COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Public Law Division

2024/PUB/con/

IN THE MATTER OF ARTICLES 20 and 28 OF THE CONSTITUTION OF THE COMMONWEALTH OF THE BAHAMAS

AND

IN THE MATTER OF AN APPLICATION BY TREVON STEVENS FOR CONSTITUTIONAL RELIEF

B E T W E E N

TREVON STEVENS

Applicant

AND

SINE NOMINE

Respondent

Before: The Honourable Mr. Justice Franklyn K M Williams, KC

Appearances: The Applicant Pro Se

Royann Forbes for the Attorney General

Hearing Dates: 12 August 2024

RULING

WILLIAMS J

[1.] The applicant is charged with kidnapping, rape and two counts of murder; the trial thereof is scheduled for 5 May 2025 before myself. In the meantime case management is ongoing.

[2.] The applicant has been the subject of three bail applications; the first before Turner J (as he then was), the second before myself, which grant of bail was refused, and the third before myself in which bail was granted. The applicant is on bail.

[3.] On 31st July the applicant brought a so called constitutional motion, not attended by an affidavit, and seeking no orders, by which he claimed a number of breaches of the constitution in regards to himself. I struck the motion, applying the proviso to Article 28.

[4.] I pause here to record that the applicant brings this so called "recusal motion" *pro se* and insists that he does not require the representation of counsel:

"THE COURT: Mr. Stevens.

THE ACCUSED: Yes, sir

THE COURT: You have an application?

THE ACCUSED: Yes, sir, a recusal application

THE COURT: Yes, you can proceed.

THE ACCUSED: Just one second.

This Application is a bit lengthy so whenever the Court sees fit, maybe this matter might have to be adjourned.

The heading of this is Ostensible Bias, Ground number 1.

THE COURT: Sorry, who are the parties?

THE ACCUSED: Trevon Stevens.

THE COURT: I mean who are the parties? Who is this against?

THE ACCUSED: This is in regard to a recusal motion with Judge Franklyn K M Williams

THE COURT: Yes, but who are the parties? Am I a party? Is the DPP a party? Is the Attorney General a party?

THE ACCUSED: I don't quite understand the meaning of that.

THE COURT: Okay

And for the record, Mr. Stevens, you are acting for yourself?

THE ACCUSED: Yes, sir, this is a pro se motion

THE COURT: And also it has been indicated to you that you are being charged with one count of Murder – sorry, two counts of Murder, one count of Kidnapping and one count of Rape. That a Mr. Keith Seymour has been appointed counsel for you.

THE ACCUSED: I never asserted to the Court that I need or wanted Counsel.

THE COURT: Yes, so you do not require Counsel.

THE ACCUSED: No, sir"

Transcript DPP v Trevon Stevens 12 August 2024

[6.] The applicant did not file a Notice of Motion, but rather brought "the recusal application" in court, which I then heard. The application was unsupported by affidavit and did not name the Attorney General, the proper respondent, or any for that matter.

[7.] Distilled to its essence, the grounds of the recusal application are two fold, that is:

(a) The applicant's right to a fair trial as guaranteed by Article 20 of the Constitution has been, is being or likely to be infringed; and

(b) There is or has been the presence or the appearance of bias on the part of his lordship against the applicant.

[8.] In support of his recusal application, the applicant relies on his oral statements (not made on or under oath), made *in curia* :

a. At page 2, line 18 *et perdurantes*: " Judge Williams told the female court clerk sitting at the court computer that I was here for killing my current girlfriend along with her 8 year old daughter who was a child. Judge Williams told the Court clerk that he wants these matters brought up quickly. Judge Williams did not use the word "alleged". He was conclusive in his prejudicial statement. Judge Williams also told the female court clerk that I had previous convictions for an incident involving my ex girlfriend where she was shot. I explained to Judge Williams that this present case should be judged on its own evidence and facts, and that the statement he just had made was unrelated to this current

matter… .

I explained that the events of my previous conviction was not relevant at this time and not related to those current matters and that there was no evidence linking or connecting me to these murders. I explained to judge Williams that it seems to me that he has already predetermined that I was guilty of these false charges that I was currently facing. I knew from that exact moment that I would not be able to receive a fair trial in the front of Judge Williams because his mind was closed and he had already predetermined my guilt.

b. At page 3, line 13: "In support of my defence of ostensible bias as proof and corroboration, I would like for the fair minded observer to analyse that Williams in his bail ruling at Paragraph 15 and 16 …of the aforementioned written bail ruling, Shantia Young, a prosecution witness stated in her statement:

> On Sunday, the 27th of September, 2020, he, Trevon said he end up beating up Alicia and his father had to come and save her from beating her up. She also said he took a photo of Alicia naked and sent it to Lynden with the caption, 'see your B-I-T-C-H in my house'. Trevon also said he choke Alicia Saturday night until she pass out."

Now at Paragraph 16 of the aforementioned ruling, Judge Williams stated:

> 'The Applicant has been convicted of causing grievous harm, recorded on antecedent form 29/10/16 to a female with whom he

was then having a relationship and which harm was caused in circumstances and in a manner similar to that which is alleged here.'

THE ACCUSED: …Judge Williams stated: 'I find in the premises that the Applicant is a threat to society, and in particular, to females.'

[9.] Hayton JCCJ of the Caribbean Court of Justice writes:

"Becoming a judge starts with a memorable swearing in ceremony. A judge will swear (or solemnly affirm) that he will faithfully exercise his office without fear or favour, affection or ill will – and perhaps in accordance with the relevant Code of Judicial Conduct or Ethics if there is one. The judge will also be aware of a citizen's fundamental constitutional rights to a fair and public hearing by an independent and impartial tribunal, judicial independence in itself being a means of ensuring impartiality, the two concepts being closely linked.

By virtue of their professional background leading up to their appointment, judges are assumed to be persons of "conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances." "It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions." The judge can be assumed, by virtue of the office for which he has been selected, to be intelligent and well able to form his own views." Judges should be selected as independent minded persons

of intellect and integrity.

Thus, there is a "presumption of impartiality" which "carries considerable weight." "*Recusing yourself from hearing a case*" Hayton JCCJ

[10.] Depending on the particular circumstances and issue to be decided, there may be nothing wrong with a judge giving his views, and indeed arriving at certain conclusions based on his analysis of the facts in issue. See Bingham M.R. in **Arab Monetary Fund v Hashim** 21 February 1991.A bail hearing is such.

[11.] Article 20 of the Constitution clothes all persons accused of a criminal offence with the presumption of innocence:

> **"20. (2) Every person who is charged with a criminal offence –**
>
> **(a) Shall be presumed to be innocent until he is proved or has pleaded guilty;"**

[12.] Section 4 (2) of the Bail Act, Chapter 103 reads:

> **"4. (2) Notwithstanding any other provision in this Act or any other law, any person charged with an offence mentioned in Part C of of the First Schedule, shall not be granted bail unless the Supreme Court or Court of Appeal is satisfied that the person charged**
>
> **(a) has not been tried within a reasonable time;**
> **(b)...**
> **(c) should be granted bail having regard to all the relevant factors including those specified in Part A of the First Schedule and subsection (2B), ...**
>
> **(2B) For the purposes of subsection (2) (c), in deciding whether or not to grant bail to a person charged with an offence mentioned in**

Part C of the First Schedule, the character and antecedents of the person charged, the need to protect the safety of the public order and where appropriate, the need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations."

[13.] The factors referred to in Part A are:

"PART A

In considering whether to grant bail to a defendant, the court shall have regard to the following factors –

(a) whether there are substantial grounds for believing that the defendant, if released on bail, would –

(i) fail to surrender to custody or appear at his trial;
(ii) commit an offence while on bail; or
(iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person

...

(g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant.";

[14.] Here the applicant is charged with, *inter alia*, kidnapping and rape, the details of which he is alleged to have published to another, a female. He is charged with the subsequent murder of the kidnapping and rape complainant, as well as her minor female child. The applicant has been convicted of causing grievous recorded on his antecedent (which conviction and attendant circumstances he acknowledges) to a female with whom he was then having a relationship, and which harm was caused in circumstances and in a manner similar to that which is alleged here.

[15.] Santia Young, the sister in law of the applicant and witness named on the information in a witness statement, stated:

> **"On Sunday 27 September 2020..... he (Trevon) said he ended beating Alecia up and his father had to come and save her from him beating her up. He also said he took a photo of Alecia naked and sent it to Lynden with the caption "see your bitch in my ...Trevon also said he choked Alecia Saturday night until she passed out.**

[16.] The deceased Alicia Sawyer prior to her murder, in a criminal complaint to the police, alleged that the applicant kidnapped her, took her to his apartment where he raped her, and threatened her with death, "**...you know I love you, don't let me have to kill you,....**"

[17.] The applicant is not of good character.

[18.] A perusal of the applicant's antecedents reveal the commission of several offences attended by violence or threat of violence i.e. possession of unlicenced firearm (two counts); threats of death; causing grievous harm; assault with a deadly weapon.

[19.] The Court of Appeal has provided some useful guidance on how a judge should approach an application for bail:

> **"... . The judge is only required to evaluate whether the the witness statements show a case which is plausible on its face. To put it another way, there must be some evidence before the court capable of establishing the guilt of the appellant. In essence, the test is prima evidence comparable to what is required at the end of the prosecution's case in a criminal trial.".**

[20.] The statements of Shantia Young and Alicia Sawyer, made prior to the deaths of the deceased, in particular that of the latter in which she complains of threats of death alleged to have been made to her if she should complain to the police, it is reasonable to infer that evidence contained therein is pertinent to the question of the applicant's involvement in the offences with which he is charged. When coupled with the applicant's antecedents, it is both reasonable and correct to find him a threat to the public safety and public order, and to deny him bail.

[21.] Findings on the applicant's bail application, not withstanding, there was nor has been any pronouncement of guilt, neither to be found in the 26 September 2023 transcript nor in the my written bail decision of 1st November 2023 contrary to the applicant's assertion.

[22.] The test for apparent bias is well settled. The question is asked *"whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased"*.per Lord Hope in **Porter v Magill** [2001] UKHL 67at para, 103

[23.] The English Court of Appeal considered the issue in **Otkritie International Investment Management v George Urumov** [2014] EWCA Civ. 1315:

> **"It is an even more fundamental principle that a judge should not try a case if he is actually biased against one of the parties. The concept of bias ...extends...to any real possibility that a judge would approach a case with a closed mind or, indeed, with anything other than an objective view; a real possibility in other words that he might in some ways have "pre-judged" the case."**

[24.] In **The Queen v Gary Jones** [2010] NICC 39, the court laid down the principle that every recusal application must have a proper, concrete foundation and thus be scrutinized with care:

> **"22. We also find great persuasive force in three extracts from Australian authority. In *Re JRL, ex p CJL*(1986) 161 CLR 342 at 352 Mason J, sitting in the High Court of Australia said:**

'Although ...important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.'

24. In the *Clenae* case [199] VSCA 35 Callaway JA observed (para 89(e)):

'As a general rule, it is the duty of a judicial officer to hear and determine the cases allocated to him or her by his or her head of jurisdiction. Subject to certain limited exceptions, a judge or magistrate should not accede to an unfounded disqualification application."

[25.] Kirby J in **Johnson v Johnson** (2000) 201 CLR 488 at para. 53 stated: "**the fair minded observer is not unduly sensitive or suspicious."**

[26.] The applicant submits that because I "...**told the female court clerk sitting at the court computer that I was here for killing my current girlfriend along with her 8 year daughter who was a child."**, that there was real possibility that I am biased; further, the applicant submits that because I made certain findings (none of which is a finding of guilt), on his bail application,I am ostensibly biased. A perusal of the 26th September 2023 transcript disproves the former. In fact, the transcript reveals that I did not utter the words ascribed to me. A perusal of the appellate decision on the applicant's bail disproves the latter, Barnett P writing for the court:

"In the ruling, the judge considered the length of time the appellant was in custody as well as the circumstances which he said there were

serious risks to the public and to witnesses if granted bail. He then made that having regard to the fact that the trial date was fixed for 20th November, 2023, he would continue the detention of the appellant until that trial date The appellant seeks to appeal that decision.

As an appellate court we do not see any matter that the judge took into account that he ought not to have... or that he did not take into account any matter that he should have taken into account and, therefore, there is no basis upon which we would consider the exercise of the discretion to refuse bail as one which this court would set aside.".

[27.] Respectfully, I adopt the dicta of Charles J in **IN THE MATTER of The Bankruptcy Act, Chapter 69 of the Statute Laws of The Bahamas RE: BERNARD E. EVANS Ex Parte THE BAHAMAS COMMUNICATIONS AND PUBLIC OFFICERS UNION PENSION PLAN AND TRUST FUND** as the measure to be applied:

"The issue in this case is whether the fair minded and informed observer, having considered the relevant facts, would conclude that there exists a real possibility that I was biased? The test for apparent bias requires consideration of a "possibility", applying the information known to and attributes of the hypothetical observer. It is well established that the hypothetical observer is properly informed of all facts, is of balanced and fair mind, is not overly sensitive and is of sensible and realistic disposition. Such an observer would, in my opinion, readily conclude that a judge will presumptively, decide every case coldly and dispassionately and only in accordance with the

evidence. This principle is deeply rooted with the policy of the common law and our constitution.".

[28.] The applicant takes issue with my initial refusal of bail, the reasons therefor, the initial setting of trial date of 20th November 2023, and what he claims is a fraudulent transcript of 26th September 2023; he says that the court's handling of or dealing with these issues, cumulatively show *mala fides*, that I have predetermined the case and thus ostensible bias on my part. I refer to the decision of the Court of Appeal, before whom, presumably these plaints were brought by the applicant, or could have been brought. Also, I have dealt with them elsewhere (See**Trevon Stevens v DPP).** In light of that decision, and the fact that the appellant is on bail, granted by myself, I consider the bringing up of these matters *pusillum* and the issues themselves *nullius momenti esse.*

[29.] The applicant has provided not an iota of evidence of bias on my part. The fact of making certain findings on a bail application (which the Bail Act mandates) in considering whether to grant or refuse bail neither makes me, *ipso facto* biased nor a fair trial impossible.

[30.] The applicant purports a constitutional breach by the court. In holding the applicant's motion and application for recusal unfounded and unsubstantiated, and thus no constitutional breach incurring, I repeat for full effect my findings in **Trevon Stevens v DPP** *ut hic quoque locum habet*:

"[10.] Subsections (2) and (3) of Article 28 confer wide powers on the court to grant constitutional relief where the right to it has been established. But Article 28 is not the refuge of the claimant who ceaselessly complains because some ruling, judgement or decision was adverse to him or because he cannot impose his writ upon the trial process or one whose claims are a smokescreen, designed to obscure forum shopping. The point can be gleaned from the discussion of the court's jurisdiction in Attorney General and Others v Boyce (2006) 69 WIR 104 at para. [59]:

'...the jurisdiction conferred...on the High Court to adjudicate allegations that any particular right has been, is being or likely to be contravened and to fashion appropriate remedies...is limited

to cases which involves a contravention of one or other of the detailed sections.' *de la Bastide PCCJ and Saunders JCCJ*

and from the discussion in Adrian Paul Gibson et als v The Director of Public Prosecutions SCCon/CrApp No.97 of 2023:

'20. I sound a word of caution that the fundamental rights provision of the Constitution must not become the first refuge of disgruntled litigants lest those provisions lose their importance as safeguards of societal rights. I repeat the caution sounded by Lord Diplock in **Harrikissoon v Attorney General of Trinidad and Tobago** [1980] PC App. No.40 of 1977 when speaking about judicial review in relation to administrative actions but is equally applicable in the context of criminal proceedings:

'the notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by...the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened , is an important safeguard of those rights and freedoms, but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative actions. In an originating application to the High Court, ...the mere allegation that a human right or

fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right' Isaacs JA

[10.] ...The applicant has not been able to point to any guaranteed right thereunder which has been, is being or is likely to be infringed.

[11.] Before disposing of this matter altogether, I wish to iterate the fundamental flaw in the bringing of the applicant's motion, which but for the applicant being *pro se* **I would have dismissed** *ab initio***; that is the Honourable Attorney General is not, nor has been sought to be joined. The point is emphasized by Evans JA in Adrian Paul Gibson et als v Director of Public Prosecutions** SCCrApp No. 46 of 2024:

'22. At no point was the Honourable Attorney General sought to be joined. He after all is the custodian of the Constitutional rights of the citizens of the Bahamas and the defender of any challenges to or under the Constitution pursuant to Article 28. ...'

[12.] The matters complained of here are either frivolous, or easily capable of being dealt with through ordinary trial or in this case, case

[31.] In the premises, I hold that the application seeking my recusal is unfounded and unsubstantiated, without merit. It is judge shopping dressed up in constitutional clothes, and is therefore dismissed.

Dated the 3rd Day of March 2025

FKM Williams

Franklyn K M Williams KC

Justice