IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2019/CRI/bail/00517

BETWEEN

TAMICO VALENTINO COAKLEY a.k.a. "Miko"

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	**The Hon. Justice Neil Brathwaite**
Appearances:	**Mr. Ian Cargill for the Applicant** **Mr. Ashton Williams for the Respondent**
Hearing Date:	**12th December A.D. 2024**
Ruling Date:	**28th January A.D. 2025**

RULING ON BAIL

[1.] The Applicant was arraigned in the Magistrate's Court on 27th September 2023, and stands charged with the offences of Murder and Possession of a Firearm with Intent to Endanger Life. He states that he is twenty-eight years old, and worked as an electrician prior to his incarceration. He claims to have no previous convictions or other pending matters. The Applicant maintains his innocence, and claims that he will be disadvantaged in his ability to support himself and his ten year old daughter, and to adequately prepare his defence if denied bail.

[2.] In opposing the application, the Respondent filed the affidavit of Karine Macvean, Counsel in the Office of the Director of Public Prosecutions, to which are exhibited a number of documents, from which it can be gleaned that on 24th March 2023 two men who had been riding in a black Nissan Note fired a number of shots at persons standing outside a bar on Hospital Lane. The men re-entered the vehicle, which drove off, and was

followed by an off-duty police officer, who saw when the vehicle turned into a yard near a church, where four males exited, one of whom was identified by the witness as the Applicant. It was later discovered that a male had died as result of injuries sustained during the shooting. The affidavit in response also refers to information that fifty-three persons who were being electronically monitored had been killed since November 2021, and that twenty-two persons who were being monitored were killed between January 2022 and December 2022.

[3.] Counsel for the Applicant relies on the constitutional presumption of innocence and the right to bail, and notes that the Applicant has no previous convictions or other pending matters. It was therefore submitted that there is no basis to infer that the Applicant would abscond or interfere with witnesses, and that the Applicant is a good candidate for bail. While accepting that a previous application for bail had been refused, it was emphasized that each application must be considered afresh.

[4.] Counsel for the Respondent notes that the charges are serious, and suggests that the evidence is cogent, all of which raises the likelihood of absconding. It was further suggested that the Applicant is a threat to public order and safety, based on the nature and circumstances of the offence, and should therefore be kept in custody. While accepting that each application for bail must be considered afresh, it was submitted that there has been no change of circumstances since the denial of bail by the learned Grant-Thompson J in June of 2024, and that there was therefore no basis to deviate from that decision. The court was therefore asked to refuse bail in the interests of public safety and order.

LAW AND ANALYSIS

[5.] The tensions surrounding an application for bail have been considered in many cases. In **Richard Hepburn and The Attorney General SCCr. App. No 276 of 2014**, Justice of Appeal Allen opined that:

> "5. Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction."
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> 6. Indeed, the recognition of the tension between these competing interests is reflected in the following passage from the Privy Council's decision in Hurnam The State [2006] LRC 370. At page 374 of the judgment Lord Bingham said inter alia:

"...the courts are routinely called upon to consider whether an unconvicted suspect or defendant shall be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as whole. The interests of the individual is, of course, to remain at liberty unless or until he is convicted of crime sufficiently serious to deprive him of his liberty". Any loss of liberty before that time, particularly if he is acquitted or never tried, will prejudice him and, in many cases, his livelihood and his family. But the community has countervailing interests, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit further offences..."

[6.] At paragraph 11 she further noted that

"The general right to bail clearly requires judges on such an application, to conduct realistic assessment of the right of the accused to remain at liberty and the public's interests as indicated by the grounds prescribed in Part A for denying bail. Ineluctably, in some circumstances, the presumption of innocence and the right of an accused to remain at liberty, must give way to accommodate that interest."

[7.] The presumption of innocence is enshrined in Article 20(2)(a) of the Constitution of The Bahamas which states:

"Every person who is charged with a criminal offence – (a) shall be Presumed to be innocent until he is proved or has pleaded guilty".

[8.] Furthermore, Article 19(1)provides as follows:

"19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases-
(a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;
(b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;
(c) for the purpose of bringing him before a court in execution of the order of a court;
(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;
(e) in the case of a person who has not attained the age of

eighteen years, for the purpose of his education or welfare;
(f) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
(g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and, without prejudice to the generality of the foregoing, a law may, for the purposes of this subparagraph, provide that a person who is not a citizen of The Bahamas may be deprived of his liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.
(2)...
(3) Any person who is arrested or detained in such a case as is mentioned in subparagraph (1)(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph (1)(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial".

[9.] The relevant provisions of the Bail Act Chapter 103 read as follows:

"4. (2) Notwithstanding any other provision of this Act or any other law, any person charged with an offence mentioned in Part C of the First Schedule, shall not be granted bail unless the Supreme Court or the 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), and where the court

makes an order for the release, on bail, of that person it shall include in the record a written statement giving the reasons for the order of the release on bail.
(2A) For the purposes of subsection (2) (a) ...
(a) without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed to be a reasonable time;
(b) delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered to be a reasonable time.
(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."
9. 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;
(b) whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;
(c) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;
(d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;
(e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;
(f) whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding
one year;
(g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant.";

[10.] In an application for bail pursuant to section 4(2)(c), the court is therefore required to consider the relevant factors set out in Part A of the First Schedule, as well as the provisions of section 2B.

[11.] In considering those factors, I note that the Applicant is charged with serious offences, involving the use of a firearm, and resulting in the death of another, in circumstances where others could easily have been injured and the consequences more dire. With respect to the seriousness of the offence, I am mindful that this is not a free-standing ground for the refusal of a bail application, yet it is an important factor that I must consider in determining whether the accused is likely to appear for trial.

[12.] In the Court of Appeal decision of ***Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011***, it was stated that:

> ***"The seriousness of the offence, with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration in determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail".***

[13.] I note also **paragraph 30** of ***Jeremiah Andrews vs. The Director of Public Prosecutions SCCrApp No. 163 of 2019*** where it states:

> ***"30. These authorities all confirm therefore that the seriousness of the offence, coupled with the strength of the evidence and the likely penalty which is likely to be imposed upon conviction, have always been, and continue to be important considerations in determining whether bail should be granted or not. However, these factors may give rise to an inference that the defendant may abscond. That inference can be weakened by the consideration of other relevant factors disclosed in the evidence. eg the applicant's resources, family connections..***

[14.] While no direct evidence has been provided that the Applicant will not appear for his trial, the possible penalty which could follow a conviction raises the issue of the likelihood of not appearing for trial.

[15.] That likelihood must be contrasted with the nature of the evidence against the Applicant. In ***Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016***, Allen P., at ***paragraph 34*** stated,

"It is not the duty of a judge considering a bail application to decide disputed facts or law. Indeed, it is not expected that on such an application a judge will conduct a forensic examination of the evidence. The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences by the appellant, such as to justify the deprivation of his liberty by arrest, charge and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail."

[16.] In considering the cogency of the evidence, I note the following statement from the Court of Appeal in ***Stephon Davis v DPP SCCrApp. No. 20 of 2023***:

"In our view "strong and cogent evidence" is not the critical factor on a bail application. The judge is only required to evaluate whether the witness statements show a case that 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 facie evidence, comparable to what is required at the end of the prosecution's case in a criminal trial. We can find a useful summary of the strength of the evidence required at the end of the prosecution's case in the headnote to the Privy Council's decision in Ellis Taibo [11996] 48 WIR 74:

"On a submission of no case to answer, the criterion to be applied by the trial judge is whether there is material on which a jury could, without irrationality, be satisfied of guilt; if there is, the judge is required to allow the trial to proceed."

[17.] In reviewing what has been placed before me, while I bear in mind that the court is not to embark on a trial of the matter on the papers, I am satisfied that the evidence rises to the level of a prima facie case, as the Applicant has been identified by an eyewitness as the shooter in this case. The cogency of the evidence again raises the likelihood that the Applicant will not appear for trial.

[18.] With respect to the issue of public order, I bear in mind that the circumstances of this offence brought danger to the public. The evidence of the eyewitness is that a number of shots were fired at a group of persons. There is no indication of any motive for the shooting, but the inference can be drawn that the violence appears to have been targeted. The court must therefore also bear in mind the number of retaliatory killings that have occurred in this jurisdiction, and the corresponding danger to the public which such acts entail. While the Applicant is entitled to the presumption of innocence, the court must bear in mind that there is cogent evidence of the Applicant's involvement in what appears to be a drive-by shooting. With these factors in mind, I am satisfied that the Applicant would be in danger of being targeted for retaliation if released on bail, and that danger would also pose a danger to public order and safety.

CONCLUSION

[19.] In all the circumstances of this case, given the nature and cogency of the evidence, and the seriousness of the offences, I am not persuaded to exercise my discretion to grant bail at this time. I am satisfied that no conditions could be put in place to ameliorate the risk to public order and safety, or to protect the life of the Applicant, and that the further detention of the Applicant is therefore necessary. In all the circumstances of this case, bail is refused.

Dated this 28th day of January A.D., 2025

Neil Brathwaite
Justice