COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2024/CRI/bail/00206

BETWEEN

TWANNO LEROY MISSICK

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Hon. Justice Neil Brathwaite**

Appearances: **Mr. Nathan Smith for the Applicant**
Mr. Uel Johnson, Ms. Teneille Bain for the Respondent

Hearing Date: **26th November A.D. 2024**

Ruling Date: **16th January A.D. 2025**

RULING ON BAIL

[1.] The Applicant seeks bail on a charge of Murder, for which he was arraigned in the Magistrate's Court on 24th September 2024. He states that he is twenty-eight years old and a father of two, and was employed in construction prior to his incarceration. He has no related previous convictions, and no other pending matters. He avers that he is not a flight risk, and promises to appear for his trial if granted bail.

[2.] In opposing the application, the Respondent filed the affidavit of Carmen Brown, Counsel in the Office of the Director of Public Prosecutions, to which a number of statements are attached. Those statements indicate that the Applicant is alleged to have shot and killed the deceased in the presence of the sister of the deceased, who was the girlfriend of the Applicant, on 28th April 2024. The witness indicates that she was aware of a dispute between her brother and the Applicant. There is also a statement from another female friend of the Applicant, who indicates that early on 28th April 2024 the Applicant came to her home and told her that he had done something stupid, and was pacing back

and forth. Later that day, the Applicant is alleged to have communicated with a male and ask if that male knew anyone who could get him off the island. The statement of the arresting officer is also exhibited, alleging that when arrested, the Applicant gave a false name to officers. There is also a Criminal Records Antecedent Form attached to the affidavit, which indicates that the Applicant was convicted and fined in 2020 for Escape, Resisting Arrest, and Disorderly Behavior.

[3.] Counsel for the Applicant relied on the presumption of innocence and the right to liberty, and suggested that bail should be granted as conditions could be put in place to ensure the attendance of the Applicant at his trial. The ties of the Applicant to this community, namely his job, family, and nationality, were also emphasized to demonstrate that there was no risk of flight. Counsel further submitted that there was no evidence to support a contention that the Applicant would interfere with witnesses. The court was therefore asked to permit the Applicant to be released on bail pending his trial.

[4.] In response, counsel for the Respondent notes that these are serious charges for which the penalty is severe, with cogent evidence. Counsel further emphasized that the Applicant had been making efforts to leave the island, as noted in the statement of one witness, and is therefore a flight risk. It was also pointed out that the Applicant at his arrest, gave the wrong name to officers, further demonstrating dishonesty and a desire to evade justice. The Respondent is therefore concerned that the Applicant poses a serious danger to the public and is a flight risk, and urges that bail be refused.

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".
>
> 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 a serious offence, involving the use of a firearm and resulting in the death of another. 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 Applicant is charged with murder which, in considering 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 considering 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 strong prima facie case, as the Applicant is alleged to have shot and killed the victim in the presence of the victim's sister, who was romantically involved with the Applicant, and that the Applicant also made incriminating comments to another female friend. In my view, the cogency of the evidence, coupled with the seriousness of the offence, supports a concern that the Applicant will not appear for his trial. The issue of the appearance of the Applicant for his trial is in my view of even greater concern in this case, when one considers the allegation that the Applicant was enquiring about getting off the island, the Applicant is alleged to have given officers a false name at his arrest, and the Applicant has been convicted in the past of Escape and Resisting Arrest.

[18.] In considering the question of bail, the court is required to conduct a balancing act between the right of the Applicant to liberty and the need to protect the public. While there is no evidence that the Applicant in this case poses a danger to the public at large, it must be remembered that an attack of this nature is in itself an affront to public order. While the Applicant is presumed to be innocent, the court must have regard to the fact that there is strong prima facie evidence of his involvement in the instant matter, in circumstances where the Applicant has demonstrated a desire in the past to evade arrest and escape justice, and where the Applicant is alleged to have made enquiries about leaving the island, and to have stayed at a location different from his address after the incident. Having regard to these facts, I am satisfied that the Applicant is not likely to appear for his trial if granted bail.

CONCLUSION

[19.] In considering whether conditions could be imposed to ensure the attendance of the Applicant at trial, I am mindful of the usual conditions which include reporting, electronic monitoring device ("EMD"), and curfew. In my view, those conditions would not suffice in the instant case, as they cannot serve to prevent a person who is a serious risk to evade justice from absconding. I further have regard to the fact that the Applicant is alleged to have used a firearm to commit a murder, and bear in mind the unacceptably high rate of firearm offences in this jurisdiction, and the public fear which exists as a result.

[20.] In the circumstances and having regard to the foregoing reasons I find that the Applicant is not a fit and proper candidate to be admitted to bail. Bail is therefore denied.

Dated this 16th day of January A.D., 2025

Neil Brathwaite
Justice