COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2023/CRI/Bal/188

BETWEEN

DENERO WHYMS

Applicant

V

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: Alex Dorsett for the Applicant

Mrs. Janet Munnings for the Director of Public Prosecutions

Hearing Date: 17th June 2025

RULING ON BAIL

Williams J

[1.] The applicant Bahamian citizen is charged with Murder.

[2.] The applicant makes his application by bail form given to remanded persons and is not attended by affidavit.

[3.] The respondent relies on the affidavit of Shaneka Carey, counsel, for the Director of Public Prosecutions in opposition to the application. Appended thereto are witness statements which contain the allegations against the applicant, and for which cause bail is opposed. Moreover, before me is the applicant's previous application for bail, and the affidavit of Vashti Bridgewater in opposition thereto, to which affidavit is appended the affidavit of Inspector Jermaine Toote of the Central Intelligence Bureau of the Royal Bahamas Police Force.

[4.] The statements allege that on the afternoon of Sunday 10th September 2023, the applicant pursued Dion Scavella and another, firing shots at them. The applicant was accompanied by another man who he is alleged to have shot resulting in the decease of that man.

[5.] Documents appended to the respondent's affidavit further allege that on Monday 11th September 2023 while at the Criminal Investigation Department, Dion Scavella confronted the applicant, whereupon, it is alleged a verbal altercation ensued. Dion Scavella and the applicant are known to each other, and appear to be in conflict.

[6.] The Bridgewater affidavit indicates that there are substantial grounds for believing that the applicant is affiliated with a local gang, and asks the court to take judicial notice of the number of persons being electronically monitored murdered since November 2021. Between 14th January 2022 and 17th December 2022 alone, some twenty two such persons were murdered. The respondent believes that if released on bail, the applicant is likely to act in a retaliatory manner or be retaliated against.

[7.] The Bridgewater affidavit refers to a total of twelve persons, unintended targets murdered between 25th September 2017 and 6th March 2023.

[8.] The applicant has one previous conviction for possession of dangerous drugs.

[9.] I note the applicant has previously been denied bail, and that there has been no change of circumstances. The matter is set for trial 26 October 2026.

LAW AND ANALYSIS

[10.] The presumption of innocence obtains.

[11.] Allen P in **Richard Hepburn v The Attorney General** SCCr.App. No. 276 of 2014 summed up the tension of competing interests at stake on an application for bail:

"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 interest 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."

[8.] On an application for bail pursuant to section 4(2)(c), I am required to consider the relevant factors set out I Part A of the First Schedule, as well as the provisions of section 2B.

[9.] There has not been unreasonable delay in trial.The applicant is not, per law, a person of good character.

[10.] In considering the relevant factors on an application for bail, I note that the applicant is charged with a serious offence, involving the use of a firearm. With respect to the seriousness of the offences, I am mindful that this is not a freestanding ground for the refusal of a bail application, yet it is an important factor which I must consider in determining whether the accused is likely to appear for trial.

[11.] In the Court of Appeal decision of ***Jonathan Armbrister v The Attorney General*** SCCrApp. No 45 of 2011, the court stated:

"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.".

[12.] I note also the dicta of the Court of Appeal in ***Jeremiah Andrews v The Director of Public Prosecutions*** SCCrApp No. 163 of 2019:

"30. These authorities all confirm therefore the seriousness of the offence, coupled with the strength of the evidence and the likely penalty 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 may be weakened by the consideration of other factors disclosed in the evidence. e.g. the applicant's resources, family connections.".

[13.] No direct evidence notwithstanding, the possible penalty upon conviction raises the issue of the likelihood of not appearing for trial.

[14.] Such likelihood is contrasted with the nature of the evidence against the applicant. In ***Cordero McDonald v The Attorney General*** SCCrApp No.195 of 2016, Allen P 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."

[15.] On this issue of cogency, I note the dicta of 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 require at the end of the prosecution's case in the headnote to the Privy Council's decision in Ellis Taibo [1996] 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."

[16.] While I bear in mind that I am not to engage in a forensic examination of the evidence, the evidence, in my view discloses a prima facie case, as the applicant has been identified by an eyewitness.

[17.] In respect of public safety and order, I note that the deceased was not the intended target. A number of shots were fired at the eyewitness, of whom it appears was targeted. I take judicial notice of the number of retaliatory killings that have occurred in this jurisdiction, and the connected danger to the public. Moreover, I take note of the averments in the affidavit of Inspector Jermaine Toote that the applicant is affiliated with a gang. There is some indication of this in the eyewitness' police statement. There was a violent verbal altercation between the applicant and the eyewitness at the Criminal Investigation Department. These indications point to the issue of public safety and order, as well as the risk of harm to the applicant. Thus, I am satisfied that the applicant poses a danger to the witness in particular, and to the public order and safety generally, and that he himself is susceptible to retaliation.

[18.] I have considered the utility of imposition of the usual conditions of reporting, electronic monitoring and curfew in mitigating the risks that here obtain. In my considered view, there are none.

[19.] In the premises, I find that the applicant is not a fit and proper candidate for bail; therefore bail is refused.

FKM Williams

Franklyn K M Williams MB KC

Justice

16 July 2025