COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2015/CRI/Bal/0290

BETWEEN

PHILLIP BOODLE

Applicant

V

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: Damien White for the Applicant

Ms. Kara White for the Director of Public Prosecutions

Hearing Date: 17th June 2025

RULING ON BAIL

Williams J

[**1.**] The applicant Bahamian citizen is charged with Attempted Murder, Armed Robbery, Accesory after the fact to Murder, Possession of Firearm with intent to supply, Possession of Ammunition. He is not of good character, having been convicted of Possession of a Firearm and Armed Robbery.

[**2.**] The applicant makes his application by summons attended by affidavit.

[3.] The respondent relies on the affidavit of Cashena Thompson, 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. The applicant has been identified as the person who robbed the female complainant. He was identified as the male who parked a Nissan Primera on 3rd January 2024, from which three males emerged and fired shots at a traffic light. Two persons died as a result. The Primera has been identified as the one taken from the female complainant. The applicant has been identified as the person who fired shots at a vehicle occupied by Eric Arthur, wounding Arthur. On 14th April 2024, police officers searched a vehicle near to where the applicant stood, finding two 9mm pistols and thirteen rounds of live ammunition. The applicant was pointed out as the possessor of the weapons.

[4.] The respondent notes the serious nature of the charges, for which the penalties are severe, raising the likelihood of absconding. The respondent suggests that the applicant should be kept in custody for his own safety, to prevent his being killed.

LAW AND ANALYSIS

[5.] The presumption of innocence obtains.

[6.] I note the applicant has previously been denied bail previously, and that there has been no change in circumstances.

[7.] 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.] The applicant is charged with a number of serious offences involving the use of a firearm. I remind myself that this is not a freestanding ground for the refusal of bail, yet it is an important consideration in determining whether the accused is likely to appear for trial.

[10.] 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 of absconding notwithstanding, the possible penalty upon conviction for each of the alleged offences raises the issue of the likelihood of the applicant 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 on the charges of arm armed robbery, attempted murder, and being an accessory to murder after the fact. as the applicant has been identified by an eyewitnesses in each of the offences alleged; on its face, the evidence against the applicant on the charges of possession of firearm and ammunition less so.

[17.] In respect of the strength of the evidence, I have serious concerns that the applicant will not appear for trial. In respect of the public safety and order, I note that the allegations disclose a series of predations in which first, a vehicle was stolen at gun point, that vehicle used in the murder of two persons, and an attempt made on the life of another. Both the murdered and the wounded appear to have been targeted. The applicant has previous convictions for armed robbery and possession of a firearm. Here, he is charged with armed robbery, and other offences involving the use of a firearm. In the premises, the presumption of innocence and the right to liberty must give way to the need to protect the public order.

[18.] I have considered the utility of imposition of the usual conditions of reporting, electronic monitoring and curfew in mitigating the threat to the public

order and safety. However, having taken into consideration the applicant's antecedents, the nature and seriousness of the charges here, as well as the cogency of the evidence, I am of the view that said conditions would not suffice to protect the public order and safety.

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

Franklyn K M Williams MB KC

Justice

17 July 2025