

COMMONWEALTH OF THE BAHAMAS CASE NO. 2025/CRI/BAIL/FP/00041
IN THE SUPREME COURT

Criminal Division

B E T W E E N

SHANDAE BROWN

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Mr. Justice Andrew Forbes
Appearances: Mrs. Ashley Carroll c/o Director of Public Prosecutions
Mr. Parkco Deal c/o Shandae Brown
Hearing Date: 9th September, 2025

RULING ON BAIL

FORBES, J

BACKGROUND

[1.] The Court heard the application, rendered its decision, and indicated the intention to provide the written reasons; it does so now. The Applicant's Counsel filed an application seeking consideration by the Court regarding the question of bail on 5th August 2025. The Applicant, in his Affidavit filed on August 5, 2025, indicated that he was born on the Island of Jamaica on January 26, 1996, and is a Jamaican citizen who resides in Bailey Town, Bimini, in the Bahamas. The Applicant notes he is currently on remand for Murder contrary to section 291(b) of the Penal

Code. That he has been incarcerated since August 2024 and has yet to be served his voluntary bill of indictment, he further avers that he has no pending matters. He also stated that he is prepared to comply with any and/or all conditions should bail be granted and that he is innocent of these charges. That he has one (1) minor child for whom he is the sole breadwinner. The Applicant Counsel also laid out submissions that the Court will refer to later.

[2.] The Respondent filed an Affidavit in Opposition on 8th September, 2025 and was sworn by Sargent 1087 Chester Walker. He avers that the Applicant was arraigned before Magistrate Smith on the 6th September 2024, charged with Murder. The Applicant will soon be served his voluntary bill of indictment, and a speedy trial process will commence. Officer Walker further avers that there is a video recording of the Applicant admitting to the offence. That this was captured in writing, Detective Sargent 3682 Delancy, in his report, which is duly exhibited. Officer Walker further avers that the Applicant sought to evade Police capture for two weeks, that the Applicant is a Jamaican national, and would likely abscond. Sargent Chester Walker avers further that the Applicant is not a fit and proper person for bail and that the evidence is cogent.

SUBMISSIONS

[3.] Counsel represented the Applicant, Mr. Parkco Deal, who provided written arguments to the Court. Counsel for the Defendant asserts that the Applicant is presumed innocent until proven guilty and that the burden rests upon those seeking to take away the right of an accused person's liberty. In this regard, he refers to Article 20 of the Constitution of the Bahamas. He refers to the dicta of *John JA* in **Johnathan Armbrister**—specifically, paragraph 12. Counsel also refers to the case of **AG v Bradley Ferguson**. And the comments of *JA Osadebay*. Additionally, Counsel referred to the often-cited cases of **Ricard Hepburn and the Attorney General**, as well as the comments of then-President of Appeal Dame Allen, in **Cordero McDonald v. The Attorney General**. Counsel also cited the remarks of *JA Evans* in **Jeremiah Andrew and the DPP**. And the often-cited case of **Hurnam v. The State** and **Commissioner of Police v. Beneby and Shaquille Culmer and the DPP**. Again, the Court notes the lack of citation offered by Counsel for the Applicant.

[4.] Counsel asserts that the Applicant ought to be granted bail as he is a Jamaican national but has very little connection with Jamaica save for his Grandmother, who has since died. The Applicant's counsel asserts that the Applicant has strong ties, as his father is a Bahamian citizen and his mother and siblings also reside in the Bahamas. That he, notwithstanding his pending matters, is presumed innocent. Counsel for the Applicant contends that the Crown's Affidavit merely appear to be relying upon the seriousness of the Offence and the nature and strength of the evidence. He asserts that there are no persons who actually observed the Applicant shoot the deceased. That the Court ought not to rely upon the unsubstantiated evidence of Officer Delancy. The Applicant has no intention of absconding and intends to appear at his pretrial hearings. That the Crown has failed to establish that the Applicant will or has the propensity to abscond. He further contends that the Applicant is the sole provider for the one minor child and that he was gainfully employed. Counsel for the Applicant asserts that the evidence is weak and that the Applicant is a fit and proper person for bail.

[5.] Counsel for the Applicant also suggests that the Court could impose conditions to ensure that the Applicant attends Court, such as Cash bail, curfew and the Electronic Monitoring Device and surrender of travel documents.

[6.] The DPP emailed its arguments. Mrs. Carroll noted the serious nature of the allegations against the Applicant and whether there are any conditions this Court can impose that will restrain this Applicant from committing additional crimes. The DPP refers the Court to the comments made by the *Justice of Appeal Evans* in **Stephon Davis v. the Director of Public Prosecutions** SCCrApp. No.108 of 2021 and the comments made, particularly at paragraph 25. Also, the comments made by *Justice of Appeal Jones* in the **Davis** case at paragraph 19. Mrs. Carroll also cites the dicta in **Donovan Collie v. Director of Public Prosecution** SCCrApp. No.132 of 2023. Counsel for the DPP submits that the Applicant is an unfit person for bail. And that the Court is mandated to consider the nature and seriousness of the offence and the strength of the evidence. Counsel for the Crown asserts that Murder is a serious offence. The nature of the evidence raises more than a reasonable suspicion. It is stated that if the Applicant is released on bail, he will likely abscond. The Crown points out that the Applicant evaded capture for at least two weeks, and that the safety of the public must be a primary consideration. Counsel for the Crown suggests that the

Applicant is not likely to comply with the bail obligations. Counsel for the Crown, in their arguments, refers to the Affidavit of Chester Walker.

THE LAW

[7.] The Court must now consider the rationale for denying bail to the Applicant and determine whether he will refuse or fail to surrender for trial.

[8.] Section 4 (1) of the Bail Act provides:-

“(1) Notwithstanding any other enactment, where any person is charged with an offence mentioned in Part B of the First Schedule, the Court shall order that that person shall be detained in custody for the purpose of being dealt with according to law, unless the Court believes that his detention is not justified, in which case, the Court may make an order for the release, on bail, of that person and shall include in the record a statement giving the reasons for the order of release on bail: Provided that, where a person has been charged with an offence mentioned in Part B of the First Schedule after having been previously convicted of an offence mentioned in that Part, and his imprisonment on that conviction ceased within the last five years, then the Court shall order that that person shall be detained in custody.

[9.] Sections 4(2) and (3) of the Bail (Amendment) Act, 2011 provide:-

(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) is unlikely to be tried within a reasonable time; or

(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 purpose of subsection (2) (a) and (b) ---

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; delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered a reasonable time.

(2B) For the purpose 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 or antecedents of the person charged, the need to protect the safety of the public or 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.

(3) Notwithstanding any other enactment, an application for bail by a person who has been convicted and sentenced to a term of imprisonment in respect of any offence mentioned in Part D of the First Schedule shall lie to the Supreme Court or the Court of Appeal. (3A) notwithstanding section 3 or any other law, the Magistrates Court shall not have jurisdiction for the grant of bail in respect of any person charged with an offence mentioned in Part C or Part D of the First Schedule.

PART C (Section 4(3)) Kidnapping — section 282, Ch. 84; Conspiracy to commit Kidnapping — sections 282 and 89(1), Ch. 84; Murder — section 291, Ch. 84; Conspiracy to commit Murder — sections 291 and 89(1), Ch. 84; Abetment to Murder — sections 86 and 307, Ch. 84; Armed

Robbery — section 339(2), Ch. 84; Attempted Murder — section 292, Ch. 84; Conspiracy to commit Armed Robbery — sections 339(2) and 89(1), Ch. 84; Abetment to Armed Robbery — sections 86 and 339, Ch. 84; Treason — section 389, Ch. 84; Conspiracy to commit Treason — sections 389 and 89(1), Ch. 84. Possession of Firearm designed to discharge explosive matter section 30(1)(a), Ch. 213; Possession of Automatic Weapons - section (30)(l)(b), Ch. 213; Possession of Firearm or Ammunition with intent to endanger life or cause serious injury to property - section 33, Ch. 213; Possession of Firearm with intent to commit an indictable offence section 34(1), Ch. 213; Possession of Dangerous Drugs with intent to supply - section 22, Ch. 228; Any offence under any of the following sections of the Sexual Offences Act, Ch. 99: 6 (rape), 10 (sexual intercourse with a person under fourteen years), 12 (sexual intercourse with a person suffering from a mental disorder), 13 (incest) and 14 (sexual intercourse with a dependent);

DISCUSSION/ANALYSIS

[10.] It appears that the Respondent argues that the Applicant has a grave matter. Further, the Applicant is a Jamaican National with no substantial connection to the Bahamas and evaded capture on the island of Bimini for two weeks, making him a potential flight risk. Also contends that the evidence adduced is cogent and powerful, and for the reasons above, there are reasonable grounds to deny the Applicant bail.

[11.] The Applicant faces a charge of Murder contrary to section 291(b) of the Penal Code, which reads as follows: “*291. (1) Notwithstanding any other law to the contrary— (b) every person convicted of murder to whom paragraph (a) does not apply— (i) shall be sentenced to imprisonment for life;.....*”

[12.] Sections 4(2) and (3) of the Bail (Amendment) Act, 2011 permit the grant of bail to those charged with a Part C offence (as stated in paragraph 9 above). Additionally, a Judge hearing an application for the grant or denial of bail for an applicant charged with a Part C offence shall have regard to the following factors as found in Part A of the Bail (Amendment) Act, 2011:-

“(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;

(b) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;

(c) whether there is sufficient information for the purposes of taking the decisions required by this Part or otherwise by this Act;

(d) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;

(e) 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;

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

[13.] Thus, the question is, would this Applicant surrender for trial? The Respondent offered no evidence to suggest that he would not have, in fact, appeared, and implied that by his evading capture for two weeks, he is a substantial flight risk, noting also that he is a Jamaican national. They also focused on the Applicant being a safety concern to the community, and the evidence against the Applicant being robust and cogent.

[14.] The Court would note the potent comments made by Justice of Appeal John in **Johnathan Armbrister v. The Attorney General** SCCrApp. No. 145 of 2011 at paragraph 17, where he says as follows:

"It must be borne in mind that the onus is upon the Crown to satisfy the Court that the accused person ought not to be granted bail. In acknowledging that the strict rules of evidence are inherently inappropriate in deciding the issue whether bail ought to be refused, we sound the warning that a naked statement from the Prosecutor that the witnesses are known to the appellant and so he is likely to interfere with them without more is unfair to the accused person and cannot stand alone..."

[15.] The Court also takes note of the comments of the Court of Appeal in **Cordero McDonald v. The Attorney General** SCCrApp. No. 195 of 2016, where, then, *President of Appeal Dame Anita Allen* said as follows:

"18. As noted in Richard Hepburn v The Attorney General SCCrApp. 276 of 2014, there is a constitutional right to bail afforded by articles 19(3) and 20(2) (a) of the Constitution; and in as much as the right pursuant to article 19(3) is not triggered since there is no element of unreasonable delay in this case, consequently this application is grounded in the provisions of article 20(2) (a).

19. In that regard, the appellant is presumed innocent and has a right to bail, unless after a realistic assessment by the judge of the matters prescribed above, the appellant's right to remain at liberty is defeated by the public's interest 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 other offences..." 8 (per Lord Bingham in Hurnam v The State [2006] 3 LRC 370, at 374).

20. The balancing of the applicant's right to the presumption of innocence and that of the public to be protected are reflected in the factors as mentioned earlier recognized and prescribed by the Bail Act as matters to be weighed against the grant of bail, and, in so far as they are relevant to the particular application for bail, they must, as previously noted, be assessed by the judge before exercising the discretion. Indeed, section 2B prescribes that in relation to Part C offences: '...the character or antecedents of the person charged, the need to protect the public or 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.'"

[Emphasis added].

[16.] Also, the comments of *Justice of Appeal Evans*, although cited by Counsel for the Applicant, its importance is essential and he said as follows:

"A judge hearing a bail application cannot simply refuse an application for bail merely on the fact that the new offence is alleged to have been committed while the defendant was already on bail for a similar offence. There is a requirement for the judge to assess the evidence on which the crown intends to rely on the hearing of the new charge. We must recognize that every individual charged before the Court is presumed innocent until proven guilty. We walk a tight rope of having to protect the interest of society and the constitutional rights of individuals brought before the Courts. This system only works if all stakeholders do their part. As such the Crown is not at liberty to hold information to its bosom and not provide the Courts with sufficient information to make proper decisions; nor are they permitted to deprive individuals of their liberty based only on suspicion of involvement in criminal activity....."

[17.] The Court notes the assertions made by Counsel for the Applicant that the Court ought not to examine evidence that, in the Court's opinion, would be directly contrary to its function. It notes that it is not assessing the credibility or weight of the evidence, but rather whether it is sufficiently cogent. In this regard, the Court reviewed the statements of D/Sargent Vernon Delancy, who indicated that on the 15th August 2024, upon receiving information regarding a Murder on the Island of Bimini from Chief Superintendent Weir, he travelled to Bimini and, upon attending the Alice Town Police Station, he received additional information and the statements of several witnesses. He then visited the scene, received further details from Officer Young, and observed a

spent 9mm casing at the Crime Scene. The Crime Scene technician then collected the casing. He obtained additional information from a friend of the Applicant and made several checks of known locations for the Applicant with negative results. That he contacted the family of the Applicant, who indicated they hadn't had any contact with him in some time. After obtaining a search warrant for the residence of the Applicant's girlfriend, a search was conducted with negative results. On 31 August 2024, the Applicant was arrested and cautioned, during which a verbal interview took place. The Applicant indicated that he shot the male twice as he felt in fear for his life. He was constantly bullied throughout his life by this male.

[18.] According to Sergeant Delancy's statement, he conducted a video interview where he invited the Applicant to take him to the scene of the shooting. He, along with the Applicant and other Officers, conducted inquiries at Fisherman Village, located on the property of Bimini Bay. He further directed Officers to where he threw a black handgun. Officers made checks but were unsuccessful in finding the handgun. Officer Delancy noted that he offered to conduct a written interview with the Applicant, but he declined. Counsel for the Applicant contends that these are no eyewitnesses and that the evidence of Delancy is unreliable. Should the matter proceed to the jury, the Court is required to give a warning regarding evidence and the circumstances under which the evidence was obtained the question of credulity is entirely a function of the Jury should the matter so proceed.

[19.] The weight of that evidence and the credibility of any witness is entirely a matter for the Jury at trial, and one which, at this stage, the Court cannot assess. The Court also notes that the Crown asserts that, as the Applicant is a foreign national, and that this is disqualifying; the Court would point to the case of **Lindsay Shriver & Terrance Bethel v. The Director of Public Prosecutions** SCCrApp. No. 193 of 2024. This is a case where the Appellants were jointly charged with Conspiracy to commit Murder, contrary to sections 89(1) and 291 of the Penal Code. Ms. Shriver, an American citizen, was, in fact, granted bail, which was later varied. The Bail was later revoked, and the Appellant appealed the revocation to the Court of Appeal, which upheld the judge's decision to revoke the bail. The issue for consideration was that the bail was granted despite her nationality and lack of connections with the Bahamas, and it wasn't withdrawn for that reason, but rather due to her intentional efforts to interfere with the virtual complaint, despite clear orders

from the Court. The point, therefore, is that the nationality of the individual is not a disqualifying factor in determining whether they will attend Court if granted bail. In Donna Vasyli v. The Attorney General SCCrApp. & CAIS No. 148 of 2015, here again, a non-Bahamian was granted bail, albeit for health considerations.

[20.] The question of whether the Applicant would abscond is addressed by the Respondent, who offers no evidence that he would not. They appear to suggest that if he were released on bail, he would likely abscond because he is a Jamaican National, as well as being evasive when being sought by the Police. The evidence adduced does not support any of those assertions, and the Court is reminded by the Court of Appeal in Jonathan Armbrister v The Attorney General, (Supra). So I remind Counsel for the Crown that evidence must be the bulwark of the case, not bare assertions.

[21.] The Court is satisfied that the evidence adduced is indeed cogent and reasonably strong, and its credibility and weight are matters for a jury; this Court, as a matter of finding, accepts that the evidence adduced is reasonable. The issue is whether this Court can impose conditions that would ensure the Applicant attends Court when required and does not engage in any further violations or create concerns for public safety. The two factors which this Court notes are that the Applicant intends to relocate to the Island of Bimini, whose proximity to the United States provides great temptation. Given this, the Court is uncertain that the Electronic Monitoring Device, curfew or reporting requirements sufficiently ensure that the Applicant remains compliant with the terms of any bail. And one final factor, although not addressed by either the Crown or the Applicant, is that all the relevant witnesses to this incident are residents of the Island of Bimini, and the Applicant intends to return to the Island if released upon bail. In the opinion of the Court, it would be naive to think that it would not have a possible chilling effect on the witnesses. The Court is not ascribing any intention on the Applicant to interfere; however, the Island is relatively small, as are most of these Island communities, and for the Applicant to return would certainly create some concerns in the minds of many, and to assume otherwise is acting as an ostrich and burying one's head in the sand. The Court also notes that the trial of this Applicant is scheduled for next year, and indeed, the question of delay would not arise. However this would clearly be a matter to be reconsidered.

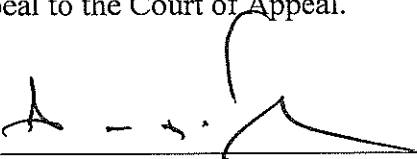
[22.] Another factor for consideration is the real likelihood of retaliation and the expressed fear by the Applicant when interviewed by Officer Delancy. The Applicant noted that this individual consistently bullied him. It would be irresponsible for this Court to ignore that retribution by the friends and associates of this individual is not likely. It is a common factor within our communities almost daily. In this regard, the Court notes the comments made by the Court of Appeal in the case of **Jaico Choute v. The Director of Public Prosecutions** SCCrApp. No. 148 of 2024, where the headnote was illustrative and said as follows:

“In bail applications, courts are called upon to balance the right of a defendant to be at liberty pending the determination of his trial and the need to protect the public interest in ensuring that those persons who may have committed the offences with which they were charged are brought to book and not frustrate their trials by absconding or interfering with witnesses. The Court found that concern about absconding and tampering with witnesses was not a motivating factor for the Judge in this case. The safety of the appellant concerned him. How long that concern may be validly held to deprive the appellant of his liberty depends on the circumstances of his case. The decision to keep the appellant in custody was justified on the grounds of ensuring the appellant’s safety. The appellant’s failure to properly identify the shooter in the first interview with authorities, and his subsequent identification in the second interview, was due to fear of retaliation from the shooter’s associates.....”[emphasis added]

DISPOSITION

[23.] This Court, given the above circumstances, will deny the application for bail for the current offence. The Court is not of the view that there are any conditions that the Court may impose that would ensure the Applicant's appearance at trial. The Applicant is invited to reapply should circumstances change. And further, there is a real concern about the personal safety of the Applicant should he be released.

[24.] Parties aggrieved may appeal to the Court of Appeal.



Justice Andrew Forbes