COMMONWEALTH OF THE BAHAMAS **CASE NO. 2018 /CRI/BAIL/FP/00116**

IN THE SUPREME COURT

Criminal Division

B E T W E E N

JAYCEE SIMMONS

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honorable Mr. Justice Andrew Forbes

Appearances: Mrs. Ashely Carroll c/o Director of Public Prosecutions

Mr. K. Brian Hanna c/o Jaycee Simmons.

Hearing Date: 22nd July, 2025

RULING ON BAIL

FORBES, J

BACKGROUND

[1.] The Court heard the application for bail, indicated the intention to provide the written reasons and does so now. The Applicant's Counsel filed a Summons on the 23rd June, 2025 and an Affidavit in Support on 23rd June 2025.

[2.] In his Affidavit, the Applicant averred that he was a Bahamian citizen. That he has been charged with Attempted Murder (2 counts) contrary to section 292 of the Penal Code. Possession

of a firearm with intent by means thereof to Endanger Life, (2 counts) contrary to section 33 of the Firearm Act. He was arraigned before the Magistrates' Court on 13th June 2023. He intends to plead not guilty and will defend these charges at trial. That he is prepared to comply with any and/or all conditions should bail be granted. He further averred he is seeking bail so as to return to work and provide for his family. He states that he resides at Eight Mile Rock, Grand Bahama. He requests to be released on bail. If he is not released, it will disadvantage his preparation for defence. That he has been in custody since June 2023. That he is not married and is a Bahamian citizen and will not abscond from the jurisdiction and will abide all conditions.

[3.] The Respondent filed an Affidavit in Opposition on 8th July, 2025 and sworn by Corporal 3913 Harris Cash. He avers that he is attached the Office of Director of Public Prosecution. That the Applicant was arraigned before the Court on the 13th June 2023 and was not required to enter a plea at that time. That the Applicant was charged with two (2) counts of Attempted Murder and two counts of Possession of a firearm with intent to Endanger life he was served his Voluntary Bill of Indictment and appeared before Justice Andrew Forbes for the arraignment on 13th February 2024 and plead not guilty to all counts. That the Supreme Court information is duly exhibited. That there is cogent evidence against the Applicant taken from the reports of multiple individuals who were eyewitnesses. That the Applicant at the time of this alleged incident was already on bail for the offences of Murder and two (2) counts of Attempted Murder, a copy of that information is duly exhibited. Further that the Applicant is not a person of good character as he has multiple convictions and his antecedent is exhibited. Corporal Cash further avers, that the Applicant is not a fit and proper person to be released on bail.

SUBMISSIONS

[4.] The Applicant's Counsel submitted Skeleton Arguments and states that the Applicant is twenty seven years old and was born in Eight Mile Rock Grand Bahama. That he is the father a minor child and his inability to work has caused financial hardship.

[5.] Counsel for the Applicant further argues the factors to be considered by the Court are the provisions contained within Part A of the First Schedule and that there are substantial grounds for believing that the Applicant will attend his trial. Counsel concedes that the serious and cogent evidence is to be given consideration and may give rise to an inference of flight, but this can be rebutted.

[6.] Counsel for the Applicant further submits that the Applicant is presumed innocent of the charges. The Applicant notes Article 20(2) (a) of the Constitution which says as follows: *"20. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. (2) Every person who is charged with a criminal offence — (a) shall be presumed to be innocent until he is proved or has pleaded guilty; ...."* Counsel notes that there was no evidence advanced to demonstrate that the Applicant will interfere with the Prosecution witnesses or that the Applicant ought to be kept safe for his protection. Counsel further contends that the Applicant is not a threat to public safety.

[7.] Counsel for the Applicant notes that when the Court exercises its discretionary power of bail it performs a balancing act and seeks that the Court exercise its discretion on behalf of the Applicant. Counsel noted during the oral hearing that the sole arguments advanced by Counsel for the Respondent was that the charges were serious and that this ground, in of itself, is an insufficient reason for denial of bail but is a factor to be considered.

[8.] The Respondent submissions advanced by. Mrs. Carroll noted the serious nature of the allegations against the Applicant and impugns 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 provisions of sections 3 and Part A of the First Schedule of the Bail Act. As well as section 4(2B) which reads as follows; Counsel noted the comments made by then Justice of Appeal Jones in **Stephon Davis v. The Director of Public Prosecutions** SCCrApp. No.20 of 2023 and the comments made particularly at paragraph 19. Specifically, which reads as follows: *"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."***

[9.] Mrs. Carroll also cites the dicta in **Donovan Collie v. The Director of Public Prosecutions** SCCrApp. No. 132 of 2023. And the comments of *Justice of Appeal Turner* at

paragraph 30: *"The judge found that the prima facie evidence against the applicant before him, was strong. The judge is only required to evaluate whether the witness statements show a case that is plausible on its face, ie some evidence 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. The Judge found this, on the evidence and there is no apparent error in this finding..."*

[10.] Counsel for the DPP further cites the case of **Treyvar Taylor v. The Director of Public Prosecutions** SCCrApp. No. 139 of 2024 and the comments of *Justice of Appeal Bernard Turner* at paragraph 36, specifically: *"In the Court's view, in the present appeal, the appellant's alleged commission of serious offences whilst on bail and under an EMD order provides us with clear evidence that the appellant is a threat to public order and is also a relevant factor to consider pursuant 11 to paragraph (f) of the First Schedule of the Bail Act. The combination of pending charges for violent offences and the appellant's conduct whilst on bail justifies the decision by the Judge to refuse bail and to support his continued incarceration pending trial."*

Counsel then submits that the Applicant is an unfit person for bail and that the evidence in this matter. During oral arguments Counsel for the Respondent indicated that they rely upon their affidavit and arguments submitted. Counsel for the Crown also pointed to the comments of Justice Evan Justice of Appeal in **Stephon Davis v. The Director of Public Prosecutions** SCCrApp. No. 108 of 2021 specifically at paragraph 25 which says as follows: *"...As the authorities show the crown has a duty to put before the court the evidence which raises a reasonable suspicion of the commission of the offences by the applicant, such as to justify the deprivation of his liberty by arrest, charge, and detention...."* Also paragraph 19 which reads: *"...It should be noted, however, that 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...."*

THE LAW

[11.] The Court must now consider the rationale for the denial of bail to the Applicant and consider whether he will refuse or fail to surrender for trial.

[12.] 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 is of the opinion 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.

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

(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 ti1nc; 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.

[14.] The Court must also consider Part A of the First Schedule which says as follows:

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 Act16;

(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.

(h) in the case of violence allegedly committed upon another by the defendant, the court's paramount consideration is the need to protect the alleged victim.

DISCUSSION/ANALYSIS

[15.] It appears that the Respondent's submissions are that the evidence adduced is cogent and powerful and are grounds to deny the Applicant bail and that given his propensity to commit violent crimes he is a danger to the community.

[16.] Additionally, a Judge hearing an application for the grant or denial of bail for an applicant charged with an 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.";

[Emphasis added.]

[17.] Thus, the question is, would this Applicant surrender for trial? The Respondent offered no evidence to suggest that Applicant would not appear for trial. They, however, focused on the Applicant being a safety concern to the community. As stated by the Court in **Stephon Davis v the DPP** SCCrApp. No 108 of 2020 where the Court said in the headnote as follows:

"..... No substantial grounds have been disclosed in this case to support a conclusion that the appellant would abscond and not appear for trial. As stated in Hurnam "the seriousness of the crime alleged and the severity of the sentence faced are not, without more, compelling grounds for inferring a risk of flight ..." it follows that there must be shown, substantial grounds for believing that the applicant would not surrender to custody or appear for trial. There is no evidence to suggest that the appellant would not appear for his trial. The Judge is required to consider whether there are conditions that may be imposed that would, as far as possible, ensure that the appellant appear for his trial. It is only the severity of the charge and the inference of flight in the instance where no form of bail condition could mitigate or minimize that flight that can support the Judge's refusal of bail. The Judge's finding for refusal of bail on the ground that the release of the appellant on bail would be detrimental to public safety is without merit as there has been no evidence provided by the respondent to support the conclusion that while on bail the appellant would breach public safety. The judge concluded that the evidence against the appellant was cogent. However, the alleged inconsistencies in the evidence of witnesses and the recanting of statements and what

weight may be attached to the evidence of such inconsistent or recanting witnesses are within the province of the jury; and does not call for an evaluation by the judge."

[18.] There is no evidence before this Court that the Applicant will refuse to surrender. The Court 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).***
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> ***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).***
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> ***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 above-mentioned factors 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.'"***
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> [Emphasis added.]

[19.] This Court also takes note of the comments made by then *Justice of Appeal Longley* in **The Attorney General of the Commonwealth of The Bahamas v. Bradley Ferguson, Kermit Evans, Stephon Stubbs, and Kenton Deon Knowles SCCrApp. No.57, 106,108 &116,** and in particular paragraph 35, where he said as follows:

"That is not to suggest that every judge must embark on a minute examination of the evidence against an accused on a bail application. That would not be proper (see Hurnam). But whereas here no evidence is adduced linking the respondents to the crimes charged at a hearing where that issue is live, it seems to me that in order to give the accused the full measure of his rights under article 19 of the constitution there is an obligation to release him immediately, and leave it to the court hearing the case preliminarily or otherwise to decide whether in fact there is evidence to support the charge. In Hurnam, release on bail was thought proper in circumstances where the evidence against the accused consisted of accomplice evidence and had to be approached with caution. The court thought the presumption of innocence in those circumstances operated to justify immediate release pending trial…."

[Emphasis added.]

[20.] Counsel for the Respondent cited **Jonathan Armbrister case** but omitted the full comment made by the Court where the Court said:

*"**It has been established for centuries in England that the proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear to take his trial, and that bail is not to be withheld merely as a punishment. The Courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in the case of conviction, the accused's record, if any, and the likelihood of interference with witnesses…** 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."*

[Emphasis added]

[21.] There is a question regarding the cogency of the evidence, given that the Applicant appears to be denying the allegations. There are multiple eyewitnesses who collectively indicates that the observed the Applicant shooting at the establishment where these alleged crimes are said to have occurred. At this stage this Court is not determining the guilt of the Applicant, but rather assessing the credibility of the evidence. The other considerations to be given by the Court is whether there are any conditions which can be imposed which will ensure that the Applicant is compliant while on bail. There are pending matters and antecedents, thus the singular issue is whether the Applicant will surrender for trial. The Electronic Monitoring Device (EMD) can ensure the availability of

the Applicant as well as requiring regular reporting conditions to the nearest Police Station to the Applicant's residence and the forfeiture of the travel documents to minimize the potential for Applicant removing himself from the jurisdiction of the Court. The Court considers the imposition of conditions as reasonable in these circumstances.

[22.] This Applicant has another matter of similar nature, reportly involving firearms, it is noted that the Applicant was on Bail for those alleged offences when these current Offences occurred. The Court is satisfied that it is unlikely that this Applicant can be restrained utilizing the methods sanctioned by the Courts.

DISPOSITION

[23.] This Court, given the circumstances, will deny the application for bail for the current offences. This Court is fully aware of the comments *Justice of Appeal Evans* and of the *President Sir Michael Barnett* of the Court of Appeal in **Stephon Davis case (supra).** Those comments bare repeating and are 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."... : "This court has on more than one occasion repeated the principle that bail should not be denied as a punishment for a crime for which a person has not yet been convicted. This principle applies even when the crime is alleged to have been committed whilst a person was on bail. The burden is on those opposing the grant of bail to should why there are good reasons to deny bail to a person charged with an offence."*

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

Dated this 2nd day of September, A. D. 2025

Justice Andrew Forbes