COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2013/CRI/Bal/00194

BETWEEN

KENO MCKENZIE

Applicant

V

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: Mr.Geoffrey Farquharson for the Applicant

Mrs. Karine Mcvean for the Director of Public Prosecutions

Hearing Date: 9th July 2025

RULING ON BAIL

Williams J

[1.] The applicant Bahamian citizen is charged with Attempted Murder (five counts) and Possession of firearm with intent to endanger life (five counts), and Damage The complainant in each count is a police officer

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

[3.] The respondent relies on the affidavit of Max G. Julien, counsel, for the Director of Public Prosecutions in opposition to the application.

[4.] The applicant, was at the time these allegations arose, on bail for Attempted Murder Information 68/4/2019 and Murder (two counts), Abetment of Murder(two counts), Accessory after the fact to Murder(two counts), Possession of Unlicenced Firearm, and Unlawful Possession of Ammunition Information 65/4/2019. On 29th September 2023, the applicant was found to have breached the conditions of that bail (seven counts) and imprisoned for one year.

[5.] The applicant states that the prosecution evidence is "inherently weak", the probability of conviction slim, and continued remand unjust and unconstitutional. Further, there is no credible evidence of intention to abscond, commit offences while on bail, or obstruct justice.

[6.] The On 24th May 2023, the sureties (near relatives, both)for the bail previously granted signaled their intention, and applied to have the applicant's bail revoked on the grounds that his "whereabouts were unknown" and their inability "to keep track of his whereabouts".

LAW AND ANALYSIS

[7.] The presumption of innocence obtains.

[8.] 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."

[9.] 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.

[10.] There has not been unreasonable delay in trial.

[10.] In considering the relevant factors on an application for bail, I note that the applicant is charged with serious offences, 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.] While no direct evidence has been provided that the applicant will not appear for trial, the possible penalties consequent upon conviction raises the likelihood of not appearing for trial. More importantly, it has been shown that sureties have not been able to guarantee his compliance with conditions upon grant of bail.

[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 on each information, in my view discloses a prima facie case.

[17.] In respect of public safety and order, I note here that the applicant appeared to, in an effort to evade apprehension, attempted to murder, and possessed a firearm with intent to endanger the lives of five police officers. I note that the circumstances in which the applicant is alleged to have participated in the commission of the prior offences, that is, in concert with others against several targets, raises the portent of retaliation and hence collateral damage to civilians by serious injury or death. In short, the public safety and order is threatened.

[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.

Franklyn K M Williams MB KC

Justice

29 July 2025