COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2025/CRI/Bal/00023

BETWEEN

MITCHELL FOX

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. Betty Wilson for the Director of Public Prosecutions

Hearing Date: 9th July 2025

RULING ON BAIL

Williams J

[1.] The applicant Bahamian citizen is charged with Murder and Conspiracy to Commit Murder on Information 347/12/2024, and Attempted Murder (two counts) on Information 77/3/2025 respectively

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

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

[4.] The applicant avers that there is no identification evidence, in fact no credible evidence connecting him to the commission of the offences alleged, that the allegations are likely to fail, and that his continued remand is a breach of his constitutional rights. The applicant further avers that he is not a flight risk, and is a fit and proper candidate for the grant of bail. The applicant fails to mention that at the time that these allegations arose, he had been charged with and was on bail for Unlawful Sexual Intercourse and Child Pornography Information 276/11/2021.

[5.] The respondent's affidavit discloses that the applicant's cell phone, recovered at the time of his arrest, contained conversations between the applicant and his co accused, including a video of the deceased's home; also found therein was a detailed voice note referencing the purchase of gloves, certifying the death of the victim, and the location (a convenience store) at which the murder was carried out. The chat allegedly referenced the motive for the murder, viz, retaliation:

"That one for bro. Eddie needed to get he head bust. I going to bust couple more. He was the main one to bring heat on bro."

The reference to "bro" is that of the applicant's brother, allegedly murdered on 6th May 2024.

[6.] The respondent's affidavit discloses that one of the victims the subject of the attempted murder charges was "an innocent bystander", a blind man who does not know, and is unknown to the applicant. The applicant was on bail for attempted murder when arrested and charged with murder.

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 for Murder, Conspiracy to commit Murder and Attempted Murder 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 on each information, in my view discloses a prima facie case.

[17.] In respect of public safety and order, I note here, that while the applicant had previously been on bail for some time, the applicant is alleged to have made clear that the murder charged here was retaliatory, and his intention to carry out further murders in avenging his deceased brother. This expressed intention, coupled with the alleged murder itself, raises the issue of his own safety and that of the public.

[18.] I take judicial notice of, and greatly concerned at the cycle of retaliatory killings of persons on bail, and by persons on bail. Here, it is alleged that the murdered man was accompanied by his wife and children, innocent persons whose lives were put at risk.

[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. The public safety and that of the applicant are best served by his remaining in custody.

[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

4th August 2025