IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2018/CRI/bail/00868

BETWEEN

DONTEE RILEY

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	**The Hon. Justice Neil Brathwaite**
Appearances:	**The Applicant Pro Se** **Ms. Jacklyn Burrows for the Respondent**
Hearing Date:	**8th April A.D. 2025**
Ruling Date:	**14th May A.D. 2025**

RULING ON BAIL

[1.] The Applicant in this matter was remanded in custody on 26th August 2024 on a charges of Murder and Conspiracy to Commit Murder. He states that he is twenty-seven years old, with no previous convictions or other pending matters. The Applicant acknowledges previously facing charges of Abetment of Murder and Abetment of Armed Robbery, for which he was released on bail in 2024. The Applicant was acquitted of those charges in March 2025. He suggests that in this case the evidence is weak, as the death certificate gives the date of death as 15th August 2025, while his ankle monitor report for that date shows that he was not in the area where the incident is alleged to have occurred. He further emphasizes that witnesses who saw the vehicle which he is alleged to have been in on the date of the incident did not report seeing anything suspicious, and that a co-accused who named the Applicant in an interview with the police has claimed that he

was oppressed, and has apologized for naming the Applicant. The Applicant relies on the fact that he was on bail before, and is not alleged to have committed any breaches while on bail. He insists that he is not a flight risk or a danger to the public, and has expressed his willingness to abide by any conditions, including relocating to a family island. He urges the court to grant bail, so that he can assist his ailing grandmother, and also be in better position to care for himself, including maintaining a special diet that he needs to preserve his health.

[2.] The Respondent relied on the affidavit of Calnan Kelly, Counsel in the Office of the Director of Public Prosecutions, to which are exhibited a number of statements, from which it can be gleaned the Applicant admitted to being at the home of a co-accused in Garden Hills where the incident is alleged to have commenced, and at the scene where the body was discovered on 15th August 2024, saying in one interview that he witnessed the deceased being beaten in Garden Hills, and killed and thrown in the water at Old Stuart Cove, while saying in another that he was in Garden Hills waiting while another suspect was cleaning, and at Old /Stuart Cove to assist in locating a phone. The home at Garden Hills was searched, and suspected blood and duct tape were found. A knife and a piece of wood which were allegedly used in the murder were also later recovered at another location. The affidavit also alleges that a report from the ankle monitor attached to the Applicant also places him at both locations at relevant times.

[3.] Counsel for the Respondent submits that the evidence is cogent, and that while the Applicant has now been acquitted of the charges for which he was on bail, the fact is that he was on bail at the time he was charged with the present offences. It is further submitted that the matter is proceeding expeditiously, as the Voluntary Bill of Indictment has already been presented. The Respondent therefore submits that the Applicant is a threat to public order, and should be refused bail.

LAW AND ANALYSIS

[4.] The tensions surrounding an application for bail have been considered in many cases. In **Richard Hepburn and The Attorney General SCCr. App. No 276 of 2014**, Justice of Appeal Allen opined that:

> "5. Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction."

6. Indeed, the recognition of the tension between these competing interests is reflected in the following passage from the Privy Council's decision in Hurnam The State [2006] LRC 370. At page 374 of the judgment Lord Bingham said inter alia:

"...the courts are routinely called upon to consider whether an unconvicted suspect or defendant shall be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as whole. The interests of the individual is, of course, to remain at liberty unless or until he is convicted of crime sufficiently serious to deprive him of his liberty". Any loss of liberty before that time, particularly if he is acquitted or never tried, will prejudice him and, in many cases, his livelihood and his family. But the community has countervailing interests, 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 further offences..."

[5.] At paragraph 11 she further noted that

"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 interests 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."

[6.] The presumption of innocence is enshrined in Article 20(2)(a) of the Constitution of The Bahamas which states:

"Every person who is charged with a criminal offence – (a) shall be Presumed to be innocent until he is proved or has pleaded guilty".

[7.] Furthermore, Article 19(1)provides as follows:

"19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases-
(a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;
(b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;
(c) for the purpose of bringing him before a court in execution of the order of a court;
(d) upon reasonable suspicion of his having committed, or of

being about to commit, a criminal offence;
(e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
(f) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
(g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and, without prejudice to the generality of the foregoing, a law may, for the purposes of this subparagraph, provide that a person who is not a citizen of The Bahamas may be deprived of his liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.
(2)...
(3) Any person who is arrested or detained in such a case as is mentioned in subparagraph (1)(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph (1)(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial".

[8.] The relevant provisions of the Bail Act Chapter 103 read as follows:

"4. (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)...
(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 purposes of subsection (2) (a) ...

(a) 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;
(b) delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered to be a reasonable time.
(2B) For the purposes 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 and antecedents of the person charged, the need to protect the safety of the 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."
9. The factors referred to in Part A are:
"PART A
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 Act;
(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.";

[9.] In an application for bail pursuant to section 4(2)(c), the court is therefore required to consider the relevant factors set out in Part A of the First Schedule, as well as the provisions of section 2B.

[10.] In considering those factors, I note that the Applicant is charged with serious offences, and is alleged to have been involved in the death of a person. Indeed, the evidence before the court suggests that the victim was beaten and stabbed, and his body discarded. With respect to the seriousness of the offence, I am mindful that this is not a free-standing

ground for the refusal of a bail application, yet it is an important factor that 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***, it was stated that:

> ***"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 **paragraph 30** of ***Jeremiah Andrews vs. The Director of Public Prosecutions SCCrApp No. 163 of 2019*** where it states:

> ***"30. These authorities all confirm therefore that the seriousness of the offence, coupled with the strength of the evidence and the likely penalty which is likely 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 can be weakened by the consideration of other relevant factors disclosed in the evidence. eg the applicant's resources, family connections..***

[13.] While no direct evidence has been provided that the Applicant will not appear for his trial, the Applicant is charged with murder and conspiracy to commit murder, which attracts a maximum penalty of life imprisonment. That possible penalty which could follow a conviction, raises the issue of the likelihood of the Applicant not appearing for trial.

[14.] That likelihood must be contrasted with the nature of the evidence against the Applicant. In ***Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016***, Allen P., at ***paragraph 34*** 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.] In considering the cogency of the evidence, I note the following statement from 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 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."

[16.] In reviewing what has been placed before me, while I bear in mind that the court is not to embark on a trial of the matter on the papers, I am satisfied that the evidence rises to the level of a strong prima facie case. While the Applicant contends that his ankle monitor does not place him at the scene on the 15th August, which is the date of death given on the death certificate, this in my view is not dispositive, as that is the date the body was found, and not necessarily the date the deceased was killed. In any event, it is my view that it is a matter to be resolved at trial, where the pathologist may or may not be able to explain how that date came to be on the death certificate. The contention of the Application further does not comport with his admissions to being present when the deceased was killed. While he contends that he was oppressed to make admissions, again, it is a matter for trial. In my view, the cogency of the evidence, coupled with the seriousness of the offences, raises a concern that the Applicant will not appear for his trial.

[17.] Of greater concern to me in the instant case are the issues of the safety of the Applicant, and the risk to public order. The offence in this case was committed in circumstances where the Applicant is alleged to have been involved in an offence in which the victim was assaulted in a home, then transported to another location, and discarded. The inferences are that there were concerted attempts to conceal the offence and thereby evade the course of justice. I am further concerned that, given the nature and circumstances of this offence, and the many local instances of vigilantism, retaliations

and the killing of persons on bail, it is my view that the Applicant's safety could best be ensured by his remaining in custody.

[18.] That view is further supported by the views of the learned Isaacs J as expressed in Dwayne Heastie v AG SCCrApp No. 261 of 2015 where the court said as follows: per Isaacs JA: **"The learned judge ought to have had regard to Part A(b) of the Bail Amendment Act, to wit, whether the defendant should be kept in custody for his own protection, and concluded that in the present climate of apparent vigilantism in the country, the appellant should remain in custody for his own protection. When courts are considering the grant of bail for persons charged with murder, judicial notice may be taken of the number of persons who have been charged with murder and released on bail who have themselves become victims of homicide. The appellant is alleged to have killed a family man of Haitian origin in an unprovoked attack where the man was seeking payment for work he had performed for the appellant. The events are of recent vintage and the emotions are quite raw. These circumstances make for a volatility which may only be defused by the continued detention of the appellant."**

CONCLUSION

[19.] In considering whether conditions could be imposed to ensure the attendance of the Applicant at trial, I am mindful of the usual conditions which include reporting, electronic monitoring device ("EMD"), and curfew. In my view, those conditions would not serve to ensure the safety of the Applicant. Furthermore, adherence to conditions relies on the Applicant abiding by his word. In this application, the Applicant relied heavily on his desire to care for an ailing grandmother, with whom he resided, while on the other stated a willingness to relocate to a family island if the court deemed it necessary. The picture emerges, in my view, of a person who is willing to say anything to get bail, but whose credibility is questionable. I am further concerned that the Applicant was on bail, and had in fact been released in March 2024, when he was charged again on cogent evidence just five months later with extremely serious offences. Bearing in mind the presumption of innocence, and the fact that the Applicant was acquitted of the charges for which he had been granted bail, I am nevertheless concerned that the Applicant will reoffend if granted bail

[20.] In the circumstances of this case, and having regard to the foregoing reasons I find that the Applicant is not a fit and proper candidate to be admitted to bail. Bail is therefore denied.

Dated this 14th day of May A.D., 2025

Neil Brathwaite
Justice