IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2025/CRI/bail/00206

BETWEEN

LAVARDO DEAN JR.

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Hon. Justice Neil Brathwaite**

Appearances: **Applicant Pro Se**
Ms. Darnell Dorsette for the Respondent

Hearing Date: **5th March A.D. 2025**

Ruling Date: **9th April A.D. 2025**

RULING ON BAIL

[1.] The Applicant was charged in August 2024 with the offence of Armed Robbery, allegedly committed on 2nd August 2024. He now seeks bail, and states that he is twenty-three years old, and a father of two. He claims to have been employed in water sports and as a locksmith prior to his incarceration, and acknowledges having pending matters of Murder and Armed Robbery, for which he had been on bail. He also acknowledges a previous conviction for Possession of Dangerous Drugs. The Applicant states that he has been on bail before, and has abided by conditions, and is therefore a good candidate for bail. He proclaims his innocence, and claims that he was unfairly charged on what amounts to fabricated evidence, as he says the police took him to the complainant and told the complainant that this was the man who had committed the offence. He further insists that he had no need to rob anyone, as he earned a good living on the beach. The Applicant therefore seeks to be released on bail, and promises to abide by any conditions if granted his freedom pending trial.

[2.] In opposing the application, the Respondent relied on the affidavit of Tylah Murray, counsel in the Office of the Director of Public Prosecutions, filed 3rd March 2025. The statements exhibited to that affidavit reveal the Applicant was identified by the complainant from a photo array as the person who committed the robbery. The Respondent has also exhibited the Criminal Records Antecedent Form of the Applicant, which reveals that the Applicant has past convictions for Possession of a Forged Document, Assault, and Threats of Harm. The affidavit in response further sates that the present matter has been fixed to be tried commencing 5th November 2025.

[3.] On behalf of the Respondent, reliance was placed on the nature and seriousness of the offence, as well as the cogency of the evidence and the antecedents of the Applicant to support an inference that there is a need to protect public order in this case, and to prevent reoffending. The Respondent notes that the Applicant was on bail for the offences of Murder, Attempted Murder, and Armed Robbery at the time he was charged with the present offence, and again raising a concern that the Applicant will reoffend if granted bail. The Respondent also pointed out that a trial date in June 2024 was vacated due to issues with the representation of the Applicant, and indicated that the trial is fixed to commence on 8th December 2025. They therefore suggest that the continued detention of the Applicant would not be unreasonable, and is necessary to protect public order and to prevent re-offending.

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.
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> 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:
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> "...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. Further, when reference is made to section 4(2)(a), the court is required to consider whether the Applicant has not been tried within a time.

[10.] In considering these factors, I note that the Applicant is charged with a serious 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 Armed Robbery which, in considering the possible penalty which could follow a conviction, particularly having regard to the antecedents of the Applicant, raises the issue of the likelihood of 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 considering what has been placed before me, I note that the affidavit in response states that the Applicant was identified as the person who robbed the complainant. While bearing in mind that I am not conducting a trial of the matter, it is my view that the evidence relied upon by the prosecution in this case certainly rises to the level of a prima facie case as is required in Stephon Davis decision above, and that the contentions of the Applicant, that the identification was concocted is an issue to be resolved at trial.

[17.] In considering this matter, I bear in mind that on an application for bail, the court is required to conduct a balancing exercise between the Applicant's right to liberty, and the need to protect the public. In conducting that exercise, I accept that the charges in this case are extremely serious, and the evidence cogent. I also note the previous convictions of the Applicant, which I consider support a need to preserve public order. I am further mindful of the fact that Applicant was on bail at the time he was charged with the present offence, a factor which is specifically referenced in the Bail Act, and which, while recognizing the presumption of innocence, again raised a concern that the Applicant will reoffend if granted bail.

CONCLUSION

[18.] In the circumstances of this case, given the previous convictions of the Applicant, the nature and cogency of the evidence, and the seriousness of the offence, I am not persuaded to exercise my discretion to grant bail at this time. I have considered whether conditions could be imposed to ensure attendance at trial, but I am satisfied that no conditions could be put in place to preserve public order and to prevent re-offending. I also note that the Applicant in his affidavit claims to have a previous conviction for dangerous drugs, while the antecedents show convictions for other offences which were

not disclosed by the Applicant, so that the Applicant has not complied with the duty of full and frank disclosure. The court could therefore have no confidence in the credibility of the Applicant. Bail is therefore refused.

Dated this 9th day of April A.D., 2025

Neil Brathwaite
Justice