

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Division
2017/CRI/BAL/00303

BETWEEN:
ALVIN MORLEY JR.

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	The Hon. Mr. Justice Loren Klein
Appearances:	Damien White and Ian Cargill for the Applicant Basil Cumberbatch and Danielle Capron for the Respondent
Hearing Date:	7 April 2026
Ruling:	Oral ruling 14 April; Written Reasons 20 April 2026

RULING (BAIL)

KLEIN, J.

Bail—Bail Act—Part C Offences—Attempted murder and possession of firearms with intent to endanger life—In-court statement by Counsel for applicant that he was approached by the virtual complainant indicating his wish to withdraw—Whether counsel’s in-court statement a matter the court can take into consideration—Witness intimidation—Antecedents—Delay

INTRODUCTION AND BACKGROUND

1. This is an application for bail under section 4 of the Bail Act (“the Act”) by a 27-year-old male charged in August of 2025 with one count of attempted murder and one count of possession of a firearm with intent to endanger life.
2. The application was commenced by summons and affidavit filed 19 March 2026. The Office of the Director of Public Prosecutions (“DPP”) filed an affidavit opposing bail on 30 March 2026.
3. The applicant was represented by Damien White and Ian Cargill. Basil Cumberbatch appeared on behalf of the DPP, along with Danielle Capron.

Brief factual background

4. The allegations underlying the applicant’s arrest and detention are that on Saturday 26 July 2025, the applicant, while on a motorcycle, pursued a vehicle driven by Bertram Paul and fired multiple shots into the vehicle, injuring Paul.

Material in support of bail

5. In his affidavit, the applicant states that he is 27 years old and has been on remand since November 2024. He indicates that he was employed at a mechanic shop (Jimmy's Head Centre) prior to his arrest, where he worked as a small engine mechanic. His main reasons for seeking bail can be found at paragraph 12 of his Affidavit, which reads:

“12. I respectfully request that this Honourable Court admit me to bail pending my further court appearance for the following other reasons:

- a. That I will be disadvantaged in my ability to adequately prepare my defence if I am further remanded.
- c. That, I will be disadvantaged in my ability to support my two minor children ages seven (7) and four (4) years old. son, (*sic*) myself and assist my family.”

13. If I am granted bail, I will comply with all rules and regulations of this Honourable Court.”

6. He acknowledges, however, that he does have previous convictions before the Courts, as well as pending matters before the Court.

7. In their affidavit, the DPP asserts that the applicant is not a fit candidate for admitting to bail, based mainly on his antecedents and his prior breaches of bail conditions. At paras. 9 and 11 of the affidavit they state as follows:

“9. The paragraphs 13 and 14 of the Applicants affidavit are denied. That the Applicant will not comply with the rules and regulations which is made evident by his convictions for bail violations in 2023. The Applicant was previously on bail for other matters with conditions such as attempted murder and four separate armed robbery matters. The Applicant is now applying for bail in this matter. The Applicant is not a fit Applicant for bail.

[...]

“11. That we make this Affidavit in opposition to the Application for bail on the following grounds. There are substantial grounds for believing that the Applicant if released on bail, whether subject to conditions or not, may fail to surrender to custody or fail to adhere to his bail conditions. That there are no conditions that can be imposed and hasn't already been imposed (*sic*) to stop the Applicant from reoffending.”

Parties' Submissions in brief

8. The applicant makes several points in support of his bail application. Firstly, it is said that he should be admitted to bail at the court's discretion and “*given the benefit of the doubt*” because he will comply with any bail conditions and present himself for trial at the appropriate time. Second, it is said that there is nothing in the opposing affidavit to support the prosecution's assertions that the applicant will not appear for trial, re-offend or will interfere with witnesses (the main bail risks). For example, it was pointed out that there was nothing in the affidavit suggesting

that the applicant had any propensity to cut off the “ankle bracelet” (electronic monitoring device or “EMD”) as suggested by the prosecution. In any event, it was said that appropriate conditions could be imposed to manage against such risk.

9. As noted, the applicant accepts his priors, but counsel argues on his behalf that he has paid his dues for these breaches, and they should no longer count against him. Furthermore, he stressed that the applicant has been employed from since 2024, subsequent to his earlier breaches, and this indicates that he is trying to earn to support his children and family and to assist with his defence.

10. There is another matter to be mentioned in support of his application, and it is this. His senior counsel, Mr. Cargill, made an in-court statement that he was approached by the virtual complainant who indicated that he no longer wished to proceed with the matter, and that he was making that decision of his own volition. He stated that he referred the complainant to the Office of the DPP and told them to report it to them, as he was not at liberty to speak to a witness, and alerted counsel for the DPP to that. He submitted that the Crown was a “minister of justice” and had a duty to speak with the witness and to come to a determination based on that.

11. The prosecution’s main point for opposing bail was the applicant’s antecedents. In this regard, the prosecution drew the court’s attention to a laundry list of offences and convictions as follows: 2018, attempted murder (outstanding); 2019, three different charges of armed robbery (one including two counts), possession of an unlicensed firearm while committing an indictable offence, several counts of possession of ammunition, assaulting a police officer, stealing, several counts of receiving, and conspiracy to commit armed robbery; 2023, two separate charges of possession of unlicensed firearms and possession of ammunition, four counts of bail violations, assaulting a police officer and resisting arrest, for which he was convicted and sentenced to prison and fined; and the current charges, which are the subject of the bail application.

12. The prosecution also argued that, having regard to the repeated bail offences, the applicant posed a considerable flight risk, and no conditions could be imposed to manage his bail.

13. Lastly, in response to the in-court statement by counsel for the applicant relating to the approach by the virtual complainant, it was submitted that any material suggesting a recantation or withdrawal by a witness was a matter for trial, based on the Court of Appeal’s statement in **Stephon Davis v DPP**, SCCrApp. No. 20 of 2023

ANALYSIS AND DISCUSSION

Law and Legal Principles

14. In **Samuel Meadows v DPP** (2024/CRI/Bal/00041), 17 March 2026, I summarized the statutory provisions and legal principles relative to the consideration of bail in eight propositions. Reference can be made to that case for a full statement of those principles. I will only provide a bird’s-eye-view here.

- (i) Bail engages the constitutional right to personal liberty and is underpinned by the presumption of innocence (**Hurnam v The State** [2006] 3 LRC 370, **Richard Hepburn v The Attorney General**, SCCrApp276 of 2014).
- (ii) Bail is granted on a discretionary basis under the Bail Act, and the applicable considerations differ depending on whether the offence is listed in Part B, Part C, or Part D of the First Schedule. For Part B offences, the Act provides that an accused “*shall*” be detained unless the court is satisfied that detention is not justified; and an accused is ineligible for bail if he served time within the preceding 5 years for conviction of another Part B offence. For Part C offences, the language of the statute is that the accused “*shall not be granted bail*” unless specified exceptions apply, including (a) where the person has not been tried in a reasonable time (presumptively 3 years) or (b) qualifies under the general Part A factors and the special factors in s. 2B. The “primary considerations” for a Part C determination are: (i) character or antecedents of the person charged; (ii) the need to protect public order or safety; and (iii) the need to protect victims (where appropriate). Part D offences are dealt with under the general discretion in section 3. The court’s primary inquiry under Part A is whether there are substantial grounds for believing that, if released, the defendant would fail to surrender, commit an offence while on bail, or interfere with witnesses or otherwise obstruct the course of justice. Other relevant statutory factors include the defendant’s protection or welfare, prior absconding or breach of bail, offending while on bail, the nature and seriousness of the offence, the strength of the evidence, and the need to protect the alleged victim from further violence.
- (iii) Bail is not to be withheld as punishment before trial; the proper test is the likelihood of whether or not the defendant will surrender for trial, although that is not the only consideration (**Johnathan Armbrister v The Attorney-General** SCCrApp. No. 276 of 2014; **Hurnam**).
- (iv) Bail applications require the court to balance the accused’s fundamental right to liberty against the countervailing interest of public safety (**Richard Hepburn; Hurnam**).
- (v) Although s. 4(6) places a burden on the applicant to satisfy the court that bail should be granted, a stream of authorities state that this does not shift the burden from the Crown to justify why bail should not be granted (**Vasyli v The Attorney General** [2015] 1 BHS J, No. 86; **Jevon Seymour v DPP**, No. 115 of 2019; **Hurnam**).
- (vi) A bail application does not require the court to decide disputed facts or conduct a forensic examination of the evidence. The material before the court need only raise a reasonable suspicion or a *prima facie* case that the applicant committed the offence, sufficient to justify deprivation of liberty (**Cordero McDonald v The Attorney General**, SCCrApp No. 195 of 2016, **Stephon Davis v DPP**, SCCrApp. No. 20 of 2023, **Damargio Whymys v DPP**, SCCrApp. No. 148 of 2019).

- (vii) There are no numerical restrictions on successive bail applications; each application must be considered on its merits. On a renewed hearing, the court must consider previous findings and whether there is any new material relevant to bail, and it retains the power to protect its process from abuse (**Darmagio Whymys; Richard Hepburn v The Attorney General** (No.2), SCCrim App & CAIS No. 135 of 2016; **Mackey and anor. v R** [2016] 2 BHS J No. 132).
- (viii) On a bail application, the court may consider material or “evidence” that would not normally be admissible at trial, including hearsay evidence and informal sources (**Alcott Fox v DPP**, SCCrApp. No. 119 of 2023, and **Attorney-General v Bradley Ferguson et. al.**, SCCRApp. Nos. 57, 106, 116 of 2008).

Court’s Application of Principles to the current application

15. I have given careful consideration to the submissions of counsel and the affidavit evidence in support of and opposing bail, as well as the statutory factors and the legal principles which govern the grant of bail for a person charged with Part C offences under the Bail Act. In particular, the Court has taken into account the nature and seriousness of the allegation against the applicant, namely an allegation of attempted murder with a firearm, the apparent strength of the evidence as presently outlined (which includes eyewitness evidence), the antecedents, community ties, record of compliance with previous bail, and all other circumstances appearing relevant.

16. Based on those considerations and the information presently before the Court, I have come to the conclusion that the application for bail should be refused. The Court is satisfied that there are substantial grounds for believing that one or more of the statutory bail risks on which the court may exercise its discretion to deny bail is made out in this case—namely, that if released on bail, the applicant will either commit further offences, and/or breach bail conditions. The Court comes to that conclusion for the following reasons:

- (i) The applicant is a prolific offender. As set out, there is a slew of antecedents stretching back as far as 2018, which involve repeated convictions for robbery with firearms and other violent offences, and there are a number of similar charges pending, including the current matters. These prior convictions and pending charges indicate that the applicant is not only very familiar with firearms but can easily access them, and the pattern of offending creates serious concerns that he will offend again (see **Samuel Meadows v DPP**).
- (ii) The applicant has committed multiple breaches of bail conditions, and this creates an even greater incentive to do so again, considering that the pending charges against him are far more serious and the possible penalties more severe (see **Hurnam**).
- (iii) Finally, the allegations against the applicant are very serious (attempted murder) and there is cogent evidence that connects him to those allegations.

17. There is one final point I should mention, and that is the in-court statement made by the applicant's senior counsel as to the approach made to him by the virtual complainant. Mr. Cargill did no more than bring this matter to the attention of the Court and, as I understood his position, was only asking the court to note the statement procedurally and to consider adjourning the bail hearing until the DPP had a chance to hear from the virtual complainant. In my view, this was quite proper, and Mr. Cargill was obviously not seeking to have the court rely on his statement as evidence of anything that could affect the hearing then before me.

18. In **Tyrone Williams v DPP** (2024/CRI/BAL/00247), a decision delivered the same time as the decision in this case, I considered the question of reliance on a recanting affidavit for the purposes of a bail application. As indicated there, the filing of an affidavit by the prosecution's primary witness recanting an earlier statement given to the police is a matter capable of affecting the apparent strength of the evidence and the prosecution's case. It does not, however, determine the issue at the bail stage. The sufficiency of the evidence is a matter for trial.

19. The issue of recantation does not arise directly here because, as noted, there was no affidavit or other proper evidence before the court that could be considered. But I do accept, as a matter of general principle, that prosecuting authorities should bring to the attention of the court material information of which the court should be aware when reviewing bail. This is implicit in the fact that bail applications are considered anew on each hearing, and therefore any change in the factors the court is statutorily required to have regard to may be factors for consideration by the court. I believe this is the principle that Mr. Cargill was adverting to when he referred to the prosecution as "ministers of justice", in the context of the developments which he sought to bring to the attention of the Court and which were said to affect the strength of the evidence currently before the court against the accused.

20. Finally, the court has considered whether any combination of bail conditions would sufficiently address the identified risks, including reporting conditions, curfew, non-contact, suretors, or electronic monitoring requirements. The applicant, and counsel on his behalf, asserts that he will comply with any conditions that may be imposed in this regard, including a curfew and the possible fitting of an EMD. But having regard to his past offences and breaches of bail conditions, this rings somewhat hollow. The court is therefore not satisfied that such conditions would adequately manage the risks in this case.

CONCLUSION AND DISPOSITION

21. In all the circumstances, the application for bail is denied. The applicant should be made aware of his right of appeal pursuant to s. 8 of the Bail Act, and he may pursue that avenue if so advised or, alternatively, he may bring renewed applications for bail as permitted by law.

KLEIN J.

20 April 2026