COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Law Division
2020/CRI/Bal/00539

BETWEEN:

DONALD COX AKA "DONALD PHILIP COX JR"

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	The Hon. Justice Loren Klein
Appearances:	Mr. Nathan Smith for the Applicant
	Mr. Akire Nicolls for the Respondent
Hearing Date:	10 March 2026
Ruling:	17 March 2026

RULING (BAIL)

KLEIN, J.

Bail—Bail Act—Part C Offence—Successive applications for Bail—Breach of bail conditions—Key witness allegedly recanted statement—Effect on cogency of evidence supporting alleged commission of offence—Threat to public safety and security—Indiscriminate firing of weapons—New material relevant to bail

INTRODUCTION AND BACKGROUND

1. This is an application to the Court for bail under the Bail Act ("the Act") by an accused charged since 2020 with two counts of murder and one count of attempted murder. He was previously admitted to bail in March of 2021, but bail was revoked in January of 2024 following repeated breaches of bail conditions.

2. The applicant renews his application for bail before this Court by summons and affidavit filed 25 February 2026. He was represented before me by Nathan Smith, and Akire Nicolls appeared on behalf of the DPP. I am grateful to counsel for their submissions.

Brief factual background

3. The applicant, along with another person, is charged with the murder of Peron Bain, which occurred on the 29 May 2020, and the murder of Lorencia Walkes, a 10-year-old girl caught in the

cross-fire, and the attempted murder of Leroy Sands. Following revocation of his bail, he made unsuccessful applications for bail in August 2024, and in February of 2025, the latter refused in a Ruling by Brathwaite J. dated 26 March 2025.

Material in support of bail

4. In support of his bail application, the applicant states that his continued incarceration in the face of the following factors (set out at para. 31 of his affidavit) renders it "*disproportionate*" and constitutes pre-trial punishment, which he says is incompensable. Those factors are:

(i) a collapsed trial date;
(ii) re-assignment to a new judge;
(iii) an anticipated 2027 or later trial date; and
(iv) a primary witness who allegedly recanted the statement connecting the accused to the offence.

5. To explain the first two factors, it appears that the applicant's trial was scheduled to commence before another Judge on 9 February 2026, which failed to come on. He deposes that the Court on that occasion indicated to him that if the trial did not come on, he would be at liberty to reapply and have his application considered afresh. He also deposes that approximately 7 years (*sic*) have elapsed since the date of the alleged offences.

6. As noted, however, the applicant was admitted to bail in March 2021, which was revoked on 25 January 2024 following convictions for breaches of his bail conditions. So he has been incarcerated for a little under three years, all told.

7. The DPP opposed bail and, in response to the central allegations at para. 31 of the applicant's affidavit, countered as follows:

(i) the re-assignment of the matter to a new Judge is of no moment in respect to the consideration of the grant of bail.
(ii) The forecast of a trial date in 2027 or beyond is speculative and premature, as the matter is set to be fixed for trial before this Court on 30 March 2026.
(iii) The DPP is not aware of the recantation of any witness, and no information has been put before the court relative to this; in any event, this may smack of interference with witnesses; and
(iv) The applicant's pre-trial remand is the penalty for his various breaches of bail conditions, and not constitute pre-trial punishment, as suggested by the accused.

Parties' submissions in brief

8. Mr. Smith accepted that the applicant's prior bail breaches were a strike against him, but submitted that the applicant had had "*substantial time to reflect and fully appreciate the seriousness of complying with any bail conditions imposed*" by the Court. He submitted further that the "evidential posture" against the applicant had weakened, because of the alleged recantation of a "primary" witness. Lastly, he stressed that the allegations of gang affiliation were baseless, and that the applicant did not pose a threat to public safety, or was himself a possible target.

9. Mr. Nichols for the DPP "strongly" objected to bail. He submitted that the DPP was not in possession of any affidavit or other material suggesting recantation. He contended that apart from in any way diminishing the evidence against the accused, it smacked of possible witness interference. He further submitted that the accused should be refused bail for all of the following reasons: (i) he was charged with very serious offences; (ii) he was a risk to public safety and public order, because of the firearms offences and the reckless and indiscriminate use of such firearms; (iii) he should be incarcerated for his own safety (being an alleged member of a gang caught up in retaliation); (iv) he has committed various breaches of his bail conditions and will likely breach them again; and (v) there has been no change since his last refusal, in a reasoned decision of Brathwaite J.

ANALYSIS AND DISCUSSION

10. 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, which can be distilled here as follows:

(i) Bail engages the Constitutional right to personal liberty which can only be deprived by lawful authority and which is underpinned by the presumption of innocence (art. 19, 20; **Hurnam v The State** [2006] 3 LRC 370, **Richard Hepburn v The Attorney General,** SCCrApp276 of 2014 ("Richard Hepburn");

(ii) Bail is granted on a discretionary basis subject to the considerations set out in the Bail Act ("the Act"), which differ depending on whether the accused is charged with an offence set out in Part "B", Part "C", or Part "D" of the First Schedule (s. 3(1)). For Part B offences (which include manslaughter, causing grievous bodily harm and robbery) the Act provides that the accused "*shall*" be detained, unless the court is satisfied that his detention is not justified; and the accused is not eligible for bail if he served time within the preceding 5 years for conviction of another Part B offence. For Part C offences (offences such as murder, kidnapping, armed robbery, treason and certain firearms offences), the accused "*shall not be granted bail*" unless certain exceptions apply: they have not been tried in a reasonable time

(presumptively 3 years under s. 4(2)A; or they qualify based on a consideration of the general Part A factors and the s. 2B special factors (character or antecedents of the person charged; need to protect public order or safety; need to protect victims (where appropriate). Part D offences, which include mainly firearms offences, are dealt with under the general s. 3 discretion to grant bail. The primary consideration under Part A that the court is to have regard to is "*whether there are substantial grounds for believing*" that the defendant, if released 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. Additionally, the court is to have regard to other salient factors, which include: whether the defendant should be kept in custody for his own protection or welfare (if a child or young person); whether he has absconded or breached his bail conditions; whether he offends while on bail; the nature and seriousness of the offence and the strength of the evidence against the defendant; and the need to protect the alleged victim from any further violence.

(iii) The proper test for whether bail should be granted or refused is the probability of the defendant surrendering for trial; bail is not withheld as punishment for a person on pre-trial detention: **Johnathan Armbrister v The Attorney-General** SCCrApp. No. 276 of 2014). However, it is not the sole consideration (see **Hurnam**).

(iv) Bail applications require the court to balance the competing interests of fundamental rights relating to personal liberty of the alleged offender and the countervailing interest of public safety: **Richard Hepburn** [5-8]; **Hurnam**, at 364, per Bingham LJ.

(v) Although s. 4(6) imposes a burden on the "*applicant to satisfy the court that bail should be granted*", a stream of authorities have held that this cannot shift the burden of proof (such as it is) from the Crown to satisfy the court 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) An application for bail does not require the court to decided disputed facts or conduct a forensic examination of the evidence (see **Cordero McDonald v The Attorney General,** SCCrApp No. 195 of 2016; **Stephon Davis v DPP**, SCCrApp. No. 20 of 2023; **Damargio Whyms v DPP**, SCCrApp. No. 148 of 2019). The case before the court must simply raise a reasonable suspicion or a *prima facie* case, that the applicant committed the offence, such as to justify the deprivation of his liberty.

(vii) Seventh, there are no numerical restrictions on the ability of an applicant to make successive applications for bail, which must all be considered on the merits (see **Darmagio Whyms***;* **Richard Hepburn v The Attorney General** (No.2), SCCrim App & CAIS No. 135 of 2016 ("*Hepburn*"), **Mackey and anor. v R** [2016] 2 BHS J No. 132 ("*Mackey*"). However, on a hearing afresh, the Court must have regard to the previous findings and whether there is any new material relevant to the grant of bail, and retains the rights to protect its process from abuse.

(viii) On a bail application, the Court may consider material or "evidence" that would not normally be admissible, including hearsay evidence and informal sources (see, **Alcott Fox v DPP**, SCCrApp. No. 119 of 20203; **Attorney-General v Bradley Ferguson et. al**., SCCRApp. Nos. 57, 106, 116 of 2008.

<u>Court's Application of Principles to current application</u>

11. As mentioned, the applicant is charged with a Part C Offence (murder), so there is a presumption against the grant of bail unless he can come either within 4(2)(a)—not being tried within a reasonable time—or there are factors under 4(2)(c) and Part A which the Court considers justify the grant of bail.

12. I have given careful consideration to the statutory considerations and the legal principles which govern the grant of bail for a person charged with Part C offences, and I am of the opinion that the accused should not be admitted to bail. I have come to this conclusion for the following reasons:

(1) I do not consider that the applicant comes within 4(2)(a). He surmises that by the time the matter comes to trial, he would have been on remand for three years or more. As things currently stand, however, he has only been continually on remand since 24 January 2024, a little over two years, and his bail was revoked because he breached the conditions. Suffice it to say, that there is still some time to go before the presumptive 3-year period kicks in, and it is rather speculative to say that he will not be tried within that period. His next appearance before the Court is 30 March 2026 to fix a new trial date.

(2) As to the Part 4(2) (c) factors, which Parliament has deemed the *primary* factors, all of these considerations weigh against him. Although he stated in his affidavit that there were no previous convictions other than the bail offences, this is not accurate: in 2017, he was convicted by a Magistrate's Court for possession of an unlicenced firearm and ammunition, for which he was sentenced to 28 months in prison; and of causing harm in 2023, for which he was fined and ordered to pay compensation to the victim. Counsel for the applicant conceded that the applicant did have prior convictions, contrary to the position stated in the affidavit. In his Ruling, Brathwaite J. also dealt with this inconsistency in the position

relating to antecedents, and stated: "*I note that the Applicant also has a previous conviction for a firearms offence, despite his claiming to have no convictions other than for bail infraction, with the result that the Applicant has not complied with the duty of full and frank disclosure*." It is rather surprising in light of that specific finding that the applicant's supporting affidavit would repeat his lack of prior convictions except for the bail offences.

(3) The DDP has also averred that the applicant poses a threat to public safety because there is not only the risk that he would re-engage in gun violence, but he is alleged to have participated in the indiscriminate firing of weapons, which as noted is alleged to have claimed the life of a child. In the affidavit of Vashti Bridgewater in response to the 2025 application, the DPP indicated that according to a list prepared in May 2023 by the Criminal Investigation Department ("CID"), a total of 12 individuals were killed during the period 25 September 2017 to 6 March 2023 by indiscriminate firing of weapons. So there is evidence of this deadly trend. Further, it is alleged that the accused is a member of an identified gang, which is embroiled in violent and deadly conflicts with rival gangs based in different communities through New Providence. Thus, it is submitted that he should continue on remand not only to protect the public and prevent any interference with witness, but for his own safety. Indeed, I remain puzzled as to how the applicant is said to have become aware that a witness had recanted his evidence, and no satisfactory explanation was proffered of this. When all of these factors are taken together, I am satisfied that there is a sufficient factual basis for concerns that the accused could once again engage in gun violence that would pose a threat to public safety, that he might interfere with witnesses, or himself be a target, and should therefore remain in custody partly for his own safety.

(4) The applicant is charged with a double murder and an attempted murder, crimes for which the law prescribes a possible death sentence or life imprisonment. This may create a powerful incentive to abscond or interfere with witnesses and may afford good grounds for refusing bail (see the remarks of the Privy Council in **Hurnam**).

(5) As to the cogency of the evidence of the commission of the offence, I do not find the assertion that the "*evidential posture*" has weakened to be of any value. Firstly, as pointed out, it is not the function of the judge on a bail application to make any findings on disputed facts or assess the quality of any evidence. All that is required is that there is reasonable suspicion or a *prima facie* case linking the accused to the commission of the crime. There is still eyewitness evidence identifying him as one of the perpetrators. In any event, this issue was raised before Brathwaite J. in the earlier ruling, who disposed of it as follows: "*While I have heard submissions of counsel with respect to a key witness recanting his evidence, I accept that, that is a matter which must be resolved at trial. The court in a bail hearing is in no position to determine whether a witness will stand by his original statement, and how such a situation might impact the credibility of that witness*." I agree with this assessment.

(6) Finally, the applicant has breached his bail conditions on a number of occasions. He avers that he has since repented of these omissions. In my view, however, having regard to the repeated breaches, there remains a substantial risk that bail conditions will not be complied with.

CONCLUSION AND DISPOSITION

13. In all the circumstances, the application for bail is denied. The applicant has a right of appeal pursuant to s. 8 of the Act and may pursue that avenue if so advised.

KLEIN J.

17 March 2026