COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Law Division
2024/CRI/bail/00041

BETWEEN:

SAMUEL MEADOWS

Applicant

AND
DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	The Hon. Justice Loren Klein
Appearances:	Mr. Bjorn Ferguson for the Applicant
	Mr. Rashied Edgecombe for the Respondent
Hearing Date:	3 March 2026
Ruling:	Oral Ruling 10 March; Written Reasons 17 March 2026

RULING (BAIL)

KLEIN, J.

Bail—Bail Act—Part C Offence—Murder—Successive applications for Bail—Prosecution's failure to procure pathologist's report; Vacation of trial date due to failure to procure report—Whether a material change of circumstances—Weight to be given to previous finding and facts—Doctrine of judicial notice—What matters can the court take judicial notice of

INTRODUCTION AND BACKGROUND

1. This is the applicant's fourth application for bail in the roughly two years and some change (2 months) since he has been in custody awaiting trial on a charge of murder, following refusals of bail on three occasions—in March of 2024 by Brathwaite J. in a fully-reasoned judgment, again by Brathwaite J. on 23 October 2024, and by Williams J. on 13 May 2025.

2. The catalyst for a further bail application appears to be this. His trial, which was fixed to commence before me on 2 March 2026, was adjourned, mainly because the pathologist's report on the deceased was not available. This was said to constitute a material change in circumstances which warranted a fresh examination of his bail status and the grant of bail.

Brief factual background

3. The applicant was arrested on 19 December 2023 on suspicion of having murdered Keith Barr, who was himself on bail (at the time facing a murder charge). He was formally charged before the Magistrate's Court on 22 December 2023 and remanded into custody. He was served with a Voluntary Bill of Indictment ("VBI") on 23 May 2024 and arraigned on 19 July 2024 before the Supreme Court, where he pleaded not guilty to the charge.

4. The current application was commenced by summons and a supporting affidavit filed 2 March 2026. His reasons for renewing his application for bail are set out at paras. 9-12 of his affidavit, as follows:

> "9. I have been in police custody and detained at BDOCS since in or about December 2023, namely two (2) years and two (2) months.
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> 10. My trial date was set to be heard on the 2nd March 2026, for ten (10) days before His Lordship the Honourable Justice Loren Klein, however, the Honourable Court was informed on that date, by the Prosecution, that the pathologist report was still outstanding and also that the Prosecution was not ready to proceed with my Trial.
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> 11. The Honourable Court vacated the trial dates of 2nd through 13 March 2026, and adjourned the matter for trial to the 25th May 2026.
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> 12. I was advised by my attorney that the relevant provision of the Bail Act is Section 4(3A) (*sic*) and that due to this change in circumstances that I am a proper candidate for the grant of bail."

The evidence

5. In support of his application, the applicant avers that:

(i) He is innocent and has a "*strong alibi defence*";
(ii) He is not a flight risk, nor will he interfere with any witnesses if granted bail;
(iii) He does not pose a risk to the safety or security of society, and has always been a productive citizen in his vocation as a skilled mason;
(iv) He is not affiliated with any gangs; and
(v) That he will comply with any conditions or other stipulations the court may impose if bail were granted and faithfully appear when summoned until the matter is disposed of.

6. As to his personal circumstances, he states that he is a 34-year old father of six children (two daughters ages 11 and 2; and four boys, ages 10, 8, 7 and 3) and he is partly responsible for their financial needs and upbringing; that he was employed as a skilled mason with a construction company; and that he has relatives and friends ready to stand as suretors for his bail.

7. In their affidavit in response, the Director of Public Prosecutions ("DPP") opposed bail mainly on the following grounds:

(i) There is "strong and cogent" evidence that suggests the applicant committed the offence;

(ii) The court should take "*judicial notice of the pervasiveness of gun violence in the country, the current client climate of retaliation [sic] of those on bail*" and the fact that the charges against the applicant involve a firearm;

(iii) That the applicant has antecedents ("*is not a man of good character*") and has previous convictions for firearm offences;

(iv) Despite the vacation of the trial date, there is nothing to suggest that the applicant's trial will not be heard within the statutorily-deemed reasonable period of 3 years; and

(v) The need to protect public safety and order.

Parties' Submissions in Brief

8. In oral submissions, Mr. Ferguson emphasized that the collapsed trial date due to the failure of the prosecution to produce the pathologist's report was a material change in circumstances that called for a fresh look at the applicant's claim to bail. He also stressed that the applicant has a strong alibi defence and that, despite the DPP's reliance on the position that the applicant may pose a threat to public safety based on a propensity for gun violence or retaliatory violence, there was no evidence to support those allegations. Finally, he submitted that the prior convictions were old and spent, and considering the strong family ties of the applicant to the community, there was nothing to suggest he was a flight risk.

9. In response, Mr. Edgecombe submitted that the failure to produce the pathologist report and the consequent rescheduling of the trial did not constitute a material change of circumstances so as to justify a different bail outcome than that found by Brathwaite J. This is because the facts that Brathwaite J. found militated against the grant of bail in his 24 March 2024 Ruling had not changed. As stated at paras. 18-19 of that Ruling:

> "18. In considering what has been placed before me, I note that the affidavit in response states that the Applicant has been identified by an eyewitness as the person who stood over the deceased firing several shots at the deceased. That evidence in my view rises to the level of a prima facie case as is required in [the] *Stephon Davis* decision above.
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> 19. Given the serious issues surrounding retaliatory killings, I am concerned that the victim in this matter was on bail for murder, and was therefore allegedly involved in criminality. I am also extremely concerned that the Applicant has previous convictions for firearms and ammunition offences. In these circumstances, I am satisfied that there is a reasonable basis to conclude that the

> Applicant would re-offend if released on bail, which is a factor set out in Part A of the Bail Act to be considered by the court in determining whether bail should be granted. I am also concerned that there is a need to protect the public, as the current matter and the past convictions all involve the use of firearms."

10. Lastly, he submitted that there was nothing to suggest that the trial would not take place within the three-year period, and therefore there was no question of unreasonable delay in bringing on the trial.

ANALYSIS AND DISCUSSION

Legal framework

11. The legal framework and principles relating to bail have been the subject of extensive judicial treatment at all levels of the judicial hierarchy. They have been described as "*pretty well settled*" (**Jeremiah Andrews v the DPP,** SCCrApp No. 163 of 2019, ("*Jeremiah Andrews*"), per Evans JA), and there is no reason to rehash them. But this is not to say that there are still not a few wrinkles that arise from time to time—one of which is engaged in this application.

12. A bird's-eye-view of the main principles should suffice for this application, which I would assemble in the following propositions:

(1) First, bail engages the Constitutional right to personal liberty, which can only be deprived by lawful authority (see, articles 19, 20; and see **Hurnam v The State** [2006] 3 LRC 370 ("*Hurnam*"), **Richard Hepburn v The Attorney General,** SCCrApp276 of 2014 ("*Richard Hepburn*"); and **Jeremiah Andrews v DPP** (SCCr.App No. 163 of 2019 ("*Jeremiah Andrews*"). Article 19(3) of the Constitution provides in material part that where a person is arrested upon reasonable suspicion of having committed or being about to commit a criminal offence, that person "*shall (without prejudice to any further proceedings which may be brought against him) be released either unconditionally or upon reasonable conditions*" that may be necessary to ensure that he or she appears at a later date for trial. Underpinning art. 19(3) is art. 20(2)(a), which embodies the fundamental principle of the presumption of innocence: "*Every person who is charged with a criminal offence – (a) shall be presumed innocent until he is proved or has pleaded guilty*".

(2) Second, the grant of bail is subject to a detailed statutory framework, provided for in the Bail Act, Ch. 103 ("the Act"). The Bail Act, originally enacted in 1994, has been substantially amended, sometimes in fits and starts, to address constitutional challenges and social concerns. The current version (consolidated to 25 March 2025) reflects an attempt to balance the rights to individual liberty with the need to protect society. The

overarching principle is that there is no automatic right to bail, and the grant of bail to a person charged with an offence is discretionary. Section 3(1) provides that a person accused of an offence "*may*" be granted bail when he is brought before a court in connection with proceedings or applies to the Court, having regard to (i) the considerations listed at Part A of the First Schedule; and (ii) s. 4, which provides additional requirements and considerations for certain serious offences (Schedule "B" and "C" offences).

2.1 For Schedule B offences (which includes offences such as manslaughter, causing grievous bodily harm, and robbery), s. 3(2) provides that the accused "*shall be detained in custody, unless the Court is of the opinion that his detention is not justified*". This is subject to the qualification that if the accused has been released from prison in the preceding 5 years on conviction for a Part B offence, the person *shall be* detained.

2.2 For Part C offences (which include the most serious offences such as murder, kidnapping, armed robbery, treason and certain firearm offences), the accused "*shall not be granted bail*" unless they come within one of the two limbs: (i) 4(2)(a)—they have not been tried in a reasonable time, which is deemed 3 years by 4(2)(A); or 4(2) (c)—they qualify for the discretionary grant of bail based on the general Part A considerations and the special factors in 2B. The latter are: (i) the character or antecedents of the person charged; (ii) the need to protect the safety of the public or public order; and (iii) the need to protect the safety of the victims (where appropriate). There are also Part D offences, which include mainly weapons and ammunition offences and are dealt with under the general s. 3 discretion to grant bail.

2.3 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.

(3) Third, the proper test for whether bail should be granted or refused is the probability of the defendant appearing for trial; bail is not withheld as punishment for a person on pre-trial detention: see, **Johnathan Armbrister v The Attorney-General** SCCRApp. No. 145 of 2011 ("*Jonathan Armbrister*"); **Richard Hepburn v The Attorney General** SCCr. App. No 276 of 2014) ("*Richard Hepburn*"). However, a stream of cases (including Privy

Council authorities) show that the fact that the accused is likely to surrender to custody for his trial is not the sole consideration (see **Hurnam**).

(4) Fourth, it is long recognized that bail requires the court to perform a balancing act between fundamental rights relating to the personal liberty of alleged offenders and the countervailing interest of public safety, interests which are sometimes antagonistic: see **Richard Hepburn***, supra* [at 5-8]; **Hurnam***,* at 364, per Bingham LJ.

(5) Fifth, the Act provides that at the hearing of a bail application, "*it shall be the burden of the applicant to satisfy the court that bail should be granted*" (s. 4(6)). Several courts have doubted the constitutional propriety of this section and reiterated that while the defendant must produce some evidence in support of his application, the burden of proof remains on the Crown (see **Vasyli v The Attorney General** [2015] 1 BHSJ, No. 86 ("*Vasily*"); **Jevon Seymour v. DPP**, No. 115 of 2019 ("*Jevon Seymour*"); and ***Hurnam*****.** In ***Vasyli****,* Isaacs JA referred to this provision (added by a 2014 amendment) as "*a rather odd and discomfiting provision of constitutional dubiety having regard to the personal liberty (even with the limitations thereon) and the presumption of innocence provisions of the Constitution*." In that same case, Allen P was of the view that notwithstanding the provision, "*…bail may only be denied if the State is able to demonstrate that there are substantial grounds for believing that the applicant would not surrender to custody or appear for trial*". In **Jeremiah Andrews**, the Court of Appeal reiterated that notwithstanding the amendment, and having in mind the cumulative effect of Art. 19 and 20(2), "*…this Court has held fast to the position that it is for the Crown to satisfy the Court hearing an application for bail for a Part C offence that an individual should be detailed in custody*". The Court's remarks were directed to a Part C offence, but this principle must apply equally to an application for bail for any offence.

(6) Sixth, an application for bail does not require a court to decide disputed facts or conduct a forensic examination of the evidence (see **Cordero McDonald v The Attorney General,** SCCrApp. No. 195 of 2016 ("*Cordero McDonald*"), where it was said that "*the judge must simply decide whether the evidence raises a reasonable suspicion of the commission of an offence by the appellant, such as to justify the deprivation of his liberty*" (per Allen P); and **Stephon Davis v DPP** (SCCrApp. No. 20 of 2023 ("*Stephon Davis*"), where the Court of Appeal said that "*The judge is only required to evaluate whether the witness statements show a case that is plausible on its face*". In **Damargio Whyms v DPP** (SCCrApp. No. 148 of 2019), "*Darmagio Whyms*)" Crane-Scott JA said (at 29) "*…a bail application is not the forum for conducting a mini-trial and on a bail hearing a judge is not required to decide contested issues of fact or law, nor conduct a forensic analysis of the evidence*."

(7). 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"); and for the earlier statement of this position in the Supreme Court, see **Paul Frazier v D. Sgt Dames (unrept.),** SC No. 80 of 1988, Georges CJ. To the extent that **Keith Patton et. al. v Commissioner of Police** (unreported, Nos. 149 and 150 of 1992), per Hall J., or any later authorities suggested that there could be procedural restrictions on successive applications unless an applicant could demonstrate a "*change of circumstances*", this was laid to rest in a trilogy of Court of Appeal cases starting with **Mackey** (Allen, P.). In **Hepburn** (Allen, P, Crane-Scott JA, and Jones JA), the learned President observed: "*Hall, J's decision in Keith Patton et al has since been overtaken by the decision of this court in Michael Mackey and Edward Johnson v Regina SCCrApp Nos. 288 and 289 of 2015 where the Court, differently, constituted, held in three separate judgments that the approach described by Hall J, namely that fresh applications for bail would only be heard if the applicants could show that the circumstances had changed was, in light of the Constitution and Bail Act, inherently wrong. Every application must be considered afresh*." What is less clear is how the judge is to treat earlier rulings and evidential material in successive applications. In **Mackey** and **Hepburn,** a majority of the panel held that a fresh hearing does not mean that the judge is not to take into consideration previous judicial or evidential findings. Allen P. said in **Mackey**: "*The judge must have regard to the previous finding on the application for bail, consider whether there is any new material relevant to the question of bail, and also consider whether there were existing circumstances at the time of the previous application which were not brought to the court's attention and are relevant to the grant of bail*." In **Hepburn**, Crane-Scott JA dissented from the majority (who upheld the Judge's decision refusing a fourth bail application, mainly relying on the material change of circumstances rule). She would have quashed the judge's decision as being wrong in principle, reiterating that the "*material change of circumstances rule*" was not a part of our bail regime.

8. In considering a bail application, the rules of evidence are somewhat relaxed, and the Court may consider evidence that would not normally be admissible, including hearsay evidence. See, **Alcott Fox v. DPP**, SCCrApp. No. 119 of 2023 ("Alcott Fox"), and **Attorney-General v Ferguson et. al.**, SCCrApp. Nos. 57, 106, 116 of 2008. In the latter case, the Court of Appeal said: "*A bail application is an informal inquiry and no strict rules of evidence are to be applied*: *R v Mansfield Justices, ex parte Sharkey* [1958] Q.B. 613, *Re Moles* [1981] Crim. L.R. 170."

13 These factors are not exhaustive, but they provide a good starting point for the consideration of an application for bail.

Court's Application of Principles to Application

14. It is against these statutory provisions and legal principles that I must now consider the current application.

15. 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 must be factors under 4(2)(c) and Part A which the Court considers justify the grant of bail.

Part 4 (2)(a) considerations: Reasonable time for trial

16. I accept, as noted by the Court of Appeal in **Duran Neeley**, that the 3-year limit is not a "*blanket right to detain an accused person for three years*". In fact, this much is clear from the drafting of that section, which expressly states that the proviso is not intended to limit the extent of what is a reasonable time, as it is clear that statutory provisions cannot cut down constitutional rights (see **AG v Ryan** [1980] A.C. 718, PC.). It simply creates a statutory presumption that three years is a reasonable time to bring on a trial. That presumption, however, may be rebutted by specific evidence in a particular case showing that the trial did not take place in a reasonable time having regard to (i) the complexity of the case; (ii) the conduct of the applicant/defendant; and (iii) the conduct of the administration and judicial authorities. These factors have been identified as the relevant considerations in a line of Privy Council cases (see, **Rummun v State of Mauritius** [2013] UKPC 6; **Aubeeluck v The State of Mauritius** [2010] UKPC 13; **Boolell v State of Mauritius** [2006] UKPC 46, endorsing the principles set out in **Dyer v Watson** [2004] 1 AC 379).

The lack of a pathologist report

17. The main factor relied on by the applicant is the lack of a pathologist report. The fact that a pathologist report is unavailable at this point in the trial preparation process is a matter of some alarm, and I was told that this handicap applied to other matters, for reasons which need not be discussed here. The prosecution was reminded of their duty to secure the evidence necessary for trial, and they have undertaken to take concerted steps to do so. In the circumstances, the Court cannot presume that it will not be procured either in time for the new trial date or, alternatively, within the 3-year statutory period.

18. I will say, however, that even though a pathologist's report is an important evidential document in a murder trial, its importance is not the same in every homicide case. It should not therefore create an automatic stumbling block preventing progression of every homicide. If the cause of death and causation are not in issue, or if the report is not necessary to resolve some other

important factual or legal issue (such as degree of force used to inflict the injury, which may go to *mens rea*, or how the injury was inflicted), the legal question of causation may be straightforward and a pathologist report may not be necessary. The law is clear that if the defendant inflicted a plainly lethal wound and the victim died shortly afterwards from it, causation creates no legal issues: see, **R v Smith** [1959] 2 WLR 623.

19. Indeed, this principle appears to have been accepted in a number of cases where counsel have agreed to proceed to trial on the basis of the death certificate. This is in keeping with several tenets of the Criminal Case Management Rules, 2012, which require, among other things, (i) the early identification of the material issues involved; (ii) ensuring that evidence is presented in the most efficient manner; (iii) encouraging co-operation among parties in the progression of a case; and (iv) the judge's duty to actively manage the case.

20. Overall, I am satisfied that there is not before the Court any cogent evidence of the factors relevant to trial within a reasonable time (see para. 16, above) that would take this case outside of the statutory presumption of a fair trial occurring within the three-year window. In fact the next trial date is set for 25 May 2026. I therefore do not find that there has been unreasonable delay in the trial so as to justify the grant of bail under this part.

Part 4(2)(c) considerations

21. I must now go on to consider whether the s. 4(2)(c) factors justify the grant of bail. As mentioned, the "primary" considerations are the character or antecedents of the accused; the need to protect the safety of the public; and that of victims (where appropriate). It is clear under the scheme of the Act that a person charged with murder has to climb a higher steeple for the grant of bail. This is because, in addition to the usual Part A considerations for bail, Parliament has tacked onto it the special considerations under 4(2)(c).

22. The prosecution points out, with regard to the first consideration, that the defendant has a previous conviction for a firearms offence, for which he was sentenced to 1-year imprisonment in 2016. They also assert, in the affidavit of Cashena Thompson objecting to bail, that the accused is to be considered a threat to public safety and order because "*the current matter and his previous convictions involve the use of firearms*". This, they say, is evidenced by the previous judgment of Brathwaite J. refusing bail, and the prosecution's earlier affidavits in opposition to bail.

23. I accept that a previous firearms conviction is a relevant and potentially weighty factor. In a murder-with-a-firearm allegation, it can suggest familiarity with weapons and the ability to access them, especially depending on the recency of the conviction, and therefore make the present accusation appear more concerning when the court considers the antecedents. But while a

previous firearms conviction is an important consideration, the Act does not provide that a conviction alone compels refusal of bail in a later murder involving a firearm.

24. The DPP also says I should take "judicial notice" of "*the pervasiveness of gun violence in the country; the current climate of retaliation of those on bail*" and the fact that the applicant is charged with an offence involving the use of firearms. I indicated to counsel some concern over the looseness with which the doctrine of judicial notice was being invoked as a basis on which to grant or refuse bail. The doctrine of judicial notice is an evidential principle set out at s.80 of the Evidence Act, which prescribes certain matters which the court is empowered to take judicial notice of under the Act (or some other Act), or of which notice can be taken because they constitute what are said to be "notorious facts" (see, for example, **Hackney London Borough Council v Mullen** [1996] EWCA Civ J1018-3).

25. However, judicial notice is not a licence for a judge to consider *any* assertion or proposition relied on by a party, and a party urging the court to proceed in this manner must satisfy the court that the fact is either notorious or not capable of being disputed. For example, to take judicial notice that there is a climate of retaliation or violence by or against those on bail (while it might well be the case) requires some evidence or material capable of supporting this assertion, or from which the court can draw a reasonable inference of it. This can be brought to the attention of the Court by way of affidavit or even laying over some material, e.g., a report or statistics, or even newspaper articles.

26. In fairness to counsel for the DPP, counsel for the accused also asked the court to take judicial notice of what was said to be inhumane or deplorable conditions under which the accused was detained. That is not a relevant factor for the Court to take into consideration on a bail application in any event, but the point is that again no material or evidence was provided to the court in this regard. So both sides have been guilty of invoking the doctrine of judicial notice willy-nilly. I hardly need to reference the line of Court of Appeal cases where that court has reiterated the need for there to be evidence before the Court (see, in particular, **Jevon Seymour**).

The Part A considerations

27. I must now also look at the general Part A considerations. The first of the general considerations is whether or not there are substantial grounds for believing that the defendant would fail to appear at his trial if released, commit an offence while on bail or otherwise obstruct the course of justice. The DPP did not make any allegations or adduce any evidence that the applicant would not appear for his trial if released. In fact, the applicant is said to be a 34-year-old father of six minor children, and it may be inferred therefore that he has significant ties to the community and is unlikely to abscond.

28. Of the other factors mentioned, the only ones which are possibly relevant to this application are: (i) interference with a witness; and (ii) the nature and seriousness of the offence and the strength of the evidence against the defendant.

29. The applicant is charged with a serious offence, a murder-with-a-firearm allegation, which comes under the Part C Offences. All of the cases speak with one voice that the seriousness of the offence is an important factor in considering the grant of bail. In this regard, the court must bear in mind what was said by the Privy Council in **Hurnam,** *supra,* at para. 15 that:

> "It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drug cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail."

30. The Privy Council was speaking in the context of a drugs charges, but this rationale applies equally, or more powerfully, to murder and like offences. As the Court of Appeal noted in **Johnathan Armbrister v The Attorney-General** SCCRApp No. 45 of 2011 ("*Johnathan Armbrister*"):

> "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 invariable weigh heavily in the scale against the grant of bail."

31. As set out in the earlier Ruling refusing bail, the evidence against the accused includes that of an eyewitness who was acquainted with the deceased and who identified the applicant as the person he saw shooting the deceased at close range as he was rolling on the ground trying to get away. It appears that the killing may have arisen out of a prior altercation between the two over a female acquaintance. It is not my duty to evaluate the quality or strength of this evidence at this stage, but I am satisfied that at its very least it rises to the level of a prima facie case or satisfies a reasonable suspicion connecting the applicant to the commission of the crime.

A material change in circumstances?

32. Lastly, the reliance by the DPP on the previous ruling of Brathwaite J. refusing bail and the earlier affidavits filed in that regard prompts a comment on the approach to be taken on successive bail applications, as foreshadowed at para. 12.7. Based on the more recent Court of Appeal authorities, the law is reasonably clear that every application for bail pending trial should

be considered *de novo*. What is less clear is how the court should treat with previous rulings and filed factual material when considering successive applications for bail.

33. I have set out above the observations of Allen P. in **Mackey**, in which she stated that on a successive application the court must still have regard to (i) the previous findings; (ii) whether there is any new material relevant to the question of bail; and (iii) any existing circumstances at the time of the previous application which were not brought to the judge's attention (in essence, new material).

34. In **Richard Hepburn (No. 2)**, Allen P. reiterated those views and upheld the judge's decision to reject a fourth bail application. However, part of the rationale for the ruling was that in the interim the Court of Appeal had affirmed the first decision of the Judge refusing bail. Therefore, he had appellate endorsement of his earlier ruling refusing bail. Jones JA agreed with the President in this regard, and found that the prosecution's allegations in an earlier 2014 affidavit had not been controverted by a supplemental affidavit of 2016, and even if the judge had considered the supplemental affidavit (which he apparently did not), the earlier objections to bail were still operative and, in his words, "*unrequited*". As has been discussed, Crane-Scott JA dissented.

35. There can be no disputing that the trilogy of COA cases referred to above clearly re-affirmed the principle (originally stated by Georges CJ) that an applicant may make successive bail applications without establishing that there has been a change in circumstances. In other words, it is not a *condition precedent* to the institution of a renewed application for bail. To the extent that this was suggested in **Keith Patton**, it is now accepted that this may have been a bridge too far.

36. But considering an application afresh on its merits does not mean hearing everything again. The court is not required to turn a Nelsonian eye to previous judicial decisions denying bail, and, in my view, neither does it obligate the court to hear arguments as to facts or law it has already heard and rejected.

37. In point of fact, although the cases of **Nottingham Justices, ex parte Davies** [1981] QB 38 and **Slough Justices, ex parte Duncan** (1983) 75 Cr App. R. 384, have occasionally been distinguished as having no application to our constitutional context (see Crane-Scott JA in **Mackey**), on a refined analysis, the position espoused in those cases is really not dissimilar from what obtains in this jurisdiction.

38. In the UK, the grant of bail is also premised on a presumption of innocence. Indeed, it might be said that the UK bail regime is more pro-rights than the Bahamian bail regime, notwithstanding the guarantees of a written constitution. Under the structure of the UK Bail Act, there is a statutory presumption in favour of bail, and it is for the prosecution to satisfy the court that the statutory exceptions justifying refusal apply. Here, the Act purports to remove the presumptive right to bail: the grant of bail is "discretionary" having regard to certain

considerations. The Act also attempts to shift the burden on the *applicant* to justify the grant, although this dubious statutory provision has been repelled by the Court.

39. Strictly speaking, there is no numerical bar on bail applications in the UK, although the defendant's ability to re-argue facts or matters already argued narrows with each successive application. This difference is based to some extent on Schedule I, Part 2A paras. 1-3 of the Schedule to the UK Bail Act 1976 (as amended). That section (as amended in 1988) provides as follows:

> "(1) If the court decides not to grant bail, it is the court's duty to consider, at each subsequent hearing while the defendant is a person to whom section 4 above applies and remains in custody, whether he ought to be granted bail.
>
> (2) At the first hearing after that at which the court decided not to grant the defendant bail he may support an application for bail with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).
>
> (3) At subsequent hearings the court need not hear arguments as to facts or law which it has heard previously."

40. Thus, the remarks of Donaldson LJ in **ex parte Davies**, made in the context of the 1976 Act, are not completely inapposite. That case was decided in 1981, and Part 2A of the Schedule was not inserted until 1988, so the court was really discussing its inherent powers to control its process. The relevant parts of the decision are as follows (underlining supplied):

> "I fully accept the submission that in accordance with s 4 of the Bail Act 1976, every person who appears or is brought before a magistrate's court in the course of or in connection with proceedings for the offence or who applies to a court for bail in connection with the proceedings is entitled to be granted bail except as provided by Sch 1 to the Act. I also fully accept that on each such occasion the exceptions specified in para. 2, and for that matter para 3 (keeping in custody for the accused's own protection or, in the case of a child or young person, for his own welfare) only apply if the justices then sitting are satisfied in terms of those paragraphs. Finally, I accept that the fact that a full bench of the same or a different constitution has decided on a previous occasion or occasions that one or more of the Sch 1 exception applies and has accordingly remanded the accused into custody does not absolve the bench on each subsequent occasion from considering whether the accused is entitled to bail, whether or not an application is made.
>
> However, this does not mean that justices should ignore their own previous decision or a previous decision of their colleagues. Far from it. On those previous occasions, the court will have been under an obligation to grant bail unless it was satisfied that a Sch 1 exception was made out. If it was so satisfied, it will have recorded the exceptions which in its judgment were applicable. This 'satisfaction' is not a personal intellectual conclusion by each justice. It is a finding by the court that Sch 1 circumstances then existed and it is to be treated like every other finding of the court. It is *res judicata* or analogous thereto. It stands as a finding unless and until it is overturned on appeal. And appeal is not to the same court, whether or not of the same constitution, on a later occasion. [….] It follows that on the next occasion when bail is considered the court should treat, as an

> essential fact, that at the time when the matter of bail was last considered, Sch 1 circumstances did indeed exist. Strictly speaking, they can and should only investigate whether that situation has changed since then."

41. Since then, there have been further statutory changes made in the UK by the Criminal Justice Act 2003, which abolished the High Court's inherent power to entertain bail applications and the right of appeal from the Magistrate's Court and Crown Court to a High Court in chambers. Bail is now only dealt with by the High Court in the context of the powers of the court relating to the prerogative orders and normal judicial review principles and, even then, the power of review is sparingly used (see, **R (Rojas) v Snaresbrook Crown Court** [2011] EWHC 3569 (Admin).

42. Thus, it appears that the real difference between the UK position and the Bahamian position is that there is no *statutory* mechanism to control repeated bail applications in our context. So, in theory, there is no numerical bar on fresh applications after refusal by an earlier judge (or the same judge). But there is nothing in the Court of Appeal's decisions, as I read them, that purports to limit the inherent power of the Supreme Court to control its process and prevent abuse. While the court is mandated to hear the application afresh, it need not entertain arguments on facts or legal matters that have already been decided by another judge and which are being made simply in the hope of eliciting a different response from a different Judge. In fact, as discussed, a majority of the Court of Appeal in **Mackey** and **Hepburn** accepted that on a renewed application, the Judge must have regard to all the pertinent statutory considerations, but must also consider the previous findings, and whether there is any new material relevant to the question of bail.

43. In the current case, I accept in principle that the missed trial date stemming from the lack of the pathologist's report was a development that may have justified a renewed bail application. I do not accept, however, that it was a factor or consideration that would lead to my granting bail on my independent statutory assessment of the statutory considerations which I am obligated to have regard to for a person charged with a Part C offence, or to justify my coming to a different conclusion than Brathwaite J.

44. Other than the reference to the missed trial date, the previous affidavits of the applicant in support of his bail applications and those of the DPP in response basically repeated the same grounds and objections contained in the initial application.

45. The 2024 decision of Brathwaite J. denied bail primarily on three main grounds: (i) that there were reasons for believing that the defendant could present a possible gun-violence threat; (ii) that there was the possibility that this could involve retaliation involving witnesses or other persons; and (iii) that there was credible and cogent evidence that the accused may have committed the offence. I do not think these are rarefied or fanciful concerns or conclusions, and there was nothing to suggest they had dissipated since the last hearing.

46. As indicated, Mr. Ferguson stressed that there was no evidence before the court of these risks. But it has to be remembered that on a bail application, the controlling question is whether the court is sufficiently satisfied on the available material that the relevant statutory thresholds and considerations are met. The court is evaluating risk, not deciding guilt.

47. In **R (Director of Public Prosecution) V Havering Magistrate's Court**; **R (McKeown) v Wirral Borough Magistrate's Court** [2001 1 WLR 805, the Divisional Court considered the factors which a justice should consider in exercising the discretion to grant bail. Latham LJ said:

> "39. It seems to me that the justice is simply required by the statute to come to an honest and rational opinion on the material put before him. In doing so, he must bear in mind the consequence to the defendant, namely the fact that he is at risk of losing his liberty in the context of the presumption of innocence. This was the view of this court in *R v Liverpool City Justices, ex p Director of Public Prosecutions* [1993] QB 223. Article 5 [European Convention on Human Rights; cf. art. 20 Bahamian Constitution] does not, in my judgment require any different approach. None of the cases which have been cited to us suggest that the provisions of article 5 include a requirement that the underlying facts relevant to detention be proved to the criminal standard of proof. That is not surprising, bearing in mind the delicate exercise on which the court is engaged in this type of jurisdiction, in seeking to provide fairness to the defendant on the one hand, but securing the objectives of justice and the protection of the public during the period up to and including the trial."

48. To be sure, there are several factors which would redound favourably to the applicant in the consideration for bail. For example, as indicated, there is no direct evidence (as also accepted by Brathwaite J.) that the accused would not surrender for trial if released, considering his brood of minor children. And the applicant has indicated that he is willing to abide by any conditions the court might impose.

49. But the grant of bail is not a simple box-ticking exercise to determine where the preponderance of checks lies. Parliament has made the factors at 4(2) (c) the *primary* considerations where an applicant is charged with a Part C offence (in this case, the charge is the most serious of the Part C offences), and these factors weighed heavily against the applicant. Thus, even if conditions could be attached to the grant of bail to guard against any possible absconding and secure his attendance at trial, I am not satisfied that those conditions inoculate against the other risk factors.

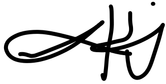
CONCLUSION AND DISPOSITION

50. I have carefully considered all of the statutory factors which are relevant to the grant or refusal of bail for a person charged with a Part C offence, and I am of the opinion that the accused

should not be admitted to bail. I have also considered the previous decision of the Court refusing bail, and those findings are still operative.

51. Bail is therefore refused. 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