COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Law Division
2024/CRI/BAL/00247

Between:

TYRONE WILLIAMS

Applicant

AND
DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	The Hon. Justice Loren Klein
Appearances:	Mr. Nicholas Mitchell with Lavar Ferguson for the Applicant
	Mr. Basil Cumberbatch with Ms. 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 Offence—Attempted Murder—Whether substantial grounds for believing that the defendant, if released on bail, would (a) fail to surrender to custody, (b) commit an offence while on bail or (c) interfere with witnesses or otherwise obstruct the course of justice—Affidavit of main prosecution witness "recanting" and indicating an intention not to proceed with trial—Whether recanting affidavit creates substantial grounds for inferring risk of interference with witnesses

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 with attempted murder. He has been in continuous custody since early November 2024 following his arraignment on 7 November 2024. He now faces a trial date of 23 August 2027.

2. The application was commenced by summons filed 19 March 2026, supported by the affidavit of the applicant filed the same date. Counsel for the applicant also lodged comprehensive written submissions with the Court on 27 March 2026, and supplemental submissions were filed on 2 April 2026.

3. The Office of the Director of Public Prosecutions ("DPP") responded with an affidavit opposing bail on 30 March 2026, the day when the hearing was initially listed before me, and the hearing was adjourned to 7 April 2026 to allow the parties additional time to consider the material. The supplemental submissions were filed in response to the prosecution's affidavit.

4. The applicant was represented by Nicholas Mitchell and Lavar Ferguson, and Basil Cumberbatch appeared on behalf of the DPP with Ms. Danielle Capron. I am grateful to counsel for their written and oral submissions.

Brief factual background

5. The allegations underlying the applicant's arrest and detention are that the applicant accosted the virtual complainant, Michael Brown, in the early morning hours of Saturday 2 November 2024, after they both left a bar located off Mackey Street called "Sweet Scents". The applicant threatened Brown with a knife in respect of monies that were said to be owing to the applicant. Another male, presumed to be an accomplice of the applicant, then approached with a gun and threatened that they would "kill him" (the virtual complainant). Brown managed to grab the gun and escape from the assailant brandishing the gun, but the applicant stabbed him in the back, hit him over the head with a bottle, and stabbed him in his stomach and side with the knife. He was assisted by friends who were able to disarm the applicant. He survived, but sustained serious injuries.

6. He later made a statement to police identifying the accused as the person who stabbed him. The applicant was said to be someone he knew and with whom he had worked. There are also statements from other persons who witnessed the events identifying the applicant as the assailant.

Material in support of bail

7. The applicant in his affidavit states that he is 27 years old and was arraigned and remanded on 7 November 2025 to the Bahamas Department of Corrections ("BDOCs") for the alleged offences. Prior to his arrest, he was the operator of a car wash and is a carpenter by trade. He resides at his family home and indicates that he is willing to be fitted with an electronic monitoring device ("EMD") as well as adhere to any reporting conditions.

8. His main reasons for seeking bail, based on his affidavit and written and oral submissions are as follows: (i) that the prosecution has not adduced any evidence of any substantial grounds for believing that he would fail to surrender, commit an offence while on bail, or interfere with witnesses or obstruct justice; (ii) that the trial was originally fixed for 12 August 2025, which was vacated by the Court, as the matter was not trial-ready and was re-fixed for 23 August 2027, a trial date teetering close to the statutorily presumed 3-year period of unreasonable delay; and (iii) that the main evidence against him has been severely undermined by the affidavit of the virtual complainant recanting, so that the strength and cogency of the evidence which provide the basis for the applicant's detention should be revisited. This is said to constitute a material change of circumstances.

9. The main grounds of his application are captured at paragraphs 13 and 18 of his affidavit as follows:

"13. My matter was originally fixed for trial between the 23rd August and the 3rd September 2025 before the Honourable Mr. Justice Franklyn Williams K.C. but that date was subsequently vacated. A new trial date has been set for August 2027. Although this date falls just within what is statutorily deemed a reasonable period, I verily believe that, given the vacated 2025 listing, the significant extension of time, and the present state of readiness in this matter, there remains real uncertainty as to whether the case will in fact be ready for trial by 2027, and further delay is likely.

[xx]

"18. I have been advised by my counsel and verily believe that on or about 20 November 2025 a sealed document was received at the Chambers of Callenders & Co., which contained a letter signed as received by the Director of Public Prosecutions dated 30 October 2025, together with an Affidavit of Michael Ricardo Brown sworn on 28 October 2025, in which, in both, he indicated his request to withdraw his statement and his involvement in the matter against me forthwith. I am further advised by my counsel and verily believe that this development represents a substantial change in circumstances relevant to my application before this Honourable Court. Both documents are attached hereto and marked TW-3."

10. The DPP replied with a very short affidavit opposing bail, but also relied on their previous affidavit opposing bail filed 21 November 2025. The November 2025 application was never heard and apparently it was "withdrawn", for reasons explained by counsel in Court but which need not be addressed here. An earlier application filed 22 January 2025 had also been rejected in a written ruling dated 19 February 2025, by Braithwaite J. In addition to relying on the earlier affidavit, the substance of the DPP's affidavit is in paragraphs 5-6 of that affidavit, as follows:

"5. That the Applicant states that if bail is granted he will not interfere with the Crown's witnesses. The Applicant has already interfered with the Crown's witnesses and this is made evident in the Applicant's affidavit in regards to witness Michael Ricardo Brown's Affidavit.

6. That the nature of the offence with which the Applicant is charged, the cogency of the evidence against the Applicant and the likely sentence he may receive if convicted gives the applicant an incentive to flee this jurisdiction. If the applicant is fitted with a monitoring device, the Court has no assurances that he will not tamper with it or completely remove it. We say that there are no conditions that the Court can impose can prevent (*sic*) the Applicant from absconding or committing a further offence. That the Applicant appears to be graduating to more serious offences. There is nothing peculiar about the Applicant's situation which suggests his continued detention is unjustified.

7. That we make this Application 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. 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.

Applicant's submissions

A. Delay, Reasonable time and proportionality

11. A key argument made by the applicant is that the delay in the trial date, which came about because the prosecution was not ready to proceed and through no fault of the applicant, weighs in favour of release, not continued detention. They point out that s. 4(2A)(a)—which deems 3 years as a reasonable pre-detention time—is expressly qualified by the words "*without limiting the extent of a reasonable time*", thereby preserving the Court's ability to assess whether continued detention is justified in a particular case, notwithstanding that 3 years may not have elapsed.

12. In this regard, it is submitted that the matter was delayed because the prosecution was not in a position to proceed, although they now assert in their opposing affidavit that they are "*not in opposition to the trial proceeding before that date*." The applicant contends that the prosecution, having acquiesced in the delay and agreed the adjourned date, cannot now conscientiously oppose bail by arguing that they are ready to proceed at an earlier date.

13. It is further submitted that detention should not be used to give the prosecution time to ready its case. For this proposition, they rely on **Duran Neeley v Director of Public Prosecutions** (SCCRAppNo. 92 of 2020), where the Court of Appeal made clear that s. 4 of the Act does not confer a blanket entitlement to detain a person for 3 years, and stated that it is not fair to retain an accused in custody while the Crown seeks to "*put its house in order*".

B. No substantial grounds that any of the bail risks would materialize

14. The next main argument is that continued detention is unjustified, because the prosecution has not shown "substantial grounds" that the applicant would abscond, interfere with witnesses, or commit further offences if released. Counsel argues that there is no evidence of threats, attempted contact, or conduct from which an intention to interfere could reasonably be inferred, and submits further that the allegations of interference are speculative and legally unsustainable.

15. In particular, they rely on several authorities from the Court of Appeal, which all make the point that averments in affidavits stating the mere possibility of such risks rather than the probability of such risks are insufficient.

16. In **Williams v DPP** (SCCrApp No. 25 of 2022), the Court said "…*a judge denying bail must have 'substantial grounds' for believing that an applicant for bail 'would' not 'might' or 'may' abscond, interfere with witnesses or commit a crime while on bail.*" In **Hepburn v Attorney General** (SCCrApp. No. 276 of 2014), the Court rejected a "*naked statement*" that the witnesses were known to the accused and that interference might occur as being evidence of witness interference. This principle was reiterated in **Dennis Mather v DPP** (SCCrApp NO. 96 of 2020), where the Court of Appeal made clear that predictive conclusions under the Bail Act must be grounded in logic and evidence, not in unfounded premises or generalized concerns.

17. The Applicant contends that these broad, unparticularized concerns are not supported by conduct attributable to the applicant. This, they say, constitutes a failure to satisfy the statutory requirement of "substantial grounds".

C. "Nature and Stability of Evidence"

18. Counsel for the applicant placed great reliance on what I will refer to as the "recanting material", arguing that it is not only a material change in circumstances, but one that undermines the strength and stability of the prosecution's case and augurs for a re-consideration of the Applicant's detention. As put in their written submissions (at para. 19-20):

> "Where a case depends materially on eyewitness accounts arising from such circumstances, and where there is identified uncertainty surrounding a witness connected to that account, the evidential position cannot be regarded as fixed or settled at this stage. […] The Court is therefore required to consider whether it is just to maintain a deprivation of liberty over an extended period on the basis of evidence whose present state is not only contested in the ordinary course but also exhibits elements of practical uncertainty. The weaker or less stable the evidential footing, the stronger the justification required to sustain continued detention."

D. General Part A Considerations

19. The applicant also attacks the DDP's reliance on several of the other factors the Court is required to consider with respect to bail (Part A factors). For example, it is stressed that the seriousness of the offence alone is relevant, but not determinative and cannot, without more, justify the refusal of bail (**Jeremiah Andrews v Director of Public Prosecution** (SCCrApp No.163 of 2019).

20. The applicant accepts that his antecedents disclose a progression in offending which, on its face, may give rise to an inference that the accused presents an increased risk of further criminal conduct, and which is a matter the Court is entitled to take seriously. However, it is submitted that the proper test is not whether the applicant has offended in the past, nor whether there is a pattern capable of generating concern, but whether there are substantial grounds for believing he would commit further offences if released (**Dennis Mather v DPP**).

21. Lastly, it is submitted that any residual concerns with regard to bail risks can be adequately managed by stringent bail conditions. In particular, it is submitted that conditions such as non-contact orders, reporting requirements, electronic monitoring, and curfew are measures capable of neutralizing realistic bail risks, making prolonged detention unnecessary and disproportionate.

22. In this regard, the applicant rejects the DPP's generalized and "hypothetical" belief that the accused might interfere with an EMD if fitted as being completely without any evidential foundation. In written submissions, it was submitted as follows:

> "[E]lectronic monitoring is itself a condition designed to supervise and detect noncompliance. The suggestion that the existence of such a safeguard should operate as a basis to refuse bail, rather than as a mechanism to ensure compliance, reverses the proper analysis under the Bail Act. In the absence of any evidence that the Applicant has breached conditions or cannot be trusted to comply with them, the Court cannot properly conclude that such a risk rises to the level required to justify continued detention."

Prosecution's submissions

23. The prosecution did not lodge any written submissions. In oral submissions, Mr. Cumberbatch made several arguments. His primary submission was that the recanting material was evidence that the applicant "*has already interfered with the Crown's witness*", or at the very least was material from which the Court should infer that there was likely to be interference.

24. In this regard, reference was made to several authorities, the principal one being **Treyvar Taylor v. DPP** (SCCrApp No. 139 of 2024), where the Court of Appeal upheld the decision of the first-instance judge refusing bail, partly on the basis that the judge had found that there was a serious likelihood of interference with the witnesses based on a recanting affidavit delivered to the chambers of the accused's attorney.

25. Next, the prosecution argued that the seriousness of the offence, coupled with the "cogency" of the evidence against the accused amounted to substantial grounds for believing that the applicant would fail to surrender, commit a further offence, or breach bail conditions. As noted, the prosecution went as far as to assert in their supporting affidavit that that the court had "*no assurances*" that the applicant would not tamper with his EMD and that there were "*no conditions that the court could impose*" that would prevent the applicant from absconding.

ANALYSIS AND DISCUSSION

Law and Legal Principles

26. 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 Whyms 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 Whyms**; **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).

(vii) 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 20203, and **Attorney-General v Bradley Ferguson et. al**., SCCRApp. Nos. 57, 106, 116 of 2008).

Court's Application of Principles to current application

27. I start with the observation that there is considerable force in the applicant's criticisms of the deficiencies in the DPP's affidavit, in particular that many of the statements in it are broad, un-particularized and unsupported by conduct attributable to the applicant. For example, apart from the question of whether it may be proper to draw any inferences from the recanting material (which I discuss below) the affidavit averred that "*the applicant has already interfered with the Crown's witnesses*". There was no evidence before the court of the circumstances in which the affidavit was made, and no direct evidence that there was interference with the witness in a legal sense—i.e., "*interference with a witness by unlawful means, such as violence, bribery, threats or improper pressure*" (see **Dennis Mather v DPP**, SCCr. App. No 96). In **Mather**, the Court of Appeal held that the mere assertion in an affidavit that the appellant had contact with the witnesses did not amount to witness interference, so as to justify the judge's finding of that fact and to refuse bail, *inter alia*, on the basis that he might do so again if released on bail.

28. Next, the affidavit states that "*the Court has no assurances that he [the applicant] will not tamper with the electronic monitoring device*". Firstly, it has to be borne in mind that it is the prosecution that has to satisfy the court that there are substantial grounds for denying bail because one or more of the primary bail risks exists. The applicant does not have to justify to the court that these risks do not exist, although the applicant will invariably attempt to provide grounds to support his or her application for bail. In truth, the Court never has any assurances that an accused might not tamper with an EMD, because such conduct is always in the realm of the possible. But there was nothing before the Court to suggest that it was a probability based on any conduct or history of the applicant. In any event, for the prosecution to oppose bail on the hypothetical risk that an EMD can be tampered with calls into question the utility for including it as a bail condition.

29. Next, it is said that there are "*no conditions that the Court can impose [that] can prevent the Applicant from absconding or committing a further offence*". Firstly, there was no evidence that the applicant was a flight risk, other than the clichéd reliance on the ***Hurnam*** statement of principle that a serious offence might create an incentive to flee. In fact, in refusing bail in the earlier decision, Brathwaite J. accepted that "*there was no direct evidence*" that the Applicant will not appear for his trial, although he found that it could be inferred. In **Amalia Charlton v DPP** (2026/CRI/BAL/153), 30 March 2026, I stated that principles enunciated in **Hurnam** (and other cases) "*…cannot be elevated into a rule of law, such as to justify automatic inference of reasonable or substantial grounds for believing an accused <u>would</u> abscond or interfere with witnesses in every case involving serious offences and severe penalties*."

30. Neither was there any real basis to state that the applicant will definitely re-offend and that there were *no* bail conditions which could be imposed to prevent that. The applicant has priors, but nothing approaching anything that could justify such a statement. For example, he was convicted of causing damage, assault and throwing missiles in 2018, for which he was fined with the alternative of 3 months in prison. Then, there was a second conviction in 2023 for carrying arms (not a firearms charge), for which he was again fined or in the alternative required to serve 1 month in prison. With respect, there is nothing in his past conduct to justify the "predictive conclusion" that the applicant was *certain* to re-offend and, again, it begs the very question of the utility of bail conditions.

The recanting material

31. Counsel for the prosecution drew the attention of the Court to the Court of Appeal's decision in **Stephon Davis**, for the proposition that the issue of recantation of evidence is a matter for trial. The reference was apparently to para. 34, where the Court of Appeal said as follows:

> "Alleged inconsistencies in the evidence of witnesses and the recanting of statements and what weight may be attached to the evidence of such inconsistent or recanting witnesses are within the province of the jury; and does not call for an evaluation by the judge."

32. However, I do not read that passage as saying that the Court cannot take into consideration matters that may affect the strength of the prosecution's evidence on a bail application. The court was simply indicating that the final determination of any issues of inconsistencies in evidence or recantation by witnesses in the prosecution's case were factual matters for the jury at trial. Indeed, the Court's comments at paragraph 32 make this clear. This is what they said:

> "[…] The question of the sufficiency of the Prosecution's evidence is a matter for the jury. This is not to say that a judge viewing the facts cannot form an impression about the strength of the Prosecution's case, for example, [where] there is photographic or video evidence along with a tracking report obtained through an attached monitoring device all of which show that the accused person was at an entirely different location than where the offence is alleged to have happened, it would be perverse of a judge in those circumstances to view the case against that person as cogent."

33. In other words, what I understand the Court to be saying is this: if there is *material* information going to the allegations against the accused, these are matters that can be taken into consideration in assessing the strength and cogency of the evidence against the accused on a bail application.

34. I therefore accept that the filing of an affidavit by the prosecution's primary witness recanting an earlier account given to the police is a matter capable of affecting the apparent strength of the evidence and the prosecution's case, and may be considered by the court. In fact, the "*nature and strength of the evidence against the defendant*" is one of the factors which the Court is mandated to take into consideration under Part A of the First Schedule. It does not, however, determine the issue conclusively at the bail stage. As the applicant has accepted, the court is not

conducting a trial within a trial, nor making any *final* findings as to credibility, reliability, or truthfulness of a witness. These are indeed matters for trial (see **Cordero McDonald**, **Stephon Davis**). The affidavit must also be considered in the context of all the available material. However, I also indicated to counsel during the hearing that the recanting material was a double-edge sword.

35. I think it is important to set out the material terms of the recanting material. There is a short note, said to be from Michael Brown, in which he identifies himself as the virtual complainant and indicates that he went to the Prosecution in April of 2025 and requested that the charges against Tyrone Williams be dropped, as he no longer wished to pursue them. He indicates that he was once again "*requesting that the charges against him and my statement be withdrawn*". It is useful to set out the terms of the short affidavit sworn 28 October 2025 by Mr. Brown. Following the formal parts, it states:

> "1. That in the month of November 2024, I was questioned by officers of the Central Detective Unit of the Royal Bahamas Police Force in regards to an incident in which I was stabbed during an altercation involving Mr. Tyrone Williams who is being charged before the Supreme Court for Attempted Murder.
>
> 2. That I Michael Ricardo Brown Jr. made and signed a statement with the Officers from the Central Detective Unit in regards to the said incident in which I identified Mr. Tyrone Williams as the person responsible for my injuries.
>
> 3. That I wish to withdraw the said statement and do not wish to have any further involvement in the said case that is being tried before the Judicial Courts of the Bahamas.
>
> 4. That I, Michael Ricardo Brown Jr., hereby make this Affidavit upon my free will. I was not paid, promised, or threated by anyone."

36. As indicated, this is not the place to assess the quality or probative value of a recanting affidavit, as it is not properly part of the evidence outlined before the Court in support of the charges. But, to the extent that it is said to materially weaken the cogency of the prosecution's main evidence and the basis for the custody of the applicant, it can be taken into consideration in discussing the "…*nature and strength of the evidence against the defendant*".

37. The principles culled from a number of cases suggests that relevant considerations might include: (i) the timing of the withdrawal; (ii) the circumstances in which it was made; (iii) whether the witness or complainant had any contact with the accused person or persons associated with the accused before recanting; (iv) whether there are any indications of fear, dependency, loyalty, remorse or pressure; (v) whether the affidavit explains why the earlier allegations were said to be false or mistaken, if there is a conflict with the new material; and (vi) whether it fits or conflicts with the broader evidential picture. See for example, **Maharaj and Others v The State** [2021] UKPC 27; **Sharmella Inderjali (as next friend of Marcus Bisram) v The Director of Public Prosecutions** [2019] CCJ 4 (AJ); and **Hamon v R** [2013] NZCA 540. It is appreciated that

several of these cases deal with the principles involved where recantation evidence is relied on in substantive hearings (such as appeals), but they may also be apposite preliminary proceedings, such as bail.

38. There is no evidence of the circumstances in which the affidavit sought to be relied on by the applicant was made and, in particular, the Court does not know whether it was produced out of remorse, loyalty, intimidation, inducement or pressure. Generally, for these reasons, recantation evidence is normally subject to careful qualitative scrutiny (see **Maharaj and Others v The State).**

39. However, there are several things that stand out about the recantation material. Firstly, it is to be noted that the witness does not disavow the original account he gave to police indicating that the applicant was responsible for his injuries. When initially interviewed, he indicated that he was able to "*automatically recognize*" the applicant in the photo-lineup because he knew him well—Tyrone had worked for him doing dry wall-work. What he now says is that he wishes to "*withdraw*" his statement and does not wish to have any further involvement in the case. In other words, this is not an affidavit seeking to correct the earlier version of the facts based on further recall by the witness, or indicating a possible mistaken identification of the applicant. It is simply an indication that the applicant wishes to *resile* from pursuing the case.

40. However, the question of whether the matter is to proceed to trial and what evidence the prosecution will lead is a matter for them, based on the assessment of the evidence. For example, if the witness maintained the recantation at trial, the prosecution might decide to seek leave to cross-examine him and treat him as a hostile witness. Were that to occur, the Court does not know what the complainant's eventual evidence would be, and whether it would contradict or confirm his original statement to the police. Furthermore, and significantly, it must be borne in mind that the virtual complainant is not the only eyewitness to the offence, so there is still other cogent evidence connecting the applicant to the offence.

41. Unfortunately for the applicant, in my view, having considered this material, it is the double edge of the sword that cuts. This is a case where the circumstances of the recanting itself gives rise to concerns as to possible interference, pressure or witness intimidation.

42. In **Taylor**, the Supreme Court refused bail partly on the basis that there were concerns about witness interference, having regard to the fact that an affidavit had been delivered to the chambers of counsel for the applicant for bail, purportedly indicating that the virtual complainant no longer wanted to continue the case. This was said to be because his car had been found (the charge was armed robbery of the virtual complainant's car and other valuables) and he no longer felt it necessary to proceed with the matter. Counsel for the appellant argued in the Court of Appeal that there was no proof that the appellant (applicant below) would interfere or had interfered with any of the witnesses, and attacked the Judge's findings that the evidence of the affidavit "*raises a serious likelihood of interference with witnesses*".

43. In dismissing the appeal, the Court of Appeal stated:

> "24. This Court concurs with the finding of the Learned Judge that it was extremely concerning that an affidavit allegedly prepared on behalf of the VC was delivered to office of counsel for the appellant, coincidentally while she was preparing a bail application for the appellant. Further, the affidavit was intituled as being in relation to a bail application, all without being at the instance of, or even with the knowledge of, counsel for the then applicant, who prepared that application. This indeed raises serious concerns about how the affiant knew to contact counsel's office, rather than approaching the Police directly to indicate, through an affidavit, that they no longer wished to pursue the matter."

44. There is none of the subterfuge here that was present in the **Taylor** case. But likewise, the recanting material leaves the Court unclear as to the circumstances in which it was made and the motivation behind it, and raises the spectre of witness interference or acts to otherwise obstruct the course of justice. There are a number of Court of Appeal authorities that support the position that this court can properly draw certain inferences from recanting material in deciding to refuse bail. In fact, I have serious concerns that the virtual complainant would seek to resile from pursuing any judicial outcome to a matter in which he was savagely attacked by an assailant well known to him in the absence of any further explanation of the circumstances in which his change of decision was made.

45. I am also required to consider whether this risk and any other risks could be mitigated by the imposition of conditions. A non-contact order might keep the applicant away from the virtual complainant, and an EMD would also allow the authorities to keep track of the accused. But none of these might be sufficient to protect the safety of the victim, which is one of the primary considerations.

CONCLUSION AND DISPOSITION

46. The court has taken into consideration the nature and seriousness of the allegation, namely an allegation of attempted murder, the apparent strength of the evidence as presently outlined, the defendant's antecedents, and all other relevant circumstances.

47. While the court is not satisfied that there are substantial grounds for believing that, if released on bail, the defendant would fail to surrender to custody, I entertain tremendous concerns about the safety of the victim in this matter. I think that this matter, coupled with the antecedents and seriousness of the offence, justifies my refusal of bail at this time.

Postscript

48. I also wish to make the observation that applicants for bail relying on recantation evidence or similar material should tread very cautiously. It is a double-edged sword. The production or adducing of such material without any explanation as to the circumstances in which it was obtained or even as to the authenticity of its contents, is a risky gambit. Recantation evidence is not

inherently unreliable, but it is to be viewed with a healthy dose of skepticism. The court is always alert to the danger that it poses, particularly when that evidence is said to come from the persons who should have the least motivation in the world for doing so.

KLEIN J.

20 April 2026