

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

Criminal Division
CRI/BAL/00179/2023

**BETWEEN:
KHIRY DAXON**

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Hon. Mr. Justice Loren Klein
Appearances: Danielle Kemp for the Applicant
Ashton Williams and Janet Munnings for the Respondent
Hearing Date: 19 May 2026
Ruling: Ruling 26 May 2026

RULING (BAIL)

KLEIN, J.

Bail Act—Application for Bail—Part C Offences—Armed Robbery, Possession of Firearm with Intent to Endanger Life—Prior convictions—Alleged threat to Public Safety—Relevant Considerations

INTRODUCTION AND BACKGROUND

1. This is an application by Khiry Daxon for bail pursuant to section 4 of the Bail Act, commenced by a summons and supporting affidavit filed 24 April 2026, and a supplemental affidavit filed 18 May 2026.

2. The applicant is charged with one count of armed robbery and one count of possession of a firearm with intent to endanger life. The purpose of the supplemental affidavit was simply to add the second count, which was inadvertently omitted from the supporting affidavit.

Brief factual background

3. In brief, the allegations underlying the applicant’s arrest and detention are that on the 26 June 2025 he robbed a fruit-stand vendor of some \$650.00, while armed with a handgun. He has been remanded since that date.

Material in support of bail.

4. In his affidavit in support of bail, the applicant indicates that he is 35 years old and was employed as a maintenance man at a restaurant/bar before his arrest in 2025. He acknowledges that he has prior convictions, which he lists as two counts of shop-breaking, assault of a police officer and unlawful escape, for which he was either fined or served short sentences.

5. He further states that he lived with his mother, who is now up in age, prior to his arrest and cared for a four-year nephew whose mother is deceased, and would likely be able to return to his earlier employment if released. He says that he is not a flight risk, that he will appear for his trial and any adjournments, and that he will not interfere with any witnesses.

6. In their affidavit opposing bail, the DPP makes several main points. The first is that the applicant was identified by the virtual complainant in a photo line-up. Secondly, it is indicated that the applicant's trial date is March 2027, which means that the trial window is within the three-year statutorily presumed reasonable time for a trial. Thirdly, it is indicated that the DPP's affidavit exhibits a true record of the applicant's antecedents, which "*extend beyond*" what the applicant avers in his affidavit. Finally, it is said that because of the applicant's prior criminal history, the DPP "*verily believes*" that the applicant is a threat to public safety. For all of these reasons, it is contended that bail should be denied.

Parties' Submissions in brief.

7. Before launching into her submissions, Ms. Kemp drew the court's attention to the supplemental affidavit adding the additional count and accepted that the extended list of antecedents indicated in the DPP's affidavit was correct. She made three main points in support of her argument for bail. Firstly, it was submitted that the DPP's reliance on the identification evidence ("ID") in objecting to the bail application was overstated, as the issue of the strength of the ID evidence was a matter to be ventilated at trial. Secondly, it was submitted that despite the applicant's numerous prior convictions, they all concerned minor summary breaches to which he had pleaded guilty and in respect of which he had either paid fines or served a short sentence.

8. In addition, she contended that the purpose of bail was not to punish the applicant for prior offences. The test was whether or not the prosecution had adduced substantial grounds for believing the applicant would commit one or more of the major statutory risks, such as re-offending, absconding, or interfering with witnesses (citing the Court of Appeal case of **Stephon Davis**, see below). Finally, it was submitted that the applicant does not have any convictions for prior firearms or violent offences, and there were no allegations of gang affiliation. Therefore, the suggestion that he was a threat to public safety was completely without any evidential basis and unwarranted.

9. Finally, the applicant offered to comply with any reasonable conditions the court might impose, including reporting conditions and the wearing of an electronic monitoring device (“EMD”).

10. For the DPP, Mr. Williams accepted that the purpose of bail was not to test the evidence relied on to prove the case against the applicant, but to establish that there was sufficient prima facie evidence linking the applicant to the commission of the offence. Mr. Williams (rightly I think) did not press the averment in the affidavit that the applicant was a threat to public safety; he stated that that was “*not his position this morning*”. However, he stressed that the list of antecedents indicated that the applicant was a prolific offender and at least one of the convictions—unlawful escape—was grounds for inferring that he was a bail risk. Finally, he stated that there had been no delay as the projected trial date was well within the three-year limit.

ANALYSIS AND DISCUSSION

Law and Legal Principles

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

Court's Application of Principles to current application

12. I have given careful consideration to the submissions of counsel and the affidavit evidence in support of and opposing bail, as well as the statutory factors and the legal principles which govern the grant of bail for a person charged with Part C offences under the Bail Act. In particular, the Court has taken into account the nature and seriousness of the allegations against the applicant, namely an allegation of armed robbery and possession of a firearm with intent to endanger life,

the apparent strength of the evidence as presently outlined (which includes eyewitness evidence), his antecedents, community ties, and all other circumstances appearing relevant.

13. Based on those considerations and the information presently before the Court, and notwithstanding Ms. Kemp's helpful submissions, I decline to grant bail. Ms. Kemp was right to point out that it is not appropriate at a bail application to consider in detail the strength of the identification evidence; that is a matter for trial. I was also unpersuaded by the allegation that the applicant's history of offending made him a threat to public safety. In any event, and as indicated, Mr. Williams basically did not advance that argument, notwithstanding what was contained in the affidavit.

14. However, I am satisfied that there are substantial grounds for believing that one or more of the statutory risks are made out, in particular that if released on bail the applicant will likely re-offend or possibly abscond. I have come to that conclusion for the brief reasons given below.

15. The thrust of the DPP's case for denying the applicant bail is that he has a long list of antecedents, and it is proper to infer that he will likely re-offend if granted bail. His list of antecedents disclose a laundry list of crimes from 2014 to 2025, as follows: (1) he was convicted of shop breaking and stealing in 2014, for which he was sentenced to 2 years' imprisonment and ordered to compensate the virtual complainant in the amount of \$500.00; (2) he was convicted of stealing in 2017, for which he was fined \$500.00 fine or 5 months in prison; (3) he was convicted of trespassing in 2017, for which he was fined \$50.00 or 1 month in prison; (4) he was convicted of threats of death, obscene language and disorderly conduct, also in 2017, and fined \$575.00 or 6 months in prison; (5) he was convicted of shop breaking and stealing in 2018, for which he was sentenced to 18 months in prison; (6) he was convicted of fraud by false pretenses, uttering a forged document and possession of forged documents in 2020, for which he was fined \$1000.00 and ordered to pay compensation to the virtual complainant of \$3,830.00; (7) he was convicted of deceit of a public officer in 2023 and sentenced to 2 months' imprisonment; and (8) he was convicted of escape from lawful custody in 2025 and sentenced to 3 months in prison.

16. I should emphasize that the fact that the applicant has a long list of antecedents is not by itself a reason to refuse bail. The applicant's antecedents is a factor to be taken into consideration, but only to the extent that it is relevant to one of the main statutory risk on which the court may refuse bail. Ms. Kemp was right to point out that although the applicant has numerous offences, they are in the main non-violent, summary offences for which he has paid his dues.

17. That is largely true, but I think there are several important takeaways from the applicant's history of offending. He has been in and out of prison over the years on various charges, and it appears that every time he is released, he goes back to offending. The applicant also seems to have a particular proclivity for committing offences involving property, and that is concerning

considering the present matter with which he is charged. I am therefore not convinced that the applicant will not return to what has seemingly been a way of life for the past decade or more if released.

18. Secondly, the fact that one of his offences was escape from lawful custody is also grounds for believing that the applicant might abscond and not appear for trial. The offences with which he is now charged are very serious ones, with the possibility of a substantial sentence if convicted. In my judgment, that means that the applicant is faced with a stronger incentive than he ever had to abscond, and he is a potential flight risk.

19. I bear in mind the proposed reporting conditions and the willingness of the applicant to wear an EMD, but I do not think that either is enough to assuage the concerns of the court.

20. For completeness, I should also say something about the delay. The applicant has been in custody since June 2025, and the scheduled trial date is March 2027. The prosecution relies on the fact that his trial will be within the three-year window as evidence of lack of delay. The point is plain beyond debate that the three-year period is only a rule-of-thumb, and not an inflexible measure of a reasonable timeline for bringing on a trial. What is a reasonable time must be assessed in all the circumstances of the case (see **Duran Neeley v. DPP** (SCCrApp. No. 92 of 2020); **Shaquon Dean v. DPP** (2023/CRI/BAL00195, 27 April 2026).

21. In this regard, I cannot help but note that this is a case in which the prosecution only proposes to call seven witnesses, one of whom is the virtual complainant, and all the other six police officers. This is a trial that should only last a few days, at most, and so it should not take two years to come on. I should indicate to counsel on both sides that this is a matter that should be shortlisted and made ready for call-up on a moment's notice.

CONCLUSION AND DISPOSITION

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

KLEIN J.



26 May 2026