

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL DIVISION
2024/CRI/BAL/00236**

BETWEEN

JONATHAN DAVIS

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Jeanine Weech-Gomez

Appearances: Mr. David Cash for the Applicant
Ms. Desiree Ferguson and Mr. Brent McNeil for the Director of Public Prosecutions

Hearing Date: 1st September 2026

RULING – BAIL DECISION

Criminal Law – Bail – The Constitution – Bail Act, Chapter 103 (as amended) – Renewed application for admission to bail following prior refusal – Murder contrary to section 291(1)(b) of the Penal Code, Chapter 84 – Voluntary Bill of Indictment narrowed since prior refusal – Whether there is a material change of circumstances – Section 4(2), (2A) and (2B) of the Bail Act – Character and antecedents as a primary consideration – Identification and circumstantial evidence – Whether the evidence discloses a reasonable suspicion sufficient to justify continued detention – Whether the Applicant is a fit and proper candidate for admission to bail – Application refused.

INTRODUCTION

1. The Applicant, Jonathan Davis (date of birth 23rd July, 1993), stands charged on a Voluntary Bill of Indictment with one (1) count of Murder, contrary to section 291(1)(b) of the Penal Code, Chapter 84, arising from the shooting death of the Deceased.
2. The Applicant is presently remanded in the custody of the Bahamas Department of Correctional Services pending trial.
3. This is not the Applicant's first application for bail in this matter. He was previously charged, in addition to Murder, with Possession of an Unlicensed Firearm and Possession of Ammunition, and a prior application for bail in respect of all three charges was refused by the Honourable Justice Neil Brathwaite, whose decision is dated 25th February 2025.
4. The Applicant now renews his application for bail, by way of an application dated 21st July 2026. The Voluntary Bill of Indictment presently before the Court charges the Applicant with Murder alone; on its face it does not include the counts of Possession of an Unlicensed Firearm or Possession of Ammunition that were before Brathwaite, J.
5. The Respondent opposes the application and relies upon the Affidavit-in-Response of Tanesha Forbes, an Attorney within the Office of the Director of Public Prosecutions, sworn on 24th August 2026 ("the Forbes Affidavit").
6. A backup trial in this matter is presently scheduled for the period 19th to 30th October 2026, with pre-trial discussions listed for 23rd September 2026.

THE APPLICANT'S SUBMISSIONS

7. Counsel for the Applicant, Mr. Cash, submitted, inter alia, that –
- i. the Applicant is a fit and proper person to be admitted to bail;
 - ii. directing the Court’s attention to paragraph 14 of the Forbes Affidavit, the evidence there relied upon by the Respondent namely, the Applicant’s antecedents is not cogent;
 - iii. although the Forbes Affidavit speaks to a grey Honda Civic said to be connected to the incident, the only civilian eyewitness to the shooting, Oshimae Bethune, does not in her statement speak to any vehicle at all;
 - iv. the Applicant is charged only with Murder; the Voluntary Bill of Indictment does not speak to, or charge, Possession of a Firearm, and the weight the Respondent attaches to the vehicle, and firearms evidence must be read in that light;
 - v. the witness Rose Spence does not, in her statement, speak to a vehicle in a manner that connects it to the incident; she speaks only to having loaned her vehicle to the Applicant;
 - vi. as to the identification evidence of Ms. Bethune, Counsel submitted that there was in his words “a lot going on” at the material time: it was approximately 10:00 p.m., the Deceased was said to be Ms. Bethune’s husband, and she was screaming at the time, such that the circumstances were not conducive to a reliable identification;
 - vii. while the Applicant is not, on Counsel’s own submission, a person of “absolute good character”, by reason of his previous conviction for Causing Harm, that alone does not disqualify him from being a fit and proper candidate for bail.

THE RESPONDENT’S SUBMISSIONS

8. Counsel for the Respondent advanced no further oral submissions beyond the Forbes Affidavit, upon which the Respondent relied in its entirety. In summary, the Respondent’s position is that :
- i. there has been no delay in this matter, and there is no objective reason to conclude that the Applicant will not be tried within a reasonable time;
 - ii. the evidence against the Applicant is cogent and compelling, comprising eyewitness, identification, and circumstantial evidence linking the Applicant to the shooting and to the vehicle used in its perpetration;

- iii. the Applicant was previously convicted of Causing Harm and has a pending matter in which he is charged with Possession of a Firearm with Intent to Endanger Life; the character and antecedents of the Applicant fall to be taken into account;
- iv. there is an overriding need to protect public safety and public order, particularly as it relates to gun violence; the grant of bail would pose a significant danger to public order and safety, and to the safety of the Applicant himself, given the culture of retaliatory violence which the Respondent says has developed and persists in this jurisdiction;
- v. the seriousness of the offence with which the Applicant is charged, and the likely penalty upon conviction, furnish considerable motivation for the Applicant to abscond and to interfere with witnesses or otherwise obstruct the course of justice; and
- vi. in all the circumstances, the Applicant is not a fit and proper candidate for bail, and the Court is invited to exercise its discretion to refuse the application.

ISSUES

9. Three questions arise for the Court's consideration. First, whether the Applicant has demonstrated a material change of circumstances since the refusal of bail by Brathwaite, J., such as to warrant a fresh consideration of the question of bail. Secondly, whether the evidentiary challenges advanced by Counsel for the Applicant undermine, to a material degree, the cogency of the case disclosed by the Forbes Affidavit. Thirdly, and in any event, whether the Applicant is now a fit and proper candidate for admission to bail.

THE LAW

- [10.] The Applicant is presumed innocent of the charge unless and until he is convicted. Article 20(2)(a) of the Constitution of the Commonwealth of The Bahamas provides: "20.(2) Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty."
- [11.] Article 19 of the Constitution guarantees the right to personal liberty, subject to lawful detention upon reasonable suspicion of having committed a criminal offence, and Article 19(3) provides that a person so detained who is not tried within a reasonable time shall be

released, either unconditionally or upon reasonable conditions. The presumption of innocence does not, however, equate to an automatic entitlement to bail; the right to liberty is qualified by statute and may be curtailed where necessary in the interest of public safety and the administration of justice.

- [12.] Murder is an offence mentioned in Part C of the First Schedule to the Bail Act, Chapter 103 (“the Bail Act”), and section 4(2), (2A) and (2B) accordingly apply:

“(2) ... any person charged with an offence mentioned in Part C of the First Schedule, shall not be granted bail unless the Supreme Court or the Court of Appeal is satisfied that the person charged – (a) has not been tried within a reasonable time; (b) is unlikely to be tried within a reasonable time; or (c) should be granted bail having regard to all the relevant factors including those specified in Part A of the First Schedule and subsection (2B)...

(2A) For the purpose of subsection (2)(a) and (b) – (a) without limiting the extent of a reasonable time, a period of three years from the date of arrest or detention of the person charged shall be deemed to be a reasonable time; (b) delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered a reasonable time.

(2B) ... in deciding whether or not to grant bail to a person charged with an offence mentioned in Part C of the First Schedule, the character or antecedents of the person charged, the need to protect the safety of the public or public order and, where appropriate, the need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations.”

- [13.] The proper construction of these provisions was considered by the Court of Appeal in **Hepburn v The Attorney General SCCrApp & CAIS No. 276 of 2014**, itself an appeal from the refusal of bail to a person charged with murder. The Court identified two distinct rights to bail: a general right to be released unless there is sufficient reason under Part A of the First Schedule not to grant it, and an absolute right to be released where the constitutional guarantee of trial within a reasonable time has been, or is likely to be, breached. The three-year period in section 4(2A) is to be construed as “a marker and not a

limitation”, to be assessed case by case; and an applicant who invokes section 4(2)(a) or (b) must first raise the presumption of unreasonable delay before the burden shifts to the State.

- [14.] The factors the Court must take into account are set out in Part A of the First Schedule to the Bail Act, including whether there are substantial grounds for believing that the defendant, if released, would fail to surrender to custody, commit an offence while on bail, or interfere with witnesses or otherwise obstruct the course of justice; and the nature and seriousness of the offence and the nature and strength of the evidence against the defendant.

- [15.] The Court’s function on a bail application is not to conduct a mini-trial. In **Jonathan Armbrister v The Attorney General SCCrApp No. 145 of 2011**, the Court of Appeal affirmed that the seriousness of the offence and the likely penalty upon conviction are important considerations, and that in cases of murder the seriousness of the offence weighs heavily against bail; a bare, unparticularised assertion, however, cannot stand alone.

- [16.] In **Hurnam v The State [2006] 3 LRC 370**, as applied in **Stephon Davis v The Director of Public Prosecutions SCCrApp No. 108 of 2021**, it was recognised that a person charged with a serious offence, facing a severe penalty if convicted, may have a powerful incentive to abscond or interfere with witnesses; where such risk cannot be effectively eliminated by conditions, it affords good grounds for refusing bail.

- [17.] In **Cordero McDonald v The Director of Public Prosecutions SCCrApp No. 121 of 2023**, the Court of Appeal reiterated that it is not the duty of a judge considering a bail application to decide disputed facts; the judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offence such as to justify the deprivation of liberty, and then consider the relevant factors under the Act.

- [18.] As to the renewal of a bail application after a prior refusal, the position is settled. The Court hearing a fresh application does not sit on appeal from, and does not review, the ruling that previously refused bail, and will not entertain the renewed application as a means of re-

arguing what has already been decided. A fresh application falls to be refused unless the Applicant can demonstrate a substantive or material change of circumstances since the earlier ruling, or can advance fresh matters not previously before the Court (see **R v Nottingham Justices, ex parte Davies [1981] QB 38**), an approach consistently applied in this jurisdiction.

- [19.] Finally, questions as to the reliability, credibility, or completeness of witness accounts including the circumstances under which an identification was made are, save in the plainest of cases, matters for trial, to be tested by cross-examination and weighed by the tribunal of fact upon proper directions. It is no part of the Court's function on a bail application to resolve such contests, nor to weigh one witness's account against another's silence on a given point, save to the limited extent necessary to determine whether the material as a whole discloses a reasonable suspicion of the commission of the offence.

THE EVIDENCE

20. The evidence relied upon by the Respondent, as summarised in the Forbes Affidavit, includes the following.
21. Oshimae Bethune, an eyewitness, was present when the Deceased was shot multiple times. She states that she was able to identify one of the defendants, whom she says was holding a firearm she described as a long gun. Her witness statement and an identification report in respect of one of the assailants are exhibited as "T.F.-3" and "T.F.-4".
22. Rose Spence, described as a friend of the Applicant, states that she loaned the Applicant her vehicle a grey Honda Civic bearing licence plate AV3455 on the day of the incident, that she is able to identify the Applicant, and that her vehicle is the one which the Police say was used in the perpetration of the offence. Her witness statement, her identification report, and a vehicular identification report are exhibited as "T.F.-5", "T.F.-6", and "T.F.-7".

23. D/Insp. Raphael Miller conducted an identification parade at which both Ms. Bethune and Ms. Spence participated; his report is exhibited as “T.F.-8”.
24. D/Sgt. McKenzie reports that he observed a man known to him as the Applicant jumping over a fence and thereafter located the grey Honda Civic bearing licence plate AV3455 ditched in nearby bushes. The Applicant is said to have admitted to D/Sgt. McKenzie that he had been driving that vehicle. D/Sgt. McKenzie’s report is exhibited as “T.F.-9”.
25. ASP Paul Cash reports that, while in an unmarked police vehicle, he heard rapid gunfire and a woman screaming and observed two black males firing a weapon at a man on the ground before driving off in a red Mazda. He followed the Mazda; when it was pulled over on West Bay Street, the occupants abandoned it and got into a dark grey, two-door Honda Civic. His report is exhibited as “T.F.-10”.
26. On the material before the Court, no single witness account speaks to every link said to connect the Applicant to the offence; rather, the Respondent’s case is cumulative and circumstantial, each witness speaking to a different part of the sequence the shooting itself, the loan and description of the Honda Civic, its discovery ditched near where the Applicant was apprehended, the Applicant’s own admission to driving it, and the observed transfer of the assailants from the Mazda into a matching vehicle.

THE APPLICANT’S CHARACTER AND ANTECEDENTS

27. The Forbes Affidavit discloses that the Applicant was previously convicted of Causing Harm, and that he has a pending matter in which he is charged with Possession of a Firearm with Intent to Endanger Life. An Antecedent Form is exhibited as “T.F.-11”.
28. I bear in mind that the charge of Possession of a Firearm with Intent to Endanger Life remains pending and unproven, and that the presumption of innocence attaches to it as it does to the charge presently before this Court. It is, for that reason, not to be treated as though it were a conviction. It is nonetheless properly before the Court as part of the Applicant’s antecedents, and section 4(2B) of the Bail Act makes the Applicant’s character and antecedents a primary consideration in respect of a Part C offence such as Murder.

29. The prior refusal of bail by Brathwaite, J. on 25th February 2025, in respect of the same underlying facts then charged as Murder, Possession of an Unlicensed Firearm, and Possession of Ammunition is exhibited as “T.F.-12”.

ANALYSIS AND DISPOSITION

(1) Whether there is a material change of circumstances

30. The starting point is that bail in this matter was refused by Brathwaite, J. on 25th February 2025. That refusal stands, and it is not open to the Applicant to invite this Court to sit in review of it. What is before me is a fresh application, and the threshold question is whether the Applicant has shown a material change of circumstances since that refusal.
31. The one matter capable of being characterised as new is that the Voluntary Bill of Indictment now before the Court charges the Applicant with Murder alone, whereas the application refused by Brathwaite, J. concerned Murder, Possession of an Unlicensed Firearm, and Possession of Ammunition together. Counsel for the Applicant relies on this narrowing, submitting that the Voluntary Bill of Indictment does not speak to Possession of a Firearm.
32. I do not accept that this narrowing amounts to a material change of circumstances sufficient to warrant departure from the earlier refusal. The gravamen of the case against the Applicant that he participated in the shooting death of the Deceased with a firearm is unchanged; what has fallen away are two subsidiary possessory counts, not the factual allegation that a firearm was used in the killing itself, which remains squarely a feature of the Murder count and of the evidence adduced in support of it. The absence of a standalone firearm charge from the indictment does not diminish the seriousness of the Murder charge, nor does it alter the risk factors to public safety, to witnesses, and of absconding that arise from the nature of the offence as alleged. Save for that narrowing, nothing has changed since the earlier refusal; the Applicant’s antecedents, the evidence summarised above, and the trial timetable have not materially shifted in his favour.

(2) The evidentiary challenges

33. Counsel for the Applicant mounted a series of specific challenges to the cogency of the Respondent's case: that paragraph 14 of the Forbes Affidavit is not cogent; that the eyewitness Ms. Bethune does not speak to any vehicle; that Ms. Spence's evidence does not connect her vehicle to the incident; and that Ms. Bethune's identification, made at approximately 10:00 p.m. amid screaming and, on Counsel's account, involving her husband, was made in circumstances not conducive to reliability.
34. As to paragraph 14, I have already addressed, in considering the Applicant's antecedents, the distinction between the Applicant's proven conviction for Causing Harm and his pending charge of Possession of a Firearm with Intent to Endanger Life. To the extent Counsel's submission is that the pending charge cannot be treated as conclusively probative of anything, I agree, and I have given it correspondingly limited weight. That does not, however, render the antecedents' evidence as a whole lacking in cogency; the conviction for Causing Harm is a matter of record, and it is properly considered.
35. As to the submissions concerning the Honda Civic and the absence of any reference to a vehicle in Ms. Bethune's account, and as to Ms. Spence's evidence not itself connecting her vehicle to the incident, I remind myself, applying *Cordero McDonald*, that it is not my function on this application to resolve such contests or to weigh the completeness of one witness's account against another's. The Respondent's case, as I have noted, is cumulative: it does not depend upon any single witness speaking to every element. That the eyewitness to the shooting did not herself describe the getaway vehicle, and that the owner of that vehicle did not herself witness the offence, is unremarkable and does not deprive the cumulative account encompassing the discovery of the vehicle ditched near where the Applicant was apprehended, and his own admission to driving it of its cogency for present purposes. Whether that cumulative account withstands scrutiny at trial is a different question, and not one for this Court to anticipate.
36. As to the reliability of Ms. Bethune's identification, the matters Counsel raises the hour, the presence of screaming, and the suggestion that the Deceased was her husband are the very kind of considerations that bear upon the weight and reliability of identification

evidence at trial, where they may be explored in cross-examination and addressed in appropriate directions to the tribunal of fact. They are not, without more, a basis upon which this Court, on a bail application, can conclude that the identification evidence fails to disclose a reasonable suspicion of the Applicant's involvement in the offence. I note, further, that an identification parade was conducted by D/Insp. Miller, which affords the Applicant a distinct and available avenue to challenge the identification at trial.

37. Standing back, I am satisfied that the material before me, taken as a whole, discloses a reasonable suspicion of the commission of the offence sufficient to justify the Applicant's continued detention, subject to the remaining factors the Bail Act requires me to weigh. I say no more about the strength of the evidence than that; it is not my role to go further.

(3) Character, antecedents, and risk

38. Murder being a Part C offence, section 4(2B) of the Bail Act makes the Applicant's character and antecedents a primary consideration. The Applicant has a previous conviction for Causing Harm, an offence of violence, and a pending charge of Possession of a Firearm with Intent to Endanger Life. Counsel for the Applicant fairly and properly conceded that the Applicant is not a person of, in his words, "absolute good character".
39. I accept, as Counsel submits, that imperfect character does not of itself disqualify an applicant from bail. The question is not whether the Applicant's character is unblemished, but what his character and antecedents, taken with the nature of the present charge, indicate as to the risks the Bail Act requires me to assess: of absconding, of further offending, and of interference with witnesses. A prior conviction for a violent offence, coupled with a pending allegation of possessing a firearm with intent to endanger life, and now a charge of Murder alleged to have been committed with a firearm, discloses, in my judgment, an escalating pattern that speaks directly to those risks.

(4) Public safety and public order

40. Section 4(2B) also makes the protection of public safety and public order a primary consideration. The Respondent's affidavit speaks to an overriding need to protect public safety and public order as it relates to gun violence, and to a culture of retaliatory violence

said to persist in this jurisdiction, extending even to a concern for the Applicant's own safety were he released. I accept that gun-related violence of the kind alleged here is a matter of grave public concern, and that this consideration weighs against the grant of bail in this case.

(5) Proportionality and conditions

41. I have considered whether conditions sureties, electronic monitoring, reporting, a curfew, or a combination of these could adequately mitigate the risks I have identified. Given the seriousness of the charge, the nature of the evidence connecting the Applicant to a killing carried out with a firearm following a chase and the abandonment of two vehicles, and his antecedents, I am not satisfied that any condition or combination of conditions would adequately address the risk of further violence, of interference with witnesses (several of whom are civilian eyewitnesses whose safety the Respondent has raised), or of absconding in the face of a charge carrying the most serious penalty known to this jurisdiction's law.
42. The Court is mindful that pre-trial detention must not become punitive. It is a precaution, not a punishment. Where, as here, the statutory criteria are met and the identified risks cannot be mitigated by conditions, continued remand is protective rather than punitive. The trial dates already fixed pre-trial discussions on 23rd September 2026 and a backup trial listed for 19th to 30th October 2026 indicate that this matter is proceeding with reasonable dispatch, and no submission was made, nor could properly be made on this record, that the Applicant is unlikely to be tried within a reasonable time.

DECISION

43. The Applicant has not established a material change of circumstances since the refusal of bail by Brathwaite, J. The narrowing of the indictment to a single count of Murder does not, for the reasons given, alter the risk assessment that underpinned the earlier refusal.
44. The evidentiary challenges advanced by Counsel for the Applicant go to matters properly reserved for trial; they do not deprive the Respondent's case, taken cumulatively, of the cogency required to justify the Applicant's continued detention at this stage.

45. Even were the matter approached entirely at large, I would not be satisfied that the Applicant is presently a fit and proper candidate for admission to bail. The seriousness of the Murder charge, the cumulative evidence connecting the Applicant to the offence, his antecedents including a conviction for a violent offence and a pending charge involving a firearm and the public safety concerns properly raised by the Respondent, together disclose a real and substantial risk of absconding, of further offending, and of interference with witnesses, which cannot be adequately mitigated by conditions.
46. Accordingly, the application for bail is refused.
47. The Applicant shall remain remanded to the Bahamas Department of Correctional Services pending trial.
48. Should there be any material change in circumstances in the interim including, in particular, any alteration to the trial timetable such that the Applicant is unlikely to be tried within a reasonable time the Applicant is at liberty to reapply.

Dated this 29rd day of September , 2026.

The Honourable Madam Justice Jeanine Weech-Gomez