COMMONWEALTH OF THE BAHAMAS **2018/CRI/BAL/00539**

IN THE SUPREME COURT

Criminal Division

B E T W E E N

DOOBENSKY ANTOINE

Applicant

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Ms. Renae McKay

Appearances: Mr. Rzhard Humes for the Applicant
Ms. Davina Pinder for the Respondent

Hearing Dates: 24th August, 2026

BAIL RULING

1. By summons filed on 8 October 2025 and supported by an affidavit filed on 9 October 2025, the Applicant, Doobensky Antoine, applied for bail.

2. The Applicant, aged 31 and a Haitian national, is charged with two counts of attempted murder, contrary to section 292 of the Penal Code, Chapter 84.

3. He is presently remanded at the Bahamas Department of Correctional Services ("BDOCS").

4. The Respondent opposed the application by an affidavit of Calnan Kelly filed on 9 February 2026 ("Kelly Affidavit") and a supplemental affidavit of Calnan Kelly filed on 21 April 2026 ("Kelly Second Affidavit").

5. The Applicant filed a supplemental affidavit on 10 August 2026.

6. Having heard the submissions of both counsel, I reserved my decision.

Submissions by Counsel for the Applicant

7. Counsel for the Applicant, Mr. Humes, submitted that the Applicant had requested an identification parade from the outset, but none was conducted. The Applicant subsequently learned that a 12-person photographic line-up had been used.

8. Mr. Humes addressed the account that Inspector Dean had asked the Applicant to circle a response on a form and write down why he was unwilling to participate in a parade. Counsel submitted that the exhibited form contained a circled response but no written explanation. He said this should be considered alongside the Applicant's continuing assertion that he had wanted an identification parade.

9. Counsel explained that the Applicant had been granted bail in another matter, which had been delayed through no fault of his own. Mr. Humes said he had no indication that the Applicant had breached the conditions of that bail. The present charges were the matter for which the Applicant now sought bail.

10. Mr. Humes submitted that the Applicant had substantial ties to The Bahamas despite questions about his immigration status. He said the Applicant had attended at least two schools in the country and operated a barber shop before his incarceration. Counsel also referred to a work-permit application and said the Applicant had been unable to meet expenses associated with maintaining his status, principally because he was in custody. In his submission, The Bahamas was the place the Applicant knew as home.

11. Counsel argued that a lack of citizenship or current immigration status was not, by itself, an automatic bar to bail. He cited **AG v Mendez & Ayo, SCCrApp & CAIS Nos. 93 and 99 of 2010**, in support of that submission. He said the question was whether the Applicant would comply with bail conditions and return for trial. He proposed a surety, electronic monitoring and reporting requirements, together with a curfew if the Court considered one necessary. He further submitted that the Applicant was not a flight risk, would not interfere with witnesses, was not gang-affiliated and would comply with any conditions imposed.

12. Mr. Humes also disputed the suggestion that the description "Yardie" identified the Applicant. He said the Applicant was not known by that name and denied being the person described.

13. Finally, Counsel relied on the statement of one of the two complainants. Although that complainant described hearing gunshots and sustaining an injury, he said he had not seen who fired the gun or who else was shot and would be unable to identify the shooter. Mr. Humes submitted that this account undermined the prosecution's description of its evidence as "cogent", called into question the basis for the two attempted-murder counts against the Applicant, and reinforced his challenge to the identification evidence.

Submissions by Counsel for the Respondent

14. Counsel for the Respondent, Ms. Pinder, submitted that bail should be refused having regard to the seriousness of the alleged offences, the Applicant's earlier charge, public safety and his immigration status.

15. Ms. Pinder submitted that the Applicant was charged with murder in September 2021 and granted bail subject to conditions. She said that he was alleged to have committed the two attempted-murder offences while on bail for that charge.

16. Referring to Part A of the First Scedule to the Bail Act, Ms. Pinder identified the factors she said the Court should consider: whether the Applicant should be detained for his own protection; whether, having previously been released on bail, he had subsequently been charged with a similar offence; the nature and seriousness of the alleged offences; and the nature and strength of the evidence against him. She submitted that these factors, together with concerns about public safety and public order, weighed against his release.

17. Ms. Pinder relied on the accounts of two complainants exhibited to Kelly's affidavit. The first complainant said that a man described as "the Yardie bey" pointed a firearm at him, shot him in the leg and continued firing as he ran away. According to the complainant, the man then stood over him and tried to shoot him in the head, but the gun jammed.

18. The second complainant said that he was sitting at the rear of the bar when he heard what sounded like gunshots, felt a burning sensation in his groin and noticed blood running down his leg. Ms. Pinder described him as an apparent innocent bystander who had taken no part in the confrontation. She relied on his injury in support of her submissions concerning public safety and public order.

19. Ms. Pinder also relied on the Second Affidavit of Kelly concerning the Applicant's immigration status. She submitted that checks with the Department of Immigration showed that he had no valid status to remain in The Bahamas. According to her account, a work permit approved for the period from 14 June 2018 to 12 October 2019 was not issued because the required payment was not made. She said that his application for a spousal residence permit was refused on 9 December 2022 and suggested that his present status might expose him to further charges.

20. For those reasons, Ms. Pinder submitted that bail should be refused.

Issue

21. Whether the Applicant is a fit and proper candidate for bail.

Law and Analysis

22. Bail is the conditional release of a person from custody on conditions imposed by the Court to secure that person's attendance at hearings and at trial.

23. The Bail Act, Chapter 103, governs applications for bail. Section 4(2) outlines the factors the Court must consider when deciding whether to grant or refuse bail. It provides as follows:-

> **"4. (2) Notwithstanding any other provision of this Act or any other law, 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), and where the court makes an order for the release, on bail, of that person it shall include in the record a written statement giving the reasons for the order of the release on bail.**
> **(2A) For the purposes of subsection (2)(a) and (b) –**
> **(a) without limiting the extent of a 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 to be a reasonable time.**
> **(2B) For the purposes of subsection (2)(c), 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."**

24. Section 4(2) must be read together with Part A of the First Schedule, which sets out further factors for the Court to consider:-

> **(a) Whether there are substantial grounds for believing that the defendant, if released on bail, would—**
> **(i) Fail to surrender to custody or appear at his trial;**
> **(i) 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;**
> **(b) Whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;**

(c) Whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;
(d) Whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;
(e) Whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;
(f) Whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year;
(g) The nature and seriousness of the offence and the nature and strength of the evidence against the defendant."

25. In applying section 4(2) of the Bail Act and Part A of the First Schedule, I must also give due weight to the Applicant's constitutional rights under Articles 20(2)(a) and 19(d).

26. **Article 20(2)(a)** provides:-

> **Every person who is charged with a criminal offence—**
>
> > **(a) shall be presumed to be innocent until he is proved guilty or has pleaded guilty.**

27. **Article 19(d)** also provides:-

> **No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases—**
>
> > **(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence.**

Strength and Cogency of the Evidence

28. Part A of the First Schedule identifies the nature and strength of the evidence against the Applicant as a factor in deciding whether to grant or refuse bail. That factor is not decisive on its own; I must also consider the other relevant factors. The case of **Stephon Davis v DPP SCCrApp No. 20 of 2023** further supports that distinction. At paragraph 19, the Court of Appeal stated that:-

> **19. "In our view, 'strong and cogent evidence' is not the critical factor on a bail application. <u>The judge is only required to evaluate whether the witness statements show a case that is plausible on its face.</u> <u>To put it another way, there must be some evidence before the court capable of establishing the guilt of the appellant.</u> In essence, the test is prima facie evidence, comparable to**

what is required at the end of the prosecution's case in a criminal trial." [Emphasis added]

Antecedents

29. The Applicant's antecedents are also a relevant consideration under section 4(2) of the Bail Act. In assessing that factor, I am guided by the decision of Isaacs JA (as he then was) in **Stephon Davis v DPP No. 108 of 2020**. At paragraph 28, His Lordship stated:-

> **28. <u>The antecedents of an applicant for bail is an important factor to be taken into account by a court considering the application. This record may provide a barometer for the likelihood of the applicant to commit other offences while on bail.</u> Although a court is obliged to have regard to the antecedents of an applicant for bail, little weight should be given to offences that are as trivial as vagrancy. That offence is committed merely by being found as to have contravened section 3 of the Vagrancy Act. It is essentially a victimless crime and may be committed by persons who are merely in a penurious state. [Emphasis added]**

Risk of absconding

30. Part A of the First Schedule to the Bail Act requires me to consider whether there are substantial grounds for believing that, if released on bail, the Applicant would fail to surrender to custody or appear for trial. The Court of Appeal's recent decision in **Jermaine Noulus, SCCrApp No. 83 of 2026**, is particularly instructive on the risk of absconding. At paragraphs 40–42, Evans JA stated:-

> **40. There is no dispute with the proposition that the seriousness of the offence, the apparent strength of the evidence and the severity of the likely penalty are relevant considerations in assessing the risk of flight. The difficulty, however, lies in treating the inference which may arise from those considerations as determinative without examining the other evidence bearing upon the likelihood that this particular Appellant would abscond.**
>
> **41. The approach required was explained by this Court, differently constituted, in Jeremiah Andrews v Director of Public Prosecutions SCCrApp No. 168 of 2019. At paragraph 30, the Court stated:**
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> > **"30. These authorities all confirm therefore that the seriousness of the offence, coupled with the strength of the evidence and the likely penalty which is likely to be imposed upon conviction, have always been, and continue to be important considerations in determining whether bail should be granted or not. However, these factors may give rise to an inference that the defendant may abscond. That inference can be weakened by the consideration of other relevant factors disclosed in the evidence. E.g the applicant's resources, family connections, employment status, good character and absence of antecedents."**

42. The significance of Andrews is that notwithstanding the inference of flight which may arise from the seriousness of the offence and the potential penalty, it remains necessary for the Court to consider the evidence as a whole, including any circumstances personal to the applicant which may strengthen or weaken that inference.

Decision

31. In determining this application, I have considered both counsel's submissions, the Applicant's affidavit and supplemental affidavit, the Respondent's affidavit in response and supplemental affidavit, and the evidence as a whole.

32. The Applicant is charged with two counts of attempted murder. These are serious offences falling within Part C of the Bail Act, and a conviction may result in a lengthy custodial sentence. The Applicant maintains his innocence and is entitled to the presumption of innocence.

33. The affidavit evidence and counsel's submissions raise disputes about the proposed identification parade, including whether the Applicant declined to participate in it, and about the identification of the shooter by one of the complainants. Those disputes are for determination at trial. I do not resolve them on this bail application, although I consider the evidence to the extent necessary to assess the application.

34. The nature and strength of the evidence against the Applicant are relevant considerations, but they are not the only ones. I have also considered whether conditions, including electronic monitoring, a curfew and reporting requirements, could secure his attendance at hearings and at trial.

35. The Applicant has an armed robbery matter pending before the Court, in addition to the present attempted-murder charges. He also has previous convictions arising from offences committed in October 2022: obscene language, disorderly behaviour in a police station and assaulting a police officer. Those summary offences are neither the same as nor as grave as the charges now before the Court. I have considered the convictions but attach little weight to them in determining this application.

36. The Prosecution submitted that the Applicant poses a threat to public safety and public order. Although these are relevant considerations under section 4(2) of the Bail Act, neither the Kelly Affidavit nor the Second Kelly Affidavit advances them as grounds for opposing bail. I therefore make no finding on either issue in this application.

37. A significant issue in this application is the Applicant's immigration status. His supplemental affidavit includes a Grade 9 progress report showing that he attended D. W. Davis Junior High School in 2011, when he was 16 years old. It also includes evidence that he sat the Bahamas Junior Certificate examination in June 2011 and possesses a Public Health Immunisation Card dating back to January 2007. This material supports his Counsel's submission that he has longstanding ties to The Bahamas.

38. Nevertheless, the material before me does not establish that the Applicant has citizenship, residence status or a valid work permit entitling him to remain in The Bahamas. His ties to the country do not resolve his current immigration status. I take both matters into account when assessing the likelihood that he will attend court as required.

39. The Applicant's lack of lawful status in The Bahamas is relevant to the risk that he may fail to attend court, but it does not, by itself, establish that he will abscond. I have also considered his connection to Haiti, where he was born, alongside the evidence of his longstanding ties to The Bahamas, as a Haitian national.

40. Having weighed the Applicant's ties to The Bahamas against his lack of lawful here, I find a material risk that he may leave the jurisdiction rather than face the pending matters he has before the Court. I have considered whether a surety, electronic monitoring, a curfew and reporting requirements would sufficiently reduce that risk. Those measures would assist in monitoring his whereabouts and detecting a failure to comply, but, in the circumstances established by the evidence, I am not satisfied that they would adequately secure his attendance at future hearings and at trial.

41. For those reasons, I refuse bail. The Applicant may make a fresh application if there is a material change in circumstances, or pursue any available appeal.

42. He shall remain in custody at BDOCS, subject to any further order of the Court.

Dated the 8th day of October, A.D. 2026

Honourable Justice Renae McKay