COMMONWEALTH OF THE BAHAMAS **2019/CRI/BAL/00287**

IN THE SUPREME COURT

Criminal Division

B E T W E E N

MARLON WILLIAMS

Applicant

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Renae McKay

Appearances: Stanley Rolle for the Applicant
Betty Wilson for the Respondent

Hearing Date: 23rd April, 2026

BAIL RULING

Criminal Law — Bail — Armed Robbery — Presumption of innocence — Part C offence—Bail (Amendment) Act, Ch. 103 — Whether the Applicant is a fit and proper candidate for admission of bail at this time

INTRODUCTION

[1.] The Applicant herein Marlon Williams applied for bail via the bail system on 29th January, 2026. He is a 27-year-old Bahamian citizen, charged with two counts of armed robbery, contrary to section 339(2) of the Penal Code Chapter 84. He is remanded to the Bahamas Department of Correctional Services ("BDOCS").

[2.] The Director of Public Prosecutions ("Respondent"), filed an Affidavit in Response on 2nd February 2026, sworn by Tylah Murray ("Murray Affidavit"), opposing the Applicant's bail.

[3.] On 19th March 2026, the Court heard submissions from both counsel for the Applicant and the Respondent.

SUBMISSIONS

Submission of Counsel for the Applicant

[4.] Counsel for the Applicant, Mr. Rolle, and Counsel for the Respondent, Ms. Wilson, each advanced submissions respectively in support of, and in opposition to, the Applicant's admission to bail.

[5.] Mr. Rolle submitted that the Applicant had no convictions and maintained his innocence. He submitted that while the Applicant has pending matters with respect to the offences of murder and armed robbery he has been on bail since 2019 and has complied with the bail conditions. He has a three-year-old son for whom he has had sole responsibility for.

[6.] He submitted that the Respondent's Affidavit in Response had not averred that the Applicant was likely to interfere with witnesses, fail to appear for trial, or be a flight risk.

[7.] He referred the Court to the decision in **Stephon Davis, No. 164 of 2021** where at paragraph 19, the Court of Appeal stated that strong and cogent evidence is not the critical factor on a bail application and that the proper question is whether there is prima facie evidence sufficient to justify detention.

[8.] Moreover Counsel continued that the Respondent's Affidavit in Response did not describe the circumstances under which the complainant allegedly identified the Applicant, and those circumstances might reveal a possibility of mistake or even, at trial, lead to the case being withdrawn from the jury. For that reason, he asked the court to place little or no weight on the identification evidence at the bail stage, while acknowledging that a bail court should not determine disputed facts.

[9.] Mr. Rolle submitted that the electronic monitoring evidence, together with the placement of the applicant in a commercial area of West Bay Street, without more, did not show that he was the perpetrator, and that apart from the identification material, there was nothing else linking him to the offences.

[10.] Mr. Rolle referred to paragraph 49 of **Dennis Mather, No. 179 of 2022**, as authority for the proposition that the fact that the Applicant has been charged with a new offence while already accused of an earlier offence cannot, by itself, justify concluding that there is a propensity to offend that would warrant denying bail

[11.] He also submitted that Mr. Williams was a person of good character and that this was a primary consideration on a bail application. For that submission, he referred to **Stephon Davis, No. 164 of 2021**. He also further referred to paragraph 35 of Dennis Mather, stating that bail should not be refused as punishment for an offence for which a person has not yet been convicted, even if the alleged offence was committed while already on bail, and that the burden lies on the Respondent to show good reasons for denial.

[12.] Mr. Rolle argued that Mr. Williams is presumed innocent and that the allegations had neither been admitted nor proven. He said that if the applicant were acquitted or the charge were

withdrawn, continued detention would constitute pretrial punishment. He also referred to Richard Hepburn for the principle that if attendance at trial can reasonably be ensured by means other than detention, it would be unjust and unfair to deprive a person of liberty.

[13.] Mr. Rolle urged the court to evaluate risk by reference to the applicant's Bahamian nationality, ties to The Bahamas, prior employment, lack of convictions, and the likelihood that he would not be idle if released. He placed particular emphasis on the fact that since 2019 Mr. Williams had not breached bail conditions. He therefore submitted that there were sufficient and adequate conditions available to the court if it decided to grant bail.

[14.] On the issue of witness interference, he argued that courts commonly impose conditions to manage that risk and that there was no evidence that the parties or complainants were known to the applicant. He submitted that the court could impose suitable conditions regarding witness interference and warn the applicant that any breach would likely result in further remand.

[15.] Mr. Rolle, again relying on Stephon Davis, stated that in that case, the applicant had appealed a refusal of bail while facing two murder counts and an armed robbery matter, and that the Court of Appeal ultimately granted bail.

Submission of Counsel for the Respondent

[16.] Ms. Wilson accepted that the Applicant has constitutional rights, but argued that those rights had to be balanced against the rights of society.

[17.] The Applicant had been on bail for murder when he was later charged with two counts of armed robbery, which she described as serious Part C offences. Counsel submitted that the applicant's conduct further suggests that he will re-offend while already benefiting from release.

[18.] The Prosecution further submitted that the evidence against the Applicant is cogent, as he had been positively identified by the two complainants as the person responsible for robbing them on 6 August 2025.that the identification evidence should be treated as a serious factor in the bail decision.

[19.] Although Ms. Wilson acknowledged that the seriousness of the offence alone did not automatically require refusal of bail, she submitted that the court should give serious weight to the fact that the case involved armed robbery and the Applicant used a handgun to rob the virtual complainants.

[20.] The Prosecution submitted that the combination of the seriousness of the offences, the identification evidence, and the fact that the Applicant had allegedly committed the new offences while already on bail for murder showed a real risk of reoffending.

[21.] Concluding she submitted that protecting society at large, as well as public order and safety, required that the applicant not be granted bail.

LAW AND ANALYSIS

[22.] Bail is the conditional release of a person charged with an offence, pending trial or further court appearances, on terms set by the court to ensure that person's attendance and to protect the public or the administration of justice.

[23.] The Applicant is presumed to be innocent of the charges against him until proven guilty. In this regard, **Article 20(2) (a) of the Constitution of The Bahamas** states:-

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

[24.] **Article 19(1) (b)** further provides that no person shall be deprived of personal liberty, save upon reasonable suspicion of having committed a criminal offence.

[25.] Whether an accused ought properly to be admitted to bail is a matter in respect of which the burden rests upon the Prosecution. It is for the Prosecution to place before the Court sufficient material to justify the continued deprivation of the accused's liberty pending trial and to satisfy the Court that there are proper grounds for refusing bail in accordance with the applicable legal principles.

[26.] The Court's powers to grant bail are found in the **Bail (Amendment) Act, Chapter 103, Section 4(2)** provides the statutory framework for the grant of bail for part C:-

> **"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) (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.**

[27.] The **First Schedule Part A of the Bail (Amendment) Act** outlines the relevant factors that the Court must consider in an application for bail which provides:-

"In considering whether to grant bail to a defendant, the court shall have regard to the following factors—

(a) Whether there are substantial grounds for believing that the defendant, if released on bail, would—
Fail to surrender to custody or appear at his trial;
Commit an offence while on bail; or
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."

[28.] It is important that the Court be satisfied that the evidence against the Applicant is strong and cogent. As outlined in **Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016**, Allen P., clarified the extent of a judge's task in relation to the evidence which is adduced at a bail application:-

"34. It is not the duty of a judge considering a bail application to decide disputed facts or law and it is not expected that on such an application a judge will conduct a forensic examination of the evidence. The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences such as to justify the deprivation of liberty by arrest, charge, and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail."

[29.] I wish to highlight the following statement from the Court of Appeal in **Stephon Davis v DPP SCCrApp No 20 of 2023**:-

"In our view 'strong and cogent evidence' is not the critical factor on a bail application. The Judge is only required to evaluate whether the witness statements show a case that is plausible on its face. To put it another way, there must be some evidence before the Court capable of establishing the guilt of the Appellant. 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. We can find a useful summary of the strength of the evidence required at the end of the Prosecution's case in the headnote

to the Privy Council's decision in Ellis Taibo [11996] 48 WIR 74: "On a submission of no case to answer, the criterion to be applied by the trial judge is whether there is material on which a jury could, without irrationality, be satisfied of guilt; if there is, the judge is required to allow the trial to proceed."

[30.] In **Jeremiah Andrews v DPP SCCrApp No.163 of 2019**, the Court of Appeal explored the seriousness of the offence and the cogency of evidence at paragraph 30 therein opining that:

> 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.

[31.] While the Court accepts that armed robbery, as a Part C offence of the First Schedule under the Bail Act (as amended), is unquestionably serious, the seriousness of the charge cannot, without more, constitute a standalone basis for refusing bail.

[32.] The evidence relied upon by the Respondent is "cogent and compelling," but the strength and cogency of that evidence, standing alone, are insufficient to justify refusal. Both are relevant and not critical considerations, but neither is determinative in the absence of other factors warranting the Applicant's continued detention.

[33.] The Respondent adduced evidence on the seriousness of the case, the cogency of the evidence, the threat to public order, and the Applicant's propensity to re-offend if granted bail. However, the Respondent has not persuaded me that the Applicant would interfere with witnesses or be a flight risk if granted bail.

[34.] The Applicant who has no antecedents was on bail for a pending matter and also was being electronically monitored, when the offences were alleged to have been committed.

[35.] In deciding whether to refuse bail, the Court must consider the totality of the evidence and all relevant statutory factors, including the seriousness of the offence, the cogency of the evidence, the risk of flight, the likelihood of interference with witnesses, the risk of further offending, and any threat to public safety or public order. No single factor is determinative.

[36.] The Court's task is to determine whether the evidence discloses real and substantial risks that cannot be adequately mitigated by appropriate bail conditions. If such risks can be sufficiently managed by conditions, refusal of bail is not warranted; if not, continued detention of the Applicant may be proper.

[37.] Mr. Rolle has argued that there is no evidence adduced or indication that the Applicant will abscond or fail to appear for his trial, as he has always appeared, and has further suggested that

bail conditions can be imposed to ensure the Applicant's attendance at trial and to mitigate against any concerns that the Court may have.

[38.] Accordingly I am reminded of the usual bail conditions which include reporting, the electronic monitoring device ("EMD"), curfew, etc. I am satisfied that the imposition of these stringent conditions would be sufficient to further mitigate or ameliorate the Court's concerns in these circumstances.

[39.] Having heard the submissions made by Counsel for both sides and having careful review of the evidence adduced, I accept the submissions of Counsel for the Applicant herein. I am satisfied that conditions can be imposed to ensure the Applicant's attendance at trial and to mitigate against any concerns that the Court may have.

[40.] In the circumstances and having regard for the foregoing reasons I shall exercise my discretion and accede to the application herein. In the circumstances, the Court exercises its discretion and grants the Applicant bail in the sum of $20,000.00, with two sureties. The grant of bail is subject to the following conditions:

i. The Applicant shall surrender his passport or travel documents;
ii. The Applicant shall be fitted with an effective, properly functioning electronic monitoring device;
iii. The Applicant shall report to the Grove Police Station before 6:00 p.m. on Mondays, Wednesdays, and Fridays;
iv. The Applicant shall remain at his residence, First Street, Coconut Grove, between the hours of 6:00 p.m. and 7:00 a.m. daily;
v. The Applicant shall not, whether directly or indirectly, interfere with any of the Prosecution's witnesses;
vi. On the day before the trial, the Applicant shall return into custody to the Grove Police station before 7 p.m.

[41.] A breach of any of the foregoing conditions shall result in the revocation of the bail granted herein.

Dated the 23rd day of April, A.D. 2026

Justice Renae McKay