

COMMONWEALTH OF THE BAHAMAS

2026/CRI/CON/00002

IN THE SUPREME COURT

Criminal Law Division

**IN THE MATTER OF Articles 20 and 28 of the Constitution of the Commonwealth of The
Bahamas**

BETWEEN

SHAKEEM MUNROE

The Applicant

AND

THE ATTORNEY GENERAL

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondents

Before: The Honourable Mr. Justice Dale Fitzpatrick

Appearances: Mr. K. Melvin Munroe for the Applicant

Mr. Angelo Whitfield for the Respondents

Heard on the Papers

**Criminal Law – Constitutional Redress – Article 20 of the Constitution - Whether there has
been a breach of the Applicant’s right to a trial within a reasonable amount of time**

DECISION

Fitzpatrick J

Introduction

1. Delay in progressing criminal cases to trial has been a long standing challenge faced by courts worldwide. In 1868, then British Prime Minister William Gladstone in a House of Commons speech famously said “justice delayed is justice denied”. The phrase has often been repeated as the rallying cry of those seeking timely justice. Delay in bringing criminal charges to trial is a significant concern in The Bahamas and the singular focus of the Application brought here by Mr. Munroe (the “Applicant”).
2. The Director of Public Prosecutions (“DPP”) alleges that, on January 26th, 2021, the Applicant murdered Lamar Moss. The murder is alleged to have occurred against the backdrop of a personal dispute between the Applicant and Mr. Moss.
3. The Applicant was arrested on January 26th, 2021. He was charged six days later on February 1st with murder contrary to section 291(1)(b) of the *Penal Code, Chapter 84*.
4. The Applicant was placed into custody on February 1st, 2021 and granted bail on May 28th, 2021.
5. The Applicant served the Application herein seeking constitutional relief on April 15th, 2026.
6. The DPP filed the pathologist’s report relating to the late Mr. Moss on May 28th, 2026 (the “Pathologist’s Report”).
7. The Applicant’s trial is presently listed to commence on February 22nd, 2027, just over six years following his arrest.
8. The Applicant contends that the delay in bringing him to trial has violated his constitutional rights to a fair hearing within a reasonable time. He seeks declaratory relief and an award of damages. He is not seeking a judicial stay of proceedings.

Analysis

Has the Applicant’s Right to a Trial Within a Reasonable Time Been Violated?

9. The Applicant submits that he has been denied a trial within a reasonable time, as guaranteed by Article 20(1) of the *Constitution*.
10. The following is the timeline for the progression of this case:

- a. The Applicant was arrested on January 26th, 2021;
- b. He appeared before the Magistrates' Court and was charged with one count of murder on February 1st, 2021 and was remanded into custody at the Bahamas Department of Corrections ("BDOC") that day;
- c. On May 21st, 2021, the Applicant was arraigned before the Supreme Court for the charge of murder;
- d. The matter returned before Justice Hilton (as he then was) on May 27th, 2021 and November 4th, 2021 for case management. On November 4th, Justice Hilton set November 20th, 2023 as the trial date;
- e. The matter continued for ongoing case management dates in 2022 and 2023, all before Justice Hilton;
- f. The matter returned before Justice Hilton for case management on May 18th, 2023 where he noted that the Pathologist's Report remained outstanding and that the Applicant had no other issues for trial;
- g. The matter returned before Justice Hilton on November 9th, 2023 where he again noted that the Pathologist's Report remained outstanding. On that basis, the trial date of November 20th was vacated;
- h. The matter next returned before Justice Hilton on November 30th, 2023 where he set October 14th, 2024 as the back up trial date and a substantive trial date of March 24th, 2025;
- i. The matter continued for ongoing case management dates in 2024. On September 12th, 2024, Justice Hilton noted that the Pathologist's Report remained outstanding and the back up trial date of October 14th, 2024 was vacated;
- j. The matter returned for case management on January 30th, 2025. Justice Hilton noted that the Pathologist's Report remained outstanding and set a pre-trial for March 6th, 2025;
- k. At the March 6th pre-trial, Justice Hilton noted that the Pathologist's Report remained outstanding and set a further pre-trial for March 20th, 2025;
- l. On March 20th, the matter was before this Court (Justice Fitzpatrick) for the first time. This Court noted that the Pathologist's Report remained outstanding and the substantive trial date of March 24th was vacated;
- m. The matter returned for case management on June 5th, 2025. The Court then set March 9th, 2026 as the back-up trial date and a substantive trial date of February 22nd, 2027;
- n. The matter continued for ongoing case management dates in 2025 and into 2026;
- o. The matter returned for a pre-trial on March 6th, 2026 when the Court noted that the Pathologist's Report remained outstanding and the back-up trial date of March 9th was vacated. The Court then set a pre-trial date for January 22nd, 2027 and confirmed the existing substantive trial date of February 22nd, 2027;
- p. The matter returned for case management on April 15th, 2026 when the Applicant served the Application herein seeking constitutional relief;
- q. The DPP served the Pathologist's Report on May 28th, 2026;
- r. The Applicant's trial date remains scheduled for February 22nd, 2027.

11. The Respondents do not challenge the timeline noted above or that the trial in this case was deferred because of the failure to disclose the Pathologist's Report until May 28th, 2026. The Respondents argue that the Applicant has suffered no "real prejudice" or breach of his rights and that he can have a fair trial.
12. The terms delay and reasonable time to trial are too often conflated such that some clarification at the outset will hopefully be of assistance. The term reasonable time to trial refers to the appropriate or acceptable timeframe to bring a given case to trial. The term delay means the period of time in excess of that acceptable timeframe.
13. The starting point in assessing whether an accused has been denied a trial within a reasonable time is the four-factor balancing test articulated fifty four years ago by the United States Supreme Court in *Barker v Wingo* [1972] 407 US 514 ("*Barker*").
14. In *Barker*, Justice Powell identified four matters to be considered when determining whether an accused person has been deprived of the constitutional right to trial within a reasonable time: the length of the delay; the reasons advanced by the prosecution for the delay; the extent to which the accused has asserted the right; and the prejudice, if any, suffered by the accused as a consequence of the delay.
15. Justice Powell made it clear that the four factors suggested in *Barker* are neither exhaustive nor to be regarded as either "necessary or sufficient" to the finding of an unreasonable time to trial. The task for the court is to consider and balance these factors along with all other relevant circumstances. In other words, the court must identify, assess and balance all of the relevant circumstances, including but not limited to the factors identified in *Barker*, in the context of the specific case under consideration to determine if the constitutional right to a trial within a reasonable time was violated. The Court in *Barker* provides little additional guidance leaving each case to be decided by this "difficult and sensitive balancing process".
16. The courts in The Bahamas have and continue to address complaints of trial delay by relying on *Barker*. The Court of Appeal did so recently in *The Director of Public Prosecutions v Howard Edney Rolle*, SCCr/ConApp No. 161 of 2023 ("*Rolle*").
17. The issue before the Court of Appeal in *Rolle* was whether the right to a trial within a reasonable time was violated where the timeframe under consideration was approximately seven years. Justice Hilton (acting, as he then was) commenced his analysis in that case with reference to the four *Barker* factors. As such, there is no doubt that the *Barker* factors

continue to be the framework to be applied in addressing the issue of reasonable trial time in The Bahamas.

18. Justice Hilton also confirmed that Article 20(1) of the *Constitution* provides an accused with three separate, distinct rights, namely to a fair trial, before an independent and impartial court, heard within a reasonable time.
19. We do not have the benefit of hindsight. This is not a case where the trial has been completed and the appeal process exhausted where we can with certainty know the prosecution end date. Where, as here, the court is addressing delay prior to trial, an appropriate measurement of timeliness is from the point that an accused is arrested to the scheduled commencement of trial (see: *Sooriamurthy Darmalingum v The State* [2000] UKPC 30, *R v HM Advocate and Another* [2002] UKPC D3 at para 31, and *Prakash Boolell v The State* [2006] UKPC 46).

The Length of the Delay

20. The Applicant's right to be tried within a reasonable time was engaged on January 26th, 2021 with his arrest. The Applicant's trial is presently scheduled to begin February 22nd, 2027 and is expected to take one week to complete. The gross period of time to trial, therefore, is six years and one month.
21. Any lost time caused by the Applicant must be deducted from the gross total. There was no time lost here owing to any action or inaction by the Applicant. The net time to trial in this case is, therefore, six years and one month.
22. It is trite to note that the prosecution of the Applicant is the responsibility of the State. The State through the Respondents, particularly the DPP who has carriage of prosecutions in The Bahamas, is required to ensure that the Applicant is brought to trial within a reasonable time.
23. The Caribbean Court of Justice in *Frank Gibson v. The Attorney General* [2010] CCJ 3 (AJ) at paragraphs 58, stated that a "finding that there indeed has been unreasonable delay in bringing the accused to trial must be made on a case by case basis. It cannot be reached by applying a mathematical formula although **the mere lapse of inordinate time will raise a presumption, rebuttable by the State, that there has been undue delay** [emphasis mine]. Before making such a finding the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the State."

24. In the Privy Council decision in *Dyer v. Watson* [2004] 1 A.C. 379 at paragraphs 52, Lord Bingham stated that “the first step is to consider the period of time which has elapsed. Unless that period is one which, on its face and without more, gives grounds for real concern it is almost certainly unnecessary to go further...The threshold of proving a breach of the reasonable time requirement is a high one, not easily crossed. But if the period which has elapsed is one which, on its face and without more, gives grounds for real concern, two consequences flow. First, it is necessary for the court to look into the detailed facts and circumstances of the particular case...Secondly, it is **necessary for the contracting state to explain and justify any lapse of time which appears to be excessive.**” [emphasis mine]
25. The Parliament of the Bahamas has provided a benchmark to assess whether the time to trial under consideration is reasonable. Section 4(2A) of the *Bail Act* provides that a period of three years from the date of the arrest or detention of the person charged to trial shall be deemed to be a reasonable time. In other words, by enacted statute, the timeframe for any case that has not been tried within three years from the arrest of an accused is deemed to be unreasonable.

The Respondents' Explanation for the Delay

26. Even where Parliament's three-year benchmark is exceeded it would be open to the Prosecution to provide evidence that the case under consideration required more time. A case may be exceptionally complex such as one involving huge volumes of electronic or other evidence requiring more than three years to prepare. A case may have evidentiary or similar developments close to the scheduled trial date that push the timeframe beyond three years. Failing such circumstances, Parliament's three-year benchmark should otherwise apply.
27. The overall timeframe to bring the Applicant's case to trial is six years and one month; far in excess of the three-year benchmark to trial established by Parliament as reasonable. There is no evidence before this Court suggesting that the prosecution of the Applicant is complex or otherwise establishing that Parliament's three-year benchmark to trial should be extended in this case.
28. In *Shanto Curry v. Attorney General et al* [2006] BS 2006 SC 41, the Court treated a trial timeframe of seven years as sufficiently inordinate to be presumptively unreasonable. In

Quincy Johnson v Attorney General [2005] BS 2005 SC 85, the Supreme Court held that a trial timeframe of four years was sufficient to engage that presumption.

29. The net timeframe to bring the Applicant's case to trial exceeds six years. The delay in the Applicant's case is slightly more than three years. The length of time to trial here is not due to complexity or any other acceptable cause.
30. The post mortem or autopsy for Mr. Moss was completed on February 1st, 2021. The Pathologist's Report was served on May 28th, 2026 after the Applicant's substantive trial date of February 27th, 2027 was scheduled and after the Application herein was served.
31. The prosecution was stalled for five years and three months while the Respondents awaited receipt of the Pathologist's Report. As this Court has noted, the failure to furnish timely pathology reports has been a recurring cause of delay in many criminal cases in this jurisdiction.
32. The Court of Appeal decision in *Alfred McKinney v The Director of Public Prosecutions, SCCr/Ap. No. 91 of 2025* ("*McKinney*") is also of assistance in evaluating the Application in this case. The issue of bail was before the Court of Appeal in *McKinney*, including whether the failure to provide the pathologist's report at the time the Voluntary Bill of Indictment ("VBI") was filed meant that no prima facie case could be established for the murder charge faced by Mr. McKinney.
33. The decision in *McKinney* is relevant to the Application herein where Justice Evans stated that the "lack of Pathologist's Report at the initial filing of a VBI is a procedural issue that can be rectified later through disclosure, **provided the prosecution has a good reason for the initial omission, and it does not prejudice the accused's right to a fair trial.**" [emphasis mine].
34. The delay in providing the Pathologist's Report in this case is without explanation beyond the Respondents noting that repeated requests were made for it by the DPP without success until May, 2026.
35. All pathologist reports are prepared by the Pathology Department at the Princess Margaret Hospital ("PMH"). PMH is a publicly funded hospital falling under the control of the Public Hospital Authority. As noted above, it is the responsibility of the State to ensure that an accused person is brought to trial within a reasonable time. Any delay by PMH in providing a pathologist report lies at the feet of the State regardless of whether another branch of the State, such as the DPP, made repeated requests for this document. Just as delays in the production of police statements, crime scene photographs and investigative

reports lie at the feet of the prosecution, so do delays in the preparation of forensic reports prepared by other government actors.

36. The Respondents submit that the Pathologist's Report is not relevant given that the anticipated defence is one of alibi although no alibi notice has been filed in the case to date. The Respondents say it can prove their case based on the certificate of death alone. It does not appear that the Respondents presented this position prior to this Application. The Respondents are at liberty to take that position. This does not mean that the Pathologist's Report is irrelevant to the defence or that the State does not have an obligation to disclose it.
37. A pathologist's report is a multiple page document prepared by a forensic pathologist providing various details that could be used by the accused's counsel at trial to challenge the testimonial reliability of prosecution witnesses. For example, a pathologist's report can offer details about the location of the injuries, the number of injuries, the force of the injuries, the directionality for the injuries and the proximity of the assailant. Except for the general location of the injuries, none of this information is contained in a death certificate. The relevance or at least potential relevance to the defence is clear and mandates disclosure by the prosecution.

The Applicant's Assertion of His Right

38. The Applicant has been diligent in the pursuit of a timely trial. This is reflected and demonstrated by the case timeline detailed above. The Applicant retained counsel without delay. With one exception, he has appeared at court when required along with his counsel. The Applicant accepted the trial dates offered by the court, which presumably were the earliest dates available in the court calendar, and thereby undertook to be ready for trial as scheduled. There is not one instance where the Applicant objected to an otherwise available trial date or where a set trial date was adjourned at the behest of the Applicant.
39. Through counsel, the Applicant as early as May 18th, 2023, indicated to the Court that he had no issues for trial except the disclosure of the Pathologist's Report. Production of the Pathologist's Report was, clearly, outside of the Applicant's control or influence.
40. The Applicant did not by agreement or other express means waive any of the delay in bringing this case to trial.

Prejudice

41. As noted above, the Applicant submits that his ability to have a fair trial has been impaired by the unreasonable delay in commencing his trial. However, the Applicant's affidavit filed on this Application simply offers the bare assertion that he cannot now have a fair trial given the passage of time. He has provided no evidence whatsoever in support of this assertion. He has not even specifically stated that he is prejudiced. This significantly undermines the Applicant's position.
42. The court files for the Applicant's substantive charge and bail do provide some materials that could assist in the assessment of prejudice.
43. The Applicant was granted his release from custody on May 28th, 2021 with conditions, including wearing an electronic monitoring device, signing in with police multiple times per week and a daily curfew from 9:00 p.m. to 6:00 a.m. The Applicant, who is presumed innocent, has been bound by these terms since his release and shall remain subject to these stringent bail terms until his trial.
44. The Applicant has been subject to the criminal process since his arrest in January, 2021. This means he has presented himself and paid for his lawyer for the many court attendances required for this case. The Applicant's family, social and work life have been disrupted dealing with this case. He has carried the weight of the allegation of murder against him and the anxiety from the uncertainty of outcome. The Applicant also has borne the stigma of being accused of murder in the relatively small community of Nassau.
45. The Applicant has also faced the risks that a murder allegation in the context of a personal dispute brings in The Bahamas. The courts in The Bahamas have regularly referenced the culture of retaliation that exists here. This culture is well recognized by the Respondents. The DPP has, in other matters before this Court, namely on bail hearings, filed and relied upon reports setting out the statistics for retaliatory violence.
46. Prejudice may also be inferred or presumed flowing from the length of time a case has waited for a trial. The inference being made where a case lingers is a reasonable one. It is a matter of common sense and experience that evidence, in particular memories, degrade with the passage of time with related impact on an accused's ability to make a full answer and defence. It cannot and should not be presumed that lost memory, even for prosecution witnesses, is a benefit accruing to the Applicant. Witnesses can and often do provide

evidence that assists both prosecution and defence. Forgotten, relevant details from any witness diminishes trial fairness

47. The longer the wait the more likely that an inference of prejudice will crystalize. The inference though is rebuttable where the Respondent can demonstrate no actual prejudice to an accused. The Respondent has not done so offering only the unsupported assertion that the Applicant has suffered no real prejudice. That said, I repeat that the Applicant did not provide any evidence or even make a specific claim of prejudice in his materials filed on this Application.
48. The duration of these proceedings, now exceeding six years, gives rise to a presumption of some prejudice. There is no meaningful doubt that the memories of all 9 of the prosecution witnesses, including the Respondent's primary eyewitness witness, Mr. Dames, will have frayed, at least to some degree, over the past six years.
49. The Respondent has not addressed this concern at all. For example, there is no current statement signed by Mr. Dames or anything else before this Court to find or even suggest that the Respondents have been in recent contact with Mr. Dames to ensure his participation in any trial and his ability to now recall events from 2021. All there is before this Court is a statement given by Mr. Dames on January 27th, 2021 stating that he was an eyewitness to the murder and the Applicant's participation. This statement does not constitute Mr. Dames' trial evidence. If he can be located and is willing to participate, he will be required to give evidence in person as to his recollection of the events of January, 2021.
50. As demonstrated above, the Court can cobble together some peripheral evidence of prejudice here despite the evidentiary void in the Applicant's materials. However, that void serves to blunt the force of any identified prejudice. How much emphasis can the Court place upon the identified prejudice where the Applicant himself makes no specific claim and offers no evidence that he was prejudiced? At its highest, the Court can only find that the prejudice to the Applicant in these circumstances has been minimal despite the significant passage of time since his arrest.

Conclusion

51. Ultimately, the Court must balance all of the delay circumstances to determine whether the Applicant's right to a timely trial has been infringed. No one factor is mandatory. Here, there has been an unacceptable length of time to trial owed exclusively to the failure of the State to provide the Pathologist's report until May 28th, 2026 and through no fault of the Applicant. However, this is outweighed by the minimal prejudice to the Applicant.

52. In conclusion and with consideration to all of the relevant factors, the Court finds that the Applicant has not demonstrated that his constitutional right to a fair trial within a reasonable time has been infringed.

What is the Appropriate Remedy Where the Applicant's Right to a Trial Within a Reasonable Time Has Been Violated?

53. The Court has concluded that there has been no infringement of the Applicant's right to a timely trial. As such, there is no need to address remedy. However, the Court will offer a few comments.
54. The Court has a range of possible remedies available to address any violation of the Applicant's right to a trial within a reasonable time, including an order for costs, an expedited trial or a stay of the proceedings in exceptional circumstances. Here, the Applicant sought damages.
55. The Court can award damages, in appropriate circumstances, for a breach of the right to be tried within a reasonable time. Damages may be given in compensation for proven loss and also for vindication of the infringed constitutional right. However, as stated by the Caribbean Court of Justice in *Gibson v. A.G. of Barbados* 7 WIR 137 ("*Gibson*") at paragraph 69., "damages for breach of the reasonable time guarantee should be considered as an appropriate remedy only where the accused will no longer be tried or has been tried and acquitted or where his conviction has been quashed." The Court of Appeal for The Bahamas appears to have adopted this reasoning in the recent decision of *A.G. et al. v. Anthon Lightbourn Sr.* [2026] Const/SCCrApp/No. 149 of 2024 ("*Lightbourn*") at paragraph 42. where the court noted that a damages award was available in that case given Mr. Lightbourn "will no longer be tried".
56. The Applicant's trial is scheduled for February 22nd, 2027. He did not seek a stay for the alleged breach of his right to a timely trial. The Applicant's trial would be proceeding even if this Court had concluded his right to a timely trial had been violated given he did not seek a stay remedy. Following the reasoning in *Gibson* and *Lightbourn*, no damages would be available to the Applicant as a remedy with his extant prosecution and pending trial.
57. The last point to note is that the Applicant's materials are deficient in addressing his request for damages. The Applicant has not presented any evidence to establish the compensatory consequences of the constitutional infringement he claims. The bare assertion that he

cannot receive a fair trial does not, without more, provide an evidential basis for the award of substantive damages that the Applicant sought.

Disposition

58. For the reasons set out above, the Applicant's Application seeking declaratory relief and an award of damages is denied.

Dated this 9th day of October, A.D. 2026

Fitzpatrick J