COMMONWEALTH OF THE BAHAMAS **Crim /Bal /00075/2023**

IN THE SUPREME COURT

Criminal Division

BETWEEN

LARRY ALBURY

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Honourable Mr Justice Darron Ellis**

Appearances **Tenielle Brown with Erica Ingraham for the Respondent**

Bjorn Ferguson for the Applicant

Hearing Date: **29 September 2026**

BAIL RULING

Introduction

[1.] Larry Albury ("the Applicant") applies for bail pending trial on charges of possession of an unlicensed firearm, contrary to **section 5(B)** of the **Firearms Act, Chapter 213**, and possession of ammunition, contrary to **section 9(2)** of that Act. The Respondent opposes the application. The principal question is whether the evidence concerning the present allegations, considered together with the Applicant's existing bail status and personal circumstances, establishes substantial grounds for believing that he would commit an offence if released on bail, and whether any conditions could sufficiently address that risk.

[2.] The Applicant is presumed innocent of every charge pending against him. The Court must give proper weight to his right to personal liberty while considering the statutory grounds upon which detention pending trial may be justified. For the reasons which follow, the Court refuses the application.

Background

[3.] The Applicant is a 33-year-old Bahamian citizen who was charged before the Magistrates' Court on 13 May 2026 and has remained in custody since then. Before his arrest, he lived at Marathon Estates, New Providence, and was reportedly employed by Pitch to Perfection Roofing Services and Repairs.

[4.] The present allegations arise from an incident at 2:00 a.m. on 11 May 2026 near Tipsy's Club, located at Cordeaux Avenue and Baillou Hill Road. According to the Prosecution material, the Police received information that a man fitting the Applicant's description had a firearm and subsequently placed it in the trunk of his vehicle. The police stated that they then approached the Applicant and sought access to his parked vehicle; he refused to produce a key. Having observed that the rear quarter glass was broken, they gained access through that opening and searched the vehicle in the Applicant's presence. They said they recovered a black Taurus 9mm firearm and twelve live rounds of ammunition from the trunk. The Prosecution's evidence identifies the Applicant as the driver and owner of the vehicle.

[5.] The Respondent relies on the officers' statements about their encounter with the Applicant, his connection with the vehicle, and the recovery of the firearm and ammunition. The information that prompted the search must be distinguished from the officers' own accounts of what they subsequently observed. The latter provides the principal evidential foundation upon which I assess this application.

[6.] The Court emphasises that these matters remain allegations. The Applicant denies involvement, maintains his innocence, and is entitled to the presumption of innocence unless and until proven guilty according to law.

Evidence of the Applicant

[7.] In his affidavit sworn on 20 July 2026, the Applicant denies the charges. He states that he would neither abscond nor interfere with witnesses. He maintains that he has a fixed residence and that he was employed before his arrest. He also denies being a gang member and undertakes to comply with any conditions the Court imposes.

[8.] The Applicant acknowledges that, before his arrest on the present charges, he was on bail in respect of two counts of murder and two counts of attempted murder. He states that he has complied with all bail conditions in relation to those charges and expects to be exonerated.

Evidence of the Respondent

[9.] The Respondent relies on an affidavit sworn by G'Ann Hepburn on 1 September 2026. The Respondent maintains that the evidence linking the Applicant to the alleged offence is cogent and that the Applicant's pending matters raise significant public safety concerns. The exhibited record includes a stealing charge dating from September 2017 and murder and attempted murder charges recorded in April 2024 under VBI No. 12/1/2024. No previous convictions are disclosed. The Court approaches the application on that basis.

[10.] The Respondent contends that the present allegations, arising while the Applicant was already on bail for serious offences, demonstrate a substantial risk of further offending. That contention must be tested against the evidence.

Issue

[11.] The issue is whether the Applicant is a fit and proper person for bail

The Applicable Law

[12.] **Article 19** of the **Constitution of The Bahamas** protects the right to personal liberty, subject to the exceptions recognised by law. **Article 20(2)(a)** further guarantees the presumption of innocence. These protections remain fundamental notwithstanding the seriousness of the charge confronting an accused person. Refusal of bail must serve a lawful purpose and must not operate as punishment for an offence of which the Applicant has not been convicted.

[13.] The **Bail Act**, **Chapter 103**, as amended, governs the Court's discretion. **Section 3(1)** makes the grant of bail subject to **section 4** and to the requirements of **Part A** of the **First Schedule. Part A** sets out the relevant considerations for the present charges. The fact that the Applicant has other proceedings pending does not dispense with an individual assessment of this application.

[14.] Of particular relevance is **paragraph (a)(ii) of Part A**, which requires consideration of whether there are substantial grounds for believing that the defendant, if released, would commit an offence while on bail. **Paragraph (g)** requires consideration of the nature and seriousness of the offence and the nature and strength of the evidence against the defendant.

[15.] **Paragraph (f)** separately directs attention to a defendant's subsequent charge, following an earlier release on bail, either for a similar offence or for an offence carrying more than one year's imprisonment. The alternatives matter. The present charges need not

be identical or similar to the earlier charges if the applicable punishment exceeds one year. However, **paragraph (f)** identifies a relevant circumstance; it does not compel refusal whenever a further charge is laid.

[16.] **Section 4(5)** also makes clear that an absence of previous convictions does not, of itself, require release on bail. That provision does not render good character immaterial. The Applicant's lack of convictions is a factor in his favour and must be weighed with the other relevant circumstances. The charges of possession of an unlicensed firearm and possession of ammunition are offences falling under **Part A** of the **First Schedule** of the **Bail Act**.

[17.] **Part A** of the **First Schedule** further requires the Court to consider, among other matters, whether there are substantial grounds for believing that the accused, if released, would fail to surrender to custody, commit further offences or interfere with witnesses or otherwise obstruct the course of justice. The Court must also consider the nature and seriousness of the offence and the nature and strength of the evidence.

[18.] The Crown must provide evidence supporting the statutory risk upon which it relies. In **Jevon Seymour v Director of Public Prosecutions**, SCCrApp No. 115 of 2019, at paragraph 65, the Court of Appeal explained the Crown's evidential burden under paragraph (a) *Crane-Scott JA* stated at paragraph 65:

> "Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the crown to adduce evidence (i.e. substantial grounds) which is capable of supporting a belief that the bail applicant 'would' if released on bail, 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. The Crown's burden is only discharged by the production of such evidence."

[19.] In **Jeremiah Andrews v Director of Public Prosecutions**, SCCrApp No. 163 of 2019, the Court similarly emphasised that unsupported assertions concerning absconding, witness interference or further offending are insufficient. *Evans JA* (as he then was) stated:

> "In order to properly assist the Court, parties are required to provide evidence which will allow the Court to determine whether the factors set out in Part A of the First Schedule to the Bail Act s 4(2B) exist. We note that all too often the affidavits supplied by the Crown make bare assertions that there is a belief that if the Applicant is granted bail he will not appear for trial; will interfere with witnesses or will commit other crimes. These assertions are meaningless unless supported by some evidence."

[20.] In **Cordero McDonald v The Attorney General**, SCCrApp No. 195 of 2016 (McDonald 2017), the appellant had no previous convictions and was on bail for armed robbery when charged with attempted murder and firearm possession with intent to endanger life. The refusal of bail was upheld.

[21.] At paragraphs 16 and 21–22 of the Court's decision, *Allen P* considered the seriousness of the offence, existing bail status and supporting evidence together. Paragraph 34 explains that a bail judge does not resolve disputed facts or conduct a forensic trial of the evidence: the judge considers reasonable suspicion, then the relevant bail factors. Paragraphs 38–39 direct that the Court should further require consideration of whether conditions can adequately address the risks.

[22.] The later appeal involving the same Applicant, **Cordero McDonald v Director of Public Prosecutions**, SCCrApp No. 121 of 2023, decided on 30 January 2024, is also instructive. The appellant again sought bail after further attempted murder and firearm charges, despite already being on bail when the offences were alleged. He maintained that he had no convictions. Isaacs JA, delivering the judgment, upheld the refusal of bail.

[23.] The Court applies those decisions as requiring a reasoned assessment of the evidence and the identified risks. They do not establish that an accused person loses the benefit of the presumption of innocence upon being charged again. Nor does a finding of reasonable suspicion, without consideration of the remaining bail factors, conclude the application.

[24.] The same distinction is reflected in **Stephon Davis v Director of Public Prosecutions**, SCCrApp No. 108 of 2021. In this case, the Court held that the allegation of a further offence while on bail must be examined against its evidential foundation. The Court must also consider whether suitable conditions can sufficiently reduce the identified risks as per **Hurnam v The State (Mauritius)** [2005] UKPC 49.

[25.] Accordingly, neither the seriousness of the present charges nor the existence of the Applicant's other pending charges automatically determines this application. The Court must evaluate all relevant circumstances and give the statutory considerations their proper weight.

Analysis and Findings

Nature and Strength of the Evidence

[26.] The alleged offences are undoubtedly serious. These charges do not allege that the Applicant discharged the firearm, threatened anyone with it or used it to cause injury. I do not approach the application as though such conduct had been alleged or proved.

[27.] The Applicant challenges the strength of the prosecution's case. The evidence goes beyond the fact that charges have been laid. The officers describe an encounter with the Applicant, identify his connection with a particular vehicle and give an account of the recovery of a firearm and twelve live rounds from its trunk during a search in his presence. If accepted at trial, that evidence can support the prosecution's allegation of possession.

[28.] The firearm was not allegedly recovered from the Applicant's person. Its presence in the vehicle does not finally resolve questions of knowledge or control. The broken rear quarter glass is also a circumstance the trial court may have to consider. Nevertheless, the alleged recovery, together with evidence identifying the Applicant as the driver and owner, provides an evidential connection sufficiently cogent to raise reasonable suspicion of his involvement.

[29.] The Applicant denies the charges. The Court draws no adverse inference from the fact that his affidavit does not separately deny every detail of the officers' accounts. He is not required to establish his innocence at this hearing. His denial and any issues concerning access to the vehicle, knowledge, control or the reliability of the officers' evidence remain matters for trial.

[30.] The Court therefore makes no finding that the Applicant knowingly possessed the firearm or ammunition. The Court's conclusion is limited to the sufficiency of the prosecution material for the purposes of deciding bail. I must next assess whether that material, considered with the other relevant circumstances, establishes the particular statutory risk relied upon.

Pending Charges

[31.] The Applicant's earlier bail status is established by his own evidence. The present offences are alleged to have occurred while he was on bail pending trial for two counts of murder and two counts of attempted murder. Each present charge carries a potential term of imprisonment exceeding one year. The circumstance described in **paragraph (f)** of **Part A** of the **First Schedule** is therefore engaged.

[32.] I do not infer the truth of the murder or attempted murder allegations from their existence. Nor has the material summarised before me established that those earlier allegations involved firearms. The relevance of those proceedings is that the Applicant had already been granted his liberty pending trial on serious charges when the conduct underlying the present charges allegedly occurred.

[33.] The stealing charge is much older, and the material provides little information about its present procedural status or underlying facts. I attach no material weight to it in determining the risk of further serious offending.

[34.] The Applicant's lack of convictions and his assertion that he has otherwise complied with his bail conditions weigh in his favour. I do not treat the present allegations as an established breach of an earlier order. The distinction is between a determination of breach or guilt and the risk assessment the **Bail Act** requires based on the evidence currently available.

[35.] The concern arises from the alleged access to an unlicensed 9mm firearm and twelve live rounds in a vehicle identified as belonging to and driven by the Applicant, near a club at approximately 2.00 a.m. The officers' account provides a specific evidential basis for the allegation. Taken with his acknowledged bail status, those circumstances raise a concern about further offending that is more substantial than an objection based merely on the existence of charges.

[36.] I have considered the difference between the allegations in the **McDonald** appeals and those now before me. Those appeals included fresh allegations of attempted murder; the present application is more of an inverse and concerns possession. I do not equate their gravity. My assessment turns upon the alleged availability of a firearm and ammunition during an existing period of bail, supported by the particular recovery evidence described above.

[37.] The firearm and ammunition charges arise from the same alleged incident. I do not treat them as two separate occasions of offending. The relevant sequence consists of the earlier release on bail and the subsequent incident alleged in May 2026.

[38.] Weighing the circumstances together, including the factors favourable to the Applicant, I find substantial grounds for believing that he would commit an offence if released on bail. The identified risk concerns further unlawful firearm possession and the consequent danger to public safety. It does not depend upon a prediction that he would commit murder, attempted murder or any particular act of violence.

Risk of Absconding and Interference with Witnesses

[39.] The Respondent has produced no specific evidence that the Applicant previously absconded, failed to attend court, threatened a witness or attempted to obstruct the course of justice. His fixed residence, previous employment and stated willingness to comply with conditions are relevant considerations in his favour

[40.] I am not satisfied that substantial grounds for a finding of likely absconding or witness interference have been established. I do not refuse bail on either basis. The question remains whether conditions could sufficiently address the separate risk of further offending which I have identified.

Conditions

[41.] I have considered a combination of sureties, surrender of travel documents, frequent police reporting, electronic monitoring, a strict overnight curfew, and restrictions upon attendance at licensed premises. The question is whether a workable combination would sufficiently reduce the identified risk, rather than whether any condition could guarantee that no offence would occur.

[42.] Sureties and surrender of travel documents would principally support attendance at trial. Their force in addressing the present concern is more limited: neither would materially restrict access to a firearm. Reporting requirements would provide regular contact with the police, but would leave substantial periods during which the alleged form of possession could occur.

[43.] Electronic monitoring could help supervise and record the Applicant's location and enforce restrictions on his movements. It would not, by itself, disclose whether a firearm was being kept in a vehicle or otherwise under his control. A prohibition upon firearm possession would make the obligation express, but would depend substantially upon voluntary compliance.

[44.] A strict overnight curfew and a prohibition upon attending clubs would address the time and setting of the present allegation more directly. I have given those measures particular consideration. They would reduce opportunities to be present in that setting. They would, however, leave the underlying concern about access to and control of a firearm largely unaddressed during permitted movements, including movements for work.

[45.] In the McDonald appeals, the courts considered the safeguards actually imposed and the further measures available. I have not assumed that the Applicant was subject to the same conditions, or that electronic monitoring or any particular curfew has already failed in

his case. My decision concerns the likely adequacy of the proposed measures on the evidence in this application.

[46.] The Applicant's undertaking to comply is relevant and has been weighed. Against it stands the cogent allegation of firearm and ammunition possession while already on bail for serious charges and subject to conditions. Having considered the available conditions together, including those which would restrict his movements more closely, I am not satisfied that they would sufficiently reduce the risk of further offending established by that combination of circumstances.

[47.] This is an assessment of the unique circumstances of this case including particular evidence and the proposed safeguards. It is not a conclusion that electronic monitoring, curfews or reporting conditions are generally ineffective in firearm cases. On the present material, I find continued detention necessary to address the identified statutory risk.

Delay

[48.] The Applicant has been in custody on these charges since 13 May 2026. The material indicates that his trial is scheduled for the first quarter of 2027. I have considered both the time already spent in custody and the further period anticipated before trial. Neither is to be disregarded merely because the prosecution proposes a trial date.

[49.] At the date of this ruling, the period of detention must be assessed in the context of the present stage of the proceedings and any reliable information concerning their likely progress. The Court remains conscious that the constitutional obligation to afford an accused person a trial within a reasonable time is continuing and cannot be displaced merely by reference to the statutory three-year period.

[50.] On the information presently available, I am not satisfied that the Applicant has established that he has already been detained without trial for an unreasonable period. In **Duran Neely v The Attorney General**, SCCrApp No. 29 of 2018, at paragraph 17, the Court of Appeal explained that the statutory reference to three years does not confer a blanket entitlement to detain an accused person for that period. The Court must continue to balance liberty and the protection of society. The Court does not treat that period as a minimum which the Applicant must serve before bail can be considered.

Conclusion

[51.] I have given express weight to the Applicant's lack of previous convictions, fixed residence, previous employment, denial of the charges, assertion of compliance with his earlier bail conditions and undertaking to comply with further conditions. I have also considered the remand period and the anticipated trial timetable.

[52.] I have weighed those matters against the prosecution's evidence concerning the recovery of the firearm and ammunition, the Applicant's alleged connection with the vehicle, his acknowledged bail status and the adequacy of the available safeguards. The earlier pending charges have been treated as pending charges throughout. No finding of guilt has been made in respect of them or the present allegations.

[53.] For these reasons, the Respondent has established substantial grounds for believing that the Applicant would commit an offence while on bail. The risk is sufficiently serious to justify detention, and the available conditions would not adequately address it. The bail application is refused.

Order

[54.] For the foregoing reasons, the Court orders as follows:

- The Applicant's application for bail is refused.
- The Applicant shall remain remanded in custody pending further order of a court of competent jurisdiction.
- This ruling does not preclude a further bail application founded upon a material change in circumstances, including any unreasonable delay in bringing the Applicant to trial.
- The Applicant is at liberty to exercise his statutory right of appeal to the Court of Appeal.

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

The Hon. Mr Justice Darron Ellis