

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/2023

BETWEEN

CHARLTON SAUNDERS

A.K.A

CHARLTON SAUNDERS LARRAMORE

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Before: Her Ladyship, The Honourable Madam Justice Jeanine Weech-Gomez

Appearances: Mr. Stanley Rolle for the Applicant.
Mr. Bradford McKenzie for the Respondent.

RULING- BAIL

Weech-Gomez J

INTRODUCTION

1. The Applicant, Charlton Saunders (D.O.B. 23-Jan-1993) has been charged with two (2) counts of Armed Robbery contrary to section 339 (2) of the Penal Code, Chapter 84, relative to the events of the 2nd June, 2022. He applied for Bail via Summons and Affidavit both filed the 16th September, 2022 and Supplemental Affidavit filed the 14th June, 2023. The Respondent in reply filed Affidavits dated the 5th October, 2022 and the 6th April, 2023.

SUBMISSIONS

2. The Applicant's Affidavits provides that he lives in Nassau Village, has been arraigned in the Magistrate's Court on 3 counts of Armed Robbery, VBI to be presented in December 2022, has past convictions for armed robberies which he plead guilty to and affirms his involvement in same and served the requisite four years sentence but is innocent in this matter. He also notes that before his arrest he was employed as a Security guard and will retain this post if granted Bail. The Applicant states that the Affidavit of Francesca Baptiste against the accused has been recanted, the witnesses on identification of the accused were mistaken or aided by human resources, there was no handbag in the purported video of Ms. Baptiste and the money shown therein was attained by lawful means.
3. Counsel for the Respondent submitted that the evidence against the Applicant is cogent through the statement of the accused's girlfriend detailing what transpired on the date in question including leaving with another male in a "red Nissan cube" and returning a short time after with a handbag. The contents of the handbag were thrown on the bed and the witness recorded the Applicant and his co-accused with the money on her phone and when she asked them where they got the money it was detailed that it was from a woman out East who drives a nice Mercedes Benz and thereafter told her she could have the bag. This video evidence was extracted by police and a report created. When searching the Nassau Village residence of the Applicant and witness Baptiste, the handbag was recovered and virtual complainant Dr. S. Cambridge positively identified the bag. The virtual complainants (VC's) Cambridge and DeGregory also positively identified the Applicant via their respective 12 man photo lineups.
4. Counsel for the Respondent continued that the Applicant has four (4) pending matters for Armed Robbery, one for House breaking and five (5) prior convictions for Armed Robbery, one (1) for Possession of an unlicensed firearm and ammunition and one (1) previous conviction for Stealing. The Applicant also has strong and cogent evidence weighed against him in other pending matters through the virtual complainants therein. Reviewing all of this, the Respondent objects to the Applicant being granted Bail because of the strong and cogent evidence, Applicant's antecedents, propensity to reoffend, severity of the penalty a sufficient incentive to abscond and that there has been no unreasonable delay in this matter.

Law & Discussion

5. The Bahamas' constitution grants to all citizens a presumption of innocence and for this reason an opportunity to apply for Bail. Under the **Bail Act** (as amended), Judicial officers have the discretion based on several guiding factors whether or not to grant Bail. In this instant case, the most relevant of those factors will be considered in turn and a conclusion on this Court's decision.

6. The first consideration is **whether the Applicant will receive a trial in a reasonable amount time**, the Act states that three (3) years and beyond since being charge is not reasonable and the Applicant should be granted Bail. In this matter, having been charged in 2022, this matter is moving in the normal trajectory of such cases.

7. The next consideration is the **character or antecedents of the person charged and the need to protect the safety of the public and public order**. The Applicant's antecedents reflect he has previous convictions for four (4) counts of Armed Robbery, Possession of an unlicensed firearm and ammunition and Stealing and confirms his guilt to same in his Affidavit. This is very concerning for this Court because the Applicant now stands charged with several pending matters for Armed Robbery, indicating a propensity to same. This also poses a concern for public safety particularly where a firearm was used in each armed robbery matter and as was stated in **Jevon Seymour v DPP SCCrApp No 115 of 2019** at paragraph 68,

*"If the appellant was in fact a threat to public safety or public order; or if there was evidence of specific threats which had been made against the witnesses, Perry McHardy's affidavit should have included the necessary evidence of his propensity for violence for the judge's consideration. Such evidence might have included for example, **any prior convictions (if any) for similar offences; or evidence of pending charges for violent or firearm offences;**" (emphasis added)*

8. Following the previous point is also the concern of further offences being committed if granted Bail and the fact that having been granted Bail previously he is now charged subsequently with an offence similar or an offence punishable for more than a year, in this instance, a series of armed robberies. The Applicant was on Bail for House breaking when the other incidents allegedly occurred and there is concern that further offences will ensue if granted Bail again and as the Act states the need to protect the safety of the public or public order amongst other factors are of "primary consideration".

9. The final factor of consideration is the **nature and seriousness of the offence** and the nature and strength of the evidence against the Defendant. It cannot be disputed that Armed Robbery is indeed a serious offence particularly through the use of a firearm and in this matter two (2) counts of same, which should not be taken lightly especially where the results of such actions can be fatal and it is for this reason as stated in **Jonathan Armbrister v AG SCCrApp No.145 of 2011** that the

"seriousness of the offence with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration in determining whether bail should be granted or not".

10. As it relates to the **nature and strength of the evidence against the Applicant**, the Prosecution has provided evidence of one of the stolen items being found at the Applicant's residence during a police search, the VC positively identifying her stolen property and also indicating in her report that

the Accused was driving a red Nissan Cube, the results of the 12 man photo lineup carried out by the VC's positively identifying the Applicant who they say they saw without obstruction as their porch lights, street lights and car interior lights were on, the video footage of the Applicant and others recovered by police, and while the Accused's girlfriend is said to recant her statement, it was not disputed that a video was taken. In review of the evidence provided, it can be said that it *"raises a reasonable suspicion of the commission of the offences"* (**Cordero McDonald v The Attorney-General SCCrApp. No. 195 of 2016**).

Conclusion

11. It must be agreed as stated in **Stephon Davis v DPP SCCrApp No. 108 of 2021**, that *"[w]e walk a tight rope of having to protect the interest of society and the constitutional rights of individuals brought before the Courts"* and undoubtedly the same was considered here but having reviewed the cogency of the evidence provided, the antecedents of the Applicant particularly where he has been convicted of similar serious offences, and the concern for public protection and safety amongst others factors, this Court is not minded in the circumstances to grant Bail at this time.
12. Consideration was also given to the conditions which the Court may impose that would minimize the risks involved with the granting of bail and avoiding such offences from repeating themselves and have found none that would suffice at this time.
13. Should there be any change in circumstances in the interim, the Applicant is at liberty to reapply.

Dated this 26th day of July, 2023.

The Hon. Madam Justice Jeanine Weech – Gomez