

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

CRIMINAL DIVISION
CRI/BAL/00199/2023

BETWEEN

ADARI WRIGHT

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Jeanine Weech-Gomez

Appearances: Ms. Cassie Bethel for the Applicant
Ms. Betty Wilson for the Respondent

Hearing Date: 17 July 2024

Bail Application – Murder – Attempted Armed Robbery – Possession of an Unlicensed Firearm – Possession of Ammunition – Possession of a Firearm with Intent to Endanger Life - Nature and Seriousness of Offence – Articles 19 and 20 of the Constitution of The Bahamas – Presumption of Innocence – Public Safety and Order – Likelihood to appear at Trial or interfere with Witnesses - Strong and Cogent Evidence

RULING

WEECH-GOMEZ, J:

[1.] This is a bail application brought on behalf of Mr. Adari Wright (“**Applicant**”).

Background

[2.] The Applicant was charged with: (i) Murder contrary to section 291(1)(b) of the Penal Code, Chapter 84 (“**Penal Code**”); (ii) Attempted Armed Robbery contrary to section 83(2) and 339(2) of the Penal Code; (iii) Possession of an Unlicensed Firearm contrary to section 5(a) of the Firearms Act, Chapter 213 (“**FAA**”); (iv) Possession of Ammunition contrary to section 9(2)(a) of the FAA; and (v) two (2) counts of Possession of a Firearm with Intent to Endanger Life (“**Offences**”).

[3.] The Applicant made an application for bail, which the Respondent objects to.

Issue

[4.]The issue that the Court must determine is whether the Applicant is a fit and proper person to be granted bail?

Evidence

Applicant's Evidence

[5.]The Applicant's affidavit provides that: (i) the Applicant is a Bahamian citizen born on 13 June 1997; (ii) the Applicant was charged with the Offences (the Applicant's charge sheet is attached); (iii) he was arraigned in Magistrates Court No. 4 before Magistrate Shaka Seville on 30 May 2023; (iv) the Applicant pleaded not guilty to the Offences; (v) he does not have any pending matters or prior convictions before the court(s) in the Commonwealth of The Bahamas; (vi) should the Court admit him to bail, he will have accommodations at Wright's Lane, Fox Hill, New Providence, The Bahamas (vii) prior to his incarceration, the Applicant was a cook and dishwasher (the Applicant does not provide the name of his employer or if he was self-employed); (viii) he requests to be admitted to bail for the following reasons: (a) he will be disadvantaged in his ability to adequately prepare his defence if he is further remanded; and (b) he will be disadvantaged in his ability to support himself and assist his family; (ix) the Applicant will comply with all the conditions set out by the Court if admitted to bail; and (x) the Applicant is a fit and proper person to be granted bail.

Respondent's Evidence

[6.]The Applicant's Affidavit provides that: (i) the Applicant was born on 13 June 1997; (ii) he is remanded for the Offences (the Applicant's Charge Sheet is attached); (iii) that there is cogent evidence against the Applicant in this matter to support the charges made against him; (iv) on 22 May 2023 sometime around 10:45pm the virtual complainant ("VC") was sitting in her grey 2010 Nissan Murano with her friend. She stated that she heard a motorcycle drove pass them and shortly thereafter she heard a male voice saying "get out the vehicle". As she exited the vehicle she state that she observed two males. One male was on a motorcycle and the other male was by her vehicle. The male near the vehicle she explains had on a black hoodie and was armed with a black firearm. She further stated that the male with the firearm stood by her vehicle while she began

running away. While running, she saw a police car and started screaming and shouting “they trying to rob me”. Subsequently, the police gave chase after the suspect who was on foot (the statement of the VC is attached to the affidavit); (v) the second witness (“**Second Witness**”) stated that on Monday 22 May 2023 he along with his friend the VC was in the Western area of New Providence. He stated that the VC was driving her grey Nissan Jeep when they parked in the area of Sapodilla restaurant. While sitting inside the vehicle he stated that he heard the sound of a motorbike. It was at this point the Second Witness stated that he looked behind him and saw a blue and black motor bike with two males on it. He described one of the males as being slim built, dark skinned male wearing a black hooded jacket with a blue long jeans pants. Moments later he stated that he heard someone say “get out of the f#king car.” It was at this point he observed the male pointing a black handgun on the side of him. The male then ran over to the driver side of the car. After this, he stated that he saw red and blue flashing lights approaching and then heard when the driver on the motorbike drove off. Suddenly, he stated that he heard gunshots and saw when the male ran throwing the gun on the ground. Thereafter, the male was arrested.

[7.]The Respondent’s Affidavit also states that: (i) On 25 May 2023 the Second Witness visited the Criminal Investigations Department where he saw and spoke with D/Sgt. Patton. He was shown a 12 man photo lineup and he positively identified the Applicant as the male he saw on the motorbike (the Second Witness’ statements are attached to the affidavit); (ii) the third witness (“**Third Witness**”) reported that she was the girlfriend of the Applicant at the time of the incident and that Deandre, the deceased, was in a relationship with the Applicant’s mother. She further stated that she went to the Bing with the Applicant to celebrate his mother’s birthday on the night in question. While at Bing, the deceased was said to have pushed the Applicant’s mother from her chair. This caused an altercation between the deceased and the Applicant. The deceased pulled a machete from his waist and the Applicant had a bottle in his hand. The Third Witness stood between the deceased and the Applicant when she was struck to the back of the head by the Applicant. The Applicant ran off and reappeared sometime later. A commotion started and other persons began to throw bottles at the deceased. The deceased then left with three other males in his white bus.

[8.]The Respondent’s Affidavit further provides that: (i) the Applicant then jumped in the vehicle along with the Third Witness and another male who she did not know. The male

in the rear of the vehicle asked the Applicant if he had his tool. The Applicant then pulled a gray-coloured gun from his waist and gave it to the male in the back seat. The Third Witness tried to get the Applicant to calm down and to think the situation through. The Applicant travelled from Frank Edgecombe Drive to Prince Charles where he parked on the side of the street and waited for two minutes until the deceased noticed he was being followed and pulled over on the side of the street.

[9.] Furthermore, the Respondent's Affidavit provides that: (i) The Applicant pulled over as well. The male in the back of the vehicle turned the window down and fired five shots at the deceased. The Applicant sped off and drove onto Charles Sanders Highway and went back to Fox Hill. The Applicant dropped off the other male on the side of the street through Frank Edgecombe corner (the Third Witness' statement is attached to the affidavit); (ii) the Offences are of a serious nature; (iii) the Respondent believes in the interest of the public's safety and order the Applicant should be kept in custody; and (iv) the Applicant is not a fit and proper person for bail.

Law

[10.] The law on bail is well-settled in The Bahamas. The Court must weigh the Applicant's presumption of innocence unless and until his/her guilt is proven against the need to protect the general public from crime and violence. The right to freedom and the presumption of innocence are enshrined in our Constitution. **Articles 19(1)(d), (3) and 20 of the Constitution of The Bahamas** provide:

"19 (1). No person shall be deprived of his personal liberty save as may be authorized 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;"*

"19(3). Any person who is arrested or detained in such a case as is mentioned in subparagraph 1(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph 1(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions including in particular such conditions, as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

20. Every person who is charged with a criminal offence —

(a) shall be presumed to be innocent until he is proved or has pleaded guilty"

[11.] The Court is empowered to grant bail by virtue of **section 4 of the Bail Act, Chapter 103 (“Act”). Section 4(1) of the Act** which states:

“(1) Notwithstanding any other enactment, where any person is charged with an offence mentioned in Part B of the First Schedule, the Court shall order that that person shall be detained in custody for the purpose of being dealt with according to law, unless the Court is of the opinion that his detention is not justified, in which case, the Court may make an order for the release, on bail, of that person and shall include in the record a statement giving the reasons for the order of release on bail:

Provided that, where a person has been charged with an offence mentioned in Part B of the First Schedule after having been previously convicted of an offence mentioned in that Part, and his imprisonment on that conviction ceased within the last five years, then the Court shall order that that person shall be detained in custody.”

[12.] **Section 4(2) of the Bail (Amendment) Act, Chapter 103** provides:

“Notwithstanding any other provisions 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.....

(2B) For the purpose 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...”

[13.] The First Schedule, Part A of the Act provides factors which a Court ought to consider in a bail application. It reads:

“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—

(i) fail to surrender to custody or appear at his trial;

(ii) 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)
- (d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;
- (e)
- (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...”

[14.] It is incumbent upon the Respondent to prove, through evidence, that the Applicant would likely fail to surrender to custody and/or appear at trial, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice. This was expressly stated in the Bahamian Court of Appeal decision of **Jevon Seymour v Director of Public Prosecutions**, No. 115 of 2019 (“**Jevon Seymour**”). There, the court made the following pronouncements:

“...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 applicant for bail “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”

[15.] The onus on and requirement for the Respondent to provide cogent evidence was highlighted in the case of **Jeremiah Andrews v The Director of Public Prosecutions** Appeal No. 163 of 2019, (“**Jeremiah Andrews**”) Evans JA expressed the following at paragraph 26:

“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

[Emphasis added]”

[16.] It is to be noted that the hearing of a bail application does not entitle the court to assess the strength or weakness of the evidence against the Applicant. This is a matter for the substantive trial. This was noted by Osadebey J at page 61 in the Court of Appeal decision of **Attorney General v Bradley Ferguson et al** Appeal Nos. 57,106,108,166 of 2008 where he stated:

“It seems to me that the learned judge erred in relying on his assessment of the probative value of the evidence against the respondent to grant him bail. That is for the jury at trial. As stated by Coleridge J in Barronets case earlier- the defendant is not detained because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried and because the detention is necessary to ensure his appearance at trial...”

[17.] In the Bahamian Court of Appeal decision of **Cordero McDonald v. The Attorney General** SCCrApp No 195 of 2016 (“**McDonald**”), Allen P (as she then was) explained the extent to which the Court may consider evidence at a bail hearing. The learned President opined:

“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.

[Emphasis added]”

[18.] I also wish to highlight the case of **Jonathan Armbrister v Attorney General** SCCrApp No 145 of 2011 where the court highlighted the significance of the seriousness of an offence and how the Court should treat such when considering an application for bail. The following pronouncements:

“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 determining whether bail should be granted or not. Naturally,

in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail.

[Emphasis added]”

[19.] Furthermore, in the Bahamian Court of Appeal decision of **Dennis Mather v Director of Public Prosecutions** BS 2020 CA 163 (“**Dennis Mather**”), the Court highlighted the significance of the Applicant’s likelihood to appear at trial if he were to be granted bail. At paragraphs 16 and 17 of that decision, the Court opined:

“16. *The main consideration for a court in a bail application is **whether the applicant would appear for his trial.** In *Attorney General v. Bradley Ferguson, et al* SCCrApp. No.'s 57, 106, 108, 116 of 2008, Osadebay, JA observed as follows:*

*“As stated by Coleridge J in Barronet's case cited earlier **the defendant is not detained in custody because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried and because the detention is necessary to ensure his appearance at trial.**”*

17. *In Jonathan Armbrister v The Attorney General* SCCrApp. No. 145 of 2011, John, JA said as follows:

*“12. It has been established for centuries in England **that the proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear to take his trial, and that bail is not to be withheld merely as punishment.** The courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in case of conviction, the accused's record, if any and the likelihood of interference with witnesses.*

[Emphasis added]”

[20.] Lastly, in the Privy Council decision of **Hurnam v. State of Mauritius** [2006] 1 WLR 857 the board made the following observations relating to the seriousness of offences when considering a bail application:

*“15. **It is obvious that a person charged with a serious offence, facing a serious penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drugs cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the***

imposition of appropriate conditions, they will afford good grounds for refusing bail....The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well...provide grounds for refusing bail, but they do not do so of themselves, without more: they are factors relevant to the judgment whether in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given...

[Emphasis added]”

Discussion and Analysis

Whether the Applicant is a fit and proper person to be granted bail??

[21.] I shall now apply the aforementioned law to the bail application that is before me. I also bear in mind that I am not to go into a forensic/deep analysis of the evidence for the purpose of this hearing.

[22.] With respect to the nature and strength of the evidence and whether there are substantial grounds for believing that the Applicant, if released on bail, would likely fail to surrender to custody or appear for trial, commit an offence while on bail or interfere with witnesses, the evidence suggests that: (i) the VC saw the Applicant’s face at the time of the alleged armed robbery; (ii) the Second Witness saw the firearm being purportedly held by the Applicant at the time of the incident; (iii) the Second Witness identified the Applicant in a 12-man photo lineup as the person who attempted to rob him and (iv) the Second Witness was close enough to identify distinctive characteristics of the alleged robber (i.e. that he was dark, slim and had dark colored lips).

[23.] Furthermore, the Third Witness states that she was present when the Applicant followed the deceased in his car, provided an unknown man with a gun (who was seated in the backseat of the car the Applicant was driving) and the unknown man shot the deceased with the. In my view this is cogent evidence that provides reasonable suspicion.

[24.] Having satisfied myself that there is a reasonable suspicion that the Applicant likely was involved in the Offences for which he is charged, I now consider the factors in a bail hearing.

[25.] It is noted that the Applicant has no prior convictions, however, I acknowledge that the Offences are of a very serious nature (particularly Murder, possession of an unlicensed firearm, attempted armed robbery and possession of a firearm with intent to cause harm). These are very serious offences with severe penalties if convicted. The penalties alone may provide sufficient incentive for the Applicant to abscond if granted bail. However, as the cases state, this is just one factor that the Court must consider.

[26.] With respect to whether or not he is likely to fail to surrender to custody or appear at his trial, there is no evidence which suggests that the Applicant will likely do either of these acts. Though the seriousness of the Offences alone may be seen as sufficient reason to abscond, without more, I do not believe this is sufficient reason to deny bail.

[27.] With respect to interfering with witnesses or otherwise obstruct the course of justice, there is no evidence whatsoever that suggests that the Applicant is likely to interfere with any of the witnesses in the trial or obstruct the course of justice.

[28.] I am, however, concerned about public safety. Based on the cogent evidence against the Applicant, all of the Offences occurred in public and they are all alleged to have been committed with a firearm. The prevalence of firearms in this jurisdiction is a pressing and vexing issue that the Courts have dealt with on far too many occasions. I am concerned that the seriousness of the Offences, coupled with the fact that such Offences took place in public (which threatened public safety and order) that the Applicant presents a risk to public safety and order.

[29.] Most concerning is that an eye witness was present during the alleged commission of a murder which

[30.] the Applicant is purportedly involved in. This strongly suggests that the Applicant was not only involved in the alleged Murder, but he was willing to risk the lives of innocent civilians in the course of the alleged criminal acts.

[31.] In the premises, I am not prepared to grant the Applicant bail.

CONCLUSION

[32.] Based on the aforementioned principles, bail is therefore, denied.

Dated this 13th day of August 2024

**Jeanine Weech-Gomez
Justice**