

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2014/CRI/bail/00084

BETWEEN

GLENARDO JOHNSON

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Hon. Justice Neil Brathwaite

Appearances: Applicant Pro Se
Ms. Erica Ingraham, Mr. Ashton Williams for the Respondent

Hearing Date: 4th December A.D. 2024

Ruling Date: 21st January A.D. 2025

RULING ON BAIL

[1.] The Applicant was arrested on 28th November 2022 and charged with the offence of Murder. He states that he is twenty-eight years old, and worked in the fields of pest control, landscaping, and lawn care prior to his incarceration. He has no pending matters. The Applicant maintains his innocence, and states that the witness in his matter is lying, as he was at work at the time of this incident. He denies being a flight risk, or involved with gangs, and claims that he will be unable to properly instruct an attorney or prepare his defence if denied bail. The Applicant decries the degrading conditions in prison, and urges the court to grant bail.

[2.] In opposing the application, the Respondent filed the affidavit of Tylah Murray, Counsel in the Office of the Director of Public Prosecutions, to which are exhibited a number of documents, from which it can be gleaned that the Applicant has been identified by an anonymous witness as the person who entered a bus after 9am on 4th October 2022 and

rode the bus for a distance before requesting a stop. Before exiting the bus, the Applicant is alleged to have produced a firearm and fired several shots at the driver of the bus, causing fatal injuries. When questioned by investigators, the Applicant stated that he was at work at the time of the incident. Officers checked the alibi, but were advised by the Applicant's employer that his whereabouts could not be verified prior to around 12 noon that day. Officers also recovered a lime green vest from the home of the Applicant, similar to one worn by the perpetrator of the offence. The affidavit in response also indicates that upon his initial appearance before a magistrate, the Applicant stated that he was in fear for his life, as the victim in this matter was a gang leader, and his father was a prison officer. The Respondent also notes that a previous bail application was refused by the learned Archer-Minns J on 2nd August 2023. Finally, the Respondent has indicated an intention to seek an earlier trial date in this matter during the next case management hearing, which is scheduled for 19th February 2025.

[3.] Counsel for the Respondent notes that the charge is serious, and suggests that the evidence is cogent, all of which raises the likelihood of absconding. Most importantly, the Respondent emphasizes that the Applicant himself claimed that the victim was a gang leader, which therefore places the life of the Applicant in danger if released on bail, and which could also bring danger to unsuspecting members of the public. The court was therefore asked to refuse bail in the interests of public safety and order, and to protect the life of the Applicant.

LAW AND ANALYSIS

[4.] The tensions surrounding an application for bail have been considered in many cases. In **Richard Hepburn and The Attorney General SCCr. App. No 276 of 2014**, Justice of Appeal Allen opined that:

“5. Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.

6. Indeed, the recognition of the tension between these competing interests is reflected in the following passage from the Privy Council's decision in *Hurnam The State* [2006] LRC 370. At page 374 of the judgment Lord Bingham said *inter alia*:

“...the courts are routinely called upon to consider whether an unconvicted suspect or defendant shall be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as

whole. The interests of the individual is, of course, to remain at liberty unless or until he is convicted of crime sufficiently serious to deprive him of his liberty". Any loss of liberty before that time, particularly if he is acquitted or never tried, will prejudice him and, in many cases, his livelihood and his family. But the community has countervailing interests, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit further offences..."

[5.] At paragraph 11 she further noted that

"The general right to bail clearly requires judges on such an application, to conduct realistic assessment of the right of the accused to remain at liberty and the public's interests as indicated by the grounds prescribed in Part A for denying bail. Ineluctably, in some circumstances, the presumption of innocence and the right of an accused to remain at liberty, must give way to accommodate that interest."

[6.] The presumption of innocence is enshrined in Article 20(2)(a) of the Constitution of The Bahamas which 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".

[7.] Furthermore, Article 19(1) provides as follows:

"19. (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases-

- (a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;**
- (b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;**
- (c) for the purpose of bringing him before a court in execution of the order of a court;**
- (d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;**
- (e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;**
- (f) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or**

treatment or the protection of the community;
(g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and, without prejudice to the generality of the foregoing, a law may, for the purposes of this subparagraph, provide that a person who is not a citizen of The Bahamas may be deprived of his liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.

(2)...

(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”.

[8.] The relevant provisions of the Bail Act Chapter 103 read as follows:

“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)...

(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) ...

(a) without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed to be a reasonable time;

(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 and antecedents of the person charged, the need to protect the safety of the 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.”

9. The factors referred to in Part A are:

“PART A

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) 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.”;

[9.] In an application for bail pursuant to section 4(2)(c), the court is therefore required to consider the relevant factors set out in Part A of the First Schedule, as well as the provisions of section 2B.

[10.] In considering those factors, I note that the Applicant is charged with a serious offence, involving the use of a firearm, and resulting in the death of another, in circumstances which can only be described as callous and calculating. With respect to the seriousness of the offence, I am mindful that this is not a free-standing ground for the refusal of a bail application, yet it is an important factor that I must consider in determining whether the accused is likely to appear for trial.

[11.] In the Court of Appeal decision of *Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011*, it was stated 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. 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”.

[12.] I note also paragraph 30 of *Jeremiah Andrews vs. The Director of Public Prosecutions SCCrApp No. 163 of 2019* where it states:

“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. eg the applicant’s resources, family connections..

[13.] While no direct evidence has been provided that the Applicant will not appear for his trial, the possible penalty which could follow a conviction raises the issue of the likelihood of not appearing for trial.

[14.] That likelihood must be contrasted with the nature of the evidence against the Applicant. In *Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016*, Allen P., at *paragraph 34* stated,

“It is not the duty of a judge considering a bail application to decide disputed facts or law. Indeed, 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 by the appellant, such as to justify the deprivation of his 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.”

[15.] In considering the cogency of the evidence, I note 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* [1996] 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."

[16.] In reviewing what has been placed before me, while I bear in mind that the court is not to embark on a trial of the matter on the papers, I am satisfied that the evidence rises to the level of a prima facie case, as the Applicant has been identified by an eyewitness as the shooter in this case. The Applicant claims that he has an alibi, and that the witness is lying. In my view, these are matters for trial, and which cannot be resolved during a bail hearing.

[17.] With respect to the issue of public order, I bear in mind that the circumstances of this offence brought danger to the public. This was an act carried out on a public bus which was engaged in transporting members of the public about their daily routines. The victim in this matter was reportedly involved in gang activity. While no motive has been given for the killing, there is no evidence that any robbery was attempted. It is therefore likely that the incident itself was gang related. However, whether it was or not, the court must have regard to the fact that there exists cogent evidence of the involvement of the Applicant in the murder of a person who the Applicant says was a gang leader. The court must therefore also bear in mind the number of retaliatory killings that have occurred in this jurisdiction, and the corresponding danger to the public which such acts entail. While the Applicant is entitled to the presumption of innocence, that presumption has very little bearing on perceptions on the streets where retaliatory acts take place. With these factors in mind, I am satisfied that the Applicant would be in grave danger if released on bail, and that danger would also pose a danger to public order and safety.

[18.] The tensions inherent in a bail application between the right to liberty and the need to protect the public requires the court to conduct a balancing exercise. In the instant case, I am satisfied that there is some risk of flight, and that there is a need to protect the Applicant, and to preserve public order and safety. I am concerned in this case that the Applicant has been in custody for approximately twenty-three months, and that no trial is scheduled until January 2027.

[19.] At paragraph 17 of the Duran Neely decision cited above, the learned Evans J said the following:

“It should be noted that Section 4 of the Bail Act does not provide the authorities with a blanket right to detain an accused person for three years. In each case the Court must consider what has been called the tension between the right of the accused to his freedom and the need to protect society. The three year period is in my view for the protection of the accused and not a trump card for the Crown.”

[20.] In my view, the relevant time periods in the instant case require the court to consider the protection of the rights of the accused as referenced in Duran Neely, and to weigh that factor in conducting the requisite balancing exercise. Having done so, it is my view that this matter is not yet at the stage where it can be said that the Applicant has been detained for an unreasonable period of time. The Respondent has also indicated an intention to seek to expedite the trial of this matter at the next case management hearing in February 2025, so that it is entirely possible that the Applicant will be tried within a reasonable time.

CONCLUSION

[21.] In all the circumstances of this case, given the nature and cogency of the evidence, and the seriousness of the offence, I am not persuaded to exercise my discretion to grant bail at this time. I am satisfied that no conditions could be put in place to ameliorate the risk to public order and safety, or to protect the life of the Applicant, and that the further detention of the Applicant is therefore necessary. With respect to the length of time the Applicant has been in custody, while I am satisfied that the need to protect the public still outweighs the Applicant’s right to liberty at this time, I urge the Respondent to take steps to expedite the trial of this matter. In the present circumstances however, bail is refused.

Dated this 21st day of January A.D., 2025



**Neil Brathwaite
Justice**

