

IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2025/CRI/bail/00030

BETWEEN

STCHERBATCHEFF (nee Davis) BARBARA LYNN
a.k.a BARBARA VIVIAN MURPHY

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Hon. Justice Neil Brathwaite

Appearances: Mr. Damien Gomez KC, Ms. Lilnique Murphy-Grant for the Applicant
Ms. Darnell Dorsette for the Respondent

Hearing Date: 5th March A.D. 2025

Ruling Date: 2nd April A.D. 2025

RULING ON BAIL

[1.] The Applicant in this matter was born in the United States of America on 17th December 1981, and is also a citizen of the United Kingdom. She is the mother of Valentin Stankowski, and is alleged to have kidnapped the child in February 2023 after he was delivered to her in Switzerland by the father, who had custody, to exercise visitation rights granted to the mother by the High Court of Switzerland. That order also prohibited the Applicant from traveling abroad with the child. A formal criminal complaint was subsequently made, and an Interpol notice was issued, followed by a Warrant of Arrest for the offence of Abduction. A formal request for the provisional arrest of the Applicant with a view to extradition to Switzerland was made by the Federal Office of Justice of Switzerland to the Commonwealth of the Bahamas, and a Provisional Warrant was issued for the arrest of the Applicant on 21st November 2024. She was thereafter arrested and

taken before a Stipendiary & Circuit Magistrate on 11th December 2024. Committal proceedings are now expected to begin on 30th April 2025.

- [2.] The Applicant avers in her affidavit in support of the bail application that she suffers from pain and deformity in her left breast, and has been diagnosed with Baker's contracture. A medical report is exhibited, and indicates a history of breast implants fifteen years ago, and a displacement of the breast tissue. Doctor Shrikanth Garikaparathi, who examined the Applicant on 21st October 2024, noted that there is a risk of Breast Implant Associated Lymphoma, and ordered an MRI test which did not reveal any cancerous masses, but did not rule out lymphoma. Surgery was recommended, and the report states that the procedure was tentatively scheduled for the week of Christmas due to the doctor's vacation plans and the patient's free time. There is also attached a report from Doctor Kohler, the Applicant's gynecologist, who treated the Applicant from 2013 to November 2022, who noted the contracture of the left breast in 2009, and diagnosed subacute severe hepatitis, likely autoimmune. In the opinion of Dr. Kohler, the Applicant is medically vulnerable, and her health could be worsened by physical and emotional stressors.
- [3.] The Applicant further indicates that she is on a strict diet of healthy non-toxic food, which is not available at the Bahamas Department of Corrections, as a result of which she has lost five pounds. She stresses that she has significant ties to the Bahamas, and is engaged to be married to a Bahamian citizen. She therefore denies being a flight risk, and indicates her willingness to abide by all conditions if granted bail.
- [4.] In addition to the documents detailing the nature of the proceedings against the Applicant, the Respondent has placed before the court a report from Dr. Hastings Johnson, a medical doctor at the Bahamas Department of Corrections, who acknowledged the diagnosis of Baker's contracture, and the same required urgent intervention, and stated that any emergency transfer to the Princess Margaret Hospital would be facilitated. Dr. Johnson noted that the condition would cause discomfort in any environment until corrected. A document from the Bahamas Department of Immigration has also been provided, which gives the Applicant's nationality as Mexican, and states that approval has been granted for the Applicant to be employed as a Housekeeper from 15th November 2024, expiring 14th November 2025.
- [5.] Following the initial hearing in this matter, the Applicant was again examined by Dr. Garikaparathi at the Princess Margaret Hospital. In his notes of that examination, which have been provided to the court under cover of a letter from D. Hastings Johnson, Dr. Garikaparathi notes that the Applicant complained of intense pain on the left side, and advised that the Applicant needs surgery at the earliest to remove the implant and to

conduct an excision to rule out malignancy. The doctor further noted that there is a long list of persons awaiting surgery at the Princess Margaret Hospital, with no way to know when the surgery could be accommodated. The accompanying document from Dr. Johnson recommend that steps be taken to make private arrangements for the implant removal, so that an urgent situation does not become an emergency.

LAW AND ANALYSIS

[6.] The power to grant bail in an extradition case is referenced at section 10(2) of the Extradition Act Chapter 96, which reads as follows:

10(2) For the purposes of proceedings under this section, a court of committal shall have, as nearly as may be, the like jurisdiction and powers (including power to remand in custody or to release on bail) as it would have if it were conducting a preliminary inquiry and the person arrested were charged with an indictable offence committed within its jurisdiction.

[7.] While the section refers to the court of committal, as opposed to the Supreme Court, the question of the jurisdiction of the Supreme Court to grant bail in extradition cases has been addressed by the Privy Council in **Austin Knowles & Ors v. Superintendent of HM Prison Fox Hill & Ors (Bahamas) [2005] UKPC 17**, where the court said the following:

22. It is clear that the Supreme Court had an inherent jurisdiction to grant bail to a person detained which was additional to the specific power to grant bail given to the magistrates up to the time of committal. **In R v Spilsbury [1898] 2 QB 615** in an appeal by a person arrested under the Fugitive Offenders Act 1881 who applied for habeas corpus Lord Russell of Killowen CJ said at page 620:

“This Court has, independently of statute, by the common law, jurisdiction to admit to bail. Therefore the case ought to be looked at in this way: does the Act of Parliament, either expressly or by necessary implication, deprive the Court of that power? The law relating to this subject is well stated in 1 Chitty’s Criminal Law, 2nd ed. P.97, as follows: ‘The Court of King’s Bench, or any judge thereof in vacation, not being restrained or affected by the statute 3 Edw. 1, c. 15(1) in the plenitude of that power which they enjoy at common law, may, in their discretion, admit persons to bail in all cases whatsoever, though committed by justices of the peace or others, for crimes in which inferior jurisdictions would not venture to interfere, and the only exception to their discretionary authority is, where the commitment is for a contempt, or in execution.’”

Having reviewed the provisions of the 1898 Act Lord Russell concluded that there was no express or implied withdrawal of the right to bail. He said at page 622:

“I have come to the conclusion that the provisions of the statute are consistent with the recognition of the power of this Court to admit to bail in such cases as the present. This inherent power to admit to bail is historical, and has long been exercised by the Court, and if the

Legislature had meant to curtail or circumscribe this well-known power, their intention would have been carried out by express enactment.”

He continued:

“But how ought the power to be exercised? Considering the class of cases which are likely to arise under the Fugitive Offenders Act, it is obvious that the power ought to be exercised with extreme care and caution.”

23. In the result bail was refused but not “without some doubt” (Lord Russell, p 623) and “with considerable hesitation [as to whether the power to admit to bail existed]” (Kennedy J, p 625). See also **Nazir v Chinnoy [1991] COD 207**.

24. There are differences between the Fugitive Offenders Act and the Extradition Act of The Bahamas, but in the view of the Board on the basis of Spilsbury, the Supreme Court had an inherent jurisdiction to grant bail under The Bahamas Extradition Act, the predecessor to which was based on the English Extradition Act 1870.

[8.] In considering how that discretion to grant bail in extradition cases should be exercised, their Lordships went on to say the following:

27. The Board considers that there is much force in these criticisms and the learned judge did not appear to give sufficient weight either to the nature of the crimes alleged or to the risk of, and the advantage of, their fleeing. It is important that in this particular type of case these considerations should be taken fully into account and it should only be in exceptional cases that bail as a matter of discretion is granted.

[9.] The Applicant in this matter is alleged to have defied a court order in Switzerland, and to have come to another jurisdiction. She is also reported to have been born in the United States, and to have a Mexican passport as well as a British passport. While the Applicant claims to be engaged to a Bahamian citizen, she is in this country on a work permit. I therefore do not consider the Applicant’s ties to this country to be strong, while her ties to multiple jurisdictions make her, in my view, an extreme flight risk. However, the question in this case is whether the medical condition of the Applicant amounts to an exceptional circumstance.

[10.] The medical evidence indicates that the Applicant was examined by Dr. Kohler in 2009, and was reported to have significant capsular contracture of the left breast. Fifteen years later, on 21st October 2024, she was examined by Dr. Garikaparthi, who noted the condition and scheduled surgery tentatively for the week of Christmas. It is noteworthy that the surgery was scheduled for that date due to the doctor’s vacation, which was scheduled for 8th November through 15th December 2024, and also because the patient would have time off work during Christmas week. There certainly in my view does not appear to have been a great deal of urgency displayed. However, that is not the end of

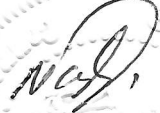
the matter, as the condition does persist, and is a cause of what is reported to be significant discomfort, with no resolution in sight, according to the latest document from Doctor Johnson. I also note with some concern the comment of Dr. Johnson that this urgency not be allowed to become an emergency, and his recommendation that private assistance be organized.

[11.] In seeking to address the issue of the urgency of the need for medical assistance for the Applicant, the court has also been provided with a letter from the Office of the Director of Public Prosecutions dated 31st March 2025, intimating that the Ministry of Health were willing to facilitate the surgery “once she and her family show their ability to bear the cost of the said surgery at the Princess Margaret Hospital. I do not consider this to be an acceptable or tenable response, as the Applicant is in the custody of the State, which is therefore responsible for her care. A willingness to assist her, once she is able to bear the cost, cannot be relied upon as a basis to continue to detain the Applicant, in circumstances where urgent medical care is required.

[12.] In the peculiar circumstances of this case, I am satisfied that exceptional circumstances exist. Therefore, despite my concern for the risk of flight, I grant bail to the Applicant in the amount of \$150,000.00 cash on the following conditions:

- a. The Applicant is to be fitted with an Electronic Monitoring Device, and must report to the Airport Police Station every Monday, Wednesday, and Friday before 6pm.
- b. The Applicant is to observe a curfew at her registered address at #1 Nelson Road, Mount Pleasant, between the hours of 8pm and 7am daily.
- c. The Applicant is to surrender all travel documents to the Registrar of the Supreme Court.
- d. The Applicant is not permitted to leave the island of New Providence without prior leave of the court.

Dated this 2nd day of April A.D., 2025


Neil Brathwaite
Justice

