

IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2012/CRI/bail/00411

BETWEEN

STEPHEN GREEN

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Hon. Justice Neil Brathwaite**

Appearances: **The Applicant Pro Se**
 Ms. Jacklyn Burrows for the Respondent

Hearing Date: **1st April A.D. 2025**

Ruling Date: **5th May A.D. 2025**

RULING ON BAIL

[1.] The Applicant in this matter was remanded in custody in January 2023 on charges of Attempted Armed Robbery, Garrotting (3 Counts), Kidnapping (2 Counts), Assault (2 Counts), and Armed Robbery (6 Counts), and Receiving (3 Counts). He states that he is thirty-two years old, and has previously been imprisoned for Armed Robbery (twice), Attempted Murder, Possession of Dangerous Drugs, (twice), Possession of Dangerous Drugs with Intent to Supply, Housebreaking, Robbery, and Causing Harm. In seeking bail, the Applicant placed a large number of documents before the court and launched a frontal assault on the evidence, claiming that he was oppressed to make admissions, that the investigators were not credible as they had been contradicted by the complainants, that the complainants had refuted the charges and claimed that they had been manipulated to identify the Applicant, that in one instance a complainant had been unaware that charges had been brought in her name, and that in another instance two complainants had

been out of this jurisdiction when they purported to give statements to the police, according to their social media posts. He also alleges that evidence against him has been fabricated.

- [2.] The Applicant further submits that he is a victim of police misconduct in this case, and is not a danger to public order or safety, as he has tried to live a positive life after being released from prison. He relies on his strong family and community ties to support his contention that he is not a flight risk, including testimonial letters, and complains that he is incarcerated in oppressive conditions which are injurious to his health, due to his asthma and the exposure to second hand smoke, as well as the poor diet, which necessitates his family bringing food for him every day. Finally, the Applicant submits that he is suffering significant financial losses as a result of his incarceration, as his business interests have suffered. He therefore urges the court to permit him to be on bail pending trial.
- [3.] The Respondent relied on the affidavit of Tanesha Forbes, Counsel in the Office of the Director of Public Prosecutions, to which are exhibited a number of statements, from which it can be gleaned in brief that the Applicant has been identified as one of the persons involved in the armed robbery of several persons at a local resort on 24th December 2022, and also made admissions concerning those charges. The Applicant is also implicated in another incident involving robbery of persons at a home near West Bay Street, and made admissions concerning that matter. Items recovered from his home were also linked to that matter, and the Applicant is alleged to have identified himself to officers on surveillance footage of the incident. It is also stated in one of the affidavits in response that trial dates have been set for 11th August 2025, 20th October 2025, and 19th October 2026 for two of the Applicant's matters.
- [4.] Counsel for the Respondent submits that the evidence is extremely cogent, and that there is a significant risk of reoffending, as the Applicant was released from prison on completion of a sentence for armed robbery just two weeks before the first set of current offences were allegedly committed. The Respondent further contends that documents submitted by the Applicant to support his attacks on the evidence may be fraudulent, as many purported letters from complainants are unsigned, and there is evidence from at least one witness that a letter produced by the Applicant in that witness' name was fraudulent, and indeed was sent to the prison from an email address of which the reputed author of the letter had no knowledge. The Respondent therefore submits that the Applicant is not a fit and proper candidate for bail.

LAW AND ANALYSIS

[5.] 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...”

[6.] 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.”

[7.] 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”.

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

**“19. (1) No person shall be deprived of his personal liberty save as may be authorised 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”.

[9.] 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.”;

[10.] 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.

[11.] In considering those factors, I note that the Applicant is charged with extremely serious and violent offences, involving the use of firearms and other weapons. 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.

- [12.] 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”.

- [13.] 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..

- [14.] While no direct evidence has been provided that the Applicant will not appear for his trial, the Applicant is charged with a string of offences, the most serious of which is armed robbery, which attracts a maximum penalty of life imprisonment. That possible penalty which could follow a conviction, raises the issue of the likelihood of the Applicant not appearing for trial, particularly as any sentence upon conviction would be aggravated by the extensive criminal history of the Applicant.

- [15.] 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.”

[16.] 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.”

[17.] In reviewing what has been placed before me, I am satisfied that the evidence rises to the level of a strong prima facie case. While the Applicant contends that he was oppressed to make admissions, those are matters for trial, as are the allegations that evidence has been concocted in some instances and recanted in others. Indeed, having reviewed everything presented by the Applicant, I harbor serious doubts as to the authenticity of those documents. Nevertheless, in my view a bail application is not the appropriate forum for a review of that evidence, as those are matters which must be decided by a tribunal of fact. In my view, the cogency of the evidence, coupled with the seriousness of the offence, raises a concern that the Applicant will not appear for his trial.

[18.] Of greater concern to me in the instant case is the issue of the risk of reoffending. The Applicant in this case was released from prison on 12th December 2022, and within approximately six weeks was back in custody charged on extremely cogent evidence with offences similar to the one for which he had just completed a sentence, and in circumstances where the evidence suggests a spree.

CONCLUSION

[19.] In considering whether conditions could be imposed to ensure the attendance of the Applicant at trial, I am mindful of the usual conditions which include reporting, electronic monitoring device (“EMD”), and curfew. In my view, those conditions would not serve to prevent reoffending, and, given my concerns with the

documentation produced by the Applicant, as well as the previous convictions of the Applicant for offences of dishonesty, I am not satisfied that the Applicant could be considered trustworthy enough to abide by conditions if granted bail.

[20.] In the circumstances of this case, and having regard to the foregoing reasons I find that the Applicant is not a fit and proper candidate to be admitted to bail. Bail is therefore denied.

Dated this 5th day of May A.D., 2025



**Neil Brathwaite
Justice**

