

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2025/CRI/bail/00130**

BETWEEN

JOHN DOE a.k.a TYRON VERNET

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Hon. Justice Neil Brathwaite

**Appearances: Mr. Damien White for the Applicant
 Ms. Davina Pinder, Mr. Akire Nicholls for the Respondent**

Hearing Date: 2nd October A.D. 2025

Ruling Date: 3rd November A.D. 2025

RULING ON BAIL

- [1.] The Applicant seeks to be released on bail on charges of Possession of a Forged Document (2 Counts), and Uttering, for which he has been remanded in custody since 1st September 2025. He states that he is forty four years old and a Haitian National, and was employed in construction prior to his incarceration. The Applicant avers that he has no previous convictions in The Bahamas, and no other pending matters, and alleges that he will be disadvantaged in his ability to prepare his defence and support his wife and child if refused bail.
- [2.] In opposing the application, the Respondent filed the affidavit of Max Julien, Counsel in the Office of the Director of Public Prosecutions, to which is exhibited a number of reports. From those reports it can be intimated that the Crown alleges that an auditor at the National Insurance Board discovered that a suspicious voter's card had been

utilized by the Applicant in attempting to obtain an NIB card. Investigations at the Parliamentary Registration Department revealed that the Applicant had not applied for a voter's card, and the referenced card had not been issued by that Department. Further investigations at the Bahamas Department of Immigration suggest that the Applicant utilized the suspicious voter's card, as a well as a fraudulent birth certificate, in making representations to that Department. A report also indicates that the Applicant admitted having been born in Haiti, and having been deported from the United States to Haiti in 2016

- [3.] On behalf of the Applicant it is submitted that the Applicant relies on the presumption of innocence, and will defend the charges at trial. Counsel further emphasized that the Applicant has no previous convictions or other pending matters, and suggested that conditions could be put in place to ensure attendance at trial. The Court was therefore urged to release the Applicant on bail pending his trial.
- [4.] In response, counsel for the Respondent suggests that there is cogent evidence on these serious charges, raising the likelihood of absconding. Counsel further notes the issue of absconding is exacerbated in this case because the Applicant has no ties to this jurisdiction, and indeed has utilized false documents, so that even the identity of the Applicant is in doubt. In these circumstances, it was submitted that no conditions could suffice to ensure attendance at trial.

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.”

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 serious offences, involving dishonesty. With respect to the seriousness of the offences, 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 possession of forged documents and uttering a forged document, for which he could be liable to imprisonment for ten years which, in considering the possible penalty which could follow convictions, raises the issue of the likelihood of not appearing for trial.

[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 considering 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 there is prima facie evidence linking the Applicant to the offences, based on his presentation of those documents to an Immigration Officer while making inquiries on the status of other persons who were reported to be in custody.

CONCLUSION

[18.] 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 might suffice in the normal course of events, particularly on charges of this nature. However, the very identity of the Applicant is in doubt in this case, and there is also evidence that he was deported from the United States, which shows a lack of respect for immigration laws. Such a lack of respect does not bode well for any promise to comply with conditions.

[19.] In the circumstances I am not satisfied that conditions could be put in place to ensure attendance at trial. I am satisfied that the Applicant is not a fit and proper candidate to be admitted to bail. Bail is therefore denied.

Dated this 3rd day of November A.D., 2025



**Neil Brathwaite
Justice**

