

COMMONWEALTH OF THE BAHAMAS CASE NO. 2018/CRI/BAIL/FP/00112
IN THE SUPREME COURT

Criminal Division

B E T W E E N

DILLION WILLIAMS

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honorable Mr. Justice Andrew Forbes

Appearances: Mr. Sean Smith c/o Director of Public Prosecutions
 Mr. Ernie Wallace c/o Dillion Williams

Hearing Date: 28th July, 2026

RULING ON BAIL

FORBES, J

BACKGROUND

[1.] The Court heard the application, reserved its decision, and indicated its intention to provide written reasons; it does so now. The Applicant's Counsel filed an application seeking the Court's consideration of bail on 6th July 2026. The Applicant, in his Affidavit filed on the 8th July

2026, indicated that he resides at No. 178 Dogfish Street Apt No. 2, Freeport, Grand Bahama. He notes he is currently on remand for Possession of an Unlicensed Firearm contrary to section 5 (B), and Possession of Ammunition contrary to section 9(2) (A). He indicated he was denied Bail because he was convicted for similar matters. He further avers he has no pending matters. He also stated that he is prepared to comply with any and/or all conditions should bail be granted. The Applicant Counsel also laid over submissions which the Court will refer to later.

[2.] The Respondent filed an Affidavit in Opposition on 20th July 2026 and sworn by Reserve Sergeant 1087 Chester Walker. He avers that the Applicant and his Co-Accused, when arrested, were discovered to have a firearm and ammunition. Sergeant Walker further avers that the Applicant's trial is to commence before Magistrate Uel Johnson on the 23rd September, 2026

[3.] Sargent Walker avers further that the Applicant is not a fit and proper person for bail and that the evidence is cogent. That the Applicant has previous convictions for Possession of Firearms and Possession of Ammunition, and the Antecedents were duly exhibited.

SUBMISSIONS

[4.] The Applicant was represented by Counsel, Mr. Ernie Wallace, who provided written submissions, which were laid over the morning of the hearing. Counsel for the Applicant cited Articles 19 & 20 of the Constitution of the Commonwealth of the Bahamas as well as the often-cited case of **Hurnam v. The State** [2006] 3LRC370 and Lord Bingham's comments at paragraph 374. Counsel asserts that the Applicant ought to be granted bail as he is a Bahamian who is gainfully employed. That he, notwithstanding his pending matters, is presumed innocent. That the Applicant has antecedents and while the Crown seeks to point to those as reasons for his continued detention he has served time for those matters. That the Applicant is was previously on bail for other matters and was convicted for bail violation, however Counsel for the Applicant asserts that the evidence is weak in the present case and that the Applicant is a fit and proper person for bail.

[5.] The DPP emailed its submissions as already mentioned by the Court. Mr. Smith noted the serious nature of the allegations against the Applicant and whether there are any conditions this Court can impose that will restrain this Applicant from committing additional crimes. The DPP refers the Court to the comments made by the *Justice of Appeal Evans* in **Tyreke Mallory v. Director of Public Prosecutions**, SCCrApp. No 142 of 2011 and particularly at paragraph 25. Also, the comments made by *Justice of Supreme Court Hilton* (as he then was) in the **Jamal Taylor**

v. The Director of Public Prosecution Cri/Bail/054/2023 case at paragraph 22. Counsel for the DPP submits that the Applicant is an unfit person for bail. That given that his trial is scheduled to occur in September 2026, he ought to remain in pre-trial detention. Although not expressly stated clearly, that's the implication. Further, the Applicant continues to re-offend, and neither curfew nor Electronic Monitoring will deter the Applicant.

THE LAW

[6.] The Court must now consider the rationale for the denial of bail to the Applicant and consider whether he will refuse or fail to surrender for trial.

[7.] Section 4 (1) of the Bail Act provides:-

“(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 thinks 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.

[8.] Sections 4(2) and (3) of the Bail (Amendment) Act, 2011 provide:-

(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) 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.

(2A) For subsection (2) (a) and (b) ---

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; delay which

is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered a reasonable time.

(2B) For 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.

(3) Notwithstanding any other enactment, an application for bail by a person who has been convicted and sentenced to a term of imprisonment in respect of any offence mentioned in Part D of the First Schedule shall lie to the Supreme Court or the Court of Appeal. (3A) notwithstanding section 3 or any other law, the Magistrates' Court shall not have jurisdiction for the grant of bail in respect of any person charged with an offence mentioned in Part C or Part D of the First Schedule.

DISCUSSION/ANALYSIS

[9.] It appears that the Respondent's submissions are that the Applicant has pending matters, the said matter being of a similar nature for which this Court gave bail, and that the evidence adduced is cogent and powerful and is grounds to deny the Applicant bail.

[10.] The Applicant faces a charge involving Possession of Unlicensed Firearm contrary to section 5 (b) of the Firearms Act and Possession of Ammunition contrary to section 9(2) (a) of the Firearms Act. These are offenses that have been included in Part D of the First Schedule of the Bail Act and the Bail (Amendment) Act, 2011, which states as follows:

“Possession of prohibited weapons and ammunition — section 30, Ch. 213; Unlawful shortening of guns — section 36, Ch. 213; Any offence mentioned in the Third Schedule to the Criminal Procedure Code, Ch. 91. Unlawful possession of a revolver - section 5, Ch. 213; Unlawful possession of a firearm or ammunition - section 9, Ch. 213; Unlawful possession of a firearm or ammunition with an intent to supply - section 9A, Ch. 213; Unlawful possession of a gun - section 15, Ch. 213; Assault with a deadly or dangerous instrument or means - section 265(5), Ch. 84.”

[11.] Sections 4(2) and (3) of the Bail (Amendment) Act, 2011 permit the grant of bail to those charged with a Part D offense (as stated in paragraph 10 above). Additionally, a Judge hearing an application for the grant or denial of bail for an applicant charged with a Part D offense shall have regard to the following factors as found in Part A of the Bail (Amendment) Act, 2011:-

“(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 offense 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;

(b) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defense Act;

(c) whether there is sufficient information for the purposes of taking the decisions required by this Part or otherwise by this Act;

(d) whether having been released on bail in or in connection with the proceedings for the offense, he is arrested pursuant to section 12;

(e) whether having been released on bail previously, he is charged subsequently either with an offense similar to that in respect of which he was so released or with an offense which is punishable by a term of imprisonment exceeding one year;

(f) the nature and seriousness of the offense and the nature and strength of the evidence against the defendant.”;

[12.] Thus the question is whether this Applicant would surrender for trial? The Respondent offered no evidence to suggest that he would not have appeared, and the Affidavit is totally devoid of any suggestion that the Applicant might not surrender for trial. They, however, focused on the Applicant being a safety concern to the community.

[13.] As stated by the Court in Stephon Davis v the DPP (supra), there is no evidence before this Court that the Applicant will refuse to surrender. The Court notes the comments made by the Court of Appeal in Riclaude Tassy and Director of Public Prosecutions MCCrApp. No. 129 of 2022, where the court said: “A breach of bail conditions may give rise to criminal liability, as well as the risk of revocation of bail.”

[14.] The Court takes note of the comments of the Court of Appeal in Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016 where, then, *President of Appeal Dame Anita Allen* said as follows:

"18. As noted in Richard Hepburn v The Attorney General SCCrApp. 276 of 2014, there is a constitutional right to bail afforded by articles 19(3) and 20(2) (a) of the Constitution; and in as much as the right pursuant to article 19(3) is not triggered since there is no element of unreasonable delay in this case, consequently this application is grounded in the provisions of article 20(2) (a).

19. In that regard, the appellant is presumed innocent and has a right to bail, unless after a realistic assessment by the judge of the matters prescribed above, the appellant's right to remain at liberty is defeated by the public's interest 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 other offences..." 8 (per Lord Bingham in Hurnam v The State [2006] 3 LRC 370, at 374).

20. The balancing of the applicant's right to the presumption of innocence and that of the public to be protected are reflected in the above-mentioned factors recognized and prescribed by the Bail Act as matters to be weighed against the grant of bail, and, in so far as they are relevant to the particular application for bail, they must, as previously noted, be assessed by the judge before exercising the discretion. Indeed, section 2B prescribes that in relation to Part C offenses: '...the character or antecedents of the person charged, the need to protect the public or public order and, where appropriate, the need to protect the safety of the victim or victims of the alleged offense, are to be primary considerations.'"

[Emphasis added].

[15.] The Court is also guided by the comments of then **President of Appeal Sir Michael Barnett** in *Stephon Davis supra*, and taking his comments from the head note, he said as follows:

"This court has on more than one occasion repeated the principle that bail should not be denied as a punishment for a crime for which a person has not yet been convicted. This principle applies even when the crime is alleged to have been committed whilst a person was on bail. The burden is on those opposing the grant of bail to show why there are good reasons to deny bail to a person charged with an offense...." (Emphasis Added)

Also, the comments of *Justice of Appeal Evans*, although cited by Counsel for the Applicant, are essential, and he said as follows:

“A judge hearing a bail application cannot simply refuse an application for bail merely on the fact that the new offense is alleged to have been committed while the defendant was already on bail for a similar offense. There is a requirement for the judge to assess the evidence on which the crown intends to rely on the hearing of the new charge. We must recognize that every individual charged before the Court is presumed innocent until proven guilty. We walk a tightrope between protecting society's interests and the constitutional rights of individuals brought before the Courts. This system only works if all stakeholders do their part. As such, the Crown is not at liberty to hold information to its bosom and not provide the Courts with sufficient information to make proper decisions; nor are they permitted to deprive individuals of their liberty based only on suspicion of involvement in criminal activity.....”

[16.] The Respondent produced a scant Affidavit that does not fully support nor demonstrate sufficient evidence to restrain this Applicant's liberty. The Director of Public Prosecutions failed to recognize that an individual's liberty requires urgency, not this laissez-faire approach.

[17.] The evidence of the current matter is truly insufficient for this Court to discern how the Applicant was implicated in the current allegations. The Court notes the Court of Appeal decision in Liston Perpall, Renardo Perpall & Desmond Higgs v The Commissioner of Police MCCrApp. No & CAIS 109,110 &243 of 2013 and the comments taken from the headnote articulating the general principle to be determined in the current case. *President of Appeal Dame Allen* said as follows:

“Possession exists when a person is in physical control or custody of a thing and has the knowledge that he has that thing in his control or custody. Therefore, knowledge of custody or control is an essential element which must be proven before the offense of possession can be established...”

This Court also takes note of the comments made by then *Justice of Appeal Longley* in The Attorney General of the Commonwealth of The Bahamas v. Bradley Ferguson, Kermit Evans, Stephon Stubbs, and Kenton Deon Knowles SCCrApp. No.57, 106,108 &116, and in particular paragraph 35, where he said as follows:

“That is not to suggest that every judge must embark on a minute examination of the evidence against an accused on a bail application. That would not be proper (see Hurnam). But whereas

here no evidence is adduced linking the respondents to the crimes charged at a hearing where that issue is live, it seems to me that to give the accused the full measure of his rights under article 19 of the constitution there is an obligation to release him immediately, and leave it to the court hearing the case preliminarily or otherwise to decide whether in fact there is evidence to support the charge. In Hurnam, release on bail was thought proper in circumstances where the evidence against the accused comprised accomplice evidence and had to be approached with caution. The court thought the presumption of innocence in those circumstances operated to justify immediate release pending trial....”

DISPOSITION

[18.] This Court, given the circumstances, will grant bail for the current offense. This Court is fully aware of the comments of *Justice of Appeal Evans* and of the President, Sir Michael Barnett, of the Court of Appeal in the **Stephon Davis case (supra)**. Those comments bear repeating and are as follows:

“A judge hearing a bail application cannot simply refuse an application for bail merely on the fact that the new offense is alleged to have been committed while the defendant was already on bail for a similar offense. There is a requirement for the judge to assess the evidence on which the crown intends to rely on the hearing of the new charge.”...: “This court has on more than one occasion repeated the principle that bail should not be denied as a punishment for a crime for which a person has not yet been convicted. This principle applies even when the crime is alleged to have been committed whilst a person was on bail. The burden is on those opposing the grant of bail to show why there are good reasons to deny bail to a person charged with an offense.”

Therefore, the bare assertion by the Crown that the Applicant has allegedly committed an offense or an offense of the same nature is not enough for the Court to deny bail. The Court, having considered the circumstances of this case and the evidence presented, will accede to the Application; however, it will impose additional conditions to ensure there are no further violations.

[19.] Bail will be granted for Nine Thousand Nine Hundred Dollars (\$9,900.00) with one (1) or two (2) sureties.

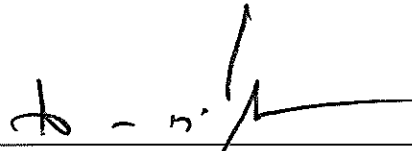
- (a) Applicant is to be outfitted with an Electronic Monitoring device and comply with all the conditions thereto.
- (b) That the Applicant will report to the Central Police Station(Freeport, Grand Bahama) each Wednesday & Friday by 7 pm at the latest.

(c) Applicant is not to affiliate with his co-accused with respect to either of the matters or contact any of the Prosecution witnesses directly or indirectly whatsoever. Any violation may result in possible revocation.

(d) Applicant is to surrender all travel documents and apply, should the Applicant require to travel.

(e) Parties are at liberty to reapply.

[20.] Parties aggrieved may appeal to the Court of Appeal.

A handwritten signature in black ink, appearing to read 'J. Forbes', is written above a horizontal line.

Justice Andrew Forbes

Dated the 11th August 2026