

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Side

2019/CRI/ba/No. 00117

BETWEEN

ELVARDO DEVEAUX

Applicant

And

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: The Honourable Mr Justice Bernard Turner

**APPEARANCES: Mr Geoffrey Farquharson for the Applicant
 Ms Darnell Dorsette for the Respondent**

HEARING DATE: 26 February 2019

RULING

TURNER J

The applicant is applying for bail in respect of a charge of Murder, the allegation being that the incident took place on 19 January 2018. According to the affidavit of the applicant, he is thirty (30) years of age and has not previous convictions.

2. The applicant asserted that there is no evidence whatsoever that he shot or killed the deceased, or that he in any way encouraged or assisted the alleged offence. That statement is predicated upon a Voluntary Bill of Indictment which alleges that he was concerned with three other persons, his present co-accused, in committing the alleged offence. He also stated that there was no credible assertion that he would abscond, re-offend or interfere with any witness or with the justice system in any way.

3. In his oral submissions, counsel on behalf of the applicant asserted that, in respect of the Respondent's affidavit opposing bail, that there was no evidence that the applicant had 'headshot' anyone and that the statement in that affidavit which asserted as much was either deliberately false or negligently inserted. Finally, counsel also submitted that the default position in a bail application is that the applicant is entitled to bail and that it is the prosecution who must justify he continued detention.

4. The Respondent, in opposing bail, referred to the nature and seriousness of the offence and submitted that there is evidence of the applicant being involved in a joint enterprise. That evidence, if accepted, comes from two eye witnesses who each identified the applicant as being

one of several persons who attacked and were beating the deceased when he was shot. Further, there is evidence, if accepted, that in the presence of these men, that a gun was sent for and that one of the men went and came back with a gun, after which the deceased was beaten and then shot, in his head.

5. Counsel for the applicant is correct in indicating that there is no evidence or suggestion that the applicant himself shot the deceased, in his head or elsewhere, and therefore that statement in the affidavit in opposition to the application for bail, that:

“..The Applicant is alleged to have ganged the deceased Craig Trevor Smith along with others and head shot Mr. Smith resulting in his death.”

is misleading. There is reference to this issue in the statements of the co-accused of the applicant, but that does not amount to any evidence against this applicant. Imprecise and misleading statements ought not to be placed in affidavits at all, still less any intended for consideration by a court.

6. Counsel for the respondent submitted that there has been no unreasonable delay in this matter to the present. The incident is alleged to have occurred on 19 January 2018 and the matter is fixed for trial in July of 2019, or within eighteen (18) months of the alleged offence.

7. Counsel for the applicant’s submission that the ‘default position’ in an application for bail is that the applicant ought to be placed on bail unless the Crown can prove that they ought to be remanded into custody amounts to a frontal, although undeveloped, challenge to the reverse onus

provisions of the Bail Act, which places on the applicant a burden to prove that they are entitled to bail, per section 4(6) Bail Act, brought about by Act No. 45 of 2014, which reads:

"(6) At the hearing of an application for bail, it shall be the burden of the applicant to satisfy the court that bail should be granted."

8. That changes the axiomatic position on bail applications, as expressed in a plethora of judicial decisions, such as the Court of Appeal in **Jonathan Armbrister v Attorney-General, No. 145 of 2011**, where it was stated, at paragraph 17, that:

"It must however, be borne in mind that the onus is upon the Crown to satisfy the court that the accused person ought not to be granted bail."

Since that issue was not argued, it remains a matter for another day, however in the instant application I continue to apply the standard that it is for the Crown to justify the applicant's detention.

9. The Court of Appeal also cited with approval, in **Armbrister** (supra) the following (from the decision of Osadebay JA in **Bradley Ferguson and Others SCCr App 57/2008**, in which His Lordship cited Coleridge J in **In the matter of Etienne Barronett and Edmund Allain 1EL & BL 2**,):

"The guilt of the party charged is not the direct ground on which he is detained in custody; and that the strength of the evidence of guilt, even when it amounts to a confession, is not conclusive as to the propriety of bailing. But it is a very important element in considering whether the party, if admitted to bail, would appear to take his trial; and I think that in coming to a

determination on that point, three elements will generally be found the most important: The charge, the nature of the evidence by which it is supported, and the punishment to which the party would be liable if convicted.” (Emphasis Provided)

We adopt for present purposes that statement of the learned judge.”

10. Having taken the charge, that of murder; the nature of the evidence, an allegation that the applicant and his co-accused attacked and beat the deceased over an apparent drug debt, during the course of which the deceased was shot in his head and killed, and the seriousness of the penalty if there was a conviction, on the current Court of Appeal guidelines a sentence of no less than thirty-five (35) years, into consideration, I consider that there is a reasonable apprehension that the applicant would not appear for his trial if placed on bail. That trial date is a little over four (4) months away.

11. In these circumstances, I find that the Crown has satisfied the court that the applicant ought to be remanded into custody and bail is refused.

Dated this day of March, A D 2019

**Bernard S A Turner
Justice**