COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Side

2015/CRI/bal/No. 00201

BETWEEN

DEANO NIXON

Applicant

And

THE ATTORNEY GENERAL

Respondent

BEFORE: **The Honourable Mr Justice Bernard Turner**

APPEARANCES: **Mr Geoffrey Farquharson for the Applicant**
Ms Kristen Stubbs and Ms Camille Gomez-Jones for the Respondent

HEARING DATE: **1 August 2019**

RULING

TURNER J

The applicant is applying for bail in respect of a charge of Murder; his last application having been dismissed by a written decision dated 4 March 2019.

2. His application is supported by a 'supplemental' affidavit, filed on 19 July 2019 in the Supreme Court Registry in Nassau. That affidavit reads, in part:

> **" 1. I am the Applicant herein.**
>
> **2. This affidavit is supplemental to my affidavits previously sworn herein and incorporates those statements by reference. I am a Bahamian citizen.**
>
> **3. In a ruling dated the 4th March, 2019 my last application was denied but the Court granted leave to reapply should my trial not proceed through no fault of my own.**
>
> **4. On the 15th day of July, 2019, my trial, set to begin that day, was aborted as another trial was ongoing in that Court.**
>
> **5. The reason then given for the denial of my application was that the Court apprehended that there was a "reasonable apprehension" that I might not appear for my trial**
>
> **6. Save and except for the seriousness of the allegation, there is no evidential basis for such a conclusion.**
>
> **7. I am advised by my attorney and verily believe that the seriousness of the charges, without more, is not a sufficient basis for denying bail.**

8. As a result, it appears that the decision in my application is unreasonable in the Wednesbury sense.

9. Accordingly I make this affidavit in support of an application to this Court for bail on the ground that the totality of the evidence against me is inherently weak.

…."

3. The affidavit states that the previous ruling indicated that if his trial did not proceed, that he could apply for bail, and then goes on to say that his trial did not proceed in July of this year; that amounts to an inaccurate conflation of the actual ruling and events surrounding trial dates.

4. The Ruling from March 2019 reads, at paragraph 3:

"3. The applicant had previously applied for, and had been denied, bail, in November of 2017, when he had a then set trial date of December 2018. That trial date was not able to be met, through no fault of the applicant or his counsel, since the trial court was still in trial in respect of another matter. A new trial date of 25 November 2019 has now been set, if not released on bail, the applicant would have been in custody for approximately two years and four months, since the allegations in respect of the charge for which he is in custody stem from July of 2017."

The trial date which was fixed was therefore November of 2019. Paragraph 11 of the Ruling indicated that

"11. Should the applicant's trial for any reason unconnected to the applicant, not proceed in November of this year, the application may be further considered."

5. Counsel on behalf of the applicant, after the bail decision in March, did seek to obtain an earlier trial, and the court did seek to accommodate such a date by fixing the matter as a back-up trial for July (which could not be held since the court was still engaged in another matter), but the decision on bail was not modified since the November trial date was never altered.

6. Further, I would observe that the affidavit in support of this present application for bail reads more like submissions on an appeal against my decision from March 2019, per paragraphs 6-8.

7. In respect of the application itself, counsel submitted that since the applicant's trial was not able to be heard in July, the applicant is entitled to be placed on bail. He also submitted that the totality of the evidence against the applicant consisted of a purported dying declaration, which he submitted was inadmissible evidence unless and until there has been an application for it to be admitted. The submission continued that it is even impermissible to place a statement containing a purported dying declaration into a Voluntary Bill of Indictment (VBI) and that a statement that the Bill revealed a substantially true case was erroneous and improper.

8. That submission, whereas it may be clever, is misguided. Courts, in bail applications, do not determine whether evidence will be admitted, but only test, in general terms, the strength of the evidence if it were to be

admitted. To preclude it from the bundle of statements in a VBI, effectively precludes it from even being able to be considered within the trial context. The force of that erroneous submission would similarly prevent admissions and any other statements admissible as an exception to the hearsay rule from being included as a part of a VBI.

9. Counsel for the Respondent submitted that the purported dying declaration was in fact cogent evidence.

10. On the issue of the cogency of the evidence, whereas the court does not engage in a forensic examination of that evidence, the purported dying declaration, if admitted into evidence, could constitute strong evidence against the applicant, since in that statement there is, allegedly, the name of the applicant being provided, as well as other identifying information.

11. As stated in the previous decision, there is no patent indication of a threat to any of the witnesses in this matter, but I do note that those police witnesses who are purportedly the witnesses to the alleged dying declaration are crucial witnesses to this case.

12. The nature and seriousness of the offence and the strength of the evidence are all matters which may be considered in a bail application. In that regard, this matter is clearly a serious offence, being an allegation of murder, with the use of firearms. I note that the trial did not start in July, but that was an attempt at giving the applicant an even earlier trial date than the November date which I had, in March, determined was not an inordinately long period of pre-trial detention.

13. Having considered the totality of this application, the indication made in March of 2019 still prevails, that after taking the nature of the evidence and the seriousness of the penalty, if there was a conviction, into consideration, I consider that there is a reasonable apprehension that the applicant would not appear for his trial if placed on bail. In these circumstances, I find that the Crown had satisfied the court that the applicant ought to be remanded into custody and I therefore refuse bail.

Dated this 8 day of August, A D 2019

Bernard S A Turner
Justice