COMMONWEALTH OF THE BAHAMAS **2017**

IN THE SUPREME COURT **CRI/bal/00023**

CRIMINAL DIVISION

BETWEEN

QUENTINO CAREY a.k.a. "CYBER"

Applicant

V

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: **The Honourable Mrs. Justice Cheryl Grant-Thompson**

APPEARANCES: **Mr. Domek Rolle of Denning Law Chambers for Applicant**

Mr. Perry McHardy of the Office of the Director of Public Prosecutions for Respondent

HEARING DATES: 13th, 26th & 27th February 2020

BAIL JUDGMENT

Bail - Bail Act - Application for Bail – Part C Offences - Part A First Schedule- Regard to relevant factors – Section 4(2)- Primary Considerations on a bail application - s. 4 (2) (2B) – Section 4(2)(a)- Whether there has been unreasonable delay - Section 4(2)(c)- Whether applicant is a fit and proper candidate for bail

GRANT THOMPSON, J

1. The Applicant, twenty-seven (27) year old Quentino Carey is charged with Two (2) counts of Murder and One (1) count of Attempted Murder which occurred on Tuesday 13th September, 2016, at New Providence.

2. An application to the Supreme Court for bail was made and supported by the Affidavit of Mr. Carey outlining, inter alia, reasons why the Applicant should be granted bail. The Respondent by the filed Affidavit of Inspector Monique Turnquest objected to the grant of bail citing, inter alia, that:

    a. There is strong and cogent evidence against the Applicant, which points to him being one of the persons responsible for the death of the deceased;
    b. There has been no unreasonable delay in the matter;
    c. That the Applicant should be kept in custody for his own protection, based on his complaints of alleged threats of death; and
    d. That contrary to the Applicant's assertion, relative to receiving threats of death while on remand, the Applicant admitted to the prison authorities that he has never made any complaints about being in fear for his life.

3. Having read the Affidavits and considering the oral submissions of Counsel for Applicant and Respondent, I find that the Respondent **has failed to satisfy me that the Applicant ought not to be granted bail pending his trial.**

4. For reasons hereinafter set forth, I hereby exercise my discretion **and grant the Applicant bail**. The Applicant has not been provided with a fair trial within a reasonable period of time.

LAW

5. Ordinarily, Parliament has set general standards for the court's consideration when deciding the issue of bail. Article 19(3) of the Constitution, provides for reasonable conditions to ensure the appearance of the person for trial, as was recognized by **Sawyer P. in Attorney General v Bradley Ferguson et al SCCr No. 57, 16, 108 and 116 of 2008**.

6. So far as is applicable in the instant case the Bail Act 2011 amendment provides:

> ***"3. Amendment of section 4 of the principal Act.***
>
> ***Subsections (2) and (3) of section 4 of the Bail Act are repealed and replaced as follows-***
>
> ***"(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.***
>
> ***(2B) For the purpose 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 or antecedents of the person charged, the need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations.***

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.

7. The Applicant is presumed to be innocent of these charges, Article 20(2)(a) of The Constitution of The Bahamas provides:

> ***"20.(2)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. The presumption of innocence afforded by the Constitution arguably entitles the Applicant to bail in the absence of the Respondent not merely asserting but rather if there are substantial grounds for the court to believe that the relevant factors specified in Part A of the First Schedule have been met.

9. The Court of Appeal in **Jeremiah Andrews v The Director of Public Prosecutions Appeals No. 163 of 2019**, considered the issue of the evidence required by all parties in bail applications. Evans JA. at paragraph 26 of the judgment stated:

> ***"26. In order to properly assist the Court, parties are required to provide evidence which will allow the Court to determine whether the factors set out in Part A of the First Schedule to the Bail Act s 4 (2B) exist. We note that all too often the affidavits supplied by the Crown make bare assertions that there is a belief that if the Applicant is granted bail he will not appear for trial; will interfere with witnesses or will commit other crimes. These assertions are meaningless unless supported by some evidence."***

TRIAL WITHIN A REASONABLE TIME-NO UNREASONABLE DELAY

10. The Applicant is entitled to a trial within a reasonable time. In this regard Article 19(3) of The Constitution of The Bahamas states:

> ***"19(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 reasonable necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial."***

11. In the case of ***The Attorney General v Bradley Ferguson, Kermit Evans, Stephen Stubbs and Kenton Deon Knowles Appeals Nos. 57, 106, 108,116 of 2008 (A.G. v Bradley Ferguson),*** the Court of Appeal of The Bahamas considered the issue of what ought to be considered a reasonable time. Sawyer P. at paragraph 37 of the Judgment stated:

> ***"37. Murder, Armed Robbery and Trafficking in Dangerous Drugs were among the offences for which bail was not granted under that section and the First Schedule unless the person so charged could not be tried within***

a reasonable time. I bear in mind that the phrase "a reasonable time" for the purposed of Article 20(1) of the Constitution was held by Gonsalves-Sabola, CJ, to be two years at the most – Stevenson Kelvin Hanna and others v the Attorney General (Nos: 430 and 560 of 1989) delivered on 22nd December, 1989; that decision was not appealed and, as presently advised, I agree with it";

12. And, at Paragraph 40:

"40……..I also pointed out that while Parliament by legislation may set general standards – for example, the criteria which are to be taken into consideration by a court when deciding whether to grant or refuse bail – if by such legislation Parliament sought to mandate how a court is to deal with particular accused persons, that would be an impermissible use of the legislative power as it would amount to legislating "adhominem." Liyanage and other v Regina [1966] 1 All ER 650. I also pointed out that the grant or refusal of bail is a judicial function and for Parliament to seek to exercise that function in any particular case would also be an impermissible exercise of the legislative function –see Hinds v The Queen [1977 AC 195 at page 213 where Lord Diplock, in giving the judgment of the Privy Council said:

"What, however, is implicit in the very structure of a Constitution in the Westminster model is that judicial power, however it be distributed from time to time between various courts, is to continue to be vested in person appointed to hold judicial office in the manner and on the terms laid down in the Chapter dealing with the judicature, even though that is not expressly stated in the Constitution; Liyanage v The Queen [1967] AC 259, 287-288"

13. Furthermore, I note that Parliament is of the view that a period of three years is a reasonable time for the remand of a person awaiting trial. In this regard section 3(2)(A)(a) of the Bail (Amendment) Act 2011 states:

2(A) For the purpose of subsection (2)(a) and (b)—

(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;"

14. The offences for which the Applicant is charged is alleged to have occurred on September 13th, 2016. Whether applying the two (2) year time period of what is perceived to be a reasonable time according to common law or the three (3) year statutory period stipulated by Parliament, the Applicant has not been afforded a trial within a reasonable period of time. I am of the view that strict bail conditions can be implemented here. Accordingly, **I do not consider him a flight risk**.

15. The Applicant has not been tried within a reasonable time and therefore the consideration according to section 4(2)(a) of the Bail (Amendment) Act 2011 has been satisfied in my view. (Three ½ years has elapsed.)

CHARACTER OR ANTECEDENTS OF THE APPLICANT

16. The Applicant is of good character according to his sworn Affidavit, a man with no previous convictions. A fact not refuted by the Crown.

17. Section 4(2B) of the Bail (Amendment) Act, 2011, mandates that the character and antecedents of the person charged is a **primary consideration** in determining whether or not to grant bail. At present, the Applicant has no prior convictions which mean he is presumed to be of good character and has therefore satisfied one of the primary considerations under the Act.

LIKELIHOOD OF THE APPLICANT TO ABSCOND

18. There is no information before this Court which indicates that the Applicant will abscond and not appear for his trial if granted bail. I do

note however, the findings of the Privy Council in the case of ***Hurnam v The State (Privy Council Appeal No. 53 of 2004) (Hurnam)***. Lord Bingham of Cornhill, in delivering the judgment of the Board said:

> ***"It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have an incentive to abscond or interfere with witnesses likely to give evidence against him"***

19. In this regard, Murder and Conspiracy to Commit Murder are all extremely serious offences. Upon conviction the Court may impose a sentence of death or a term of imprisonment for life. It follows therefore that the Applicant facing these serious charges for which he is liable to a severe penalty, if convicted, may well in my view have an incentive to abscond.

20. I however do not find, despite the severity of the charges filed in this case, that there is a likelihood the Applicant will abscond and not to appear for his trial. The Applicant is of good character due to not having any previous convictions and has ties to the community. **I do not consider him a flight risk.** His parents and grandparents have attended court and intend to move him to a family island to give him good guidance and an appropriate environment.

21. In the Court of Appeal decision of **Kyle Farrington v The Director of Public Prosecutions SCCrApp. No. 80 of 2019**, Barnett JA (as he then was) at paragraph 103 stated:

> ***"103. Given the delay of 3½ years which is prima facie an unreasonable time within which a person may be held in custody pending trial, in my judgment it was incumbent on the trial judge in the exercise of judicial discretion to give consideration as to what conditions could be imposed to reduce the likelihood of his interfering with the witnesses or perverting the course of justice. The court had the ability to impose conditions requiring the appellant to remain in a limited area and/or not to be in an area where the witnesses are likely to be found. The judge did not give any consideration to conditions that may be imposed. The President in his***

> ***dissent suggests that "short of putting the witnesses in a witness protection program, I cannot imagine what reasonable steps can be taken to address the concerns of these witnesses". In my judgment whilst a condition requiring him to reside in Exuma may not eliminate any risk, it would have the effect of minimizing any such risk and is preferable to detaining him in custody for an unreasonable length of time."*** **(emphasis mine)**

INTERFERE WITH WITNESSES OR OTHERWISE OBSTRUCT THE COURSE OF JUSTICE

22. While it is true that the Board did express the view that the seriousness of the offence and the severity of the penalty may be an incentive to interfere with witnesses, the Board in the case of ***Hurnam*** also expressed the view that there must be reasonable grounds to infer that there is a likelihood of interference with witnesses or to obstruction of the course of justice. In this regard, Lord Bingham stated:

> ***"…Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail"***

23. There is some onus upon the Crown to satisfy the Court that the Applicant is likely to interfere with witnesses if bail is granted. In other words, the prosecution has the burden of providing the Court with sufficient information from which the Court can reasonably conclude that there is a likelihood of the Applicant interfering with witnesses. The Applicant asserts that he will not interfere with prosecution witnesses. I cannot act on a mere assertion without more by the Crown.

24. In the Bahamas Court of Appeal case of **Jonathan Armbrister and The Attorney General SCCrApp No. 145 of 2011 (Jonathan Armbrister),** John JA at paragraph 11 stated:

"11. A good starting point in reviewing the principles applicable where an appellant has been charged but not yet put on trial is the statement of Lord Bingham of Cornhill in Hurnam v The State (Supra) where he said at paragraph 1:

"In Mauritius, as elsewhere, the courts are routinely called upon to consider whether an unconvicted suspect or defendant should be released on bail, subject to conditions, pending trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as a whole. The interest of the individual is of course to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify depriving him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried, will inevitably prejudice him and, in many cases, his livelihood and his family. But the community has a countervailing 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 further offences"

NATURE AND SERIOUSNESS OF THE OFFENCE

25. Murder and Attempted Murder are extremely serious offences. In the event that the Applicant is convicted of these offences there is a possibility that the maximum sentences may be imposed. The Applicant may be sentenced to imprisonment for life. The seriousness of the offences and the severity of the punishment may be viewed as an incentive for the Applicant to abscond and not return for his trial in the event that he is released on bail. **However I have determined in this case that in my view the Applicant is <u>not</u> a flight risk.**

26. I accept that the hearing of a bail application is not the appropriate place for assessing or determining the strength or weaknesses of the evidence that the prosecution proposes to present at trial. The Court of Appeal of The Bahamas expressed this view in the case of **<u>A.G. and Bradley Ferguson</u>**. Osadebay JA said at page 61 of the Judgment:

> ***"It seems to me that the learned judge erred in relying on his assessment of the probative value of the evidence against the respondent to grant him bail. That is for the jury at the trial. As stated by Coleridge J. in Barronet's case earlier – the defendant is not detained because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried and because the detention is necessary to ensure his appearance at trial" (emphasis provided)……..……The learned trial judge also took into consideration matters that he ought not to have taken into consideration by relying on his own assessment of the probative value of the evidence against the respondent"***

27. I am guided by the Judgment of the Court of Appeal and I therefore make no findings on the probative value of the witness statement laid before me save to say that the evidence is more than merely frivolous.

28. Article 19(1)(b) of the Constitution guarantees that no person shall be deprived of personal liberty, save upon reasonable suspicion of having committed… a criminal offence. Although personal liberty is guaranteed by the Constitution the law authorizes the taking away of that personal liberty upon reasonable suspicion of a person having committed a crime.

29. I accept that it is not the duty of a judge, during bail applications to decide disputes of evidence as was seen recently in ***Richard Hepburn v Attorney General SCCRAPP & CAIS No 276 of 2014***. I also accept that whether the evidence against the Applicant is strong or weak is yet to be determined.

30. The Applicant similar to the Appellant in the **Kyle Farrington** case has faced a delay of more than 3 ½ years in having his case heard and has been held in custody during this time. The Court of Appeal was of the view that this time frame was prima facie unreasonable and I concur with that view. Additionally, as was the case in **Kyle Farrington** provisions have been made for the Applicant to reside on

a family island which would minimize any such risk of him interfering with witnesses.

DECISION

31. I therefore exercise my discretion to grant bail in the following strict terms: Bail is granted in the amount of Fifteen Thousand ($15,000.00) with two suretors:

Reasons

1. The Applicant's trial **will not be conducted in a reasonable time** and therefore the consideration according to section 4(2)(a) of the Bail (Amendment) Act 2011 has been satisfied in my view;

2. The Applicant has ties to the community as he is a citizen of the Commonwealth of the Bahamas and has strong family support;

3. The Applicant to date has not been convicted of an offence and as such is of good character;

4. Provisions have been made for the Applicant to reside in Long Island with his Grandmother which would reduce any possibility of the Applicant interfering with witnesses; and

5. It has not been proven to me that bail should be denied for the Applicants own safety.

The terms and conditions of bail are to be as follows:

1. The Applicant is to be fitted with an electronic monitor and is required to comply with the regulations for the use of such a device;

2. The Applicant is to reside in Long Island, Sea Moss (Settlement) located on Snow Hill at the home of his Grandmother Genniere Adderley and his father Quentin Smith;

3. The Applicant is ordered to keep a curfew at that residence from 8pm to 6am daily;

4. The Applicant is required to sign in at the Simms Police Station on Mondays, Wednesdays, and Fridays before 6:00pm;

5. The Applicant is not to come into any deliberate contact with any of the Prosecution witnesses in this matter either by himself or through an agent;

6. The Applicant is ordered to surrender his passport and not to travel without the express permission of the court; and

7. He is also to surrender into custody on the Monday of his trial.

32. I promised to put my reasons in writing this I now do.

Dated the 16 day of April A.D. 2020

Cheryl Grant-Thompson
Justice