

15-8-19

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

**Criminal Division
2016/CRI/bal/FP/00123**

B E T W E E N

**ANDY TAYLOR
Applicant**

AND

**THE DIRECTOR OF PUBLIC PROSECUTIONS
Respondent**

DECISION

Before: The Honourable Mrs. Justice Petra Hanna-Adderley
Appearances: The Applicant Pro Se
Mrs. Erica Kemp for the Respondent

- 1) The applicant is a Bahamian male citizen. He is 25 years old having been born on February 28, 1994.
- 2) The Applicant is charged with 1 count of Armed Robbery.
- 3) The Applicant was arrested and charged on January 15, 2019 and remanded to the Bahamas Department of Corrections. He was served on August 13, 2019 with a Voluntary Bill of Indictment.
- 4) The Applicant asks the Court to consider the following when deciding whether he is should be admitted to bail:
 - (1) That the living conditions at Fox Hill Prison are inhumane.
 - (2) That he is the caretaker for his family which consists of his girlfriend and daughter and his girlfriend recently lost her job.
 - (3) That he has no matters pending before the Supreme Court.
 - (4) That at the time of his arrest he was working at Poor Man's Auto doing body works.
 - (5) That he is a Bahamian citizen.
 - (6) That he is presumed innocent until proven guilty.

- (7) That as he stated in his statement to the Police he had no involvement in this matter.
- 5) The Applicant has previous convictions. In 2011 while he was a juvenile he was convicted of Robbery with Violence and in 2013 with Deceit of a Public Officer.
 - 6) The Respondent submits that the Applicant should not be granted bail. The Respondent relies on the Affidavit of W/Sgt. 2700 Miriam McDonald filed on August 14, 2019 which states that the Virtual Complainant Fernandez Laurent the owner of JaBarr's Bar located on Logwood Road, Freeport was at the Bar when two masked men entered the Bar. One was wearing a black mask and armed with a spin barrel gun and the other had a brown wolf mask on. The man with the gun robbed the cash register and stole her Gucci handbag and then they both left the Bar. Mr. Wesley Ginton was also in the bar at the time of the robbery and confirmed that the 2 men were wearing Halloween masks.
 - 7) That Mr. Eltaneko Glenroy Greene gave a witness statement to the Police in which he stated that on the night of the robbery the Applicant called him and asked him for a ride home from the laundromat on Coral Road. That he asked him to drive him to Columbus Park to pick up the Co-Accused Shaquan Ewing who he knew as "Slick". The Applicant then told him he wanted to rob somewhere and that he wanted to scope out the place in his car. That he drove them to a yellow bar across the road from Coco Cola and he dropped them off. They walked to the bar while he circled. Minutes later he saw them running towards his car and he picked them up. That Slick had a Halloween mask but that he did not see the Applicant with a mask. That the Applicant refused to take part in an ID parade but that Greene pick him out of a photo lineup. That the Applicant denies all involvement in the robbery and that he has antecedents and further, that there has been no unreasonable delay.
 - 8) Mrs. Kemp submitted that she relied on the Affidavit of Officer McDonald and the Statement of Greene. That Greene identified both suspects. That the evidence against the Applicant is strong. That the Applicant has antecedents which are violent. That the conditions at the Prison is not a reason to grant bail. The Prison is not meant to be a luxury hotel. That there has been no unreasonable delay. That Greene is a witness for the Crown.
 - 9) The Applicant in response stated that his antecedents were from when he was a juvenile. That he may have been violent then but he has changed. That Greene tried to serve an Affidavit on the Ag's office recanting his statement but was prevented from doing so but

the Applicant has no proof of this. That Greene was never charged and that he knows Greene. He will satisfy any conditions of bail.

- 10) The onus is upon the Crown to satisfy the Court that the Applicant ought not be granted bail and the standard of proof is on a balance of probabilities.
- 11) Articles 19(3) and 20(1) and (2) of the Constitution of the Bahamas guarantee the presumption of innocence and the general right to liberty to the individual.
- 12) In **Hurnam v The State (2005) UKPC 49** Lord Bingham of Cornhill stated inter alia;
"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 deriving 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 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".
- 13) In the Court of Appeal ruling in **Armbrister v The Attorney General** SCCrApp No. 145 of 2011, John JA (as he then was) stated inter alia; **"indubitably, the right to bail in article 19(3), trumps the sufficiency of any of the prescribed grounds in Part A which might ordinarily negate the grant of bail", and "the strict rules of evidence are inherently inappropriate in deciding the issue whether bail ought to be refused..."**
- 14) Section 4, Part A of the Bail (Amendment) Act 2011:
"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."

15) The Court has to consider the character and antecedents of an Applicant. The Applicant has antecedents but the Robbery with Violence conviction for which he has served his time was 8 years ago when he was a juvenile and the other misdemeanor of deceit of a Public Officer was some 6 years ago. The Applicant was not on bail in respect of any other offences when he was charged with this offence.

16) The presumption of innocence is enshrined in the Constitution of the Bahamas. A bail application is essentially an assessment between the competing interests of the applicant and the community. The facts and circumstances of each case is different and needs an individual assessment.

17) In considering all the circumstances relevant to this hearing I find that the Respondent has not satisfied me that this applicant ought not to be granted bail pending his trial and in the interest of justice I exercise my discretion and will grant bail for the following reasons:

- (i) Armed Robbery is a serious offence but one for which bail can be granted.
- (ii) There is strong prima facie evidence against the Applicant in that Mr.

Greene has implicated him in the robbery. There is nothing else however tying the Applicant to the robbery and the Applicant maintains that he was not involved in the robbery. This competing evidence must be vetted at trial not in a bail application.

- (iii) Because of the nature and seriousness of the offence and the evidence the Applicant will know that if he is convicted he is likely to receive a long sentence and he may be tempted to abscond. However, there is no evidence before the court to suggest that he might abscond. Nor is there any evidence before the Court that he will interfere with the witnesses.
- (iv) There is no evidence before me of unreasonable delay but the Court has not been advised of the likely arraignment or trial date.
- (v) There is no evidence before the Court that there is a real likelihood that he will commit an offence if put on bail again.
- (vi) It does not appear that the applicant should be remanded in custody for his own protection.

18) Bail is granted to the Applicant in the sum of \$10,000.00 one to three sureties or Cash one to three sureties on the following conditions:

- (i) The Applicant is to be fitted with an ankle monitor.
- (ii) The Applicant is subject to curfew between the hours of 9:00 p.m. and 6:00 a.m. daily.
- (iii) The Applicant is to report to Central Police Station every Monday, Wednesday and Friday by 6:00 p.m.
- (iv) The Applicant is not to contact or interfere with any of the Crown's witnesses either by himself or through his agents.

This: 18th day of August, 2019

Petra M Hanna-Adderley
Judge