

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Criminal Division**

**2019/CRI/bal/FP/00059**

**BETWEEN**

**DAVANO HENFIELD**



**Applicant**

**AND**

**THE ATTORNEY GENERAL**

**Respondent**

**DECISION**

Before: The Honourable Mrs. Justice Petra Hanna-Adderley

Appearances: Mr. Davano Henfield Pro Se  
Mrs. S. Cooper-Rolle for the Respondent

**Background**

- 1) The Applicant is a Bahamian male citizen. He is 21 years old having been born on February 1, 1998.

**Statement of Facts**

- 2) The Applicant is charged with one count Attempted Murder and one Count of Possession of A Firearm while committing an Indictable Offence.
- 3) The Applicant was remanded to the Bahamas Department of Corrections on January 4, 2019.
- 4) The Applicant asserts his innocence.
- 5) At the time of his arrest he was employed as a welder trainee at G. B. Fabricators.
- 6) He is domiciled in The Bahamas.
- 7) The Applicant has never been convicted of any offence and he has no other matters pending.

## **Submissions**

### **Applicant**

- 8) The Applicant submits that he has been on remand for 11 months and that this is his first opportunity to be heard on the question of Bail. He felt lost in the system.
- 9) That the Confession Statement was not given voluntarily while the Applicant was in custody at the Central Detective Unit.
- 10) The Applicant has no previous convictions nor does he have any matters pending.
- 11) That he was beaten by the Police. That the Statement was not voluntary. That he told the Police that the Virtual Complainant, who is now charged with having robbed Coca Cola, had pulled a firearm on him and tried to rob him. That he has not been served with a VBI.

### **Respondent**

- 12) Mrs. Cooper-Rolle, Counsel for the Respondent submits that the Applicant should not be granted bail for the following reasons:

- (1) The Respondent relies on the Affidavit of Sgt. 2169 Prescott Pinder filed herein on December 4, 2019, where he states, in part, that in a Statement obtained by the Police from the victim, the Virtual Complainant was in a park in Eight Mile Rock where he had a conversation with a man. The man pointed a gun at him. He saw an opportunity and he walked towards the man who fired a shot striking the Virtual Complainant in the shoulder. That a struggle ensued and another shot was fired and the Virtual Complainant bit the ear of the attacker. The Applicant was arrested on the same date as the incident and was subsequently charged.

- (2) The Applicant told the Police that he was on the park and that he was involved in a struggle with a man during which "a gun was produced". That the Applicant admitted to shooting the man.

- (3) The Applicant has no previous convictions.

- 13) Mrs. Cooper-Rolle submitted that the Prosecution's objection to the grant of bail is based on the nature and seriousness of the offences. It is alleged that he shot at the Virtual Complainant. That the Virtual Complainant did bite him on his ear. He has not been served with the VBI but it has been ready for service since March of 2019 and will be served upon him on December 5, 2019. He has no convictions or matters pending.

- 14) In his Statement to the Police the Virtual Complainant stated, in part, that at about 9:00 p.m. he was on a Park in Eight Mile Rock when a man riding a bike approached him. They talked for a while then the man pulled a black handgun from his pants and pointed it at him. The man told him to step back which he did. When he asked him to step back again he refused. The man looked nervous so he saw an opportunity and walked towards him. The man shot him in the shoulder but he continued towards him. The man fired another shot then a fight ensued. He bit the man on the ear. The clip fell out of the gun and he grabbed it and the man rode off on his bike. He got assistance from a lady who was a nurse.
- 15) In his Record of Interview, the Applicant stated that he was at the park but that he did not arrive there on a bicycle. That he did not know the Virtual Complaint but that they did get into an altercation during which "a gun was produced." That he did not intentionally shoot the Virtual Complainant. That he and the Virtual Complainant were scuffling for the gun. The gun dropped and he fled. That he could not describe the gun but he knew it was a pistol. He was shown a 9mm pistol but he could not identify that gun as the same gun.

## **Analysis and conclusions**

### **The Law**

- 16) The onus is upon the Crown to satisfy the Court that the applicant ought not to be granted bail and that the standard is on a balance of probabilities.
- 17) 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.
- 18) Section 4 (2) of the Bail (Amendment ) Act 2011 (As Amended) provides as follows:
- "4(2) Notwithstanding any other provisions of the Act or any other law, any person charged with a Part C offence 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 the those specified in Part A of the First Schedule and the "primary considerations" set out in subsection (2B)."
- 19) The Applicant has not raised the issue of unreasonable delay. But the Court must go on

to consider all the relevant factors including those set out in Part A of the First Schedule and the primary considerations set out in Section 4 (2B).

20) Section 4, Part A of the Bail (Amendment) Act 2011 provides:

"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."

21) Section 4 (2B) provides as follows:

"(2B). For the purposes 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 and antecedents of the person charged, the need to protect the safety of the public or the 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."

22) The Court has to consider the character and antecedents of an Applicant. The Applicant

has no antecedents and no matters pending before this or any other Court.

23) 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.

24) In the case of **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 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 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"**.

The onus is on Crown to satisfy the Court by way of information that the Applicant will interfere with witnesses. There are conditions that the Court can impose so that the Applicant does not come into contact with the Virtual Complainant.

25) The Applicant is presumed innocent of the charge. I refer to Article 20 (2) (a) of the Constitution of The Bahamas which provides that the Applicant is presumed innocent until proven guilty.

26) In the case of **A. G. v Bradley Ferguson** Osadebay JA said 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."**

27) In the case of **Cordero McDonald v The Attorney General** SCCrApp No. 195 of 2016 Allen P., explained:

"34. It is not the duty of a judge considering a bail application to decide disputed facts or law and it is not expected that on such an application a judge will conduct a forensic examination of the evidence. The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences such as to justify the deprivation of liberty by arrest, charge, and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail."

28) 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 for the following reasons:

- (i) Attempted Murder is a serious offence and one for which bail is rarely granted. Defendants are routinely granted bail for firearm offences.
- (ii) In his Record of Interview and in his Statement under caution he admits to being at the park and to having an physical altercation with the Virtual Complainant during which a gun was produced. There is no evidence before the Court as to who introduced the gun into the fist fight. But his evidence in this application was that the statements were not voluntary. There are no eyewitnesses to this incident who can corroborate either account as to what happened and there is no evidence, other than the disputed Record of Interview, of the identification of the Applicant as the culprit by the Virtual Complainant or anyone else.
- (iii) While evidence must be vetted at trial and not in a bail application the Court is entitled to make a preliminary assessment of the strengths or weaknesses of the evidence and satisfy itself that the Police had probable cause to charge the Applicant **and that detention is necessary to ensure his appearance at trial** (Emphasis mine). I am satisfied that the Police had such probable cause based on the alleged admissions in the Applicant's Record of Interview but not that detention is a necessary means to ensure his appearance at trial. The Applicant has no criminal history and no matters pending before the Courts. There is therefore no evidence before the Court that his further detention would be in furtherance of preserving the public order or public safety. I have no reason to suspect he will not appear at his trial and there are measures which can be put in place to monitor him. (See **Jevon Seymour v The Director of Public Prosecutions** SCCRAp. No. 115 of 2019).

- (iv) Because of the nature and seriousness of the offence and the existence of his statement to the Police the Applicant will know that if he is convicted he is likely to receive a receive a long sentence and he may be tempted to abscond, but 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.
- (v) There has been no unreasonable delay thus far.
- (vi) There is no evidence before the Court that there is a real likelihood that he will commit an offence if put on bail.
- (vii) It does not appear that the applicant should be remanded in custody for his own protection.

**Disposition**

29) Bail is granted to the Applicant in the sum of \$9,500.00 one or two sureties on the following conditions:

- (i) The Applicant is to be fitted with an ankle monitor. The Applicant is subjected to a curfew from the hours of 9:00 p.m. to 5:00 a.m. daily.
- (ii) The Applicant is to report to Eight Mile Rock Station every Monday, Wednesday and Friday by 6:00 p.m.
- (iii) The Applicant is not to contact or interfere with any of the Crown's witnesses either by himself or through his agents.
- (iv) The Applicant is to surrender his travel documents to the Court.

This: 5<sup>th</sup> day of December, 2019

  
**Petra M. Hanna-Adderley**  
**Justice**