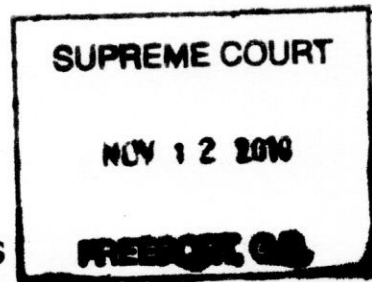


**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Criminal Division**

**2019/CRI/bal/FP/000063**

**BETWEEN**

**HENDERSON JONES**



**Applicant**

**AND**

**THE ATTORNEY GENERAL**

**Respondent**

**DECISION**

Before: The Honourable Mrs. Justice Petra Hanna-Adderley

Appearances: Mr. Wendell A. Smith for the Applicant  
Mrs. Erica Kemp for the Respondent

**Background**

- 1) The Applicant is a Bahamian male citizen. He is 34 years old having been born on May 13, 1985. He relies on his Affidavit filed herein on August 13, 2019 which states, in part, as follows.

**Statement of Facts**

- 2) The Applicant is charged with one count of Attempted Murder.
- 3) The Applicant was remanded to the Bahamas Department of Corrections on May 28, 2019.
- 4) The Applicant asserts his innocence.
- 5) That at the time of his arrest he was a self-employed gardener.
- 6) That he is domiciled in The Bahamas having lived in The Bahamas all of his life. He has strong ties to the community, namely, his mother and several family members.
- 7) The Applicant has never been convicted of any similar offence.
- 8) The Applicant pointed out what he sees as the inherent weakness of the Crown's case.

That based on the facts of this case and medical evidence the charge should have been Causing Grievous Harm and not Attempted Murder. That no credible forensic evidence has been adduced or will be adduced at trial.

- 9) That Applicant submitted that the issue of bail is to ensure his attendance on any adjourned date in this matter. That the Attorney General has not produced any evidence to satisfy the Court that he would commit an offence whilst on bail, that he would interfere with any of the witnesses in this matter, that he will abscond or that it is in the interest of his own safety that he be remanded.
- 10) That his trial date is likely to be in 2022 and would constitute an unreasonable and inordinate delay in that that date would make the time which would have elapsed from the time of his arrest to the date fixed for trial 3 years. He asked the Court to admit him to bail with reasonable conditions.

## **Submissions**

### **Applicant**

- 11) Mr. Wendell Smith Counsel for the Applicant submitted that it is alleged that the Applicant returned to the scene of a fight between his Co-Accused and the Virtual Complainant armed with a cutlass. That in his Record of Interview the Applicant maintains that he had no involvement in the fight or with the "chopping" of the Virtual Complainant with a cutlass and that this is co-corroborated by his Co-accused Marco Smith. That the Virtual Complainant is mistaken as to who is responsible for attacking him.
- 12) Mr. Smith referred the Court to the Applicant's constitutional rights to liberty as enunciated in the case of **Hurnam v The State (2005) UKPC 49** where 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"**.

A blanket statement by the Crown that he is likely to commit an offence if put on bail is

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

- 13) Mr. Smith submitted that Applicant is presumed innocent of the charge and he referred the Court to Article 20 (2) (a) of the Constitution of The Bahamas which provides that the Applicant is presumed innocent until proven guilty.
- 14) That the Applicant has previous convictions but that they are not of a violent nature. There is no basis for believing that the applicant will commit further offences if released on Bail. He has not shown a propensity towards committing violence.
- 15) Mr. Smith referred the Court to the case of **A. G. v Bradley Ferguson** where 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."** Mr. Smith argued that this will come down to who the jury will believe considering the issues of self defence and provocation. This is not the usual case of for example retaliation for drugs. The Applicant is not a violent person. A VBI has not been served on him yet. There are systemic issues. The trial could be in 2021 or 2020. To be on remand for such a long period of time will prejudice their livelihoods.

### **Respondent**

- 16) Mrs. Erica Kemp, 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 WCpl 2700 Miriam McDonald filed herein on August 15, 2019 where she states, in part, that the Virtual Complainant Renaldo Fulford and Applicant's Co-accused were drinking alcohol together when an argument between the Virtual Complainant and the Co-Accused ensued. The Co-Accused left the area and returned with a knife and the Applicant with 2 cutlasses. The Virtual Complaint tried to run but the Co-

Accused stabbed him about the body and the Applicant chopped him with the a cutlass. The Virtual Complainant received injuries from having been chopped about the body. That the incident was witnessed by Oquendo Rolle who gave the a Police Statement. The Applicant refused to participate in an identification parade. He denied knowing the Virtual Complainant and has an alibi. He states that he was at home with his family when this incident happened.

- (2) The Applicant has no previous convictions.
  - (3) The Medical Report states that the Virtual Complainant suffered multiple wounds to the right forearm, right hand, left hand, left flank (just below the left ribs) and a fracture of the right ulna. That wounds were serious but not life threatening.
- 17) Mrs. Kemp submitted that the evidence is strong against the Applicant. Mr. Oquendo Burrows Rolle was at the scene saw the Co-Accused with a "flip knife" which was used to stab the Virtual Complainant who was left with injuries that were deemed serious. He also saw the Applicant who he knew chop the Virtual Complainant with a cutlass. Mr. Burrows Rolle tried to intervene at which point the Applicant pointed his cutlass at him.
- 18) Mrs. Kemp argued that based on the seriousness of the charge, the nature of the evidence, the account of the eyewitnesses, the clear and cogent evidence of the witnesses, the Applicant will interfere with the witnesses. What the Co-Accused says is not evidence. Mr. Jones's evidence must stand on its own. Mr. Jones may abscond. She further submitted that a person brings a cutlass to a fight speaks to violence. The Court would want to protect the community from persons like the Applicant. The nature of the charge and the evidence is strong. He poses a threat to witnesses. He knows them and he may interfere with them.
- 19) The Applicant has no antecedents.
- 20) There is no unreasonable delay in this matter.

### **Analysis and conclusions**

#### **The Law**

- 21) 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.
- 22) 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.

granted.

- (ii) It is clear from this evidence that the Applicant and his Co-accused were the aggressors in the incident. The words uttered by the Virtual Complainant were provocative but after they were uttered the Co-Accused left the place where the Virtual Complainant was, went home to retrieve a knife and the assistance of the Applicant his brother, and between them armed with 2 cutlasses, returned to the scene and launched an attack on the Virtual Complainant. The Virtual Complainant stated that the Co-Accused stabbed him the back with the knife and the Applicant chopped about his arms and hands with a cutlass. This is borne out by the medical report. In his Record of Interview the Applicant states that he was not at the scene or involved in this incident.
- (iii) While evidence must be vetted at trial and not in a bail application the Court should satisfy itself that the Police had probable cause to charge the Applicant. I am satisfied that the Police had such probable cause. Mr. Burrows Rolle stated that he knew the applicant and he saw him "chapping" the Virtual Complainant with a cutlass. The Virtual Complainant identified the Applicant and the Co-Accused from a photo line-up.
- (iv) That because of the nature and seriousness of the offence and the cogency of 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, 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 again.
- (vii) It does not appear that the Applicant should be remanded in custody for his own protection.

### **Disposition**

27) In weighing all of the competing considerations of the presumption of innocence with the need to protect the public order and public safety, the Court is of the view that in the circumstances presently existing the need for public order and public safety is of the highest importance. The charge is serious in nature and the prima facie evidence is strong.

Given the nature of the offence and that the description of the vicious attack on the Virtual Complainant by the Applicant and another speak to a wanton disregard for human life, I am compelled to conclude that the safety of the public dictates that Bail be and is refused at this time.

This: 8<sup>th</sup> day of November, 2019

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