COMMONWEALTH OF THE BAHAMAS **2019/CRI/bal/FP/00030**

IN THE SUPREME COURT

Criminal Division

B E T W E E N

JERMAL MALIK LARODA

Applicant

AND

IN THE MATTER of the Bail (Amendment) Act 2011

AND

THE ATTORNEY GENERAL

Respondent

Before: The Honourable Mrs. Justice Petra Hanna-Adderley

Appearances: Mr. Carlson Shurland for the Applicant

Mrs. Erica Kemp for the Respondent

Hearing Date: August 21, 2019

DECISION ON BAIL

Hanna-Adderley, J

1) The Applicant is a Bahamian male citizen. He is 18 years old having been born on April 25, 2001. He was 17 years old and a minor when he was arrested and charged.
2) The Applicant is charged with Murder.

3) The Applicant was arraigned before Magistrate's Court #2 and remanded to the Bahamas Department of Corrections on March 25, 2019.
4) The Applicant states, in part, in his Affidavit filed herein on August 9, 2019, that he was a juvenile at the time of his arrest. That he has no other charges pending or previous convictions. That he resides at #28 Pioneer's Loop, Freeport and prior to his arrest he was employed at Jags International, Freeport as a baggage handler and he believes that he can return to this employment. That Crystal Bain will stand as his suretor and that he holds a valid passport which he can surrender within 24 hours of his release. That he has no previous breaches of bail and is willing to comply with any conditions of bail. That he will be defending the charge. That he will rely on the lack of evidence that the Police have against him.
5) In his Record of Interview to the Police the Applicant denied all knowledge of the incident. He denied being at the scene of the murder. His alibi was that he was at home with his Mother and grandparents between the hours of 5:00 p.m. and 11:30 p.m. on the date of murder.
6) Mr. Ivan McPhee Jr. and Mr. Vance Barr Jr., witnesses for the Crown, gave Statements to the Police which implicate not only the Applicant but themselves in the attack on Mr. Charles Rolle Jr., which resulted in his death. The Deceased was suspected of having broken into the home of Miss Teneille Whymms. Mr. McPhee states, in part, that while in a vehicle being driven by one "Chanjo", he, Teniko Baillou aka "Sandman" and Teneille Whymms came across a young man walking towards the red light on Coral Road. Whymms identified the man as the person who broke into her house. Baillou got out of the vehicle with a pickax and swung it at the man. The man started to run and a chase ensued. Others joined in the chase, one Buju, then Kyle Forbes, Vance Barr and 4 other men whom he did not know. Baillou, Whymms and Chanjo left the scene in the vehicle. The Applicant and Elton aka "EJ" joined in the chase. They caught up with the man and the Applicant and Kyle Forbes slapped the man in the face. McPhee kicked the man twice in the lower back. Keyano Wilkinson had also joined the chase

behind McPhee and the others. He dragged a 2 x 4 wood with the sharp part of the nails coming out of it and he hit the man across the face, neck and head with the wood. The man started to scream and fell to the ground on his stomach. The Deceased saw that Keyano was about to hit him again so he raised his hands to cover his face and head but Keyano hit him again with the wood. At that point McPhee ran home because he said he was scared.

7) Mr. Vance Barr Jr. states, in part, that he was with Natoris Taylor, Keyano Wilkinson, Roger, DeVaughn Russell, and Jermal Laroda. They were sitting talking when he heard Kyle say "that's him there". He saw Keyano, Jay and Rashard chasing the Deceased. Barr, Natoris and Roger followed in a vehicle driven by Roger. They arrived at a track road where he saw the Deceased. He saw Kyle, Jermal and Rashard Pinder. Rashard Pinder slapped the man first, then Kivan Keyano Wilkinson hit the Deceased with the wood and then Natoris hit him with a 2 x 4 wood. Then Jermal came with rocks in his hands and "burst the male", the Deceased.

8) Mr. Carlson Shurland, Counsel for the Applicant, submitted, in part, that the circumstances of Mr. Rolle's death are unclear. There was a chase and Mr. Charles Rolle Jr. was beaten to death. A group of people were chasing Rolle and the Police determined that 6 of them were implicated. A number of people were arrested and some "cut a deal" with the Prosecution and were not charged. He referred the Court to paragraph 3 of the Affidavit of Miriam McDonald, W/PCpl 2700 where she refers to the Statements of the Witnesses for the Crown. He submitted that the grant of bail is not predicated on one factor, factor (g), of the Bail Act. The Prosecution did not say he will abscond, commit a crime while on bail, or will interfere with witnesses. What they did not say to the Court was that Vance Barr Jr. and Ivan McPhee Jr. were locked up for this offence. They have given self-serving Statements. They were "cut loose" to testify against the Applicant. There are others charged with participating with the killing. The Prosecution has to prove a lot to get beyond a prima facie case. They have to prove that Mr. Laroda committed the offence. When charged he was a minor,

17 years old. He had an alibi. These are matters that must be tested at trial but he should not have to test these matters at a bail hearing.

9) Mr. Shurland submitted that the evidence is that the Applicant "burst" Mr. Rolle and that he slapped him. The Applicant has not been arraigned yet but he will have been on remand for 3 years before his trial comes on. The trials are now into 2021. Paragraphs 5 (the Officer refers the Court to the medical evidence as to the cause of death) and 6 (the Officer informs the Court that the VBI has been served on the Applicant) of Officer McDonald's Affidavit, do not assist the Court. Mr. Shurland referred the Court to the case of **Donna Vasyli** and **Lavardo Huyler**. The prosecution should show the Court why there are no conditions that would compel the Applicant to appear for his trial. Mr. Laroda is a Bahamian. All of his family live in The Bahamas. He had a job at the time of his arrest and they will have him back on the job if he is admitted to bail.

10) The Respondent opposes the grant of bail and Mrs. Erica Kemp Counsel for the Crown submits that the Applicant should not be granted bail. The Crown relies on the Affidavit of Woman Corporal 2700 Miriam McDonald and the Witness Statements of Mr. Ivan McPhee Jr. and Mr. Vance Barr Jr. W/Cpl. McDonald states, in part, in her Affidavit filed on August 19, 2019, that according to the witness Ivan McPhee, Jr. the Applicant who he knows as "J" joined in the chase after the Deceased with about 6-7 young men. That after catching up with the Deceased the Applicant slapped him. Another witness Vance Barr Jr. stated that he saw the Applicant with rocks in his hand and that he "burst" the deceased. After the beating the men left the Deceased in a bushy area. Vance Barr Jr. identified the Applicant from a 12 man photo lineup. That the Applicant refused to participate in an identification parade. That the Deceased was found the following day in a tract road. EMT Sean Thompson observed a number of injuries on the body. The cause of death from the death certificate is stated a "Blunt force head trauma". That the Applicant has been served with a VBI and that there has been no unreasonable delay.

11) Mrs. Kemp submitted that the circumstances of the death of the Deceased are

clear. Ivan McPhee Jr. was on the scene and it culminated with death by blunt force trauma. The Deceased was left on a dirt road. There were drag marks, facial injuries, blood coming from his nose and mouth. The Applicant had rocks in his hands. He is charged with others. He is a contributor to the death of the Deceased. The Crown must put on a case against each person. The Applicant had a hand in the injury which caused the death of the Deceased.

12)Mrs. Kemp submitted that The Constitution of The Bahamas provides that no-one should be deprived of his liberty. At paragraph 15 of the Judgment of the case **Jonathan Armbrister v The Attorney General** SCCrApp No. 145 of 2011 a person may be deprived of his liberty based on a reasonable suspicion that he committed an offence. If charged the Defendant must be tried within a reasonable time. There has been no delay. That we are not approaching an unreasonable time. The Bail Act refers to the factors that the Court must consider. The Court must consider the nature and seriousness of the offence. The punishment is such that the Applicant might consider absconding. Vance Barr in his Statement states that he knew the Applicant. All of the Witnesses in this case are from the same area. Under those circumstances, there being no unreasonable delay., the Court is asked not to grant bail to the Applicant at this time. Each case turns on its own facts. The Wenesbury principles come into play. The Court must consider all of the relevant factors. She does not know where Mr. Shurland is getting his information from, that a deal was cut. Even so, the Crown has the power to determine who to charge.

13)Mr. Shurland responded by questioning why the Prosecution relied on the Statement of McPhee. He further submitted that Vance Barr said nothing about the Applicant "bursting" the Deceased in his Statement made when reviewing the photo lineup. Ivan McPhee admitted to kicking the Deceased twice and talked about the Kyle and the Defendant slapping the Deceased. Vance Barr's Statement demonstrates that he was very much a part of this incident. Mr. Shurland stated that he knew what deal was struck because he was a part of it.

14)Mr. Shurland submitted that the fact that the punishment may cause the

Applicant to consider absconding is not enough to deny bail. There should be substantial evidence that the Applicant intends to abscond, evidence of preparatory steps. That each case is judged on its facts is trite. Looking at other people who were cut loose based on their participation the Applicant should have been considered too. There is reasonable suspicion that everyone in this fray committed this offence yet everyone was not charged.

15)Mr. Shurland submitted that the Wednesbury principles are hardly ever used in bail but one (1) day over how long he should be imprisoned is too much.

16)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.

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, 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."

19)The Court has to consider the character and antecedents of an Applicant. The Applicant has no antecedents or matters pending before the Court.

20)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.

21)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 I hereby grant bail for the following reasons:

(i) In **Jonathan Armbrister** John, JA stated at page 8 of the judgment:

"The seriousness of the offence, with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail."

Murder is a serious offence, the nature and seriousness of which in my view weigh heavily against the grant of bail. But this is but one factor that the Court must consider.

(ii) The only evidence against the Applicant are the Statements of 2 Witnesses for the Crown who from their own accounts participated in the murder. In the **A.G. v Bradley Ferguson and Others** SCCr. App 57/2008 Osadebay JA cited with approval the statement of Coleridge J In the matter of **Etiene Barronett and Edmund Allain** 1 EL & BL 2 where

in expressing his reasons for refusing bail Coleridge J said:

"I do not think that an accused party is detained in custody 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 insure his appearance at the trial. The guilt of the party charged is not the direct ground on which he is detained in custody; and that the strength of the evidence of guilt, even when it amounts to a confession, is not conclusive as to the propriety of bailing. But it is a very important element in considering whether the party, if admitted to bail, would appear to take his trial; and I think that in coming to a determination on that point, three elements will generally be found the most import: The charge, the nature of the evidence by which it is supported, and the punishment to which the party will be liable if convicted. "

The charge of murder carries with it a heavy punishment, that is, life in prison and in some cases the death penalty. What then is the strength of the evidence of guilt against the Applicant? The charge is that the Applicant and his Co-accused while "being concerned together" caused the death of the Deceased. I am not convinced by the evidence before me that the Crown will be able to ground a charge of Murder against this Applicant. The evidence thus far suggests Manslaughter. The evidence is that the Applicant participated in the foot chase of the Deceased and when he caught up with him he slapped him and "burst him" with rocks in hands. But both Witnesses were clearly participants in the murder and in their own Statements implicate themselves as well as the Applicant. As with accomplice evidence the Court should look for some corroboration of such evidence although I appreciate that this is not a trial. The Applicant's Record of Interview provides no corroboration. He denies that he was even there. He provides an alibi. Other than 2 participants in the murder

having now turned Witnesses for the Crown there is no other prima facie evidence against the Applicant.

(iii) There is no evidence before the Court to suggest that he might abscond or that he will interfere with the witnesses. That the Witnesses are known to the Applicant and are from the same neighbourhood without more is not evidence that he will interfere with the Witnesses. John, JA in **Jonathan Armbrister** stated at page 11: **"In acknowledging that the strict rules of evidence are inherently inappropriate in deciding the issues whether bail ought to be refused we sound the warning that a naked statement from the Prosecution that "the witnesses are known to the appellant and so he is likely to interfere with them" without more, is unfair to the accused person and cannot stand alone. "**

(iv) There has been no unreasonable delay. Mr. Shurland submitted that the Applicant's trial will not commence until 2021. At the moment, the issue of unreasonable delay does not arise.

(v) The Applicants character and antecedents are also considerations for the Court when deciding whether to admit the Applicant to bail. The Applicant has no previous convictions and no matters pending before the Court. There is therefore no evidence before the Court that there is a real likelihood that he will commit an offence if put on bail again and he was a juvenile when this incident occurred.

(vi) It does not appear that the Applicant should be remanded in custody for his own protection.

22)In weighing all of the competing considerations hereinbefore-mentioned with interests of the community, with the presumption of innocence and the strength and reliability of the evidence at this juncture, I am satisfied that the Applicant is a fit candidate for the grant of bail.

1) Bail is granted to the Applicant in the sum of $25,000.00 one or two Sureties upon the following conditions:

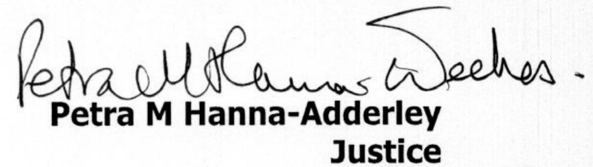
(i) The Applicant is to be fitted with an ankle monitor.

(ii) The Applicant is subjected to a curfew from 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: 26th day of August, 2019



Petra M Hanna-Adderley
Justice