COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CASE NO. 000293/2013

Criminal Side

BETWEEN

TREVOR RECKLEY

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTION

Respondent

Before:	**The Honourable Mr. Justice Andrew Forbes**
Appearances:	**Attorney Mrs. Sheanda Cooper-Rolle c/o Director of Public Prosecutions**
Attorney:	**Ms. Simone Brown c/o Trevor Reckley**
Hearing Date:	17th June 2021

RULING

Forbes. J.

1. The Applicant has filed an application seeking consideration of the court as to the question of bail and in support of this application the Applicant has filed an Affidavit filed on the 18th May 2021 in which the Applicant avers that he was arraigned before Magistrate's Court on 18th May 2020 charged with murder and that he was remanded. That on the 15th March 2021 he was served with his Voluntary Bill of Indictment (VBI) and arraigned before the Supreme Court in May 2021. He further avers that he was not present during the alleged murder and implied that the eyewitness ought to rightly be charged.

2. That the Applicant acknowledged that he has multiple matters still awaiting resolution in the Courts. There is a matter outstanding in the Magistrate Court since 2018. What the matter is, was never expressed either by the Applicant or the Respondent. The Applicant further acknowledged there being two (2) outstanding matters in the Supreme Court commencing in about 2013 or thereabouts. The matters have been adjourned indefinitely without any clear directions save for the assertion that the Crown would Nolle the matters. It is noted that this suggestion was not rebutted by the Respondent in their Affidavit.

3. The Applicant indicated he was employed and is the father a minor child, whom he provided for and indicated he was prepared to be bound by strict curfew and electronic monitoring. It would or should be noted that the Applicant has been reportedly signing in at the Central Police Station, Freeport, Grand Bahama every Wednesday before 6 p.m. as a condition of the Bail granted with reference to the Magistrate matter. As to whether there are any further conditions which were imposed regarding the other matters outstanding in the Supreme Court, nothing was brought to the attention of the Court.

4. The Respondent filed an Affidavit in Response dated 16th June 2021 and sworn by Sargent 2169 Prescott Pinder who avers that he is the Liaison Officer of the Director of Public Prosecutions and that the Applicant and his Co-Accused were

arraigned on double Murder charges of Kim Smith and Denny Rolle which occurred on 11th May 2020.

That the Applicant has been on remand thirteen (13) months and that the Matter was adjourned for fixture to the 17th June 2021.

That the Applicant was identified by a person who alleged that the Applicant was one of the persons in a dark colored car that fired upon the deceased persons.

That the Applicant has denied his involvement and has two (2) pending matters before the Supreme Court and one (1) pending matter before the Magistrate's Court.

He avers that the Applicant is a person of Bad Character, he has antecedents which were exhibited thereto.

The convictions related to Possession of Dangerous Drugs on three (3) separate occasions, first being 2011, then again 2018 and 2020.

A Vagrancy offence which occurred in 2013 and a Violation of Bail Conditions which occurred in 2017.

Also exhibited to the Affidavit of Sargent Pinder is the witness statement of one Dillion Williams. In this statement, Williams appears to be outlining a conversation he says he had with the Applicant in engaging in the commission of the alleged offence for which he, Reckley is now charged.

The Court observes that Williams was not charged as a co-Accused given his proximity and apparent knowledge.

5. The Applicant's Counsel has argued that, notwithstanding the allegations, the Applicant has denied the allegations and maintains his innocence. In support, Counsel cites the Court of Appeal decision of ***Stephon Davis and the Director of Public Prosecution SCCrApp. No. 108 of 2020*** and the Court of Appeal decision of ***Damargio Whyms and Director of Public Prosecutions SCCrApp. No. 148 of 2019.*** It is even suggested that the eyewitness may have cause to

invent these events so as to absolve himself, clearly should the matter proceed to trial that is a question for the Jury to wrestle with.

6. The Court notes that while at the principle hearing date, the Court invited parties to forward submissions. The Court notes it received submissions from the Applicant's Counsel some two (2) days ahead of intended Ruling. However the Court only as of yesterday received submissions for the Respondent, delaying the Courts intention to pronounce its Ruling.

The Respondent's submissions boiled down and amounts to there is no reasonable delay as Applicant has only been on remand fourteen (14) months and that the Applicant is a person of bad character because of previous convictions and the unresolved matters before the court and finally the offence is of such a heinous nature that it's an affront to public safety.

In this regard the Respondent sought to rely on ***Stephon Davis case supra*** where Davis was charged with Murder and two (2) counts of Attempted Murder. He appeared before a Judge of the Supreme Court and was denied bail on the basis that Davis was a threat to public safety as one of the grounds.

On Appeal, the Court of Appeal addressed each of these arguments. At paragraph, the Court said as follows ***"9. On my reading of the appellant's case, it does not appear that he was applying for bail on the basis of undue delay in bringing his case on for trial. On a reading of the Judge's 6 assessment of the respondent's case, the only real reason for their objection to bail being granted to the appellant, was the cogency of the evidence."***

The Substance of the Respondents submissions are that the Applicant is of such a bad character and has allegedly committed such heinous acts he ought not to be granted bail. The Court of Appeal in **Davis** cited ***Vasyli v. The Attorney General (2015) 1 BHS.J. No 86*** where Allen P said: - ***"12. On a true construction of section 4(2) and paragraph (a) (i) of Part A of the Bail Act, and notwithstanding the 2014 Amendment, I am still of the view that bail may only be denied if the State is able to demonstrate that there are substantial***

grounds for believing that the applicant would not surrender to custody or appear for trial. In assessing whether there are substantial grounds for such belief, the court shall also have regard to the nature and seriousness of the offence and the nature and strength of the evidence against an applicant as prescribed in paragraph (g) of Part A." [Emphasis added]

7. Taking the Respondent's case at its highest does not provide any evidence that the Applicant will not attend for his trial. Furthermore the evidence provided is scant and underwhelming and truly did not assist this Court in arriving at the decision it was tasked with.

8. There has been multiple decisions by the Court of Appeal of recent vintage and not so recent which has established what criteria a Court ought to consider when the issue of bail is being reviewed.

In the Court of Appeal decision of ***Dennis Mather and the Director of Public Prosecution SCCrApp 96 of 2020*** - the Court cited a number of cases as the starting point. *"The main consideration for a court in a bail application is whether the applicant would appear for his trial".*

In ***Attorney General v. Bradley Ferguson, et-al SCCrApp. No.'s 57, 106, 108, 116 of 2008****, Osadebay, JA observed as follows: "As stated by Coleridge J in Barronet's case cited earlier, the defendant is not 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 ensure his appearance at trial."*

In ***Jonathan Armbrister v The Attorney General SCCrApp. No.145 of 2011****, John, JA said as follows:*

"12. It has been established for centuries in England that the proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear for his trial, and that bail is not to be withheld merely as punishment. The courts have also evolved, over the years, a number of

considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in case of conviction, the accused's record, if any and the likelihood of interference with witnesses."

9. The Court must now consider the rational for the denial of bail to the Applicant and consider whether he will refuse or fail to surrender for trial.

Additionally, it appears that the Respondent's arguments are that the Applicant's antecedents - that he has pending matters and that the evidence adduced is cogent and powerful should be grounds to deny the Applicant bail.

The Applicant faces charges involving murder, an offence that has been included in Part C of the First Schedule of the Bail Act. Part C states, inter alia as follows:

> ***"PART C (Section 4(3)) Kidnapping — section 282, Ch. 84; Conspiracy to Commit Kidnapping — sections 282 and 89(1), Ch. 84; Murder — section 291, Ch. 84; Conspiracy to Commit Murder — sections 291 and 89(1), Ch. 84; Abetment to Murder — sections 86 and 307, Ch. 84; Armed Robbery — section 339(2), Ch. 84; Conspiracy to Commit Armed Robbery — sections 339(2) and 89(1), Ch. 84; Abetment to Armed Robbery — sections 86 and 339, Ch. 84; Treason — section 389, Ch. 84; Conspiracy to Commit Treason — sections 389 and 89(1), Ch. 84."***

10. Section 4(2) and (3) of Bail (Amendment) Act, 2011 permits the grant of bail to those charged with a Part C offence

> ***(2A) 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.***

(b) delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered a reasonable time.

(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 public or 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.

(3) Notwithstanding any other enactment, an application for bail by a person who has been convicted and sentenced to a term of imprisonment in respect of any offence mentioned in Part D of the First Schedule shall lie to the Supreme Court or the Court of Appeal. (JA) Notwithstanding section 3 or any other law, the Magistrate's Court shall not have jurisdiction for the grant of bail in respect of any person charged with an offence mentioned in Part C or Part D of the First Schedule.

11. In addition to Part A, Judges hearing a bail application for a Part C 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 purposes of taking the decisions required by this Part or otherwise by this Act

(e) whether having been released on bail 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. Offence must exercise their discretion to issues such as character and antecedents, the need to protect the safety of the public or public order and also to consider the need to protect the safety of victim of the alleged offence or for his own protection as well the nature and seriousness of the offence and the nature and strength of the evidence against the defendant."

12. Thus the question would the Applicant surrender for trial? The Respondent offers no evidence to suggest that he would not. In fact, the Affidavit is totally devoid of any suggestion that the Applicant might not surrender for trial. They however focused on the Applicant's Antecedents which were referenced earlier and were simple drug offences and vagrancy offence. And the only one which might give the Court pause is the conviction in 2017 for violation of the condition of bail, however the Respondent did not establish what was the particular offence the Applicant violated his bail nor was it a Magistrate Court summary offence or was it an indictable offence like those the Respondent has indicated are pending

in the Supreme Court and which Applicant's Counsel suggested that the Respondent has indicated an intention to Withdraw. Clearly, the drug and vagrancy charges are nonviolent offences. Noting the comments of Justice of Appeal Isaacs in **Stephon Davis case**, supra where he acknowledged as follows:

> ***"30. The offence of vagrancy, for which the appellant was twice convicted, and could, pursuant to section 4 and the Second Schedule of the Vagrancy Act, be deemed a rogue or vagabond. Both terms have unfavorable connotations and suggest the offender is a reprobate of no fixed address. The condition of a vagrant would be a significant factor for a court trying to determine an address where the applicant can be contacted or found. Thus, it cannot be said that the Judge placed undue emphasis on the applicant's vagrancy convictions."***
> However, at an earlier paragraph said the following: -
>
> ***"28. The antecedents of an applicant for bail is an important factor to be taken into account by a court considering the application. This record may provide a barometer for the likelihood of the applicant to commit other offences while on bail. Although a court is obliged to have regard to the antecedents of an applicant for bail, little weight should be given to offences that are as trivial as vagrancy. That offence is committed merely by being found to have contravened section 3 of the Vagrancy Act. It is essentially a victimless crime and may be committed by persons who are merely in a penurious state."***

This Court would likewise contend that simple possession of drug offences albeit serious given both the Local direction and international considerations that drugs use is more a disease of an addiction and should be decimalized. The other factor referred in the Respondent's Affidavit is that the Applicant committed the offense while already on bail. Both the Applicant and the Respondent have referred to pending matters, but the Respondent has not presented the relevant evidence for the Court to consider.

The Court is aware that the Applicant was previously granted bail for the offense of Causing Harm contrary to section 266 of the Penal Code, its particulars and current status are unknown. As such, this Court cannot offer any consideration on this issue. The final issue raised was the seriousness of the offense and the cogency of the evidence. In this regard this Court has noted the statement of the Court of Appeal in **Davis case** where in the headnote the court said as follows:

> ***"No substantial grounds have been disclosed in this case to support a conclusion that the appellant would abscond and not appear for trial."***
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> ***As stated in Hurnam "the seriousness of the crime alleged and the severity of the sentence faced are not, without more, compelling grounds for inferring a risk of flight ..."***
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> ***It follows that there must be shown, substantial grounds for believing that the applicant would not surrender to custody or appear for trial. There is no evidence to suggest that the appellant would not appear for his trial.***
>
> ***The Judge is required to consider whether there are conditions that may be imposed that would, as far as possible, ensure that the appellant appear for his trial. It is only the severity of the charge and the inference of flight in the instance where no form of bail condition could mitigate or minimize that flight that can support the Judge's refusal of bail."***

13. As stated in **Davis**, there is no evidence before this Court that the Applicant will refuse to surrender. So, as to ensure this, the Court is prepared to consider stringent conditions.

a. The Court will accede to the Applicant's bail application and grant bail in the Sum of Thirty Thousand Dollars ($30,000.00) with 1 or 2 sureties,

b. The Applicant is to be outfitted with an Electronic Monitoring Device and must comply with all conditions established related to the wearing and

maintenance of device. The Court will impose as further condition of the device - the Applicant is to be placed on curfew on weekdays by 9 p.m. and weekends by 10 p.m.

c. The Applicant is to have no Direct or Indirect Contact with any Witness involved with this case nor have any further contact with his Co-Accused; and

d. The Applicant is required to report to Central Police Station, Freeport, Grand Bahamas each Monday & Friday by 6pm at the latest.

Parties are at liberty to reapply.

Parties aggrieved may appeal to the Court of Appeal.

Dated the 2nd **day of** July **A. D. 2021**

Andrew Forbes

Justice