

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

**CRI/BAL/00087/2017**

**Criminal Side**

**BETWEEN**

**LARRY ARTILLUS JR**

**Applicant**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

**Before:** The Honourable Mr. Justice Andrew Forbes  
**Appearances:** Mr. Larry Artillus Jr. pro se  
Mrs. Ashley Carroll & Mrs. Erica Culmer-Curry  
on behalf of the Director of Public Prosecutions  
**Hearing Date:** 22<sup>nd</sup> March, 2022

**DECISION**

## **INTRODUCTION**

1. The Applicant on the 15<sup>th</sup> November, 2021 filed an application for bail. The Office of the Director of Public Prosecution opposed the application and relied on the Affidavit of Sergeant 2169 Prescott Pinder filed on 27<sup>th</sup> January 2022.
2. The facts of this case are, the Applicant has been charged with four (4) counts of Attempted Murder and one (1) count of Murder and was arraigned on the 23<sup>rd</sup> September, 2021 before Deputy Chief Magistrate, Debbye Ferguson. The Learned Magistrate denied the Applicant bail and he was remanded to The Bahamas Department of Corrections (BDOCS).

## **STATEMENT OF FACTS**

### **The Applicant**

3. The Applicant was unable to file a formal affidavit which set out his position, however during the hearing, he made oral representations in which he refuted the allegations made by the DPP.

He argued that he is a fit and proper person to be granted bail and stated that prior to his arrest he was employed as a construction worker and that he also worked at the oil refinery.

He further stated that he is a civic minded and active member in the community, that he is a Bahamian citizen and will not miss any court dates.

4. He also stated that he has no intention of interfering with witnesses or not appearing for his court proceedings. He vehemently denied the allegation that he is associated with a local gang in Grand Bahama.

He asserted that at Her Majesty's Prison, he is housed with four other persons in a single cell without lighting, and that the conditions at the prison are inhumane and oppressive especially by the officers.

Additionally, he stated that a person without a strong will could lose his sanity or succumb to pressures from other cellmates.

Lastly, he denied any involvement in this matter and stated that he will defend himself vigorously at trial.

### **The DPP**

5. The DPP relied on the filed Affidavit of Sergeant 2169 Prescott Pinder in opposition to the Applicant's application for a grant of bail. The evidence of Sergeant 2169 Pinder in the Affidavit filed on the 27<sup>th</sup> January, 2022 is that he relies on his Affidavit filed on the 9<sup>th</sup> June, 2020 (exhibited to his 2022 Affidavit) that was made in opposition to the Applicant's previous application for bail in another matter and that he relies on the Affidavit of ASP Darrell Weir exhibited to his first Affidavit.

Sergeant Pinder avers that the Applicant was charged with four (4) counts of Attempted Murder contrary to Section 292 of the Penal Code and one (1) count of Murder contrary to Section 291 of the Penal Code and that on the 23<sup>rd</sup> September, 2021 was arraigned before Magistrate Debbye Ferguson for the said offences.

He states that the Applicant is charged with a serious offence and there is cogent evidence as several prosecution witnesses identified the Applicant of one (1) of the shooters.

Sergeant Pinder further avers that the Applicant is currently on bail for the Murder of Vernon Smith and he was granted bail by the Honorable Justice Hanna-Adderley (a review of the file shows that it was Senior Justice Estelle Gray Evans who granted the Applicant bail) on the 16<sup>th</sup> June, 2020 for two (2) counts of Possession of a Firearm with Intent to Endanger Life contrary to Section 33 of the Firearms Act and that, that matter is still pending before the Magistrate Court.

Additionally, the terms of the granting of bail was the sum of twelve thousand \$12,000.00 dollars, with one (1) or two (2) sureties; he be fitted with an ankle monitoring device; that he sign in at Central Police Station on Monday, Wednesday and Friday and that he observe a daily curfew of 10pm to 5 a.m.

Sergeant Pinder deposes that he is informed by ASP Darrell Weir and verily believe that the Applicant is still an active member in a local gang called "Nike" and there is an ongoing feud with another local gang called "Puma" and this war continues to wage without consideration to the effects of the wider community.

6. In his June 9<sup>th</sup>, 2020 Affidavit, Sergeant Pinder deposes that the Applicant and a co-accused were arraigned on the 11<sup>th</sup> May, 2020 before Deputy Chief Magistrate Debbye Ferguson on two (2) counts of Possession of Firearms with Intent to Endanger Life contrary to Section 33 of the Firearms Act.

He avers that according to Vacaro Morely at or about 6 or 7p.m. on the 7<sup>th</sup> May, 2020, the Applicant and his co-accused were driving together in a blue and silver Cavalier car, when the Applicant fired shots at him and his passenger, Lynden Johnson.

That the Applicant in his record of interview stated that he was in a car in the area of Alpha Omega School with Reynaldo Hudson who was driving a gray Ford car and a silver Saturn car drove up beside him.

That he heard gunshots, and the men in the car had on masks. He denied shooting at the complainants.

Further, Sergeant Pinder avers that the Applicant is also charged with murder, and the case is pending;

That he was told by ASP Darrell Weir and verily believe that the shootings are gang related; that the Applicant has antecedents.

Sergeant 2169 Pinder's Affidavit filed on the 9<sup>th</sup> June, 2020 exhibited a number of witness statements including that of Alfred Harris, Vacaro Morley, Verrance Reckley and Uniek Moxey; copies of the dockets which show other matters pending before the court involving the Applicant, which include two (2) counts for Possession of a Firearm with Intent to Endanger Life contrary to Section 33 of the Firearms Act.

In that case it is alleged the Applicant and a co-accused fired shots at one Varcaro Morley and others.

The Applicant is also a witness in a case involving Vacaro Morley as the defendant and it has been alleged that Vacaro Morely fired a weapon at others including the Applicant and is also charged with two (2) counts of Possession of a Firearm with Intent to Endanger Life contrary to Section 33 of the Firearms Act.



The antecedents of the Applicant show that he has been convicted for Housebreaking and Stealing from a Dwelling House in September 2011 and Violation of curfew in March 2020.

According to the statements exhibited to the June, 2020 Affidavit of Sergeant Pinder, the Court gleans the following facts from each person relating to identifying the Applicant.

Uniek Moxey in her statement states that she and her boyfriend were at a local bar situated in the International Bazaar, when she alleges that she observed the Applicant running up to the car she and her boyfriend were sitting in and firing a firearm in their direction;

That she alleges that she ducked down and after the shooting stopped, she observed her boyfriend appeared to have been shot. She later identified the defendant as the shooter.

In addition, Verrance Reckley in his statement alleges that he observed the Applicant firing a weapon in the direction of a vehicle and later identified that male he observed. Further, in the statement from Vacaro Morley, he states that he was sitting outside a club in the International Bazaar and observed the Applicant, a person whom he had known from the 4<sup>th</sup> Grade shooting at a vehicle.

Lastly, a statement was given by Alfred Harris Jr., where he states that on the night in question he was at a club in the International Bazaar, where he was shot and a bullet grazed his left side and he later identified the shooter as the Applicant.

7. The DPP further avers that there has been no unreasonable delay and that the Respondent objects to the bail application due to the serious nature of the offence and the strength of the evidence.

## **ISSUES FOR CONSIDERATION**

8. The issues the Court must determine on an application for a grant of bail are:-
  - a. whether the Applicant is a fit and proper person for the consideration of bail; and
  - b. Whether the Applicant will attend his trial?

## DISCUSSION AND FINDINGS

9. The Applicant was not represented by Counsel and therefore was unable to rely upon or point to any cases that the Court can consider in support of his application. However, the Court assisted the Applicant and cites the Court of Appeal Case of **Stephon Davis v. Director of Public Prosecution SCCrApp No. 108 of 2021** in support of the application.
10. Counsel for the Director of Public Prosecutions, Mrs. Carroll referred to the Affidavit of Sergeant 2169 Pinder and submitted that the Applicant was already on bail for the charge of Murder and has multiple pending matters and previous convictions.
11. The Court referred to the comments made by the President of Appeal, Sir Michael Barnett in **Stephon Davis v. Director of Public Prosecution (supra)** where at paragraph 35 he said the following:

*“This court has on more than one occasion repeated the principle that bail should not be denied as a punishment for a crime for which a person has not yet been convicted. This principle applies even when the crime is alleged to have been committed whilst a person was on bail. The burden is on those opposing the grant of bail to show why there are good reasons to deny bail to a person charged with an offence...”*

## THE LAW

12. Section 4(2) of the Bail (Amended) Act, 2011 (“the Act”) provides:-

(2) Notwithstanding any other provision of this Act or any other law, any person charged with an offence mentioned in Part C of the First Schedule, 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 those specified in Part A of the First Schedule and subsection (2B), and where the court makes an order for the release, on bail of that person it shall include in the record a written statement giving the reasons for the order of the release on bail.

(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.

(3A) Notwithstanding section 3 or any other law, the Magistrates 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."

13. Additionally, Part A of the First Schedule states:

"PART A"

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.";

### **Trial Within Reasonable Time**

14. In considering whether the Applicant is a fit and proper person for bail, the Court must first address its mind to whether the Applicant will be tried within a reasonable time. Evans, JA in **Duran Neely v The Attorney General SCCrApp No. 29 of 2018** at paragraph 17 sought to provide an answer as to what the Court must take into consideration when determining a reasonable time. Justice Evans states:-

*"It should be noted that Section 4 of the Bail Act does not provide the authorities with a blanket right to detain an accused person for three years. In each case the Court must consider what has been called the tension between the right of the accused to his freedom and the need to protect society. The three year period is in my view for the protection of the accused and not a trump card for the Crown. As I understand the law when an accused person makes an application for bail, the Court must consider the matters set out in Section 4(2)(a), (b) and (c). This means that if the evidence shows that the accused has not been tried within a reasonable time or cannot be tried in a reasonable time he can be admitted to bail as per (a) and (b). In those circumstances where there has not been unreasonable delay the Court must consider the matters set out in (c). If after a consideration of those matters the Court is of the view that bail should be granted the accused may be granted bail."*

15. Section 2 (a) and (b) of the Act provides that the person charged has not been tried within a reasonable time or is unlikely to be tried within a reasonable time.



Section 2A of the Act provides that a reasonable time is a period of three years from the date of arrest or detention.

The Applicant's evidence is that he was arrested on February 23, 2020 and was subsequently remanded to Her Majesty's Prison on February 26, 2020.

He further states that since being on remand he has been served with a Voluntary Bill of Indictment and his trial date is set for October 2023.

It is noted by the Court that should the trial begin in October 2023 the Applicant would have been in custody a little over three years.

16. Barring that time frame, like with many other matters, trials fall away because a complainant withdraws, a Noelle is offered or the parties ask for further adjournment.

Moreover, considering the nature of the Court's schedule, while the trial date is set for October 2023 there is no evidence to show that the October 2023 date could not be brought forward. Therefore, I find it is possible for the Applicant to be tried within a reasonable time.

### **Relevant Factors in Part A of First Schedule**

#### **Likely to Abscond**

17. In **Hurnam v. The State (Mauritius) [2005] UKPC 49 (15 December 2005)**. Lord Bingham of Cornhill, in delivering the Judgment of the Board at paragraph 15 said:-

*"It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drugs cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail."*

18. The Applicant is charged with the offence of murder, one which carries a very serious penalty. It is for this very reason, it is not hard to conclude that a person facing the same would opt not to appear or attend his trial. While the Applicant alleges that these allegations are false.

The evidence the DPP relies on for the purpose of this application is that of the multiple eye witnesses. It can be suggested that there appears on the surface to be a recycling of the Applicant and some of the witnesses. It lends some support to the allegations referenced in both of Sergeant Pinder's Affidavits.

I am of the view that there are sufficient fact witnesses that place the Applicant on the scene firing the weapon used in the alleged murder of Antonio Morley, while in a public parking lot with another individual.

19. The Court at this stage is not on a fact-finding mission as it relates to the evidence before it, as such a task will be left for the jury. However, I find that the prima facie evidence before the Court is strong.

### **Interference with Witnesses**

20. It is not disputed that the evidence relied on by the DPP in this application is the evidence of several eye witnesses, the compelling concern is the suggestion of gang association. While there is no direct evidence of this and perhaps no direct evidence may be forthcoming as the Applicant denies such affiliation, the multiple offences involving firearms in which the Applicant and other witnesses to this matter are involved in other matters before the Court in various capacities raises the substantial inferences of retaliation and possible gang associations.

The burden is on the DPP to satisfy the Court that the Applicant is likely to interfere with the witness or witnesses, but they have not provided any evidence that he has or that he will.

However based on the evidence before the Court on this application, the Court can reasonable conclude that due to the multiple altercations between the parties it likely that there will be reprisals and, I am of the view that the risk of intimidation or interference is far too great in this instance.

21. Lord Bimingham in **Hurnam (supra)** stated in part at paragraph 1

*"...the courts are routinely called upon to consider whether an unconvicted suspect or defendant should be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as a whole. 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 his 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.”*

### **Released on Bail with a Similar Offence**

22. The Court notes that the Applicant acknowledges that he has multiple matters pending, has been granted bail for those matters and was complying with the conditions.

The facts of the Murder offence is not before the Court by way of Affidavit evidence save for the information filed on the 10<sup>th</sup> September 2015 and there is no indication as to current status of the same and no evidence was advanced on behalf of the DPP nor the Applicant.

There are however other charges involving the use of firearms and there are allegations that the Applicant was again alleged to fire those firearms from a moving vehicle while on the public road.

The DPP in the January 27, 2022 Affidavit of Sergeant Pinder provided the terms of the bail conditions granted to the Applicant for the offences of the two (2) counts of Possession of a Firearm with Intent to Endanger Life contrary to Section 33 of the Firearms Act. These conditions were bail granted in the sum of twelve thousand (\$12,000.00) dollars with one (1) or two (2) sureties, the fitting of an ankle monitoring device, signing in at Central Police Station on Mondays, Wednesdays and Fridays and a daily curfew of 10pm to 5am on June 16<sup>th</sup>, 2020.

However, as it related the Applicant's first charge of murder, whereby he was arraigned on September 10<sup>th</sup>, 2015 for the murder of Vernon Smith before the Supreme Court, no evidence as to the bail conditions granted to the Applicant for the same was provided by the DPP or the Applicant.

23. Therefore considering the above, there can be no dispute that the Applicant while on bail for Murder and the other offences of Possession of Firearm with Intent to Endanger Life is now subsequently charged with one (1) count of Murder and



four (4) counts of Attempted Murder. These are similar offences where again, a firearm was used and such an offence is punishable by a term of imprisonment exceeding one year.

24. The Court in assisting the Applicant has submitted that the Judgment of Sir Michael Barnett, President, in **Stephon Davis v DPP (supra)** should be considered against the DPP's submission that the Applicant is precluded from being granted bail for this reason.

In the circumstances, the Court's decision is not made in a vacuum as the Applicant's commission of an offence is not the sole factor considered in this application. While the case is instructive, the Court has addressed its mind to all of the relevant factors as found in Part A of the First Schedule.

#### **Nature and Seriousness of Offence/Nature and Seriousness of Evidence**

25. As previously stated, the offences of murder and attempted murder are serious offences. They both carry a possible penalty of death and/or life imprisonment. The seriousness of such may give cause for any defendant to abscond if released on bail.

The Court's role as stated above is not as a fact finder or a seeker of the truth at this stage. However, the Court must weigh the Applicant's presumption of innocence and right to liberty against the public's safety and order.

26. The allegations as stated above against the Applicant are serious, more so there is no evidence before the Court that the witnesses who implicate him have recanted their statements or their statements have changed dramatically from when they were first given.

Additionally, I have found that the prima facie evidence against the Applicant is strong.

Further, the alleged assertions that the Applicant is an active gang member in a local gang called "Nike" and there is an ongoing feud between that gang and another local gang called "Puma" gives the Court reason to believe that such a feud may have far reaching implications for the wider community and if the other allegations are credible a complete lack of value for the community.

It is also not lost on the Court that the recent decision of the Court of Appeal in **Randy Williams v. The Director of Public Prosecution** SCCrApp No 25 of 2022 where quoting from the head note the Court said as follows:

*“A judge in denying bail must have “substantial” grounds for believing an applicant for bail “would” not “might” or “may” abscond, interfere with witnesses or commit a crime whilst on bail. There is always a possibility that an applicant for bail may abscond, interfere with witnesses or commit a crime. However, if that possibility, nay probability, was not based on evidence then it would be difficult to see how any person charged with an offence would be granted bail. The appellant in this case has no antecedents and the Crown in its affidavit evidence does not provide any basis for denying bail save that the evidence against the appellant is cogent. There is nothing in that affidavit which suggests that had anything to do with gang warfare or that any witness indicated to them that they were in fear of being attacked by the appellant or other persons charged with the offences.”*

### **Conclusion**

27. While I am of the view that there will always be conditions that may secure a defendant to appear for trial, I do not believe that there are any conditions the Court can put in place to minimize any possible risk of witness intimidation and/or interference or continued commission of serious offences which jeopardize this community.

This Court believes that the evidence presented, establishes that there are substantial grounds for believing that this Applicant would interfere with witnesses and likely commit additional offences.

Therefore, in weighing the presumption of innocence given to the Applicant with the need to protect the public order and the public safety, the Court is of the opinion that the need for public safety and public order is of highest importance and in the present circumstances cannot be ignored.

### **Disposition**

28. In consideration of all of the factors and the evidence before the Court, I find that the Applicant is not a fit and proper person to be granted bail for the reasons stated below:-

- a. The Applicant's trial will be held within a reasonable time;
- b. That while no evidence has been adduced that he will abscond or that he will not abscond given the serious nature of the charge there is a likelihood of him absconding;
- c. That there is a high likelihood of witness interference/intimidation;
- d. That the Applicant was on bail for a similar offence and subsequently breached his previous bail conditions;

- e. That considering the Applicant's liberty weighed against the public interest and safety, the Court sides with the public interest and safety.

Dated the 19<sup>th</sup> April, 2022

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line and a flourish.

Justice Andrew Forbes