COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2014/CRI/bail/00069

BETWEEN

STEPHON GODFREY DAVIS

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Hon. Madam Justice Renae McKay**

Appearances: **Ms. Alicia Delancy and Mr. Glendon Rolle for the Applicant**
Mr. Bradford McKenzie and Ms. Makeda Stubbs for the Respondent

Hearing Date: **26th January A.D. 2023**

Ruling Date: **9th February A.D. 2023**

RULING ON BAIL

1. On 26th January, 2023 I heard submissions from the parties and promised to put my decision and reasons in writing. This I now do.

2. Stephon Davis, the Applicant herein applied for bail pursuant to the relevant provisions of the Bail Act and the Constitution which provides for any individual not to be deprived of his or her liberty unless convicted of an offence. The Director of Public Prosecutions, the Respondent herein, opposed the application for bail.

3. By his Affidavits filed 10th December 2022, 12th December 2022 and 6th January 2023, the Applicant a 27 year old Bahamian citizen and father of a seven year old girl, with no previous convictions and two pending murder matters stated that he was charged with the offence of conspiracy to commit murder on the 12th December before Magistrate Shaka Serville at Magistrate's Court #4. The matter is adjourned to the 29th March 2023 for service of the Voluntary Bill of Indictment and upon arraignment he intends to plead not guilty.

4. The Applicant spoke of a conversation had with police officer with respect to the murder of one Jason Whitfield and the assurance given by the officers that he was not to be charged with any criminal offence. Based on those representations he gave a Statement. Thereafter the Applicant who is electronically monitored stated that the Police dropped him back to his residence and came back 30 minutes later and arrested him with respect to the present offence. Additionally he says video footage is available from his residence which will show that the police dropped him off at home as agreed and then came back to take him into custody.

5. The Applicant says that he is suffering from medical complications associated with bullets lodged in his neck and head. He is an entrepreneur who currently operates a car rental business who assists his 87 year old grandmother and 47 year old mother. He avers that he is not a flight risk and should he be granted bail he would comply with all conditions which would be imposed on him.

6. The Respondent, by their Affidavit in Response filed 24th January 2023, confirmed that the Applicant had been charged with the offence of conspiracy to commit Murder with respect to an incident which is alleged to have occurred on the 2nd December 2022 at New Providence. The Respondent alleges that there was cogent evidence against the Applicant who on the 9th December 2022 while under caution admitted to participating in the alleged offence. The Applicant they further say, is currently on bail for 2 counts of murder and having regard to the cogency of the evidence, the seriousness of the offence the Respondents say that the risk of conviction is sufficient incentive for the Applicant to abscond and as such he is a potential flight risk.

7. Counsel for the Applicant and the Respondent both made further submissions on behalf of their respective clients during the bail hearings. Counsel for the Applicant, Ms. Delancy sought to highlight that the fact that the Applicant who was electronically monitored was threatened with prosecution if he did not assist the Police, and as a result he participated in a Record of Interview. She further submitted the evidence herein is weak.

8. Ms. Delancy referred the Court to paragraph 10 of the Court of Appeal decision concerning **Duran *Neely v The Attorney General ScCrApp No. 29 of 2018,*** and she submitted that the applicable test for me in a bail application is whether or not the applicant will appear at his trial. Reliance was also placed on two additional decisions of the Court of Appeal, namely, ***Randy Williams vs. Regina SCCrAPP No. 99 of 2016*** and ***Stephon Davis vs. The Director of Public Prosecutions SCCrApp No. 108 of 2021*** as authorities for the proposition that even if there is strong evidence the appropriate test is whether or not the person is likely to appear at trial and that a judge in a bail hearing cannot refuse the application merely on the fact that there is an allegation of the commission of a new offence while on bail respectively.

9. Ms. Delancy further submitted that the Prosecution who bear the burden of providing the Court with evidence that the Applicant is likely to abscond. Have not so done herein, nor have they provided the Court with proof that he has the financial resources so to do. Counsel concluded her submissions by reminding the Court that the Applicant is innocent until proven guilty and he has a right to his liberty unless the Prosecution can prove otherwise.

10. Mr. McKenzie, Counsel for the Respondent placed reliance on the Affidavit in opposition filed herein.

LAW AND ANALYSIS

11. The Applicant is presumed to be innocent of the charge that is the subject matter of this applications. In this regard ***Article 20(2)(a)*** of the ***Constitution of The Bahamas states:***

> ***" Every person who is charged with a criminal offence – (a) shall be Presumed to be innocent until he is proved or has pleaded guilty".***

12. Additionally, ***Article 19(1)(b)*** provides that no person shall be deprived of personal liberty, save upon reasonable suspicion of having committee a criminal offence.

13. In relation to part C offences, for which Conspiracy to Commit murder is included, ***section 4 of the Bail Act, Chapter 103*** states:

> ***"4. (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; 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 purposes of subsection (2) (a) … (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 to be a reasonable time.***

(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 order and where appropriate, the need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations."

14. I am mindful that it is clear from an ordinary reading of the foregoing section that Parliament intended subsections 4(2)(a) and (c) respectively, to operate as alternative routes to the grant of bail. Given the timing of the application in relation to the service of the Voluntary Bill of Indictment and the submissions before this court, this application engages the court's Section 4(2)(c) and 2(B) discretion which requires the judge to have regard to "all the relevant factors".

15. These factors are:

"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.";

16. I am mindful that while the seriousness of the offence is not a free-standing ground for the refusal of a bail application, it is another factor that I consider in determining whether the accused is likely to appear for trial.

17. In the Court of Appeal decision of ***Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011***, it was stated that:

"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 in 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".

18. Additionally, in considering this factor, I note **paragraph 30** in ***Jeremiah Andrews vs. The Director of Public Prosecutions SCCrApp No. 163 of 2019*** where it states:

"30. These authorities all confirm therefore that the seriousness of the offence, coupled with the strength of the evidence and the likely penalty which is likely to be imposed upon conviction, have always been, and continue to be important considerations in determining whether bail should be granted or not. However, these factors may give rise to an inference that the defendant may abscond. That inference can be weakened by the consideration of other relevant factors disclosed in the evidence. eg the applicant's resources, family connections..

19. While, I find that conspiracy to commit murder is a very serious offence in the present application, no direct evidence has been adduced that Applicant will abscond.

20. The Applicant maintains his innocence, denies involvement in the deceased's killing. The Applicant further states that he was induced to give the Police a Statement herein as a result of certain representations made to him by them. Additionally he says video footage is available from his residence which will show that the police dropped him off at home as agreed and then came back to take him into custody.

21. In ***Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016***, Allen P., at ***paragraph 34*** stated,

> ***"It is not the duty of a judge considering a bail application to decide disputed facts or law. Indeed, 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 by the appellant, such as to justify the deprivation of his 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."***

22. I find that the evidence adduced before this court as contained in the witness statements attached to the Respondent's Affidavit, is strong and cogent and capable of raising a "reasonable suspicion" of the Applicant's involvement in this offence.

23. I find that there is no evidence nor suggestion of witness interference.

24. The Applicant has no antecedants, however he is on bail for two counts of murder one of which he was arraigned in 2020 and the second in 2021. The Respondent has avered that the Applicant has the propensity to commit offences of a serious nature while on bail. I have had regard to ***Article 20(2)(a)*** of the ***Constitution of The Bahamas which states that " Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty"*** as such I give no weight to the same in as much as his propensity to offend is concerned.

25. Counsel for the Applicant has submitted and laid over authorities in support of her submission that though the Applicant was in fact on bail for two pending murder matters the Court of Appeal has provided many cases to say that pending matters is not alone sufficient to deny bail.

26. While I note Ms. Delancey's submissions and reliance on the Court of Appeal's decision in ***Stephon Davis vs. The Director of Public Prosecutions SCCrAPP No. 108 of 2021***, I have also had sight of paragraph 14 of that decision which identified three (3) proposed grounds; two (2) of which are relevant for the purposes of this decision.

27. In relation to the ground that relates to whether the Appellant was a threat to public safety based on the fact that he was on bail for Murder when charged with a subsequent Murder, their Lordships were of the view that it was not unreasonable for the Learned Judge below to take that into consideration when assessing whether the Applicant was a potential threat to society.

28. I have considered her submissions and I distinguish this instant application from the matter of Randy Williams who prior to his arrest in January of 2022 had never been arrested and had no criminal history. I have also considered the decision of Duran Neely which was referred to in the matter of ***Stephon Davis v. DPP ScCrApp No. 108 of 2021*** and distinguish that decision from this instant application because Neely too had no pending matters.

29. More specifically, in ***Davis*** their Lordships, while noting that an allegation of a subsequent charge while on bail for a previous charge of a similar nature alone is not sufficient for the denial of bail, also indicated that the judge ought to assess the evidence upon which the Crown intends to rely. In ***Davis,*** their Lordships, while indicating that an allegation of a subsequent charge while on bail for a previous charge alone is not sufficient for the denial of bail and that the judge ought to assess the evidence upon which the Crown intends to rely.

30. In ***Davis***, it was noted that the evidence against the Appellant was weak and that for a reasonable chance of success, more was needed. In my view, this too is a distinguishing feature between ***Davis*** and the instant application.

31. Moreover, in relation to the Applicant's pending matters I rely on the case of ***Jevon Seymour vs. The Director of Public Prosecutions SCCrApp No. 115 of 2019*** which beginning at paragraph 68 states,

> ***"If the appellant was in fact a threat to public safety or public order; or if there was evidence of specific threats which had been made against the witnesses, Perry McHardy's affidavit should have included the necessary evidence of his propensity for violence for the judge's consideration."***

32. The Court went on to indicate at that,

> ***"Such evidence might have included for example, any prior convictions (if any) for similar offences; or <u>evidence of pending charges for violent or firearm offences;</u>" (emphasis mine)***

33. In the present application I note that the Applicant does have pending matters of a violent nature. I therefore find that having regard to the evidence of the Applicant's pending charges and the issues ventilated above, that the Applicant is a threat to public safety and public order.

34. In the present application I note the nature and seriousness of the offence, the evidence of the Applicant's pending charges for offences of a similar and violent nature, evidencing him being a threat to public safety and order, that he was on bail when he was subsequently charged with the present offence, that there is strong and cogent evidence against the applicant and that it raises a reasonable suspicion of guilt.

35. Additionally, consistent with paragraph 24 of ***<u>Tyreke Mallory vs. The Director of Public Prosecutions SCCrApp No. 142 of 2021,</u>*** which indicates that there are instances where the issue goes beyond whether the applicant will appear for his trial but turns on whether he is a threat to society, I find that this application is one of such cases, though I note that in Mallory the Appellant had previous convictions, which is a characteristic that is not shared with the present applicant.

<u>CONDITIONS</u>

36. The imposition of conditions to ameliorate or mitigate the Court's concerns must be relevant to the issues at hand. I am mindful of the usual conditions which include reporting, electronic monitoring device ("EMD"), curfew, etc. It should be noted that the Applicant was fitted on bail and was fitted with an EMD at the time of all commission of the alleged offence.

37. I am satisfied that those conditions can address the Court's concerns about securing the Applicant's attendance at trial (if that were an issue) as they deal with tracking one's geographical location, however, given the Court's finding of the applicant being a threat to public safety and order, in my view, these conditions would not be effective in addressing those concerns.

38. In the circumstances and having regard to the foregoing reasons I find that the Applicant is not a fit and proper candidate to be admitted to bail. Therefore, the Applicant's application for bail is denied.

Dated this 9th day of February A.D. 2022

The Hon. Madam Justice Renae McKay