

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

**CRIMINAL LAW DIVISION  
2019/CRI/bal/00413**

**BETWEEN**

**THEOPHILUS LLOYD**

**Applicant**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

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

**Appearances: Mr. Jerone Roberts for the Applicant  
Ms. Jacqueline Burrows and Ms. Davina Pinder for the Respondent**

**Hearing Date: 7<sup>th</sup> December, 2022**

**Ruling Date: 16<sup>th</sup> December 2022**

**RULING ON BAIL**

1. On 7<sup>th</sup> December, 2022 I heard submissions from the parties and promised to put my decision and reasons in writing. This I now do.
2. Theophilus Lloyd, 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 Affidavit filed 11<sup>th</sup> November 2022, the Applicant a 35 year old Bahamian citizen and father of two, with previous convictions and no pending matters stated that he was charged with the offence of murder and upon being aware that he was wanted for questioning, turned himself into a police station on the island of Abaco. While at the police station he was arrested and formally charged with the offence. If granted bail he would be able to continue his employment at the Show Boy Bar and Restaurant and he would comply with all conditions which would be imposed on him.

4. The Respondent, by their Affidavit in Response filed 6<sup>th</sup> December 2022, confirmed that the Applicant had been charged, along with Billy Antoine, with the offence of Murder after the killing of Andre Kikivarakis on 28<sup>th</sup> September 2022 in the area of Crossing Rock, Abaco. The Respondent alleges that there was cogent evidence against the Applicant as an anonymous witness claimed to have seen him exit a black colored Honda Fit vehicle and follow the Deceased to a stairwell located at the back of the plaza they were all in located in Crossing Rock. Thereafter, the anonymous witness heard about three gun shots and the Applicant returned to the Vehicle and the Deceased was on the stairs bleeding and not moving. The Vehicle was being driven by the Applicants co-accused Billy Antoine. The statement connected the Applicant to Billy Antoine, a major crime leader in Abaco.
5. The Applicant advised and the Respondent confirmed that the Applicant had previous convictions and opposed him being admitted to bail because of his known association and their belief that he would commit further offences if he is released on bail.
6. 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, Mr. Roberts sought to highlight that after the birth of the Applicant's youngest child, a one year old son, he changed his life as he appreciated that he should walk away from the road he was travelling. He explained that the Applicant's previous convictions were for possession of dangerous drugs, possession of an unlicensed firearm, attempted stealing and receiving and added that he did not intend to mislead the Court in any way by disclosing the evidence of his background.
7. Mr. Roberts contended that there was CCTV footage and possible footage from Doctors Hospital that would show that he was on the island of New Providence and on his way to carry out sheetrock work at Doctors Hospital, with a contractor, on the day in question. According to counsel for the Respondent, the claim of the Applicant's Counsel that there was footage of him in Nassau on the date in question was the first time they had heard of the alleged footage's existence.
8. He went on to ask that should bail be admitted, the Applicant would not be made to wear an electronic monitoring device or have a curfew imposed on him as he worked just along West Bay Street which was a heavy tourist population area.
9. Mr. Roberts contended that the evidence relied on by the Respondent was in line with the Turnbull fleeting glance principle and based on the case of Jevon Seymour v DPP, while it was evidence which was sufficient for a bail application, it would not hold up at trial. His family was one of humble means and his mother had requested that there were no

“land papers” available to secure bail; therefore he asked the Court to bear that in mind when considering the amount of bail that would be set.

10. Ms. Burrows, Counsel for the Respondent submitted that despite the Applicant turning himself in, the fact remains that he was arrested. While she did not want to delve too deeply into the evidence, the shooting of the Deceased was carried out execution style with no forewarning or previous interactions prior. Because of his character, the Respondent believed that the Applicant would commit further offences while on bail.
11. Ms. Burrows submitted that even if two (2) of his convictions were spent, that he still had convictions which were not and were offences against a person.

### **LAW AND ANALYSIS**

12. 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”.*

13. Additionally, *Article 19(1)(b)* provides that no person shall be deprived of personal liberty, save upon reasonable suspicion of having committed... a criminal offence.
14. In relation to part C offences, for which 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.”*

15. 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”.

16. 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.";*

#### **SERIOUSNESS OF THE OFFENCE AND LIKELIHOOD TO ABSCOND:**

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. In the present application, no evidence has been adduced that Applicant will abscond; which is also considered in light of the fact that he turned himself in to police custody.

19. However, 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.

20. 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, employment status, good character and absence of antecedents."*

21. Similarly, I find that murder is a very serious offence and that as this inference can be weakened, it may also be strengthened, which will be discussed below.

#### **STRENGTH AND COGENCY OF EVIDENCE:**

22. The Applicant maintains his innocence, denies involvement in the deceased's killing and said he was not at the scene but was in New Providence at the material time. The Applicant further states that there is surveillance footage to support this. However, the parties are not in receipt of the same.

23. 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.”*

24. 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.

#### **INTERFERENCE WITH WITNESSES**

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

#### **CHARACTER AND ANTECEDENTS**

26. Firstly, as for the Applicant's alleged association with a major crime leader, without more evidence I cannot consider this a factor to be weighed against the Applicant and therefore give no weight to the same.

27. Secondly, at *paragraph 42* of *Dennis Mather vs. The Director of Public Prosecutions SCCrApp No. 96 of 2020*, the Court of Appeal considered the decision of the judge below in the assessment of a “spent” conviction, in which the judge gave no weight to it. The Court of Appeal stated:

*“The Judge addressed the appellant's antecedents when she said at paragraph 10 of her September 2020 decision, in reference to the effect of the appellant's convictions being spent: "Previous Convictions (10) The Applicant has no previous convictions as they appear to have been spent in accordance with the Rehabilitation of Offenders Act, Chapter 100.”*

28. Their Lordships went on to say that, *“this alone however, cannot determine whether the Applicant should be granted or refused bail.”*

29. According to section 6(2)(a) of the Rehabilitation of Offenders Act,

*“Nothing in subsection (1) of section 5 shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person’s previous convictions or to circumstances ancillary thereto- (a) in any criminal proceedings before a court (including any appeal or reference in a criminal matter);”*

30. Their Lordships found that the Judge ought not to have disregarded the previous convictions for the purpose of the bail hearing; but by doing so, provided the appellant with an unmerited benefit.

31. In this vein, I note counsel for the Applicant’s submissions on the age of the Applicant’s Possession of Dangerous Drugs conviction (2006) and Attempted Stealing conviction (2010) as being spent. Also that in relation to the Receiving conviction (2014) that it was almost spent.

32. However, having regard to *Section 6(2)(a) of the Rehabilitation of Offenders Act* and on the authority of *Mather*, I find that for the purposes of these proceedings these convictions ought to be considered as I assess the Applicant’s character and the effect it has on his propensity to reoffend and be a threat to public safety and order.

33. Moreover, in relation to the Applicant’s unlicensed firearm conviction (2016), I rely on the case of *Lorenzo Wilson vs. The Director of Public Prosecutions SCCrApp No. 129 of 2020* which beginning at paragraph 19 states,

*“19. As to the antecedents, it is not required to show that the appellant lives a habitual life of crime before taking his antecedents into account.*

*20. In this case, the appellant is 24 years old and has already been convicted of a criminal offence which was serious enough to serve 18 months imprisonment. That offence involved an unlicensed firearm and this offence also involves a firearm which was alleged to be used indiscriminately against members of the public on a public street.*

34. The Court went on to indicate at **paragraph 21** that,

*“In our view, it was not unreasonable for the judge to have found that the appellant was a danger and not a fit person to be granted bail”.*

35. I note that in the instant application, on the Appellants full and frank submissions, he was sentenced to a term of five (5) years imprisonment for his firearm conviction and that similarly a firearm is also alleged to have been used in the commission of this offence.

36. Additionally, while his previous convictions are not similar in nature to that of Murder, the Court can nevertheless consider these in terms of his good character or lack thereof.

37. While I find that the Applicant is not a man of good character, this Court’s assessment of the effect of these convictions, more particularly the firearm conviction, goes further.

38. In *Tyreke Mallroy vs. The Director of Public Prosecutions SCCrApp No. 142 of 2021*, a case where the Appellant had multiple previous convictions and was on bail for Armed Robbery when he was charged with Murder, at **paragraph 24** of the judgment, their Lordships stated:

*In these circumstances this issue goes beyond whether the appellant will appear for his trial but turns on whether he is a threat to society. The learned judge’s decision when read as a whole is based on his view articulated in paragraph 33 as follows: “33. 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.”*

39. Their Lordships went on to find that having regard to the Appellant’s antecedents and the fact that he was arrested for the current offence while on bail there is a reasonable basis to perceive him as a threat to society and that as the evidence raised a reasonable suspicion of the commission of the offences by the appellant, it justified the deprivation of his liberty by arrest, charge, and detention pending trial.

40. In the present application I note that the Applicant does not have a pending matter, unlike *Mallroy* above. However, I am of the view that the principle remains the same, in considering the effect of multiple previous convictions, inclusive of a firearm conviction, coupled with the allegations of the present offence being committed with the use of a firearm.



41. This, in my view is consistent with the Court of Appeal's position in *Wilson*, which, according to their Lordships, even if the Applicant did not live a habitual life of crime, his previous firearm conviction coupled with the manner in which the present charge alleges it was used is sufficient evidence for the court on the assessment of a bail application, to find that the Applicant is a threat to public safety and order.
42. I therefore find that having regard to the evidence of the Applicant's prior convictions and the issues ventilated above, that the Applicant is a threat to public safety and public order.

### **CONDITIONS**

43. 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 requests that an EMD and curfew not be imposed considering the nature of his job.
44. 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.
45. 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 16<sup>th</sup> day of December 2022**

**The Hon. Madam Justice Renae McKay**