

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

Criminal Side

2018/CRI/bal/No. 00574

BETWEEN

KIRKWOOD THOMPSON

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: **The Honourable Mr Senior Justice Bernard Turner**

APPEARANCES: **Mr Ryszard Humes and Ms Karina Rolle for the
Applicant**

**Ms Janessa Murray and Ms Karine MacVean for
the Respondent**

HEARING DATE: **8 February 2023**

RULING

TURNER Snr. J.

1. The applicant herein applied for bail by way of a summons with an affidavit in support thereof filed on 24 January 2023.
2. The applicant is charged with the offence of Manslaughter, which is alleged to have been committed on 16 January 2023. The deceased is a three month old infant.
3. The affidavit of the applicant states, in part:

“ ...

3. That I am 29 years old being born on the 28th December, 1993.
4. That prior to my arrest I resided Garden Hills #1 Ameryllis Avenue House #57.
5. That prior to my incarceration I was employed as funeral director and embalmer at Amethyst Funeral Home and I worked as a passenger screener at the Lynden Pindling International airport.
6. That I resided with my grandmother and I assist her with the bills in the home.
7. That I have no previous convictions.
8. That I have no pending matters in this and or any other jurisdiction.
9. That I was arraigned and charged with the offence of Manslaughter in Court #1 before Magistrate Algernon Allen Jr.
10. That I maintain my innocence and that this matter did not involve any offensive instrument, violence or physical altercation.

11. That I am not a flight risk and I pose no threat to society.

12. That I will not interfere with the witnesses in this matter.”

4. In response to the application, the respondent submitted an affidavit detailing the reasons why they considered that the applicant ought to be denied bail. They highlighted that the virtual complainant is a three month old and that the applicant admitted causing unlawful harm to the child. The medical report stated that the harm consisted of conjunctival hemorrhages, injury to her left eye, swelling to her face and bruising on her nose and left middle cheek.
5. Counsel contended that the applicant was not a fit and proper candidate for bail as there was no unreasonable delay, the evidence against the applicant was cogent and admissible, and, that :

“9. The applicant should be kept in custody for his own safety and protection as there was an obvious and viral expression of public outrage in relation to this unlawful death of a three (3) month old.

10. That if the applicant is released on bail he will likely be the victim of retaliation.

11. That the Court has a duty to protect the public from persons who commit these serious offences. The application for bail should be denied in the interest of public safety.”

6. The charged offence is a Part C offence and in relation to those types of offences section 4(2) of the Bail Act provides:

“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,

(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 make 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 for the released on bail.

....”

Part A of the First Schedule of the Act 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;

...

(g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant;

(h) in the case of violence allegedly committed upon another by the defendant, the court's paramount consideration is the need to protect the alleged victim.

7. Relative to the nature and seriousness of the offence of manslaughter, the alleged circumstances, as asserted by the respondent in a record of interview, exhibited to the respondent's affidavit, suggest that the injuries to the child were caused during the course of a drive when the respondent had to swerve to avoid a collision, which resulted in the child falling out of her car seat and injuring herself. Besides the police hospital form, nothing else is referenced in the respondent's affidavit to controvert or support the statements in the said record of interview.
8. The respondent, by the charge presently filed, do not suggest any intent to kill, indeed the evidence as presently placed before the court suggests something in the nature of an accident, resulting in the death of the child.
9. In support of their submission that the applicant ought to continue to be remanded in custody for his own safety (per the provisions of Part A, (b) of the Bail Act), the respondent cited **Dentawn Grant v DPP No.**

59 of 2022, Bahamas Court of Appeal where it was stated, by Isaacs JA:

“25. However, it cannot be gainsaid that the Judge was fully entitled to consider the safety of the Appellant as one of the factors for her to weigh in the scale pertaining to whether or not to grant the Appellant bail based on the strength of the material provided to her by the Respondent, namely, the Appellant's car had been shot at some days before the murders took place, an event the Appellant admitted occurred in his Record of Interview with the police.

26. Part A of the First Schedule to the Bail Act states, inter alia as follows: "The Court shall deny bail to a defendant in any of the following circumstances — (b) where the Court is satisfied that the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;"[Emphasis added]

27. Once there is a basis for the Court to conclude that an accused person's life may be in danger if he is released on bail - and the attack days earlier on the Appellant provides such a basis the Court is obliged by the mandatory "shall", to deny bail to the Applicant. However, a caveat may be applicable here, to wit, if the Applicant is able to demonstrate to the Court that notwithstanding a finding that his life may be in danger if released on bail, he is able to minimise that risk either by relocation to another island or by remaining under house arrest, the Court ought to have

regard to such conditions when deciding whether or not to grant bail.”

10. Properly considered however, the factual circumstances in this matter are inapposite to Grant, in which the appellant had already been attacked, and had admitted to being attacked. In the instant matter, the affidavit in response alluded to viral social media outrage but did not purport to cite any particular threat to the applicant. The respondent in effect is inviting the court to find that the applicant’s safety is at risk, without providing any basis for the court to do so. That would clearly be unreasonable and wrong.
11. The applicant is therefore granted bail on the following terms:
 1. Bail in the sum of \$9,000.00 with two sureties.
 2. The applicant is not to come into any deliberate contact with any of the witnesses in this matter, either by himself or through any agent.
 3. The applicant is required to sign in at the East Street South Police Station on Mondays and Fridays before 6:00pm.
 4. A breach of any of these conditions will render the applicant liable to further remand.

Dated this 13th day of February, A D 2023

A handwritten signature in black ink, appearing to read "Bernard S A Turner".

**Bernard S A Turner
Senior Justice**