

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Criminal Side**

**2018/CRI/bal/No. 00190**

**BETWEEN**

**ROMELL KENNETH POITIER**

**Applicant**

**And**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

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

**APPEARANCES:**   Mr Lennox Coleby for the Applicant  
Ms Cordell Frazier and Ms Karine MacVean for  
the Respondent

**HEARING DATES:**   30 January 2023

# **RULING**

**TURNER Snr. J.**

The applicant herein is applying for bail in respect of one count of Possession of a firearm with intent to endanger life, which is alleged to have occurred on Christmas Day, 2022.

2. The salient parts of his affidavit in support of the application for bail, read as follows:

“ ...

2. That I am twenty-seven (27) years of age, and I am a Bahamian living all my life in The Bahamas.

3. That at the time of my arrest, charge and incarceration I was seeking gainful employment.

4. That I have been arrested and charged with one (1) count Possession of Firearm with intent by means thereof to endanger life. Contrary to section 33 of the Firearms Act Chapter 213.

....

7. That notwithstanding the allegation of against me are serious I am innocent of the charge and I intend to fight the charges and call witnesses.

8. That I have one (1) pending criminal matter before the court.

9. That if admitted to bail I will not abscond from the jurisdiction, I would be domicile in my mother's home, with my mother & family who would ensure that I would attend court; and not get into any mischief.

10. That I will abide by any condition set by this Honourable Court in granting bail including being monitored.

11. That I would not interfere with the witnesses in this matter.

12. That I make this Affidavit in support of my application for bail.

13. That the statements made herein my Application for Bail are made from my personal knowledge and are true and correct to the best of my knowledge, information and belief.”

3. The Respondent objected to the application and filed an affidavit which reads, in part:

“....

4. That the Applicant, ROMEL POITIER a.k.a "MOB" a.k.a "MEL", (Date of Birth: 27th October, 1994) is charged with Possession of Firearm with Intent to Endanger Life, contrary to section 33 of the Firearms Act, Chapter 213.

5. That it is alleged that on Saturday the 24th, December, 2022, the Applicant, did have in his possession a firearm and fired several gunshots at Olricka Farrington with the intent by means thereof to endanger her life.

6. That the Applicant appeared before the Stipendiary and Circuit Magistrate Kara Turnquest-Deveaux in Court #10 on Friday 30th of December, 2022 on that charge and was remanded to the Bahamas Department of Correctional Services.

7. That the Voluntary Bill of Indictment with respect to this matter is presently being prepared. That there has been no unreasonable

delay in the aforementioned matter as the incident is alleged to have occurred on the 24th of December, 2022.

8. That the Applicant has previous convictions for Possession of dangerous Drugs with Intent to Supply (4/9/18) where he was fined \$4,000.00, Possession of Dangerous Drugs with Intent to Supply (9/7/19) where he was fined \$2,000.00 or twelve months in prison, Taking Preparatory steps to export Dangerous Drugs (9/7/19) where he was fined \$2,500.00 or 12 months in prison, and Possession of Dangerous Drugs (14/12/21) where he was fined \$2,500.00 or 6 months in prison. There is now produced and shown to me marked as "Exhibit JM-1" a copy of the Applicant's Royal Bahamas Police Force Criminal Records Antecedents Form dated the 28th of December, 2022.

9. That the Applicant now stands charged with a more serious offence, Possession of a Firearm with the Intent to Endanger Life. That having regard to the Applicant's previous convictions and the present charge of Possession of a Firearm with the Intent to Endanger Life, the Respondent has substantial grounds for believing that the Applicant will re-offend should he be released on bail.

10. Further, the Applicant should be kept in custody in the interest of public safety and public order, as he has been convicted of Drug Offences stemming from 2018, 2019, 2021 and now the present offence in 2022.

11. That the evidence against the Applicant in respect to the present offence is cogent. According to the VC when Shawn

McDonald, her cousin came to pick her up in a gray Honda Civic, there were two other males in car; namely "Draco" in the back seat "Mob" in the front passenger seat. When the VC opened the front passenger door, Shawn asked "Mob" to move and go in the back seat so that she could sit down. "Mob" said no, that he started freaking out and got into an argument with Shawn. He then grabbed the VC and subsequently pulled out a black handgun. She immediately became in fear of her life and ran back inside the house. She remembered hearing three gunshots and is able to identify "Mob" if she was to see him again because he was not wearing any mask at the time of the alleged offence. There is now produced and shown to me marked as "Exhibit JM-z"0 a copy of the statement of Olricka Farrington.

12. That on the 25th of December, 2022, Olricka Farrington, while at the Carnival, Fort Charlotte, positively pointed out the Applicant, Romel Poitier to police officers on duty at the Carnival Grounds as the male who shot at her. She further indicated that she is in fear of her life. There is now produced and shown to me marked as "Exhibit JM-3", a copy of the statement of Olricka Farrington.

13. That on the 25th of December 2022, while on duty at the Carnival Grounds, D/C 4027 Percy Leary cautioned and arrested the Applicant referenced to a complaint made by Olricka Farrington in addition to her positively identifying the Applicant as the male known to her as "Mob" who shot at her. There is now

produced and shown to me marked as "Exhibit JM-4" the report of D/C 4027 Percy Leary.

14. That the Applicant, when asked by D/Insp. Rosenell Butler to participate in an identification parade or group identification he refused to do so and the same was documented on the Identification Parade Form. There is now produced and shown to me marked as "Exhibit JM-5" and "Exhibit JM-6", a copy of the Report of D/Insp. Rosenell Butler and the Identification Parade Form respectively.

15. That on Tuesday, the 27th of December 2022, Shawn McDonald was shown a 12-man photo gallery where he positively identified the Applicant in position #7 as the male he knew as "Mel" who got in a verbal altercation and subsequently fired several gun shots at his cousin, Olricka Farrington. There is now produced and shown to me marked as "Exhibit JM-7" and "Exhibit JM-8", a copy of the statement of Shawn McDonald and the 12-man Photo gallery respectively.

16. That on Saturday, the 27th of December, 2022, Deangelo Morley a.k.a. "Draco" was shown a 12-man photo gallery where he positively identified the Applicant in position #10 as the male he know as "Mob" who got into a verbal altercation with Olricka Farrington and subsequently pulled out a firearm and fired several shots at her. There is now produced and shown to me marked as "Exhibit JM-9" and "Exhibit JM-L0", a copy of the statement of Deangelo Morley and the 12-man Photo gallery respectively.

17. That the Applicant is not of good character and having regard to the serious nature of the offence to which he is presently charged and the manner and circumstances in which this offence was committed for the safety of the VC, he should be kept in custody.

18. In the present circumstances, the Respondent prays that this Honourable Court refuse the Applicant's application to be admitted to bail.

19. That the contents of this Affidavit are true to the best of my knowledge, information and belief.”

4. Section 4(2) of the Bail Act 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 ;

(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),.....”

5. The offence with which the applicant is charged is listed in Part C of the Bail Act. Further, sub-section 4(2B), reads:

**“(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.”**

6. Counsel for the respondent submitted that having regard to the antecedents of the applicant, that the beliefs adumbrated in paragraphs 10, 17 and 18 of their affidavit are all reasonable and borne out by the evidence of his character and the attendant circumstances.
7. These considerations are laid out in the decision of The Bahamas Court of Appeal in **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**. Paragraph 66 of that decision states:

**“66. In the absence of evidence, merely listing the relevant factors and using expressions such as “may”; or “is likely to”; or “it is recommended” as was done in the McHardy affidavit, cannot discharge the Crown’s burden. We take this opportunity to stress once again what this Court (differently constituted) said in Armbrister, which is that that is not how the Crown’s burden on a bail application is discharged. Paragraph (a) of the First Schedule requires the production by the Crown of evidence capable of supporting a belief that the applicant for bail “would”, if released, abscond, commit new offences or interfere with witnesses. Ritualistic repetition of the Part A factors, in the absence of**



**evidence, is unfair to the accused person and comes nowhere close to discharging that burden.”**

8. Paragraph 70 concludes the review of this issue by stating:

**70. Put somewhat differently and at the risk of being unduly repetitive, we are satisfied that given the presumption of innocence and the evidence of the appellant’s good character and the absence of criminal antecedents, there was no evidential basis before the judge in relation to the appellant which is capable of supporting the judge’s ultimate conclusion at paragraph 16(v) of his decision that: “in the circumstances of this Applicant and this application the need for public order and public safety is paramount”. In the absence of evidence that the appellant posed a substantial threat to the Crown’s witnesses or to public safety and public order, the judge’s decision was unreasonable and clearly wrong.”**


9. A bail application is not to determine where a person is guilty of any offence, but to determine whether an applicant ought to be placed on bail, or whether there is any sufficient basis made out to determine that he should be remanded into custody to await his trial.
10. Having regard to the issues raised by the legislation in section 4(2B), I note that the applicant, has a criminal history of serious drug offences. Those offences are not crimes of violence, but the attendant circumstances normally surrounding the commission of those types of offences usually carry the specter of violence.

11. In addition, the applicant acknowledged that he has a pending criminal charge and whereas he did not condescend to indicate what that charge was, the record indicates that he had been charged previously with Possession of a firearm with intent to endanger life, Possession of an unlicensed firearm and possession of ammunition, in 2019.
12. What is disclosed as the intended evidence, without making any findings on same, points to the indiscriminate use of a firearm in the vicinity of a number of other persons, including eyewitnesses, in apparent disregard of their presence.
13. The intended evidence also indicates that the alleged eyewitnesses were all known to the applicant, indeed they assert that he was in a car with them when he drew a firearm and started shooting at the cousin of one of the car's occupants for the seeming innocuous reason that he was asked to go into the back seat of the car.
14. I find from all of the circumstances in respect of these allegations, and the circumstances of the applicant, and considering the provisions of the Bail Act, that the Respondent has placed sufficient information before the court as to cause me to conclude that there is a substantial risk that if released on bail, the applicant would not only interfere with the witnesses in this matter, and endanger public safety generally, but that he would also not appear to take his trial.
15. Having considered whether any conditions could be imposed which would prevent any witness interference, public endangerment and the applicant not appearing at his trial, I do not consider that any conditions

could be placed on the Applicant which would prevent any of those eventualities. Electronic monitoring devices are useful and effective tools for tracking persons on bail, but there is nothing which physically prevents a person from removing the device, once a decision is made to breach the conditions of a bond.

16. In these circumstances, I find that the Respondent has satisfied me that the Applicant ought to continue to be detained in custody.
17. His application for bail is therefore refused.

**Dated this 10<sup>th</sup> day of February, A D. 2023**

A handwritten signature in black ink, appearing to read "Bernard S A Turner J.", written in a cursive style.

**Bernard S A Turner  
Senior Justice**