

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Side
2022/CRI/bal/No. 00191

BETWEEN

ALEX BARR

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

APPEARANCES: **Mr Stanley Rolle for the Applicant**
 Ms Cephia Pinder-Moss for the Respondent

HEARING DATES: **3 October 2022**

RULING

Turner Snr J

The applicant herein is applying for bail in respect of a charge of murder, which is alleged to have occurred on 28 April 2022 in Freeport, Grand Bahama.

2. His affidavit in support of the application for bail, filed 17 August 2022 reads as follows:

“I, ALEX T. BARR of Red Bays, in the Settlement of the Island of Andros (North) one of the Islands in the Commonwealth of The Bahamas and currently an Inmate at the Bahamas Department of Correctional Services in the Island of New Providence, another Island in the said, Island and Commonwealth, make Oath and say as follows:-

1. That I am the Applicant herein being Twenty-seven (27) years of age and a Bahamian national having been born in New Providence on the 20th day of July, 1995.

2. That prior to being arrested I was a self-employed Construction Worker and held other jobs as a Diver and Fisherman.

3. That I was arrested on May 12, 2022 and charged with Harboursing a Fugitive and Possession of Dangerous Drugs. I was arraigned on these charges. However the charge of Harboursing a Fugitive was dropped and the trial for the Possession of Dangerous Drugs was adjourned to the 28th September, 2022 in Freeport, Grand Bahamas.

4 That on the 20th May, 2022, I was charged for the Murder of Jevon Pinder. This incident is alleged to have occurred in Freeport, Grand Bahama. I am innocent of this allegation.

5. That for the Murder charge I returned to court on the 12th of July, 2022 for the Voluntary Bill of Indictment (VBI) but the VBI was not ready. I returned to court again on the 28th of

September, 2022, in Freeport for the next opportunity to be served with the VBI.

MY REPLY TO THE ALLEGATION

6. That I am innocent of the allegation and will vigorously defend my innocence against this allegation. I have done nothing wrong.

MATTER(S) PENDING & BAIL

7. I have no matters pending before any Court.

CONVICTION(S)

8. That I have a conviction for Possession of a Firearm in 2017. I was sentenced to three and a half (3 ½) years. This is a matter where I was forced to plead guilty. The firearm was rusty and most likely not working. However, to avoid my family going to jail, I pleaded guilty. I have asked that the firearm be tested but the reply was "for what purpose".

FOR THESE REASONS I ASK THE COURT TO GRANT ME BAIL

9. That I am innocent of this allegation. There were two other males listed as suspects for this incident.

10. That I have maintained my innocence against the allegation and I have suffered unwarranted hardship, oppression and abuse because I am continually remanded to prison.

11. That while in custody I did not attend and identification parade no one said I was identified. I volunteered my blood to clear my name.

12. That at no time to my knowledge was it complained that I had interfered in anyway with the witnesses for the prosecution. I have no intention to. I believe in justice and know that justice will prove me innocent.

13. That I firmly believe that I am a fit and proper person to be admitted to bail. All ties are to the Bahamas alone and I am not

a flight risk. I will honor the conditions, if any, impose upon me as a condition of me being admitted to bail.

14. That this Affidavit is filed in support of the summons filed herein pursuant to the Bail Act, 1994 and I humbly pray that this Honorable Court would see me fit to be admitted to bail thereby exercising its discretion in my favour and grant me bail in a reasonable sum.

15 That the contents herein contain are correct and true”

3. The Respondent filed an affidavit in opposition to the application for bail, on 31 August 2022, which spoke to the applicant's antecedents and provided some information about the nature and strength of the evidence in the matter for which the applicant is seeking bail, the material parts read:

“3. That the Applicant was remanded to bail in relation to a May 12th 2022 Possession of Dangerous Drugs matter. The Applicant was subsequently charged with the Murder of Jevon Pinder May 20th 2022 while on bail and subject to conditions.

4. That the Applicant was previously convicted of Possession of Unlicensed Firearm in 2017 and released May 7th 2021 from the Department of Correctional Services. A copy of his Antecedents are attached and marked as "Exhibit D. T. 1."

5. That the Applicant is now accused upon reasonable suspicion of Murder of which the evidence is cogent. Witness Cecil Lamont has identified the Applicant as the person responsible for shooting the deceased April 28th 2022 via a twelve man photo array conducted May 19th 2022 by Sergeant # 1849 Smith. A copy of the statements in regards to this matter are attached and marked as "Exhibit D. T. 2."

6. That it is alleged that the firearm that was discharged in regards to this matter was done so 11 times in a residential area, without regards to other persons present. That the need to protect the safety of the public or public order are primary considerations in relation to bail.

7 That the nature of the offence with which the Applicant is charged and the likely sentence he may receive if convicted and the close proximity of Grand Bahama Island to the United States, gives the Applicant an incentive to flee this jurisdiction. Also if the Applicant is fitted with a monitoring device, the Court has no assurances that he will not tamper with it or completely remove it. That the Applicant was subject to conditions previously and is now back before the court. There is nothing peculiar about the Applicant's situation which suggests his continued detention is unjustified.

8. That Murder is a Part C offence. That I make this Affidavit in opposition to the Application for bail on the following grounds as stated in chapter 103 of the Bail Act that:

- a. There are substantial grounds for believing that the Applicant if released on bail, whether subject to conditions or not, would commit an offence while on bail;**
- b. There are substantial grounds for believing that the Applicant if released on bail, whether subject to conditions or not, would fail to surrender to custody; and**

c. That the Applicant was previously released on bail in relation to Possession of Dangerous Drugs and is now charged subsequently with an offence which is punishable by a term of imprisonment exceeding one year namely Murder.

9. That the contents of this Affidavit are true to the best of my knowledge' information and belief."

4. The Bail Act, section 4(2) 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. 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. I note that the applicant in his affidavit had asserted that he did not attend an identification parade, however the affidavit of the respondent provides context to that assertion, since the affidavit indicates that the applicant declined to attend an identification parade, as is his right. The affidavit however indicates that the applicant was identified on a photo lineup, since he declined to attend a parade.

7. Counsel for the respondent submitted that having regard to the antecedents of the applicant, and the alleged circumstances of the present matter, inclusive of what can only be described as cogent evidence that the applicant is alleged to be the actual shooter in this matter, there are reasonable grounds to believe that if released on bail the applicant would commit offences and/or not appear to take his trial.

8. The issue of the reasonableness of these types of 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**, where it was stated at paragraph 66:

“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.

.....

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 whether 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 legislative provisions of section 4(2B), I note that this 27 year old applicant has already spent three and a half years in prison

-serving a sentence for possession of an unlicensed firearm, on a guilty plea. That is a serious matter and the circumstances of that conviction were such that the trial magistrate must have considered a sentence of that length to be necessary and sufficient.

11. I cannot accept the applicant's assertions about the circumstances of either the matter (he says a found rusty gun) or the reason for his guilty plea (he says he was forced to do so to keep family members out of prison) since to do either would be to effectively sit in judgment on the merits of that conviction, which is outside of the scope of a bail application, indeed any appeal in that matter would lay to the Court of Appeal.

12. Further, I find that that conviction is for a crime of violence, possession of an unlicensed firearm, is but a pre-cursor to what is now alleged against the applicant, a murder, with a firearm.

13. Indeed he is alleged to have committed this offence within a year of having been released from prison for his firearm conviction.

14. I find that in the circumstances of this matter, it is sufficient evidence of prior conduct to give the court concern about future conduct, as to whether he would commit other offences.

15. What is disclosed as the intended evidence, without making any findings on same, clearly points to the use of firearms in an indiscriminate and arbitrary manner, which places the safety of the public at some risk.

16. The respondent's characterization of this matter is of it being a matter allegedly committed while the applicant was on bail for other matters, namely possession of dangerous drugs. I do not agree with that analysis, since the respondent's own affidavit indicates that that matter was in relation to an

alleged May 2022 incident, whereas in fact the murder allegation is in relation to an April 2022 incident. The fact that he was charged first for the May incident does not mean that he was on bail for another matter when charged with another matter **allegedly committed** while on bail.

17. I do however 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.

18. As had been noted by the Court of Appeal in **Seymour**:

“68. 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. Such evidence might have included for example, any prior convictions (if any) for similar offences; or evidence of pending charges for violent or firearm offences; or again, evidence for instance, of any known or suspected gang affiliation. No such evidence was placed before the learned judge and the absence of such evidence, stood in stark contrast with the evidence which the appellant had placed before the judge of his good character, strong family and community ties and the fact that he had a long and unblemished record of service within the BDF.”

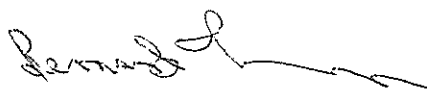
19. Having considered whether any conditions could be imposed which would prevent any witness interference, public endangerment and the applicant not appearing at his trial, I do not consider that any conditions could be placed on the Applicant which would prevent any of those eventualities.

20. Although electronic monitoring devices are useful and effective tools for tracking persons on bail, there is nothing which physically prevents a person from removing the device, once a decision is made to breach the conditions of a bond. Even more importantly, in relation to a threat to witnesses, a patent issue in this matter, it can hardly protect any vulnerable witnesses.

21. In these circumstances, I find that the Respondent has satisfied me that the Applicant ought to be detained in custody.

22. His application for bail is therefore refused.

Dated this 24th day of October, A D 2022

A handwritten signature in black ink, appearing to read 'Bernard S A Turner', followed by the initials 'S.M.J.' to the right.

**Bernard S A Turner
Senior Justice**