

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Criminal Side**

**2020/CRI/bal/00362**

**BETWEEN**

**ALVARDO CURRY**

**Applicant**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

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

**APPEARANCES:       Mr James Thompson, Public Defenders Office,  
for the Applicant**

**Ms Abigail Farrington for the Respondent**

**HEARING DATE:       28 November 2022**

**RULING**

1. The applicant herein applied for bail, in relation to a charge of murder, by way of a summons and an affidavit in support filed on 7 November 2022.

2. The affidavit reads:

**“I, ALVARDO CURRY of #1, Boatswain Road off Carmichael Road, New Providence currently incarcerated at The Bahamas Department of Correctional Services, Fox Hill Road on the island of New Providence one of the Islands of the Commonwealth of The Bahamas, make Oath and say as follows;-**

**1. That I am the Applicant named herein, being a citizen of The Commonwealth of The Bahamas, a juvenile, age twenty-three (23) having been born on the 24<sup>th</sup> day of February, 1999.**

**2. That, prior to my arrest I employed in the business of yard maintenance and Handyman.**

**3. That I was arrested March 7, 2022 for the offence of MURDER. No VBI has been served as yet and I return to the court on the 15th day of December 2022 before Chief Magistrate Joyanne Ferguson Pratt. I was remanded without bail but told of my right to apply to the Supreme Court for bail.**

#### **PENDING MATTERS & BAIL**

**4. I have PENDING matters before the court for MURDER AND ATTEMPTED MURDER. I was granted bail for these offences in 2020 before Madam Justice Renea McKay with conditions that I wear a monitoring device and report to the Carmichael Road Police Station every Monday Wednesday and Friday. The trial of this matter is in November, 2022.**

#### **CONVICTIONS**

**5. I have NO convictions.**

## **MY REPLY TO ALLEGATION**

**6. I am innocent of this alleged allegation against me and will vigorously defend my innocence.**

**7. That I have no knowledge of the alleged crime that I am accused of. People came in and mix me up in this false allegation. I attended no identification parade and I do not recall signing any paper that stated I do not wish to attend an Identification Parade. During my record of interview my attorney advised me to answer no comment.**

## **PERSONAL INFORMATION**

**8. That I am a young man who works hard. I attend the SDA congregation and I am helpful in my community.**

## **REASONS FOR THE GRANT OF BAIL**

**9. That I am innocent of the allegation alleged against me in this matter. All my ties are to the Bahamas alone. I am not a flight risk. There is no incentive for me to abscond. I will appear for my trial and each adjournment. I will not interfere with witnesses. I am innocent and will vigorously defend my innocence.**

**10. That I know that I am a fit and proper person to be admitted to bail and will reside in New Providence until my matter is disposed of. There are appropriate conditions that can be attached to the bail that I will abide by.**

**....”**

3. The respondent, the Director of Public Prosecutions, relied on an affidavit in response, filed on 18 November 2022, in objecting to the grant of bail. That affidavit reads:

**“..4. That the Applicant Alvarado Curry (Date of Birth: 24th February, 1999) is charged with one (1) count of Murder**

contrary to section 291(1)(b) of the Penal Code, Chapter 84. This offence is alleged to have occurred on Thursday, 24th February, 2022. There is now produced and shown to me a copy of the charge sheet marked and exhibited as "R.F.1"

5. That evidence in the matter is cogent. On Thursday, 24th February, 2022, sometime around 6:45 p.m., an anonymous witness observed the deceased through Carmen Close and Blue Hill. A few seconds later the witness heard gunshots. The witness then saw the Applicant, a tall brown-skinned male the witness knew as Alvarado Curry a.k.a "Buggy" wearing a dark colored jacket with a firearm in his hand. Alvarado Curry, the Applicant was hitting the firearm against the ground. The Applicant then stood up and pointed his hand towards the ground. This is when the anonymous witness heard another single shot and then saw the Applicant running away from the deceased body. The anonymous witness has known the applicant for a few years from visiting the area of Carmen Close. There is now produced and shown to me a copy of the statement of the anonymous witness marked and exhibited as "R.F.2."

6. That the anonymous witness visited C.I.D where the Applicant was positively identified in photo number (12) twelve as the male seen with a firearm who fired a shot to the body of the deceased. There is now produced and shown to me a copy of the identification statements of the anonymous witness marked and exhibited "R.F.3"

7. That the Applicant was wearing an Electronic Monitoring Device at the time of incident and was monitored by Metro Security Solutions by Global Positioning System (GPS) which tracked and showed him to be in the area of Camden Close in New Providence. There is now produced and shown to me a copy of the G.F.S location marked and exhibited as "R.F.4"

8. That prior to the Applicant's incarceration for the present offence, the Applicant has also been charged with Murder and Attempted. There is now produced and shown to me a copy of the Antecedent Form marked and exhibited as "R.F.5".

9. That while on Bail for the previous offence of Murder and Attempted Murder, Indictment Number 75/04/2019 that was alleged to have taken place on Sunday, 17th March, 2019, the applicant is now charged with the same offence of Murder. There is now produced and shown to me a copy of the Voluntary Bill of Indictment marked and exhibited as "R.F.6".

10. That there has been no unreasonable delay and there is nothing peculiar about the Applicant's circumstances that would suggest that his continued detention is unjustified.

11. That there are no conditions that may be imposed that will mitigate the risk of the applicant absconding or committing further offences while on bail.

12. That the Applicant is not a fit and proper candidate for bail at this time.

**13. In the circumstances the Respondent requests that this Honourable Court in exercising its discretion not admit the Applicant to Bail.**

**14. The contents of this Affidavit are true to the best of my knowledge, information and belief.”**

4. The factors to be considered in an application for bail are found in section 4(2)(c) of the Bail Act, which reads:

**“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 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.**

5. 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. Part A of the First Schedule of the Bail Act states:

“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;

...

(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. In **Cordero McDonald v The Attorney-General SCCrApp. No. 195 of 2016** the Court of Appeal stated:

“1. The appellant was charged in the Supreme Court on 18 July 2016 with two counts of attempted murder, and two counts of possession of a firearm with intent to endanger life allegedly committed on 26 June 2016.

2. At the time of his arrest and charge, the appellant was on bail in respect of a pending charge of armed robbery; and as a condition of that bail, he was ordered 3 to wear an electronic monitor. Counsel noted that the appellant has no previous convictions.....

“21. Inexorably, attempted murder is considered a serious offence. The penalty for attempted murder is the same as for murder, except for the death penalty. In addition to the presence of that factor weighing against the grant of bail in this case, there is the other factor that the appellant was on bail when charged with an offence similar to that in respect of which he was already released on bail. The existence of these factors would support a finding of substantial grounds for believing that the applicant would fail to surrender to custody or appear at his trial; or commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice.

22. Notwithstanding however, the presence of the aforementioned factors in this case, the nature of the evidence against the appellant is of utmost relevance, as it is in all cases, for it underpins the reasonableness of the suspicion of the commission of the offences by the appellant, and consequently, the basis for arrest and deprivation of his liberty in relation thereto.”



8. The Court of Appeal in **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**, stated that:

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. ....

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.”

9. I find that the factual matrix in this matter brings it within the description in **Seymour** (ibid) of the type of evidence which is required to be placed before the Court to properly substantiate an assertion that the applicant is a threat to public safety or as constituting evidence on which it can be concluded that he may not appear to take his trial or would commit other offences while on bail.

10. The Court of Appeal has restated these principles in **Tyreke Mallory v Director of Public Prosecutions 142 of 2021** (January 2022) where their Lordships stated, under the rubric ‘**Released on Bail with a Similar Offence**’;

“21. At the bail hearing before the Supreme Court, counsel for the DPP, referred to the Affidavit of Sergeant 2169 Pinder and submitted that the appellant was already on bail for the charge of armed robbery and has multiple previous convictions. In response, counsel who appeared for the appellant in the Supreme Court relied on the recent decision of **Stephon Davis v. The Director of Public Prosecutions SCCrApp. No. 108 of 2021**. In that case this Court (differently constituted) opined, per Evans, JA, at paragraph 19: “19. It should be noted, however, that a judge hearing a bail application cannot simply refuse an application for bail merely on the fact that the new

offence is alleged to have been committed while the defendant was already on bail for a similar offence. There is a requirement for the judge to assess the evidence on which the crown intends to rely on the hearing of the new charge...” And at paragraph 25:

“25. In his submissions Mr. Carroll asserted that the police file contains other information. However, whatever that information maybe it does not appear that it was placed before the judge as he made no reference to any other evidence. As the authorities show the crown has a duty to put before the court the evidence which raises a reasonable suspicion of the commission of the offences by the applicant, such as to justify the deprivation of his liberty by arrest, charge, and detention. In my view they failed to do so.”

22. Sir Michael Barnett, P. in his concurring judgment observed as follows:

“35. This Court has on more than one occasion repeated the principle that bail should not be denied as a punishment for a crime for which a person has not yet been convicted. This principle applies even when the crime is alleged to have been committed whilst a person was on bail. The burden is on those opposing the grant of bail to should (sic) why there are good reasons to deny bail to a person charged with an offence.

36. In this case, the Crown alleges that he is a threat having regard to the fact that this offence was committed whilst he

was on bail. But the Crown has produced scant evidence to show the basis upon which he has been charged...”

23. Unlike in *Stephon Davis* the evidence against the appellant is cogent and cannot be said to be very weak or non-existent. The contents of the reports as exhibited to the Affidavit of Sergeant 2169 Pinder sets out what can only be described as a strong prima facie case. This supports the findings by the trial judge that there is a reasonable basis for the Crown’s allegation that the appellant is a threat having regard to the fact that the present offence was committed whilst he was on bail.

24. 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.”

25. In my view, having regard to his 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. Further, the evidence, in my view, 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 pending trial.”**

11. The asserted factual matrix in this matter can be described as a strong prima facie case. Not only is the applicant identified by an eyewitness who asserts that the applicant was known to the witness, but the Electronic Monitoring Device which the applicant was wearing at the time places him in the vicinity of the alleged murder.
12. This points clearly to the conclusion that the applicant is a threat to society generally and to witnesses in this matter, at least one is an anonymous witness. In my view, having regard to the fact that he was arrested for the current allegation while on bail for the alleged offences of murder and attempted murder, means that there is a reasonable basis to perceive him as a threat to society. The evidence, in my view, raises a reasonable suspicion of the commission of the offence by the applicant, such as to justify the deprivation of his liberty by arrest, charge, and detention pending trial.
13. 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 endanger public safety generally, would pose a substantial risk of committing other offences while on bail, and would also pose a substantial risk of not appearing to take his trial.

14. In considering whether any conditions could be imposed which would prevent public endangerment, the applicant not appearing at his trial and/or preventing him from committing other offences, I note that the applicant was on bail when charged with this offence. The conditions of that bail, for murder and attempted murder, included reporting to the police station every Tuesday, Thursday and Saturday before 6:00 pm, daily curfew between the hours of 9:00 pm to 6:00 am, electronic monitoring, refraining from interfering with witnesses and any breach of such conditions rendering him liable to further remand.
16. Even these conditions have not prevented the applicant from being charged for a further murder allegation in circumstances in which there is strong prima facie proof, inclusive of information obtained as a result of his previous monitoring. I do not believe that any other conditions can be imposed to mitigate the risks of public endangerment, the applicant not appearing at his trial or committing other offences.
17. In these circumstances, I find that the Respondent has satisfied me that the Applicant ought to continue to be detained in custody. His application for bail is therefore refused, the applicant is at liberty to appeal this decision.

**Dated this 2<sup>nd</sup> day of December, A D 2022**

A handwritten signature in black ink, appearing to read "Bernard S A Turner" followed by "Snr. J." to the right.

**Bernard S A Turner  
Senior Justice**