

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Side

2019/CRI/bal/No. 00356

BETWEEN

DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

And

CLYDON STUBBS

Respondent

BEFORE: The Honourable Mr. Senior Justice Bernard
Turner

APPEARANCES: Mr Roger Thompson, Ms Jameica Basden and
Ms Racquel Whymns for the Applicant

Mr Barry Sawyer for the Respondent

HEARING DATES: 21 & 28 November 2022

RULING

TURNER J

The applicant in this matter, the Director of Public Prosecutions, is seeking the revocation of bail granted to the Respondent Clydon Stubbs on 23 June 2020 for a charge of Murder and bail granted on 14 May 2021 for a charge of Armed Robbery.

2. The conditions of the two bonds signed by the Respondent and his sureties are laid out in the affidavit in support of the revocation application. That affidavit reads:

“..2. That this Affidavit is made in support of an application for the revocation of the Respondent's bail. A copy of the Bail Bond is attached and marked as "Exhibit G.T-1 and "Exhibit G.T-2", respectively.

3. That the Respondent's sureties are:

- a. Eloise Cooper of 31 Dignity Gardens, Carmichael Road;
- b. Maria Coakley of 82 South Beach; and
- c. Arnold Stubbs Sr. of 32 Pinewood Gardens

4. That the Respondent **CLYDON STUBBS (D.O.B. 09/12/1997)** is charged with

- a) One (1) count of Murder.

5. That the Respondent was granted bail by Supreme Court Justice Deborah E. Fraser on 23rd June 2020, in the amount of Thirty Thousand Dollars (\$30,000) with one (1) suretor. Attached hereto marked as

"Exhibit G.T.-1" is a copy of the Bail Bond outlining the terms of the Bail.

6. That the conditions of the Respondent's bail were as follows:

a. That the Respondent is to report to the East Street South Police Station, every Monday, Wednesday, and Friday before 6:00 pm.

b. That the Respondent is to be fitted with an electronic monitoring device and must agree to be bound by the 2010 Regulations of the device.

c. That the Respondent not come into any deliberate contact with any of the prosecution witnesses in this matter either by himself or through any agent.

d. That by any breach of these conditions, bail shall be forfeited and renders the Respondent liable to further remand at The Bahamas Department of Correction Services.

7. That the Respondent was granted bail by Supreme Court Justice Bernard Turner on 14th May 2021, in the amount of Eight Thousand Dollars (\$8,000) with one (1) or two (2) sureties. Attached hereto marked as "Exhibit G.T. 2" is a copy of the Bail Bond outlining the terms of the Bail.

8. That the conditions of the Respondent's bail were as follows:

a. That the Respondent is to report to the East Street South Police Station, every Monday and Friday before 6:00 pm.

b. That the Respondent is to be fitted with an electronic monitoring device and must agree to be bound by the 2010 Regulations of the device.

c. That by any breach of these conditions, bail shall be forfeited and renders the Respondent liable to further remand at The Bahamas Department of Correction Services.

9. That the Respondent CLYDON STUBBS (D.O.B. 09/12/1997) is charged with

b. One (1) count of Arm Robbery.

10. That the Respondent signed the Bail Bonds agreeing to comply with all the conditions listed on his Bail Bond.

11. That the Applicant was informed by Metro Security Solutions that the Respondent was non-compliant with the conditions of the Electronic Monitoring Program between the period of 2nd October 2022 to 28th October 2022. Attached hereto marked as Exhibit "G.T.-3" is a copy of the Electronic Monitoring Compliance Report.

a. That sometime around 5:59 am on 2nd October 2022 the Monitoring Center received an alert via Global Positioning System for the Respondent in violation of his curfew conditions as imposed by the court. Whereby, the Royal Bahamas Police Force recorded two (2) Arm Robberies and two (2) Murders on the aforementioned date. At this time no account could be given concerning the whereabouts of the Respondent who in breach of his bail conditions was off the grid.

b. That sometime around 6:16 pm on 9th October 2022 the Monitoring Center received an alert via Global Positioning Systems for the Respondent in violation of his curfew conditions as imposed by the court. Whereby, the Royal Bahamas Police Force recorded one (1) Arm Robbery on the aforementioned date. At this time no account could be given concerning the whereabouts of the Respondent who in breach of his bail conditions was off the grid.

c. That sometime around 3:22pm on 14th October 2022 the Monitoring Center received an alert via Global Positioning Systems for the Respondent in violation of his curfew conditions as imposed by the court. Whereby, the Royal Bahamas Police Force recorded one (1) Murder on the aforementioned date. At this time no account could be given concerning the whereabouts of the Respondent who in breach of his bail conditions was off the grid.

d. That sometime around 8:04am on 16th October 2022 the Monitoring Center received an alert via Global Positioning Systems for the Respondent in violation of his curfew conditions as imposed by the court.

e. That sometime around 7:09 am on 21st October 2022 the Monitoring Center received an alert via Global Positioning Systems for the Respondent in violation of his curfew conditions as imposed by the court. Whereby, the Royal Bahamas Police Force recorded one (1) Arm Robbery on the aforementioned date.

At this time no account could be given concerning the whereabouts of the Respondent who in breach of his bail conditions was off the grid.

12. That the Applicant has intelligence that the Respondent is a member of the "Dirty South Gang" involved in a gang feud with other gangs.

13. That the Respondent associates daily with other known gang members of the "Dirty South Gang".

14. That I verily believe that if the Respondent remains on Bail, he may offend.

15. That the Applicant has filed this Affidavit for the revocation of bail of the Respondent for failing to comply with the conditions of the Electronic Monitoring Device Program.

16. That the Respondent for the above reasons is not a fit and proper candidate to be on bail and in the circumstances bail should be revoked.

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

3. The Respondent filed an affidavit in response to the application which takes issue with some of the contents of the affidavit in support of the application. That affidavit reads as follows:

“I, CLYDON STUBBS of Saffron Street, Pinewood Gardens in the Southern District of the Island of New Providence, The Commonwealth of The Bahamas Make Oath as say as follows:

- 1. That I have read the Affidavit of Corporal # 3674 Gregory Taylor filed herein on the 1st day of November, A.D., 2022.**
- 2. Paragraph 3 through 10 of Corporal's Taylor Affidavit are not denied.**
- 3. That I object to paragraph 11 of the said Affidavit on the basis that I am advised that, that Paragraph contravenes the hearsay rules. Corporal Taylor cannot say what the metro security should give as evidence, In any event, paragraph A, B, C, D and E refers to a violation of curfew. There is no curfew condition associated with my bail.**
- 4. Paragraph 12 and 13 ought to be inadmissible as being offensive and prejudicial to me and both are hearsay evidence that is false in any event. I am not a member of any gang.**
- 5. That I have meticulously adhered to all conditions of my bail bond and do not comprehend why the prosecution feels compelled to make an application to revoke my bails.**
- 6. That I feel as though I have been targeted by the Police and sought out to be incarcerated. I was arraigned on a plethora of charges on the 31st of October, A.D., 2022 including 'A' unlawful possession at Avocado Street. In these instances, I was visiting an individual where the Police found car parts, I know nothing of**

the car parts. The parts were not in my possession, I have no control of the items.

Attached hereto and marked Exhibit "CS I" is the copy of the charge sheet.

"B" unlawful possession of the Honda Bumper at Saffron Street where I live. The Investigators refuse to go to the Vendor that I purchased the bumper from and did not allow me to go and try to find the receipt evidencing my purchase of the bumper.

Attached hereto is a copy of the charge sheet marked Exhibit "CS II"

"C" Armed Robbery, Of an incident that purportedly occurred of the 2nd of May, 2021. At such time I may have been in police custody in relation to a matter that I am now on bail. In any event, the alleged offense occurred more than 18 months ago and I was since in Police custody and charge with another offense. Attached hereto and marked Exhibit "CS III" is a copy of the charge sheet.

"D" Five counts of violation of Bail conditions. Attached hereto and marked Exhibit "CS IV"

7. That I humbly pray that this Honourable Court dismisses Prosecutions Summonses filed on the 10th and 11th of November, 2022 as showing no cause of action against the Respondent.

That the contents of this Affidavit are made from my own knowledge information and belief and are true and correct.”

4. Section 12(3) of the Bail Act states that:

“12(3) A person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a Court may be arrested without warrant by a police officer where

—

(a) the police officer has reasonable grounds for believing that that person is not likely to surrender to custody;

(b) the police officer has reasonable grounds for believing that that person has committed another offence while on bail;

(c) the police officer has reasonable grounds for believing that that person is likely to break any of the conditions of his bail or has reasonable grounds for suspecting that that person has broken any of those conditions; or

...”

5. In relation to the application, it falls within the scope of section 12(3)(c), as the applicant is asserting that the respondent has failed to comply with certain of the conditions of his bail, in as much as each of the two sets of conditions imposed electronic monitoring on the respondent, with the concomitant requirement to comply with the regulations for the use of those devices.

6. The attached reports from the monitoring authority detail that on the 2nd, 9th, 14th, 16th and 21st October 2022, the respondent's monitoring device, which the regulations, via the agreement signed between the respondent and the monitoring authority, was required to be charged once per day for a period of two hours, with a portable charging device which allows the person to move about even as the device is being recharged, was "off the grid" for hours, a term which means that the rechargeable battery for the device had been allowed to discharge to zero, in breach of the agreement.

7. Effectively, when a person being monitored, per a court order, allows his device battery to discharge to zero, he can no longer be monitored. The authorities therefore would not know whether such a person is commencing an attempt at fleeing the jurisdiction of the court, or whether they are otherwise in breach of some other condition of the court.

8. Most fundamentally however, that failure to charge the device means that the person placed on bail by a court is in breach of the order of the court.

9. The respondent's reply to the allegation of being in breach of his conditions was to attack some of the content of the affidavit, and to assert that the affidavit contained hearsay information which should have come directly from the monitoring authority.

10. That submission missed two important points, the first being that in bail applications, some amount of hearsay is permissible, as per the statement of the Court of Appeal in **Attorney General vs. Bradley Ferguson et al, Nos. 57, 106, 108, 116 of 2008.**

11. Further, secondly, and more importantly, the information is in fact before the court, in exactly the same way the intended evidence in a matter

is placed before the court on a bail application, to determine whether there is any cogency to the evidence, by way of the statements, or in this case, the reports, being attached to the affidavit of the applicant.

12. The second aspect of the respondent's reply is that some of the information are just allegations without any underlying support, in respect of the assertions of the respondent's alleged involvement in gang activity.

13. In respect of that submission, I agree. It is not sufficient for the applicant to assert that they have intelligence that the applicant is a member of a gang, and then assert that that is a basis for revoking the respondent's bail, granted in respect of other criminal allegations. I therefore do not consider those assertions in considering whether the respondent's bail should be revoked.

14. I also do not consider the assertions contained in the applicant's affidavit that while the applicant was off the grid, that they could not say whether he had committed the offences which the applicant gratuitously added in the affidavit as allegedly being committed while the applicant could not be monitored. Without more, those speculative statements have no proper place in a court's deliberations on the question of bail, or the revocation of bail. They too are not therefore being considered in determining whether the respondent's bail should be revoked.

15. Finally, the respondent also made the point that the affidavit refers to the respondent being in breach of a curfew, when in fact none of the conditions imposed on the respondent in any of the two separate matters included a curfew. I also agree with that submission, that there was no curfew imposed on the respondent.

16. However what the respondent did not address directly, beyond his compendious statement that he “**meticulously adhered to all conditions of my bail bond**” was the substantiated allegations that he had on the occasions mentioned in the report and repeated in paragraph six (above) been in breach of the bail conditions imposed by two courts, when his device was determined to be off the grid because of his failure to charge his device.

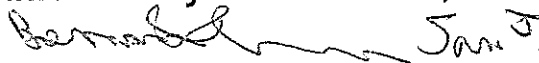
17. I find these repeated and prolonged, as detailed in the report, periods of the device being off of the grid and not trackable to be serious breaches of the conditions imposed by the courts.

18. On the available evidence I find that the Applicant, the Director of Public Prosecutions, has established that the Respondent has repeatedly breached the conditions of his bail.

19. In these circumstances I find that no conditions can be imposed upon the Respondent, if he were returned to bail, which would ensure that he appears before the court to take his trial in The Bahamas, and/or not offend.

20. For these reasons, the bail granted to the Respondent on the charges indicated above was revoked and he is remanded to await his trial.

Dated this 2nd day of December, A D 2022



**Bernard S A Turner
Senior Justice**