COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2023/CRI/BAL/00009

BETWEEN

KENO KNOWLES

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	The Honourable Mr Senior Justice Bernard Turner
Appearances:	Mr. C. Alex Dorsett for the Applicant
	Mr. Uel Johnson for the Respondent
Hearing Date:	15 June 2023

RULING

TURNER Snr J

1. The Applicant is charged with Armed Robbery and Kidnapping contrary to provisions of the Penal Code, Chapter 84, in respect of alleged offences said to have taken place on 4 January 2023. He was arraigned on 11 January 2023 in the Magistrates Court.

2. A previous application for bail, filed 1 February 2023, was denied by the Court on 20 March 2023, after an adjournment to await the outcome of a Magistrates Court matter against the applicant. The present application was launched on 19 May 2023, with the filing of a summons and an affidavit in support.

Applicant's Affidavit Evidence

3. The Applicant's stated that he:

    (i) is 28 years old;

    (ii) resides at #12 Pitt Road, Nassau, The Bahamas;

    (iii) was employed with Sheldon's Plumbing Repair and Draining Company as a plumber's helper;

    (iv) has a prior conviction for Attempted Armed Robbery and was sentenced to 10 years in prison;

    (v) was also convicted of two (2) counts for Receiving and was sentenced to three (3) months for each conviction;

Respondent's Affidavit Evidence

4. On 14 June 2023, the Director of Public Prosecutions ("**Respondent**") filed an Affidavit in Response. It states that:

    (i) the offences for which the Applicant was convicted are of a similar nature to the Charges;

    (ii) if released on bail, his history predicts that he will commit further offences;

(iii) that the complainant identified the Applicant in a 12 man photo array as the driver of the complainant's truck during the time the complainant was robbed and held at gunpoint;

(iv) Det. Sgt. 3478 David Rolle provided a report where he indicated that he showed the complainant a 12 man photo array where he (the complainant) identified the Applicant as one of the individuals who robbed him at gun point and kidnapped him;

(v) the evidence against the Applicant is cogent;

(vi) that the Applicant was denied bail on 20 March 2023 by this Court and that there is no change in circumstances;

(vii) there are no conditions that will prevent the Applicant from committing another offence if granted bail; and

(viii) the Applicant is not a fit and proper person for bail.

Law

5. The Constitution of the Commonwealth of The Bahamas ensures that no person is denied his/her right to liberty, without just cause. **Article 19 of the Constitution of The Bahamas** provides:

> **""19 (1). No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases-**
>
> **...**
>
> **(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;"**
>
> **"19(3). Any person who is arrested or detained in such a case as is mentioned in subparagraph 1(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if**

any person arrested or detained in such a case as is mentioned in the said subparagraph 1(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions including in particular such conditions, as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial."

6. Further, **Article 20(2)(a) of the Constitution of The Bahamas** provides:

> **"Every person who is charged with a criminal offence —**
>
> **(a) shall be presumed to be innocent until he is proved or has pleaded guilty;..."""**

7. Some of the factors for the Court to consider in respect of an application for bail are found at **section 4** of **the Bail Act, 1994 ("Act").** Section 4(1) of the Act provides:

> **"(1) Notwithstanding any other enactment, where any person is charged with an offence mentioned in Part B of the First Schedule, the Court shall order that that person shall be detained in custody for the purpose of being dealt with according to law, unless the Court is of the opinion that his detention is not justified, in which case, the Court may make an order for the release, on bail, of that person and shall include in the record a statement giving the reasons for the order of release on bail:**
>
> **Provided that, where a person has been charged with an offence mentioned in Part B of the First Schedule after having been previously convicted of an offence mentioned in that Part, and his**

imprisonment on that conviction ceased within the last five years, then the Court shall order that that person shall be detained in custody."

8. According to section 4(2) of the Act, as amended:

> **"Notwithstanding any other provisions 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.....**
>
> **(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.....(emphasis added)"**

9. The First Schedule Part A of the Act outlines relevant factors that the Court must consider in a bail application. **Part A of the First Schedule** 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;

(c) .....;

(d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;

(e) .....;

(f) whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year;

(g) the nature and seriousness of the offence and the nature and <u>strength of the evidence</u> against the defendant (emphasis added)"

10. The Respondent has the burden of proving that the Applicant would fail to surrender to custody, appear at trial, commit an offence

while on bail or interfere with witnesses or otherwise obstruct the course of justice. This was observed in the Court of Appeal decision of **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019** ("**Jevon Seymour**"). There, the Court was tasked with determining whether the judge at first instance made a proper ruling on denying the applicant bail. At paragraph 65 of the judgment, Crane-Scott, J.A. stated:

> **"...Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the crown to adduce evidence (i.e. substantial grounds) which is capable of supporting a belief that the applicant for bail "would" if released on bail, fail to surrender to custody or appear at his trial; commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice. The Crown's burden is only discharged by the production of such evidence (emphasis added)."**

11. It too was noted at paragraph 68 of ***Jevon Seymour*** that:

> **"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 (emphasis added)."

12. At paragraph 26 of **Jeremiah Andrews v The Director of Public Prosecutions Appeal No. 163 of 2019, ("Jeremiah Andrews")** Evans JA expressed the following:

> **"In order to properly assist the Court, parties are required to provide evidence which will allow the Court to determine whether the factors set out in Part A of the First Schedule to the Bail Act s 4 (2B) exist. We note that all too often the affidavits supplied by the Crown make bare assertions that there is a belief that if the Applicant is granted bail he will not appear for trial; will interfere with witnesses or will commit other crimes. These assertions are meaningless unless supported by some evidence (emphasis added)."**

13. The Privy Council's approach to bail was enunciated by Lord Bingham in **Hurnam v. State of Mauritius [2006] 1 WLR 857** at paragraph 15:

> **"15. It is obvious that a person charged with a serious offence, facing a serious penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drugs cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail....The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well...provide grounds for refusing bail, but they do not do so of**

themselves, without more: they are factors relevant to the judgment whether in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given...(emphasis added)"

14. **In Cordero McDonald v. The Attorney General SCCrApp No. 195 of 2016 ("McDonald")**, Allen P., clarified the extent of a judge's task in relation to the evidence adduced at a bail application:

> **"34. It is not the duty of a judge considering a bail application to decide disputed facts or law and it is not expected that on such an application a judge will conduct a forensic examination of the evidence. The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences such as to justify the deprivation of liberty by arrest, charge, and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail (emphasis added)."**

15. The significance of protecting public order and safety was highlighted in the Court of Appeal decision of **Tyreke Mallory v Director of Public Prosecutions SccrApp. No. 142 of 2021 at paragraphs 24 and 25** ("**Tyreke Mallory**") where the Court observed:

> **"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 (emphasis added)."**

16. I must also bear in mind the following pronouncements made by the Court of Appeal in ***Dennis Mather v Director of Public Prosecutions SCCrApp. No. 96 of 2020*** at paragraph 68:

> **"68. This Court has on many occasions stated that "bail may only be denied if the State is able to demonstrate that there are substantial grounds for believing that the applicant would not surrender to custody or appear for trial" see Allen P in Vasyli v Attorney General [2015] 1 BHS J No 86. See also the dissenting judgment of Conteh JA (emphasis added)."**

DISCUSSION AND ANALYSIS

17. The Applicant is charged with two (2) First Schedule Part C offences (Armed Robbery and Kidnapping). The above factors will now be considered.

18. The Respondent submits that there was a prior application for bail before this Court. The Court is permitted to consider any application for bail afresh, as confirmed in **Damagio Whyms v The Director of Public Prosecutions SCCrApp. No. 148 of 2019**. There, paragraphs 20 and 21 provide:

> **"20. In his separate opinion in Mackey, Isaacs JA explained the reasons why the English practice is unworkable within the Bahamian constitutional framework given the guarantees of personal liberty and the right to a fair hearing within a reasonable time. He put the matter as follows:**
>
> > **"57. Articles 19 and 20 provide that a person may only be detained if the law authorises it; and he is presumed innocent unless he pleads guilty or until it is determined otherwise after a trial. It is clear that no policy created by a magistrate or judge can override a person's undoubted ability to apply for bail as often as he wishes or his right to have that application fully considered." [Emphasis added]**
>
> **21. In similar vein, Crane-Scott JA also rejected the applicability in this jurisdiction of any practice or policy (such as that employed in English courts) which restricts an applicant for bail from making successive and repeated applications to be considered for bail unless a "change in circumstances" can be demonstrated. In her separate opinion in Mackey, CraneScott JA explained:**
>
> > **"67. ... (given our Constitutional arrangements), I am of the view that no policy**

created by a magistrate or judge (nor, I would add, any policy created by English courts such as described in Nottingham Justices or Slough Justices) can lawfully restrict a person's right as authorized by the Constitution and the Bail Act, to apply to the courts for bail as often as he or she wishes or to have that application considered on its merits.

68. ... <u>each judge has the duty to consider afresh each application for bail on its merits and considerations (advocated in the English authorities) such as whether there has been a "material change in circumstances" since the earlier application have no place in our current bail regime</u> (emphasis added)."

19. The Court is bound to follow these principles.

20. According to the Applicant's brief affidavit, he has three (3) prior convictions and no pending matters before the Court, save and except the present charges.

21. The Respondent's Affidavit provides that there is evidence directly from the complainant identifying the Applicant, as well as his co-accused, as the individuals who robbed him at gun point and kidnapped him. This evidence, in the Court's view, raises a reasonable suspicion that the Applicant was involved in the alleged Armed Robbery and Kidnapping. That intended evidence can be said to be cogent.

22. The cogency of evidence however is not a free standing basis for refusing bail, but is a requirement before a court can even go on to consider whether there is any basis for refusing bail.

23. The Court notes the fact that the Applicant has three (3) prior convictions (one for Attempted Armed Robbery and two counts of Receiving) and is before the Court for two serious offences (Armed

Robbery and Kidnapping). The Court views this as compelling and cogent evidence that suggests the Applicant will likely commit an offence if released on bail. Public Safety is a paramount concern/factor as was observed in the ***Tyreke Mallory*** decision.

24. Having considered whether any conditions could be imposed which would prevent the applicant from committing further offences, I do not consider that any conditions could be placed on the Applicant which would prevent any an event, electronic monitoring would only be effective to identify the location of a person, but would not prevent that person from committing further offences.

25. His application for bail is therefore refused.

26. The applicant is of course at liberty to appeal this decision.

Dated this 22nd day of June, A D 2023

Bernard S A Turner
Senior Justice