

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Side

2017/CRI/bal/No. 00025

BETWEEN

KIRKLAND BULLARD

Applicant

And

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

**APPEARANCES: Mr Ian Cargill for the Applicant
Ms Cordell Frazier for the Respondent**

HEARING DATE: 13 April 2023

RULING

TURNER SNR J

The applicant herein is applying for bail by way of a summons and an affidavit in support filed 11 January 2023 in respect of a charge of murder.

2. His affidavit in support of the application for bail, reads, in part:

“

2. I was born on the 7th day of December, 1991, in the Commonwealth of the Bahamas and I am 21 years of age.

3. I stand remanded on the following Charges:-

(a) MURDER, Contrary to Section 291 (1) (B) of the Penal Code, Chapter 84.

There now shown and exhibited true copies of the charge sheets as "Exhibit K.B.1".

4. I was arraigned in Magistrate Court No. 9 on the 9th day of January, A.D., 2023 before Chief Magistrate Mrs. Joyann Ferguson-Pratt, My matter is adjourned to the 4th day of April, A.D. 2023.

5. I respectfully request that this Honourable Court admit me to bail pending my further Court Appearances.

6. I do not have a previous conviction(s) before the court(s) in the Commonwealth of The Bahamas

7. I do have a pending matter before court No. 6 for Housebreaking in the Commonwealth of The Bahamas.

8. Should this Honourable court admit me to bail, I will have accommodations at No 7A Florida Court, New Providence, Bahamas.

9. Prior to my incarceration I was self employed as a Tennis Salesman Commonwealth of the Bahamas

10. I am a citizen of The Commonwealth of The Bahamas.

11. I respectfully request that this Honourable Court admit me to bail pending my further Court Appearance for the following other reasons:-

a. That I will be disadvantaged in my ability to adequately prepare my defence if I am further remanded.

c. I will be disadvantaged in my ability to support my four (4) children (3 boys and 1 girl), myself and assist my family,

13. I am a fit and proper candidate for Bail.

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

3. The Respondent filed an affidavit in response on 19 January 2023 objecting to the application. That Affidavit reads, in part:

“ ...

3. That save hereinafter stated, no admissions are made regarding the assertions contained in the Affidavit of the Applicant in this matter.

4. That the Applicant, Kirkland Bullard a.k.a. "Papi" a.k.a. Kirk Benard Bullard, a.k.a. Kirklyn Barnard Bullard, is 31 years old and not 21 as alleged in paragraph 2 of his affidavit. His date of birth is the 7th of December, 1997 and he is charged with one count of Murder contrary to section 291(1)(b) of the Penal Code, Chapter 84. There is now produced and shown to me marked as "Exhibit JM-1." a copy of the Charge Sheet.

5. That it is alleged that on Thursday the 22nd of December 2022 the Applicant while at New Providence by means of unlawful harm, did intentionally and unlawfully cause the death of D'Amatto Deveaux a.k.a. "Deo".

6. That the Applicant appeared before Chief Magistrate Joyann Ferguson-Pratt on the 9th day of January, 2023 where he was given an adjourned date of the 4th of April, 2023 for the presentation of his Voluntary Bill of Indictment and thereafter 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 22nd of December 2022.

8. That the Applicant has previous convictions for Housebreaking (11/12/2017) where he was fined \$500.00 or two years in prison and Stealing (11/12/2017) where he was fined \$500.00 or two years in prison. The Applicant was also to compensate the virtual complainant in the amount of \$829.00 and \$3,703.00 respectively; Failure of which, he would serve a one-year sentence. There is now produced and shown to me marked as "Exhibit JM-2" a copy of the Applicant's Royal Bahamas Police Force Criminal Records Antecedents Form.

9. That the Applicant now stands charged with a more serious offence. That having regard to the Applicant's previous convictions and the present charge of Murder, 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.

11. That the evidence against the Applicant in respect to the present offence is cogent. The Anonymous eyewitness to the murder indicates that on the 22nd of December 2022 around 6:00pm the witness was around 8th Street when the witness observed a suspicious white four door vehicle, so the witness decided to watch it.

12. That the said vehicle left the area and went onto Robinson Road and within seconds returned through 8th Street from Palm Tree Avenue. That the vehicle then stopped at the front of a residence of a male by the name of D'Amatto who was standing on the porch of that residence. Suddenly the rear left door of the vehicle swung open and a heavy-set male known to the witness as "Papi" from Florida court area came out holding a big gun.

13. The witness went on to say that he/she saw when "Papi" chased D'Amatto and began shooting him as they both ran towards the front door of D'Amatto's residence. The witness heard five or more gunshots. The witness went over to get an even closer look and saw D'Amatto laying on the ground covered in blood.

14. That the witness has known "Papi" for over four (4) years. That his first name is Kirkland and he lives through Florida Court. That

the witness saw his face clearly as the streetlight and porch light showed provided good lighting. That the Applicant wore no mask and was dressed in a dark hoody and dark colored pants. That there was nothing obstructing the witness' view and that the witness had him in view for 7 seconds.

15. Further, the witness indicates that he/she is in fear for his/her life and that the Applicant is a dangerous person. The witness also provides a basis for his/her fear in his/her original (unredacted) statement, which the Respondent can provide to the court in support of this contention. There is now produced and shown to me marked as "Exhibit JM-3" the statement of Anonymous Witness.

16. That the Applicant, when asked by D/Insp. Demetrius Taylor to participate in an identification parade or group identification, he refused to do so and the same was documented on an Identification Parade Form. There is now produced and shown to me marked as "Exhibit JM-4" and "Exhibit JM-5" a copy of the report of D/Insp. Demetrius Taylor and the Identification Parade Form respectively.

17. That on Wednesday, the 4th of January 2023 the Anonymous witness was shown a 12-man photo gallery where he/she positively identified the Applicant in position 8 as the male he/she knows as Kirkland a.k.a. "Papi", from Florida Court who the witness saw exit the vehicle with a gun and shot and killed D'Amatto a.k.a. "Deo". There is now produced and shown to me marked as "Exhibit JM-6," and "Exhibit JM-7" a copy of the

statement of Anonymous Witness and the 12-man Photo gallery respectively.

18. That the Applicant is not of good character and having regard to the manner in which this offence was committed, the serious nature of the offence and the severity of the penalty if convicted, is sufficient incentive for the Applicant to abscond or fail to appear at his trial should he be released on bail.

19. The Respondent further ask this Honourable Court to take Judicial Notice of the number of Applicants charged with murder who when released on bail were themselves murdered; hence, this Applicant whose identity was not hidden during the commission of this alleged crime should be kept in custody for his own safety.

20. In the present circumstances, the Respondent prays that this Honourable Court exercises its discretion in refusing the Applicant's application to be admitted to bail.

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

4. The Respondent also filed a supplemental affidavit in support of their objection to bail, on 20 January 2023 which added the following information:

“ ...

2. That I make this Supplemental Affidavit in further opposition to the Applicant's application for bail by way of a Summons and an

Affidavit in support filed in the Supreme Court on the 11th of January 2023.

3. That not only does the Applicant have a pending Housebreaking matter in Magistrate's Court No. 6 as admitted to in paragraph 7 of his Affidavit filed herein on 11th January, 2023; he also has a pending Armed Robbery matter (3 Counts), Information No. 127/5/2017 before this Honourable Court.

4. That in respect to the aforementioned Armed Robbery matter, the Applicant was granted bail by Justice McKay in the amount of \$9,500.00 with one or two sureties on the 10th August, 2017. There is now produced and shown to me as "Exhibit JM-1" a copy of the Applicant's Bail Bond.

5. That the Applicant while on bail for the Armed Robbery (3 Counts) is alleged to have committed a further offence of Murder and therefore, the Respondent has substantial grounds for believing that there are no conditions that this Court can impose that will ensure that the Applicant will not re-offend or that he will appeal for his trial.

6. Further, that this Court has issued a Bench Warrant for the Applicant in respect to the aforesaid Armed Robbery matter for his failure to appear before the Court on the 25th May, 2022. There is now produced and shown to me as "Exhibit JM-2" a copy of the Applicant's Bench Warrant.

7. In the circumstances, the Respondent prays that this Honourable Court exercises its discretion in refusing the Applicant's application to be admitted to bail.

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

5. For completeness, it should also be indicated that the Applicant provided a number of affidavits, some four (4) in total, from various persons each purporting to provide an alibi as to the Applicant's whereabouts at the time of the alleged incident the subject of the murder charge. The issue of an alibi is of course classically a trial issue.

6. The issues which are to be considered in an application for bail are found in the Bail Act (the Act). In addition, there are a number of decisions of the Court of Appeal of the Bahamas on the issue of bail. Section 4(2) of the 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),.....”

7. 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.”

8. Some of the dicta of the Court of Appeal on the issue of bail include the following:

In **Dennis Mather v DPP (No. 96 of 2020)** their Lordships stated, at paragraph 44:

“44. The seriousness of the offence charged may lead a court to presume the applicant would seek to flee; but the presumption is rebuttable and there must be substantial evidence to suggest flight.”

And later:

“48. The Judge was technically correct when she found at paragraph 12 that as a historical fact the appellant was on bail for other offences when he was arrested for murder:

“Commit an offence while on bail

(12) The Applicant was on bail for “Assault with a Dangerous Instrument” when he was arrested for this present offence (a charge in which he has since been discharged). I do note however, that there was a lapse of time of eight (8) years from the

time in which he was arrested for the assault to when he was arrested and charged with the present murder offence. This behavior may represent a possibility that the Applicant may commit an offence if he is given bail."

49. However, inasmuch as the appellant was able to produce certificates evidencing that he had been discharged on those offences, he was to be regarded in relation to those as "pure as the driven snow" thereafter. Thus, the Judge erred when she concluded that the fact that he had been charged with offences and placed on bail prior to his arrest for the present murder offence disclosed that "This behaviour may represent a possibility that the Applicant may commit an offence if he is given bail". The fact that a person has been charged with one offence while he stands accused of having committed an earlier offence cannot provide support for a conclusion that a propensity to commit offences has been disclosed should the person be admitted to bail particularly after the person has been discharged on the earlier offence."

In *Jeremiah Andrews v DPP* (No. 163 of 2019) they stated at paragraph 30:

"30. These authorities all confirm therefore that the seriousness of the offence, coupled with the strength of the evidence and the likely penalty which is likely to be imposed upon conviction, have always been, and continue to be important considerations in determining whether bail should be granted or not. However, these factors may give rise to an inference that the defendant may

abscond. That inference can be weakened by the consideration of other relevant factors disclosed in the evidence. E.g the applicant's resources, family connections, employment status, good character and absence of antecedents.”

9. The respondent submitted that:
- i) the evidence against the applicant was cogent;
 - ii) the applicant had previous convictions;
 - iii) the applicant was on bail for serious offences;
 - iv) in respect of one of those offences, there was an outstanding warrant for his failure to appear in the Supreme Court;
 - v) there was a reasonable concern about the safety of some of the witnesses in respect of the matter;
 - vi) there was a reasonable concern in respect of the safety of the applicant himself.

And that therefore their beliefs as adumbrated in their affidavit are all reasonable and supported by the evidence of the attendant circumstances.

10. In **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**, the Court of Appeal stated:

“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.

...

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." [Italicized emphasis added]

11. A bail application is not to determine whether a person is guilty of any offence, but to determine whether any sufficient basis has been established by the prosecution to the requisite standard that he should be remanded into custody to await his trial.

12. I note that the applicant has previous convictions for housebreaking and stealing, offences not on the same order or magnitude as is an allegation of murder.

13. I also note that the applicant has a pending charge for armed robbery, for which he was on bail when charged with this offence.

14. Further, the applicant had failed to appear before the Supreme Court when this matter was called and so at the time of the alleged commission of this offence, there was an extant warrant for his arrest. No explanation has been proffered in respect of this failure to appear before the Supreme Court.

15. The respondent asserted that the intended evidence was cogent, consisting of an anonymous witness who is purported to have identified the

applicant as being the shooter in relation to this incident. Having regard to the contents of the affidavits supplied by the Respondent, it could be said that the intended evidence is cogent.

16. 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.

17. As noted, the applicant was on bail on armed robbery and housebreaking charges, when charged with this offence of murder. He failed to indicate in his affidavit that he was before the Supreme Court on the armed robbery charges, stating specifically that he was before the Magistrates Court on a housebreaking charge.

18. 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, and the treatment of this issue by the Court of Appeal in paragraph 68 of **Seymour** (ibid), since the applicant was on bail for both a violent offence, involving the use of firearms; 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. Indeed the applicant has already demonstrated as much in failing to appear before the Supreme Court in relation to the armed robbery charge.

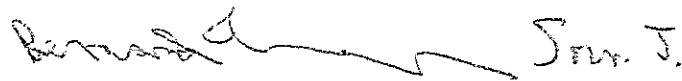
19. Having considered whether any conditions could be imposed which would prevent any witness interference, public endangerment and the applicant not appearing at his trial, I do not consider that any conditions could be placed on the Applicant which would prevent any of those eventualities.

20. In these circumstances, I find that the Respondent has satisfied me that the Applicant ought to continue to be detained in custody in relation to this latest charge of murder.

21. His application for bail is therefore refused.

22. The applicant is at liberty to appeal this decision.

Dated this 12th day of May, A D 2023

A handwritten signature in black ink, appearing to read "Bernard S A Turner" followed by a flourish and the initials "S.A.T." to the right.

**Bernard S A Turner
Senior Justice**