

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Side
2022/CRI/bal/No. 00204

BETWEEN

WILBENS JOSEPH

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

APPEARANCES: **Mr C Alex Dorsette for the Applicant**
 Ms Cephia Pinder-Moss for the Respondent

HEARING DATE: **26 September 2022**

RULING

Turner Snr J

1. The applicant herein applied for bail in respect of a charge of eighteen (18) counts of manslaughter, by summons supported by an affidavit sworn by a Legal Administrator in the Chambers of the applicant's counsel, both of which were filed 29 August 2022.

2. The affidavit in support reads:

“...
2. That the applicant herein is a Haitian national born on 23rd July 1985 and is 37 years of age.

3. That the applicant resides in Harbour Island on the Island of Eleuthera, and the nearest police station is the Harbour Island Police Station.

4. That the applicant has been employed by Kayla Davis of Harbour Island as a handyman for the past four (4) years and has no criminal convictions and no other matters pending. The applicant is in possession of a work permit that expires in February 2023 and he was given an extension.

5. That the applicant has strong community ties in Harbour Island as he has a sister, Rosaline Joseph and brother, Joseph Guely Camongee who all live and work on the Island of Harbour Island.

6. That the applicant appeared before the Magistrate charged with 18 Counts of Manslaughter. A copy of his charge sheet is attached and marked as "exhibit 1".

7. That if the applicant is granted bail, he will return for his trial and will comply with whatever conditions of bail the Court sets.

..”

3. The attached exhibit of the charge sheets accuse the applicant and two co-accused of causing the deaths of eighteen unidentified bodies, by means of unlawful harm on 24 July 2022.

4. A supplemental affidavit filed 3 October 2022, sworn by the same Legal Administrator, exhibited a copy of the applicant’s asserted brother’s work permit and a copy of the asserted sister’s work permit, in support of the strong family ties to The Bahamas assertion.

5. In respect of the applicant however, it only exhibited a copy of a payment receipt for the renewal of a work permit dated 22 March 2022, and a letter from the Department of Immigration approving the renewal of a work permit for a Wilbens Joseph, dated 24 March 2022, for a period of one year, with an expiry date of 14 February 2023.

6. The respondent’s affidavit in objection to bail states the following:

“ ...

2. That I make this Affidavit in 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 29th of August, 2022.

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, Wilbens Joseph, 37 years old (D.O.B. 23rd July, 1985) is charged with (18 counts) of Manslaughter contrary to section 293 of the Penal Code, Chapter 84. There is now produced and shown to me marked as "Exhibit TB1" a copy of the Charge Sheet.

13. That having regard to the nature of the evidence against the Applicant, the Respondent have reasonable grounds for believing that the Applicant committed the present offences along with others. According to the evidence of Tony Wilgens, a survivor of the boating incident and a person living in Harbour Island, Eleuthera, he came to Nassau and was a passenger on the capsized boat, that his mother, Paulna Elan gave a male he knows as Wilbens \$7,500.00 to take him to Miami.

14. That this witness, Tony Wilgens identified the Applicant in position 12 as the person he knows as Wilbens and the person his mother gave \$7,500.00 to take him to Miami before the boat capsized in waters in New Providence which claimed the lives of eighteen (18) people. There is now produced and shown to me marked as Exhibit TB2" and "Exhibit TB3" are copies of the

Report of D/Sgt. 3214 Melbert Munroe and the B.P 70 Royal Bahamas police Force Hospital Forms respectively.

15. Also of note, the Applicant acknowledges in his Record of Interview at question 5 that he agreed with Manie Slyvian to watch over her child, Mary as a family member and he would watch over her on the voyage. He also denied receiving \$8,000.00 to take the child on the voyage but acknowledge that Manie sent monies with Lenisa to pay for the voyage for her daughter. Also that it was Zet that received the money the person that she spoke to in the United States. There is now produced and shown to me marked as "Exhibit TB4" a copy of the Record of interview of the Applicant.

16. That the Applicant has evinced a clear intention not to be within the jurisdiction as he was aboard a boat with a number of illegal immigrants headed to the United States.

17. That having regard to the seriousness of the offences alleged and the Applicants lack of ties to this country and the public's interest bail should not be granted at this time.

18. That the Respondent verily believes that there are no conditions that could be imposed that will ensure that this Applicant appears for his trial.

19. In the circumstances, the Respondent avers that this Honourable Court exercise its discretion and not admit the Applicant to bail.

..."

7. The factors to be considered in a bail application in respect of these charges are found in section 3 of the Act, which reads, in part:

“3. (1) Subject to section 4 and the requirements of Part A of the First Schedule, bail may be granted, notwithstanding the provisions of any other law, to a person —

(a) who is accused of an offence when —

(i) he appears or is brought before a Magistrate’s Court or the Supreme Court in the course of or in connection with proceedings for that offence; or

(ii) he applies to a Court for bail in connection with the proceedings for that offence;

Part A reads, in part:

“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.

...”

8. The applicant, through the ipse dixit of counsel from bar table, asserts that he has resided in The Bahamas for the past four years. I note that the applicant required the assistance of an interpreter during the course of the proceedings, to understand the proceedings, despite apparently having lived here for this period. The assertion of family ties relate to an alleged brother and sister, although nothing confirms that the named persons and exhibited documents are in fact those asserted persons.
9. The respondent asserts that having regard to the cogent evidence which they say exists, as demonstrated in the attachments to their affidavit, and the lack of any strong connection to The Bahamas, that there are no conditions which can be imposed to reasonably ensure that the applicant would remain or return for his trial.
10. In particular, they note that the applicant was found on a capsized boat which was being used for a smuggling operation of illegal migrants to the United States from The Bahamas. Thus, they assert, the applicant was already evincing an intention to leave The Bahamas. More importantly, it also demonstrates the applicant's ability to move between jurisdictions by irregular means.

11. The apparent evidence indicates that the applicant admitted to being on the vessel, for the asserted innocent purpose of catching a ride to Freeport, Grand Bahama, for a fee of \$50.00. The intended evidence however indicates that the applicant himself was paid over \$7,000.00 to transport a person to the United States, belying, the applicant's innocent explanation for his presence. This trafficked person survived the deadly trip and is available as a witness.

12. In the decision of The Bahamas Court of Appeal in **Cordero McDonald v The Attorney-General SCCrApp. No. 195 of 2016**, the Court stated:

“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.”

And finally, at paragraph 34:

“...it is not the duty of a judge considering a bail application to decide disputed facts or law. Indeed, 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 by the appellant, such as to justify the deprivation of his 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.”

13. I do not consider that the asserted connection to two siblings lawfully in The Bahamas amounts to strong ties to The Bahamas. The applicant asserts that he has an apparent work permit, and provides some proof of the potential for its existence, but has not in fact produced same. This work permit would not amount to any evidence of strong ties to this community, especially in light of the evidence that he was apparently engaged in human trafficking to the United States from The Bahamas.

14. Having regard to the alleged circumstances of the present charges, and the circumstances of the applicant, being a non-national of this country, the court is concerned as to the prospect of the applicant, if released on bail, appearing to take his trial.

15. I therefore turn to consider whether any conditions could be imposed which could reasonably ensure that the applicant would appear at his trial.

16. I do not consider that any conditions could be placed on the Applicant which could ensure that he would so appear. Electronic monitoring devices are useful and effective tools for tracking persons on

bail, but there is nothing which physically prevents a person from removing the device, once a decision is made to breach the conditions of a bond.

17. I find that neither an electronic monitoring device, nor sureties, nor reporting conditions, nor curfews nor the surrender of travel documents would be effective in preventing the applicant from absconding and not appearing to take his trial. As stated by the Court of Appeal, again in McDonald (ibid):

“38. The further question for the learned judge was whether there are conditions which can be imposed which would reasonably ensure the appellant’s presence at his trial; the safety and protection of the public; and the safety of victims. Suffice it to say that the appellant was already on bail for another offence, he was required to have two sureties; to report to the Elizabeth Estates Police Station every Monday, Wednesday and Saturday before 6 pm; and was fitted with an electronic bracelet monitoring his whereabouts. The only other conditions which could reasonably be considered are a curfew, and the surrender of his passport.

39. Given these circumstances, namely the conditions to which he is already subject, and the fact that he was charged with these offences while on bail for another offence, I fail to see how the imposition of a curfew and surrender of his passport could reasonably ensure his appearance at trial; the safety, and the protection of the public, and that of the complainants.”

18. For the reasons given, this court will not accede to the applicant's application for bail at this time.

19. His application for bail is therefore refused.

Dated this 18th day of October 2022.

 S.M.J.

Bernard S A Turner

Senior Justice