

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Side
2013/CRI/bal/No. 0006**

BETWEEN

MOSES MORRIS

Applicant

And

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: The Honourable Mr Senior Justice Bernard Turner

**APPEARANCES: Mr David Cash for the Applicant
 Mr Perry McHardy for the Respondent**

HEARING DATE: 20 February 2023

RULING

TURNER SNR. J.

By a summons filed on the 13 February 2023, the applicant applied for bail in respect of a charge of manslaughter, which charge came about as a consequence of his acquittal on a murder charge but a hung jury on the lesser offence of manslaughter, returned by a jury before Fraser J on 7 February 2023.

2. The offence is alleged to have been committed on Long Island on 1 April 2015. The applicant had pled guilty to the offence of murder, but on appeal the Court of Appeal had set aside the conviction following upon that plea, on the basis that the applicant had indicated that he intended to plea to manslaughter only, and ordered a re-trial on the charge of murder.

3. It was that re-trial which resulted in the acquittal for murder and the hung jury on manslaughter.

4. The applicant's affidavit, cited some of the information indicated above, and stated that he was now 51, and:

"7. That I have been in custody remanded on the charge at paragraph 4 (*murder*) since April of 2015 (almost 8 years.)

8. That if granted bail, I will on all occasions dutifully report to court when required and abide by all the other terms and conditions of my bail."

5. The respondent, in opposing the application for bail, filed an affidavit which reads, in part:

"7. That the evidence against the Applicant is cogent. On the 1st April 2015, the Applicant went to the residence of the victim Harry

Harding to collect money that was owed to him. After the victim stated that he did not have the money on him currently, he was stabbed by the Applicant several times with a knife.

...

9. That the Applicant has previous convictions which are of a similar nature to the offence he is currently charged with. These convictions are of a violent nature and shows that the Applicant has a propensity to commit these offences.

..

11. That there has been no unreasonable delay in this matter as the Applicant has been tried in this matter on two separate occasions. The Applicant will now be preparing for his third trial before the Supreme Court.”

6. The reference in paragraph 9 to a previous conviction is a reference to the fact that the applicant was convicted in 1996 of manslaughter and sentenced to twenty-five years. The applicant would have been released from prison prior to the alleged commission of the present offence. Counsel for the respondent submitted that having regard to the foregoing, that the applicant has demonstrated a propensity to commit what it described as ‘these offences’.

7. The authorities do establish that previous convictions can be considered in a bail application to determine a propensity to commit offences, a factor which goes into determining whether an applicant should be remanded to bail or in custody.

8. That has to be, however, weighed against the fact that the applicant has been in custody for some considerable period, and now stands in the position of a person accused, notwithstanding a previous plea, of a criminal offence, who has not been convicted of same.

9. Counsel for the respondent contended that the evidence is cogent, whereas counsel for the applicant contended that the cogency of the evidence, which, it is asserted, consists of an alleged confession, does not preclude the court from granting bail and that the primary consideration is whether the applicant will appear before the court on the date of trial.

10. The court is concerned in respect of the applicant's previous conviction for manslaughter and the service of a lengthy sentence, but considers that that should be weighed, as indicated, with the fact of his having spent some time awaiting re-trial, and the fact of his acquittal of murder and the hung jury on manslaughter.

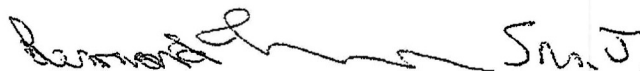
11. In all of these circumstances, the court considers that bail should be granted. Counsel for the applicant submitted that bail should be on the most favourable of terms. In the circumstances of this matter, I do not agree with that submission, conditions must be imposed to ensure the applicant appears to take his trial and is reasonably precluded from committing further offences.

12. Any concern about the potential for witness interference is lessened by the fact that the apparent evidence centers around an alleged confession statement.

13. In all of these circumstances, this court hereby accedes to this application for bail. Bail is granted on the following conditions:

1. Bail in the sum of \$12,000.00 with two or three sureties.
2. The applicant is required to sign in at the Clarence Town, Long Island Police Station on Mondays and Fridays before 6:00pm.
3. The applicant is to be electronically monitored and is required to comply with the Regulations for the use of such a device.
4. The applicant is required to remain at his identified home between the hours of 10:00pm and 5:00am.
5. The applicant is not to come into any deliberate contact with any of the witnesses in this matter, either by himself or through any agent.
6. The applicant is to surrender any travel documents to the court, until the completion of the matter.
7. The applicant is required to surrender into the custody of the Central Police Station at Nassau, New Providence by 6:00pm on the evening before the scheduled trial date of his matter and to remain in custody during his trial, unless further ordered.
8. A breach of any of these conditions will subject the applicant to further remand.

Dated this 2nd day of March, A D 2023



**Bernard S A Turner
Senior Justice**