

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CASE NO: ANUHCV 2021/0314/315/316

**IN THE MATTER OF SECTIONS 5, 7 AND 15 OF THE ANTIGUA AND BARBUDA CONSTITUTION
ORDER, CAP. 23 OF THE LAWS OF ANTIGUA AND BARBUDA, REVISED EDITION 2009**

IN THE MATTER OF AN APPLICATION TO BE ADMITTED TO BAIL

BETWEEN:

**JASON MODESTE
ALIYAH MARTIN
SHAKEIL THOMAS**

Applicants

and

**THE COMMISSIONER OF POLICE
THE DIRECTOR OF PUBLIC PROSECUTIONS**

Respondents

Appearances:

Mr. Wendell Robinson and with him Mr. Lawrence Daniels, Counsels for the First Applicant
Mr. Lawrence Daniels, Counsel for the Second Applicant
Mr. Andrew O’Kola, Counsel for the Third Applicant
Ms. Rilys Adams, Counsel for the Respondents

2021: August 20th,
September 3rd

DECISION

[1] **WILLIAMS J.:** The Applicants, Jason Modeste, Aliyah Martin and Shakeil Thomas were jointly charged along with Armal Warner Jr. for the offence of murder. The charge states that Jason

Modeste, Shakeil Thomas, Aliyah Martin and Armal Warner between the 9th and 13th April, 2020 at Indian Creek in the parish of St. Paul did murder Bruce Greenaway.

- [2] The Applicants' co-accused, Armal Warner Jr. was admitted to bail on 13th August, 2021. The Court found that even though Warner's previous application in July 2020 was denied, there was a change of circumstances that entitled a fresh bail application to be considered.
- [3] On the 16th, 17th and 18th August, 2021, Jason Modeste, Aliyah Martin and Shakeil Thomas respectively filed Fixed Date Claim Forms initiating this bail proceeding.
- [4] Crown Counsel, Ms. Rilys Adams, on behalf of the Respondents, was of the view that the Applicants were not entitled to apply for bail. Ms. Adams stated that all three Applicants were refused bail during the course of last year and that the Respondents' position was that there were no changed circumstances since their previous application to entitle the Applicants to re-apply at this stage. Ms. Adams indicated that the Respondents were relying on the Affidavit deposed to by another Crown Counsel, Mr. Curtis Cornelius, in grounding its objection to the application. This submission was advanced even though in the case of the co-accused Armal Warner Jr., it was held that there were in fact changed circumstances noting among other things, the fact that the Committal Proceedings were completed several months ago.
- [5] The Deposition from the Committal Proceedings which was not yet ready at the time of Armal Warner's bail application was now ready; each Applicant was served with a copy of the Deposition prior to the commencement of the hearing. The Applicants have not yet been indicted.

The Order

- [6] On the 20th August, 2021 the following Order was made:

"The Court, having determined that there are circumstances which would entitle the Claimants to make a fresh application for bail:

LEAVE IS GIVEN: For the First Claimant, Jason Modeste to file an additional Affidavit regarding his health conditions (referred to during counsel's submissions).

IT IS ORDERED: The Crown to file Affidavits (in objection to bail) on or before Friday 27th August 2021.

Claimants at liberty to respond by Wednesday 1st September 2021.

Matter adjourned to Friday 3rd September 2021 at 10:00 am.

Claimants further remanded."

- [7] No Affidavit was filed resisting any of the applications for bail on behalf of the Applicants in keeping with the Order of 20th August, 2021.

Jason Modeste's Affidavit

- [8] Mr. Modeste says that he is a police officer who resided at Herberts with his girlfriend and 5 years-old son. He has 5 children in all – three girls and two boys - the eldest child being 24 years old. He is now 45 years old. He was born in Grenada and moved to Antigua and Barbuda 25 years ago. Since enlisting in the Police Force, he has been posted at a number of police stations, acted as a Corporal of Police on at least three occasions, and represented the Royal Antigua and Barbuda Police Force in various sporting activities.
- [9] In relation to the offence he is charged with, Mr. Modeste said that he cooperated with investigators. He provided them first with a witness statement; then a statement under caution; and finally he was extensively interviewed. He said that he was innocent of the charge and expected to be exonerated at trial.
- [10] The Applicant detailed the harsh conditions at Her Majesty's Prison describing them at paragraph 14 as "harsh, inhumane and degrading." He noted that even though he is only on remand, he can be locked away for up to 23 hours a day. He described that at the prison there is overcrowding, the situation with infectious diseases, limited medical assistance and that he has encountered threats to harm him from some inmates.
- [11] Mr. Modeste also deposed that the lock up cells at the Police Headquarters have been deemed in law an extension of the prison. He said that prisoners serving a sentence and persons on remand have been housed there in the past. At paragraph 11 he deposed:
- "I am also aware that the 'lock up' cells at Police Headquarters are by law an extension of Her Majesty's Prisons, and was so deemed to be for decades now. Over the years prisoners serving time and arrestees awaiting trial have been held there for months and years. This include, police officers, soldiers and even prisoners."
- [12] The conditions at the Police Headquarters, he said, are cleaner, healthier and more secure. His counsel wrote to the Superintendent of Prisons on 24th August, 2020 asking for the Applicant (and his co-accused) to be housed either at the Police Headquarters or at the former US Navy Base but no response has been forthcoming since. Counsel Mr. Wendell Robinson in his oral submissions, stated that given the Applicant is a police officer, there were options available for his safe custody such as confinement to barracks or cells at the Police Headquarters. Mr. Robinson noted as well that sections of the old Navy Base which is occupied by the Antigua and Barbuda Defence Force have been deemed to be a part of Her Majesty's Prison.
- [13] The Applicant in his Affidavit spoke of being housed at the maximum security thereby "making condition very harsh." He said that the meals were "not nutritious." Mr. Modeste also said:
- "Being on remand, I am locked down for approximately 23 hours every day. With unhealthy meals, squalid and unbearable conditions and virtually one hour of 'daylight', is likened unto a concentration camp."

- [14] The Applicant noted too the impact of the COVID-19 pandemic in the crowded prison conditions as well as the impact of the pandemic creating uncertainty as to a likely trial date for his matter. He stated:

“I am concerned that where there is no jury trial of serious criminal offences, that there will be substantial and inordinate delays and it would have a domino effect on matters...”

- [15] Mr. Modeste indicated that he is prepared to live under any restrictions if he is given bail.
- [16] The Applicant in his supplemental Affidavit deposed to suffering from a pain in his groin since January 2021 and eventually getting to see a doctor after several attempts to draw his condition to the authorities. He has been diagnosed in June-July with having a cyst. He stated that doctor's appointments have been missed without any explanation from those in authority. Given his age he would like to access prostate tests and is willing to pay to have these done particularly since he has insurance coverage.

Aliyah Martin's Affidavit

- [17] Ms. Martin is from Jennings Village. She is single and has no children. Before being remanded, she attended the Seventh Day Adventist Church of which she is an active member. She is 22 years old. She joined the Antigua and Barbuda Defence Force after graduating from the Antigua State College 'A' Level Department.
- [18] As a member of the Defence Force, she performed patrol and sentry duties.
- [19] Ms. Martin declared her innocence of the offence she is charged with and expressed the view that she would be exonerated at trial. She noted that she did not have any record of violence.
- [20] The Applicant noted that the COVID-19 pandemic has impacted the holding of jury trials and even though there is legislation for judge only trials, the offence that she is charged with is one which is to be tried by a judge sitting with a jury.
- [21] Ms. Martin gave an undertaking to abide by all conditions if granted bail. She indicated that she could reside with her family at Jennings Village or at the Defence Force Compound. There is a 'Liberty Book' at the Compound as well where she can sign in.

Shakeil Thomas's Affidavit

- [22] Mr. Thomas is now 27 years old. He is from Swetes Village. He is unmarried, has no dependents and attended the Wesleyan Church before being remanded.
- [23] The Applicant said that he is a member of the Antigua and Barbuda Defence Force. They worked on rotation – 48 hours on, 48 hours off.

- [24] On the 9th April, 2020 he was on patrol - driving. Antigua and Barbuda was under a State of Emergency at the time and there was a curfew from midnight. He recalled being stopped by some persons and a report made. A person was detained – the now deceased Bruce Greenaway. Thomas placed plastic straps on the hands of the detained man and the detainee was placed in the back part of the truck. According to Thomas, Greenaway was taken to the English Harbour base, from where the detained man was later released. Thomas said that he cooperated with investigators in this matter.
- [25] Thomas said that he was refused bail by the Judge when he applied on the 6th July, 2020 – which was one month after his arrest. Incidentally, he was arrested on his 26th birthday. No copy of the previous Order was exhibited either by the Applicant or the Respondents.
- [26] According to Mr. Thomas, his co-accused, (Armal Warner Jr.) was granted bail and it would be “disproportionate” not to grant him bail. His counsel, Mr. Andrew O’Kola, noted that there were murder accused in other matters who were granted bail, such as Mikhail Gomes and Kenroy Joseph. In Gomes’s case, he was given bail on the murder charge while still facing charges on two separate indictments: for money laundering and demanding with menaces; and buggery.
- [27] The Applicant also spoke of the degrading conditions at the prison.

No Response

- [28] The Respondents have not lodged a ‘Notice of Opposition/Defence’ by completing the ‘Represent Case’ function within the electronic portal which would indicate that the Respondents intended to oppose/defend the matter.
- [29] At the hearing on 20th August, 2021 counsel for the Respondents indicated that she did not wish to respond to any of the submissions from the Applicants’ counsels.
- [30] As stated earlier, no Affidavit was filed by the Respondents in keeping with the Court’s Order to do so.
- [31] It is noted that there is a distinct difference between saying (1) that there are no changed circumstances to entitle a Applicant to be heard, and (2) that the Respondents are opposed to the granting of bail to a Applicant.

Similar or Different

- [32] Counsels for all three Applicants, respectively Messers Robinson, Daniel and O’Kola, were of the view that the Applicants ought to be treated no differently from Armal Warner Jr. Counsel submitted that since the Applicants and Warner were charged with committing the same offence, then the Applicants ought to similarly be granted bail.

[33] When one examines the Judgment in Armal Warner Jr's bail application, the significant factors that emerge are:

1. Warner, although denying any involvement in causing the death of Bruce Greenaway, indicated a willingness to speak with the Prosecution;
2. Since the conclusion of the Committal Proceedings in April, Warner said that he had not heard anything further about the case and he is of the view that the Crown was not yet ready to proceed with his matter;
3. Warner stated that there was no evidence adduced linking him to the offence; that the Crown's case in relation to him was weak, tenuous and speculative; that the Crown was relying on an assumption that he was in a vehicle captured on CCTV footage on two different occasions and an assumption that on the first occasion the deceased was a passenger as well; and
4. The Crown did not doubt Warner's assertion that the evidence against him was weak and tenuous, or that since the Committal Proceedings nothing further has been heard from the Crown.

[34] With regard to the three Applicants:

1. None of the Applicants submitted that the evidence against him or her was tenuous or weak, neither did any of the Applicants point to any part of the evidence as the reason for concluding that the case against him or her was weak. Rather, the position of the Applicants was: I would be exonerated at trial;
2. One of the Applicants acknowledged having come in contact with the deceased on an occasion on the eve of the alleged date of the offence;
3. Another Applicant said that after a witness statement was provided to the investigators, that a caution was administered, following which a caution statement was given;
4. Although none of the Applicants is indicted, the Crown moved a step close to the commencement of the matter by serving the Deposition from the Committal Proceedings.

[35] It is apparent therefore that the facts and circumstances of Armal Warner Jr's Claim also informed the bail decision in that case, are not identical to the situation with the three Applicants – Jason Modeste, Aliyah Martin and Shakeil Thomas.

[36] While the Crown has not advanced any of the classical grounds for denial of bail to a Applicant – such as risk of absconding, likelihood of interference with witnesses or otherwise obstruct the course of justice, likelihood to commit further offences while on bail – given the seriousness of this offence and the possibility (not necessarily likelihood) that the trial could be held within a reasonable time, a departure from Armal Warner Jr's bail decision is not considered to be unduly oppressive or disproportionate.

Courts Order

- [37] The Applications for bail by each of the three Applicants, Jason Modeste, Aliyah Martin and Shakeil Thomas are denied at this time.
- [38] In relation to the Applicant, Jason Modeste, he is to be housed on remand at the lock-up cells at the Police Headquarters. He is to have his medical appointments kept as scheduled.
- [39] In relation to Aliya Martin, she is to be housed at the Antigua and Barbuda Defence Force Compound.
- [40] In relation to Shakeil Thomas, he is to be housed at the Antigua and Barbuda Defence Force Compound.
- [41] If there is any breach or non-compliance with this Order, the parties are entitled to re-apply to the Court for a variation of this Order.
- [42] If this matter is not listed for trial within a reasonable time or if any of the Applicants is of the view that there is any change in circumstances, that Applicant is entitled to move the Court to consider bail.

COLIN WILLIAMS
High Court Judge

By the Court

Registrar