

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

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

CASE NUMBER: ANUHCR2018/0107

BETWEEN:

THE QUEEN

V

JASON MILLETTE

Appearances:

Mrs. Shannon Jones-Gittens, Counsel for the Crown

Mr. Andrew O'kola, Counsel for the Defendant

2021: January 21st

RULING ON APPLICATION FOR BAIL

Background

- [1] **SMITH, J.:** The Applicant is before the Court scheduled to be retried for the offence of murder. He has filed an application to be admitted for bail dated 21st December 2020.

The Crown's Case

- [2] The deceased is Ms. Xavier Thomas. She died as a result of gunshot wounds occasioned to her by a drive-by shooting. The evidence of the attending physician Dr. Su-jay Gore was that she had been shot in the chest and knee.
- [3] The main issue of the Crown's case rests on identification. Witness Lorne Nicholas in his deposition stated that he knew the three persons "DM", "SB" and "JM" and that he had known them for over ten years and that there were in jail together. Due to Lorne Nicholas being shot in a

previous incident he had heard rumors that “DM” wanted to shoot him and that persons were cruising looking for him in a grey/silver Allion motor car.

- [4] On the night in question he said he was at a shop socialising when he saw a grey/silver Allion motor car with rented plates coming down the hill. He said he could not remember the exact licence plate number but it contained an 8, 2 and probably a 9 and two 8's in it. He said he paid keen attention to it because of the rumors he had heard. He said he saw Jason Millette driving the vehicle which was a right hand drive car and that Millette's face was not covered. He said that DM and SB both opened fire at him and he received injuries.
- [5] Another witness who was in the shop at the time also saw the car but took very little notice of it but said that after the shooting Nicholas told him who he saw in the car and that Millette was the driver.

The Disclosure Issue

- [6] Counsel for Millette raised the issue of certain statements which only came to his attention during the first trial. Also after an order for inspection was granted by the court further statements came to his attention. It is trite law that the Crown is to disclose everything in its possession whether it is beneficial to the Crown or not. The Crown in their response indicated that the evidence of the car was neither here nor there. While that might be so it does not change the fact that the statements should have been disclosed and disclosed in a timely fashion.
- [7] The UK Courts have looked unfavorably on cases where the Crown and the police have failed to disclose or have lost or altered evidence¹. The defendant in his affidavit alluded to the statements taken from three persons which had not been disclosed by the Crown and which he says would have assisted at his trial.

Has there been a change of circumstances?

- [8] The first application for bail made on behalf of Millette was made by Counsel Michael Archibald in 2020. The application was denied by this Court. Today however the Court must take into account the continuing onslaught of COVID-19 and the very crowded conditions at the prison. This pandemic has made it impossible for the trial to be reheard in 2020 and will now be fixed for rehearing in the 2021 assizes.

¹ R (Ebrahim) v Feltham Magistrates Court: Mouatt v DPP [2001] 1 W.L.R. 1293.

The Position of the Applicant

[9] Counsel for the Applicant has indicated that:-

- 1) His client is not a flight risk;
- 2) He is able to sign at a police station every day if needs be;
- 3) His passport is already in the possession of the Court;
- 4) He has strong family ties in the community;
- 5) The case against him is tenuous and rests on the testimony of Lorne Nicholas and that there is no forensic evidence linking the Applicant to the shooting.

Ruling

[10] Having considered all of the above, the Court understands that the granting of bail in circumstances such as these requires the Court to undertake a delicate balancing of the rights of the Applicant to bail and the protection of the society. The Court is cognizant of the fact that the Applicant is facing a very serious charge combined with the potential for a significant sentence, to tip the balance away from the presumption of innocence and individual liberty, to the protection and safety of society and the administration of justice, as outlined in **Labonne v Director of Public Prosecutions**.²

[11] The case of **Devendranath Hurnam v. The State**³ the Privy Council, at paragraph 1, is instructive on this issue and described the Court's considerations for bail applications as follows, "*Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as a whole. The interest of the individual is of course to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify depriving him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried, will inevitably prejudice him and, in many cases, his livelihood and his family. But the community has a countervailing interest, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit further offences*".

[12] The Privy Council went on to confirm the reasoning of the Magistrate in the **Hurnam** case as being correct. It was noted at paragraph 25 that: "*The reasoned judgment of the Magistrate cannot be faulted. He did not overlook, minimise or discount the seriousness of the offences with which the*

² 2005 SCJ 38. 23

³ 2005 UKPC 49

appellant was charged. But he did not, rightly, treat this as a conclusive or all but conclusive reason for refusing bail. Instead, he addressed, rightly, the wider question whether, given the seriousness of the alleged offences, it was necessary to refuse bail in order to serve one of the ends for which detention before trial is permissible”.

- [13] As Justice Floyd pointed out in the recent BVI case of **Yan Edwards and Baptiste v The Commissioner of Police and The Director of Public Prosecutions**⁴ *“These cases and others tell us that bail considerations are multifaceted. They include, a) whether detention is necessary to ensure that the accused will appear in Court as and when required, b) whether detention is necessary for the protection and safety of the public, including any witness in the proceeding, and c) whether detention is necessary, based on a likelihood of the commission of other offences or the interference with the administration of justice. These cases and others are instructive. They provide guidance and hold that when making bail determinations, the Court may consider a number of factors including, a) the strength of the Crown’s case, b) the gravity of the offence, c) the potential for a lengthy sentence upon conviction, d) the Applicant’s ties to the community, including family and employment, e) any record of convictions for the Applicant, and f) the maintenance of confidence in the administration of justice”.*
- [14] The facts in this case are very serious. They include the discharge of a firearm in a public place. The victim an innocent bystander in the prime of her life died as a result of being shot in her chest and her knee. The use of a firearm in a violent incident heightens the concern of this Court and the society. However, one must examine the evidence of the Crown to support the prosecution of this very serious crime. I have read through the depositions and the transcript from the previous trial. I have also read through the statements which were not disclosed to the defence. I also note that The Crown has not put forward any real objections to the defendant being granted bail. They have not said he is neither a flight risk nor that he will commit further offences whilst on bail or interfere with Prosecution witnesses.
15. Having considered all of the circumstances placed before the Court, the Applicant’s application for bail succeeds. Jason Millette is to be bound by the following conditions:-
- I. Bailed in the sum of EC\$200,000 with a \$30,000 cash component. There shall be two sureties
 - II. Report to and sign in at the Grays Farm Police Station every Monday, Wednesday and Friday between the hours of 6:00 AM and 6:00 PM, commencing on January 29th, 2021
 - III. He is to reside at Donovans at the home of Ms Alberta Millette his mother.

⁴ BVIhcv2020/0220

- IV. He is not to contact or communicate in any way either directly or indirectly by any physical, electronic or other means with any Crown witness in this case, especially the witness Lorne Nicholas
- V. He is not be within 50 meters of any of the above-named persons, nor any place where the above-named persons live, work, go to school or frequent in particular the scene of the crime.
- VI. He is not possess any weapon, firearm, pellet gun, flare gun, imitation firearm, prohibited weapon, restricted weapon, bladed weapon, ammunition or explosive substance, or anything designed or intended to be used to cause death or injury
- VII. Your passport will remain in the custody of the Supreme Court and you are not to apply for a new passport or any other travel permits or documents until this case is concluded.

You are hereby admitted to bail.

Ann-Marie Smith
High Court Judge