

SAINT LUCIA

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CASE NO. SLUCRD2014/1272, 1275

BETWEEN

THE CROWN

vs

- 1. TIMOTHY DESMOND**
- 2. DYLAN EDMUND**

Defendants

Appearances:

Stacey-Anne St. Ville together with Stephen Brette and Isa Cyril Counsels for the Crown

Leslie Mondesir Counsel for the Defendant Timothy Desmond

David Moyston Counsel for the Defendant Dylan Edmund

2019: May 7;
June 12.

DECISION

- [1] **TAYLOR-ALEXANDER, J.:** The Defendants Timothy Desmond and Dylan Edmund are jointly charged with two (2) others for the murder of Ulanda Frederick. They have been remanded for over four (4) years from 10th July 2014 awaiting their trial. They were arraigned in November 2018 and there is a trial fixture of the 17th of June 2019. The Defendants have applied for bail.

Relevant Facts:-

- [2] Ulanda Frederick, a hermaphrodite was fatally shot on Tuesday the 1st of July 2014. The Crown alleges that the deceased was killed by the Defendants acting

together in a premeditated coup where they lay in wait for the Deceased.

- [3] The Crown's only eyewitness is Nicole Hippolyte who was a pedestrian passer-by and who from her view point in a gutter where she lay, witnessed the killing.

The Applications:-

- [4] Both Defendants have applied for bail and ground their applications under section 592 of the Criminal Code which by itself and read together with section 8 (2) (a) and 3 (5) on the St. Lucia Constitution establishes a right to bail for all offences under the Criminal Code.

- [5] The Defendants in their applications submit that:-

- (a) Opposition to bail cannot be based merely on an allegation or speculation.
- (b) The denial of bail must be based on grounds that demonstrate that the Applicants (1) will not surrender to custody, (2) are likely to reoffend while on bail, (3) interfere with witnesses in this case, (4) are a threat to the peace and well-being of the community, (5) require the protection of being kept in custody or (6) are minors who needs to be kept in custody for their own welfare.
- (c) The seriousness and nature of the offence of murder by itself does not constitute grounds for the denial of bail, rather that fact must be considered along with any evidence in respect of the Defendants character, antecedents and community ties.
- (d) There is nothing in the antecedents of the Defendants to indicate that if granted bail for this charge they would (1) not surrender to custody, (2) interfere with any witness in these cases, (3) re-commit whilst on bail or (4) be a danger to either themselves or the community.

- (e) That Timothy Desmond is a 29-year-old St. Lucian citizen, with a fixed place of abode, he is the holder of a St. Lucian passport and identification card, is a self-employed father of a minor child, and has no previous convictions.
- (f) Dylan Edmund is a twenty-five (25) year-old St. Lucian male. He has two (2) previous firearm related convictions committed together, for which he was convicted in 2014 and fined \$10,000.00 in default five (5) years imprisonment in one instance and cautioned reprimanded and discharged in the other.

The Submissions of the Defendants run thus:-

- [6] Bail is not a vehicle for punishment, but it is simply a means of securing the attendance of the accused at trial. The Crown in opposing bail cannot simply make bald assertions but must provide grounds that support these assertions.
- [7] The Defendants do not accept the Crown's assertions that the eyewitnesses' life has been threatened, nor have they produced any threatening phone calls that can be tied to the Defendants.
- [8] As it concerns Dylan Edmund, the Crown's evidence on the substantive case against him is weak. The Crown's evidence, which is disputed, is that he was a non-active role and that he was in the location at the time and place. Further, none of the subsequent evidence of threats made against the witness implicate him in anyway, the evidence of the threats made, attempt to implicate all of the other Defendants, but not him.
- [9] The Defendants submit that given the length of time they have been remanded, the unlikely event of them being tried on 17th June 2019, there being no grounds to support them being a threat to witnesses for the Crown or the community, they

should be granted bail. All other concerns of the Crown can be met by the imposition of appropriate conditions.

Opposition: -

[10] The Crown opposes the grant of bail, and submits the following grounds in opposition:-

1. If released on bail the Applicants may fail to surrender to custody;
2. Interfere with witnesses, in that granting the Defendants liberty would affect the rights of the lone eyewitness Nicole Hippolyte.
3. The Defendants will commit offences on bail.
4. There is strong eyewitness evidence that the Defendants committed the offence and the evidence on paper does not disclose that the Defendants acted in self-defence.
5. Granting the Defendants their liberty at this time, would not be in the public interest due to the prevalence of the offence of murder.

Fail to surrender to custody.

[11] The Crown submits that the seriousness of the offence by itself is incentive to abscond and regard must be made to how porous our borders are and how close the neighboring islands of Martinique and St. Vincent are. There is a greater likelihood of the Defendants absconding.

[12] The Defendants submit that this is not a submission to which the Court can have due regard. The Crown's failure and ability to properly secure its borders should not be a basis to deny bail. The severity of the sentence the Defendants are to face, were they to be found guilty, is a relevant element in the assessment of the risk of absconding, but this without more is insufficient.

[13] The submission of the Defendants is sound. The reasoning of the JCPC in **Hurnam D v The State** is instructive:-

"It is obvious that a person charged with a serious offence, facing a severe

penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drug cases. Where there are reasonable grounds to infer that the grant bail may lead to such result, which cannot effectively be eliminated by the imposition of appropriate conditions; they will afford good grounds for refusing bail.....The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well, as pointed out at the beginning of this paragraph, provide grounds for refusing bail, but they do not do so of themselves, with more: they are factors relevant to judgment whether, in all the circumstances, it is necessary to deprive the applicant of his liberty”.

- [14] Timothy Desmond is young man, who it is alleged is self-employed with a shop. He has one (1) child, cared for by his mother, who does not live with him. There is no indication that he owns any assets or has any professional or religious ties. The likelihood of conviction appears strong as the Defendant was identified by an eyewitness as one of the perpetrators of the murder, My findings are the same in relation to Dylan Edmund, I find no evidence of sturdy community ties, nothing to mitigate the likelihood of flight. He is in jeopardy of an even stiffer penalty were he to be found guilty given his recent relevant previous conviction. All of these factors make the risk of decamp or flight higher.

Interference with Witnesses: -

- [15] The Crown's submission is that the evidence supporting the indictment is largely based on the testimony of a single eyewitness Nicole Hippolyte. She has filed affidavits supporting the crown's opposition to bail. Her affidavits, together with her second witness statement contained in the Crown's disclosure alleges that:-
- (i) Immediately after the Murder, she was threatened by the Defendants that if she spoke, she would suffer the same fate as the deceased.
 - (ii) She was threatened on the night of the incident by the mother of two (2) of the Defendants who are not the Defendants for bail. She has also received threats from the Defendant Timothy Desmond, his mother Martina Desmond aka Martin Desmond.

- (iii) She has been stalked and followed by persons whom she believes are operatives of the Defendants who were brandishing a firearm. She was forced to use pepper spray to defend herself. She again encountered three of these operatives who again came upon her. Their firearm appeared jammed, which allowed her to defend herself by knocking the gun from the hand of the first one and grabbing the other by his testicles. All three persons, she states, were fighting with her, and she took a knife she had in her bag and stabbed one of them, in his chest.
- (iv) She was again approached by another person as she was walking by a store in town, who threatened to kill her. A physical altercation ensued with this person.
- (v) She has allegedly received a number of threatening phone calls which she states were from the Defendants, despite their incarceration at the Bordelais Correctional Facility. According to her affidavit evidence of the 15th and 25th of March 2015, she has been receiving phone calls from Boozie, Coconut and Timothy. She said she has also had calls from Morfee. He is Timothy Desmond. She says that Boozie is also known as Boloom, referring to the persons whom she identified at the identification parade as Daniel Khodra. "Fries" she identified as Samuel Khodra and Dylan Edmund as "Shattoo".
- (vi) On Thursday 21st February 2019, she was asleep on a mattress on the floor at the foot of her bed when she was awoken by a huge bang on her front door. She got up and saw two (2) men in her front room who began shooting at her, while advancing on her. She grabbed a cutlass and rushed on them while they were still shooting. Many shots were fired at her, so she fell down and played dead. She recalls that about thirteen (13) shots were fired. When they were done, she heard one of the men on his cell phone saying *"Boozie we finish dee job for the OTF gang, the bitch is dead, freedom is a must"*.

- [16] The Crown states that eight (8) of the thirteen (13) shots fired connected with the eyewitness who is hospitalized where she remains in critical condition at the Victoria Hospital.
- [17] In the handbook, *Bail : A Practitioner's Guide*, 2nd Edition by Johan van den Berg, the learned author explains the Court's consideration under this exception "... *the primary interest which is sought to be protected when the risk of interference with state witnesses (or for that matter with the police investigations) is assessed, is the proper administration of justice.. It is submitted that the proper approach is to ask whether it is likely that the accused will, not may, interfere with state witnesses in the sense that he will attempt, unduly, to influence the content or slant of the evidence or to persuade them not to testify against him at all.*"
- [18] Blackstones Criminal Practice 2005 at D5.12 page 1212 states that the "*suggestion that potential witnesses have already received threats, and can be contacted by the accused is a relevant factor*".
- [19] I do not believe that I am required at this stage to conclude with any degree of certainty that it was the Defendants through their direction to their operatives who directed the interference with the witness. It has been accepted that the witnesses life has been threatened, and she is of the belief that the numerous threats are as a result of her giving critical evidence in this case.
- [20] I am of the view that although these threats were made during the incarceration of the Defendants they are likely to increase should they be released, and this provides justification to protect the proper administration of Justice.

Commit an Offence while on Bail

- [21] The Crown submits that its obligation is to provide "grounds for believing" the Defendants will commit an offence and not proof or evidence that the same will occur. It is accepted that Dylan Edmund has previous convictions for firearm related offences, and that this present offence was committed with the use of a firearm allegedly within a short period of time of his first conviction. Based on this, I am prepared to conclude, that there are grounds for believing that he may commit

an offence while on bail and there must be consideration of public and community protection. I am not prepared without more and without the Crown providing grounds for its belief that Timothy Desmond should be painted with the same broad brush.

The Nature of the Offence and Strength of the Evidence:-

- [22] Non-Capital Murder carries a maximum penalty of life imprisonment. In **Sharman Rosemond V PC Charles and Others and ORS** Edward J opined that the discretion of the court to grant bail in the circumstances of Murder must be exercised responsibly, as it is a serious crime and it is in the public interest that a person alleged to have committed such a crime is available to stand trial within a reasonable time.
- [23] A review of the evidence comes from the sole eye witness who provides recognition evidence of the Defendants who are familiar to her and whom she later identified at an ID parade. She has provided a graphic statement of what transpired on the fatal evening, and her evidence remains consistent with the other circumstantial evidence provided.
- [24] I accept the crown's submission that theirs is a strong case and that the likelihood of conviction is high.

Discussion:-

- [25] The right to personal liberty is woven into the fabric of our Constitution. It is a crucial and valued right, which the courts should jealously preserve. Detention without trial is allowed by the Constitution under certain well defined exceptions and provided that such detention is for a reasonable time. The common law has opined on how reasonable time is to be interpreted. Detention other than in keeping with the Constitution and the common law is an encroachment upon the way of life, of a person. Therefore, the need for interim custodial remands must be well supported. Justification may be found under Section 593 of the Criminal

Code and includes the reasons provided by the Crown in this case. Between the right to bail preserved by Section 592 and the justification for continued detention, under section 593 a middle course must be steered among the competing interests. Notions of fair play, concepts of personal liberty, public opinion, practical considerations, experience and common sense must all be considered. The discretion available to a Judicial Officer under Section 593 of the Criminal Code is one to be exercised recognizing the constitutional commitment to protect the liberty of a subject.

[26] It is well known that the Criminal Division in St. Lucia currently experiences chronic delays in the trial of its cases. The period of delay averages 5 to 7 years between arraignment and trial. Even where matters have been allocated trial fixtures, these matters compete with other fixtures on that day, and the likelihood of a matter being selected for trial is, is dependent largely on its age and complexity, and complexity, and not on whether it has a fixture.

[27] This is the vexing issue that continues to disturb me. The Defendants have been on remand for over four and a half (4½) years awaiting trial. However, having assessed the applications for bail, the written and oral submissions made, I am of the view that there is a substantial risk that the fairness or integrity of the trial process might be prejudiced, by the release of the Defendants at this time and, there are no conditions that the Court can impose on the grant of bail, to mitigate that risk. The interest of Justice in this case dictates that the remand of the Defendants continue at this time, but that it should be remand with a view to bail reviewed quarterly while the matter awaits trial.

V. GEORGIS TAYLOR-ALEXANDER
HIGH COURT JUDGE

BY THE COURT

REGISTRAR