



**[2024] JMSC Crim 2**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CRIMINAL DIVISION**

**CLAIM NO. SU202403846**

**BETWEEN**

**RICK EDWARDS**

**APPLICANT**

**AND**

**THE DIRECTOR OF PUBLIC  
PROSECUTIONS**

**RESPONDENT**

**IN CHAMBERS**

**Mr. Norman Godfrey instructed by Brown, Godfrey & Morgan for the Appellant**

**Mrs Yanique Taylor- Campbell instructed by the Director of Public Prosecutions  
for the Respondent**

**Heard:           October 9 & 17 2024**

**APPEAL – BAIL - APPEAL FROM REFUSAL BY PARISH JUDGE – STATUTORY  
INTERPRETATION – STRENGTH OF CASE AGAINST DEFENDANT – GOOD FAITH  
DUTY ON APPELLANT – MEANING OF SUFFICIENT CAUSE – CONSTITUTIONAL  
PROVISIONS CONFERRING ENTITLEMENT TO BAIL**

**The Charter of Fundamental Rights and Freedoms (Constitutional Amendment)  
Act 2011, Sections 13, 14, (1), (3), (4) & 16(5)**

**Bail Act 2023, Sections 6(2), (3), 12(1) & 12(7)**

**Civil Procedure Rules 2002, rule 58.2**

**WINT-BLAIR J**

### **The Application**

**[1]** The defendant, Rick Edwards, appeals from the decision of Her Honour Miss Marlene Roper to refuse bail on the charges of Possession of Prohibited Weapon and Unauthorized Possession of Ammunition.

#### **Background**

**[2]** On August 11, 2024, seventeen people (17) were shot and injured, eight fatally, in the Cherry Tree Lane area of Clarendon. On August 12, 2024, the police were conducting foot patrols in separate teams in the Cherry Tree Lane area on or about 10:00am.

**[3]** The defendant who gives affidavit evidence by way of his father does not dispute that he was the driver of an unregistered motorcycle with Devonte Jackson aboard as the pillion. Mr Jackson was carrying a bag. The motorcycle was stopped by the police. There is no dispute that Jackson dropped the bag, ran, was chased, caught and that the bag Mr Jackson had been carrying was searched by the police.

**[4]** The prosecution intends to adduce evidence from the statements of two police men. The statement of Cst Nish says that the defendant entered the Cherry Tree Lane community from the Bustamante Highway on a motorcycle with no registration plates. Aboard that motorcycle were the defendant and Devonte Jackson. Jackson was carrying a black cross bag. The police signaled that the motorcycle should stop. The motorcycle slowed and then attempted to accelerate. The driver was apprehended. The pillion began to run, he was chased and

apprehended. He was searched, the bag he had been carrying was found to contain a Taurus 9mm pistol serial number TFW20771 loaded with a magazine. Mr Jackson, when asked whether he had a licence for such a weapon, responded that he had none.

- [5] After being cautioned for the offences of possession of a prohibited weapon and unauthorized possession of ammunition, Jackson said: “Offica, a Rick gi mi the bag enuh offica, me never know a wah in deh.” He identified Rick as the rider of the motorcycle. On caution for the offences, the defendant made no comment.
- [6] Both men and exhibits were taken the May Pen Police Station. The defendant gave his name as Rick Edwards, his address as Lawson Boulevard, Four Paths, Clarendon, his occupation as a farmer and his age as 22 years old. The co-accused gave his name as Devonte Jackson. He was a 24-year-old construction worker of Cherry Tree Lane, Four Paths, Clarendon. Mr Jackson told the police that he was a witness to the shooting on August 11, 2024, as it had occurred at his gate.
- [7] Devonte Jackson gave a cautioned statement to the police in the presence of two Justices of the Peace. He was charged with the offences of possession of a prohibited weapon and unauthorized possession of ammunition and cautioned separately. On the charge of possession a prohibited weapon he said, “offica a mine e gun.” On caution for the offence of unauthorized possession of ammunition, he said, “offica so how long mi ago de yah?” Rick Edwards, the defendant, was cautioned for each offence and made no comment.
- [8] On the scene and in a cautioned statement given to the police, Mr Jackson imputes possession of the firearm to the defendant. More will be said about this later on.
- [9] The firearm seized from the bag was loaded with a magazine. There was one unexpended cartridge in the breach and eleven cartridges in the magazine. The black cross bag, the firearm and ammunition were taken to the May Pen Scene of Crime Unit where it was photographed and swabbed in the presence of both the defendant and Mr Jackson. The exhibits were sealed and labelled. At the time of the bail hearing, no results from these tests were available.

[10] On the 11<sup>th</sup> of September 2024, the defendant appeared before the Clarendon Parish Court. An application for bail made before the learned parish judge was refused.

[11] The Bail Act (“the Act”), provides in section 10 as follows:

*“10.— (1) Subject to subsection (2), where a deciding official—*

*(a) grants bail or refuses bail;*

*(b) appoints a time or place for a defendant who is granted bail to surrender to custody;*

*(c) imposes or varies any condition in respect of bail;*

*or (d) revokes bail, that deciding official shall, in the prescribed form, make a record of the decision and shall cause a copy of the record of the decision to be given to—*

*(i) the defendant;*

*(ii) and (ii) every person providing surety, in a case where surety is required as a condition for the grant of bail;*

*(iii) and (iii) the prosecution or, in the case of a defendant who has not yet been charged, to the police, as soon as practicable after the record is made.*

*(2) Where bail is granted to a defendant by endorsing a warrant of arrest, the constable who released the defendant on bail shall make the record required by subsection (1) instead of the Judge or Justice of the Peace (as the case may be) who issued the warrant.*

*(3) Where a deciding official—*

*(a) grants or refuses bail;*

*(b) imposes conditions in granting bail;*

*(c) varies any conditions of bail;*

*or (d) revokes bail, the reasons for the decision shall be given in accordance with subsection (4).*

*(4) A deciding official who is required under subsection (3) to give reasons for a decision, shall note those reasons in the prescribed record and shall, within forty-eight hours after the decision is made, cause a copy of that note to be served on (a) the prosecution;*

*(b) the defendant concerned, or on the defendant’s representative;*

*and (c) if the decision affects the provision of any surety, the person providing the surety.*

*(5) Where a decision referred to in subsection (3) is made in respect of a defendant who is not represented by an attorney-at-law, the deciding official shall inform the defendant of the procedure for review under section 11 or the right of appeal conferred by section 12, as the case may be.”*

### **The decision of the Court below**

- [12] The Court below, having heard the matter, gave brief reasons which followed the form set out in the statute. There is no requirement for extensive reasons as would be expected in the case of a written judgment. The law requires that the decision and the reasons for that decision should be written down in the judicial officer’s notebook and be sufficient to allow, in the case of a parish judge, delivery to the defendant who wishes to appeal against the decision. These statutory provisions were complied with by the learned parish judge

### **The Approach of this Court**

- [13] The discretion exercised by the learned parish judge, is not lightly to be disturbed. The test for interfering with the decision is whether the Court misdirected itself in a material way, in relation to facts or the law.
- [14] The powers of this Court are limited where the matter comes before it on appeal. Although this Court may have a different view, it should not substitute its own view for that of the parish judge because that would be an unfair interference with the exercise of her discretion.<sup>1</sup> The real question is whether it can be said that the parish judge who had the discretion to grant bail exercised that discretion wrongly.
- [15] If misdirection is established, the reviewing Court is at large to consider whether bail ought, in the particular circumstances, to have been granted or refused on a rehearing on the material before it and has the powers to make the orders it considers just. In the absence of a finding that the learned parish judge misdirected him or herself, the appeal will be unsuccessful.
- [16] The powers of a Judge in Chambers on appeal under the old Bail Act are settled and nothing in the language of the Bail Act, 2023 varies these powers. The holding

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<sup>1</sup> Huey Gowdie v R [2012] JMCA Crim 56, in which Brooks, JA, refers to Lord Diplock in *Birkett v James*

of Sykes, J (as he then was) in **Stephens v the Director of Public Prosecutions**<sup>2</sup> is that “a Judge in Chambers is fully entitled to substitute his view of the matter on a rehearing. Unless this is so there would be little point in giving the Judge in Chambers the power to make the same orders on a rehearing that the Resident Magistrate could have made.” This remains the legal position.

[17] Sections 12(1) and (7) of the Bail Act set out the statutory position on appeal to this Court:

*“(1) The defendant concerned may, in accordance with any applicable rules of Court, appeal to— (a) a Judge of the Supreme Court in Chambers, in respect of a decision made by a Judge of the Parish Court— (i) and referred to in section 7(4)(a) or 10(3); or (ii) upon a review conducted under section 11;*

*(7) On an appeal under this section, the Judge in Chambers may affirm the decision that is the subject of the appeal, or grant or refuse bail to the defendant, revoke the grant of bail to the defendant, impose conditions on the grant of bail to the defendant, or vary or remove any condition of bail imposed on the defendant.”*

[18] In **Hadmor Productions v Hamilton**,<sup>3</sup> it was settled that the decision ought to be disturbed only where the judge has erred by exercising the discretion wrongly or has acted on some wrong principle by giving weight to something which he ought not to have taken into account or by failing to give weight to something he ought to take into account.

### **The Constitution**

[19] The principles of the liberty of the subject and the presumption of innocence are common law principles, but they form part of the underpinnings of civil rights in our Constitution and our legal system and affect the issue of the right to bail. These principles were first set out in Chapter III of the Constitution of Jamaica in 1962

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<sup>2</sup> Unrep Claim No HCV 05020 of 2006; January 3, 2007

<sup>3</sup>[1983] A.C. 191, 220

and have been retained and enhanced in the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011 (“the Charter.”) (see Huey Gowdie v R.)

- [20] Section 13, of the Charter guarantees the right to liberty, freedom of the person and due process, along with other rights and freedoms expected in a “free and democratic society”.
- [21] Section 14(1) prescribes the right to liberty and freedom of the person. It states, in part: “No person shall be deprived of his liberty except on reasonable grounds and in accordance with fair procedures established by law in the following circumstances- ...”
- [22] Section 14(3) of the Charter, provides that even before a person accused is brought before a Court he is entitled to be: “...released either unconditionally or upon reasonable conditions to secure his attendance at the trial or at any other stage of the proceedings”
- [23] Section 16(5) speaks to the presumption of innocence. It prescribes that: “Every person charged with a criminal offence shall be presumed innocent until he is proven guilty or has pleaded guilty.”
- [24] The Charter expressly provides for the right to bail. It also places an onus on the party seeking to deprive a citizen of his right to liberty, to show sufficient cause for keeping him in custody.
- [25] Section 14(4) of the Charter prescribes: “Any person awaiting trial and detained in custody shall be entitled to bail on reasonable conditions unless sufficient cause is shown for keeping him in custody.”
- [26] Having set out the constitutional provisions which govern us all and the Courts in determining this issue, I now turn to the decision to refuse bail.

#### **The decision to refuse bail**

- [27] In arriving at her decision to refuse bail, the learned parish judge reviewed the cautioned statement of the co-accused in which he said that the firearm belonged to the defendant.

**[28]** The learned judge gave as the reasons for her decision:

“The nature and seriousness of the offence; the likely threat to public order should the defendant be released on bail and the prevalence of the offences of the type for which the defendant is suspected of committing.”

### **The grounds of appeal**

**[29]** Aggrieved by the decision of the learned parish judge, the defendant filed the grounds of appeal set out below:

1. *“The learned parish judge erroneously placed significant reliance on the cautioned statement of Devonte Jackson the co-accused of the defendant and which statement is not evidence against the defendant.*
2. *The statements of the police officers in no way establish the elements of possession in the Defendant.*
3. *In order to get to the:*
  - a. *Nature and seriousness of the offence*
  - b. *There is the likely threat to public order should the defendant be released on bail.*
  - c. *There is a prevalence of the offences of the type for which the defendant is suspected of committing,*

*There has to be evidence linking him to the offence, and there is no evidence linking him to the offences charged.*

- 4) *The defendant is not considered a flight risk.”*

**[30]** The defendant has applied to this Court pursuant to section 12(1) of the Bail Act, 2023 and rule 58.2 of the Civil Procedure Rules 2002 (the CPR”), for the reversal of the learned Parish Court Judge’s decision. These proceedings fall into the category of a criminal cause or matter and are not civil proceedings. The standard of proof is on a balance of probabilities.



**Ground 1- The learned parish judge erroneously placed significant reliance on the cautioned Statement of Devonte Jackson the co-accused of the defendant and which statement is not evidence against the defendant.**

- [31] It was submitted by Mr Godfrey that the cautioned statement of Mr Jackson is evidence against its maker only and is not evidence against the defendant. The submission in essence is that the learned parish judge gave too much weight to a factor which she ought not to have taken into account at all and gave no weight to factors she ought to have taken into account.
- [32] Mrs Taylor-Campbell, for the prosecution did not respond to this ground in her oral submissions.
- [33] The well-known case of **R v Gunewardene**<sup>4</sup> stands for the proposition that: “Where a prisoner has made a statement implicating a co-accused who is tried jointly with him, it is the duty of the Judge to impress on the jury that the statement is not evidence against the co-prisoner. This case was affirmed in **Dennis Lobban v R**.<sup>5</sup>
- [34] The learned parish judge gave demonstrable weight to the cautioned statement of the co-accused in her reasons. She referred to it in her reasons as follows:
- “The co-accused gave cautioned statement, outlining that the gun belongs to Rick Edwards. Additionally, on seeing the police, Rick told him a gun was in the bag.*
- [35] The hearing of an application for bail is an informal enquiry not employing the strict rules of evidence. The prosecution is not required to prove beyond a reasonable doubt, or to produce formal evidence of any assertions made at that hearing.
- [36] The cautioned statement of Mr Jackson says he was carrying a one strap bag and he and the defendant rode along with another two friends on bikes to see Shamoy. At Shamoy’s house, the defendant took the one strap bag, belonging to Mr

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<sup>4</sup> 35 Cr. App. R. 80 and

<sup>5</sup> Privy Council Appeal 23/93 [6.4.95]; SCCA 148/88 [4.6.90] (the statement of one co-defendant is not evidence against the other. The prosecution is also not allowed to cross-examine a defendant on a statement which is inadmissible in the case against him.)

Jackson, to the back of the house. When he returned, he gave the bag to Mr Jackson who noticed that it was heavy but did not look inside. They both went back on the bike and rode to Cherry Tree Lane. The police stopped them, it was then that the defendant told Mr Jackson that a gun was in the bag. He dropped the bag and jumped from the bike and ran. The police chased and held him. He told the police that the gun was the defendant's but the defendant told him to "take the charge." He closes by saying he never touched the gun, "it's Rick's gun."

**[37]** Mr Jackson would be entitled to the entire contents of the statement being read at trial as part of his defence and to give oral evidence along the lines of his caution statement if he so chose, however it is not evidence against the defendant.

**[38]** The learned judge is required to assess the strength of the evidence against the defendant. There was no evidence against the defendant in the cautioned statement capable of being used by the prosecution to strengthen its case against the defendant. The weight placed on the cautioned statement as evidence against the defendant in the assessment of the strength of the prosecution's case was a misdirection in law, therefore this ground succeeds.

**Ground 2: The statements of the police officers in no way establish the elements of possession in the defendant.**

**[39]** A bail hearing is an inquiry conducted by the learned parish judge to see whether there is anything to displace the prima facie entitlement of a defendant person to bail. The Act sets out what should be considered at the bail stage and it has already been said the strict rules of evidence do not apply. The Court is not required to look too closely at nor to weigh the evidence at this stage.

**[40]** The defendant has elected to remain silent as is his right. The evidence before the Court is in the form of an affidavit from his father, Mr Robert Edwards who deposed that the bag being carried by Mr Jackson had no connection to the defendant.

**[41]** It is submitted by Mr Godfrey that the police statements do not establish the offences, however, the application was made at a stage where the file is

incomplete. He addressed the absence of a timeline for any further evidence, but not the existence of this further outstanding evidence in his submissions.

- [42] The Court, when engaged in considering an application for bail, as opposed to a trial, is expressly required to consider section 6(3)(j) of the Bail Act which provides that *any evidence— that a firearm was used in the commission of the offence; and that the defendant came into possession of the firearm unlawfully, or that the firearm is a prohibited weapon as defined in section 2 of the Firearms (Prohibition, Restriction and Regulation) Act* be given to the Court and assessed.
- [43] The Court is not asked to weigh the evidence at the bail stage as if presiding at a trial, however, the Court cannot ignore the evidence of the (i) presence of, (ii) use made and (iii) any risk presented by a firearm in the circumstances of the case before it. The express statutory provision namely section 6(3)(j) in clear and unambiguous language means that that the deciding official has to give due regard and pay close attention to not the form of the evidence, but the fact of “**any evidence**” of the presence of a firearm. Had the legislature intended to restrict the ways in which the evidence of a firearm could be presented to the Court under the Bail Act it would have said so.
- [44] This means that the learned parish judge was obliged to consider the evidence of the presence of a firearm and also to weigh the strength of the prosecution’s case in relation to the charges before the Court in respect of it. By law she is entitled to make any enquiries she considered necessary as the Court is not limited to material admissible at trial at this stage.
- [45] The learned parish judge was also expected to take notice of the fact that a heinous and unprecedented act of violence had taken place in the community on August 11, 2024, involving the use of firearms. The next morning, transported into the same community was an illegal firearm for which no licence has been produced. There is no dispute that the firearm contained one cartridge in the breach, that means it was ready to be fired. The police have properly seized that firearm and removed it from the streets.

- [46] The firearm is to be tested and its antecedent history **must** be made known to the Court. This is important to the case of the prosecution. There is evidence that it has been sent for ballistic testing. In fact, it is important that the results made known to both sides as this will bolster the case of one side or another. These results were not before the Court on the date of the bail hearing and they do not form a part of the record before this Court by way of new material.
- [47] Cst Nish said he observed the photographing and swabbing process, the statement of the officer who took those photographs and swabs is not before this Court and it was not before the learned parish judge. There was no timeline for the submission of these results from the prosecution. There was also no submission from either side, that there was an adjournment requested for the production of these test results before the hearing was completed.
- [48] The learned parish judge did not and could not have fulfilled her statutory duty to consider “any evidence” when all of the evidence intended to be adduced by the prosecution was not before her. She was limited to the availability of statements which speak to tests results to be obtained, therefore she could properly infer that there was a firearm to be tested, as its presence is not in dispute.
- [49] In order to fairly assess the nature and quality of the allegations against the defendant, the prosecution intends to rely not only the police statements at trial, but on evidence, which is as yet unavailable, the existence of which is known to the defendant. The assessment was at a premature stage and the learned parish judge acted on what was before her.
- [50] Mr Godfrey’s submissions do not take into account the existence of the other evidence related to the firearm which the prosecution has put the defendant on notice it will tender into evidence at trial. The defendant has failed to address the statutory requirement that the parish judge consider “any evidence” of a firearm. The Court has to balance the scales. This ground fails.

**Ground 3: There is no evidence linking him to the offences charged, therefore there could be no assessment of the nature and seriousness of the**

**offence, the likely threat to public order and the prevalence of the offences of the type for which the defendant is suspected of committing**

- [51] Mr Godfrey submitted that there has to be evidence linking the defendant to the offence and there is no such evidence. The statements of Constable Nish and District Constable Chambers do not attribute possession of the prohibited weapon or the ammunition to the defendant. The cautioned statement of Mr. Jackson gives is evidence against Mr. Jackson only. The evidence to be adduced against the defendant is almost non-existent. Further, the information relied on to refuse bail in the record of bail decision discloses no basis for the refusal of bail. There is no allegation that the defendant is a flight risk and is likely not to surrender to custody if released on bail, nor was this a reason given by the parish judge. In addition, the defendant can find sufficient and reputable sureties if offered bail.
- [52] Both sides made concurrent submissions that the defendant is charged with the offence of murder and is before the Circuit Court for the parish of Manchester. It was submitted that the defendant is on bail with reporting conditions from that Court. These conditions were not given to the Court below nor is it a part of the record before this Court. Mr Godfrey argued that a 24-hour curfew could be imposed by this Court if the defendant is released.
- [53] It was further contended by Mr Godfrey that the parish judge did not consider the murder charge which was raised before her and it was, he, as an officer of the Court who had done so. The fact of the defendant being before another Court for the charge of murder was brought to the notice of the parish judge by counsel for the defence on the day the judge made her ruling as the prosecution was not then aware of this other offence. He argued that the mere fact of this other charge is not determinative of the issue of bail in this matter.
- [54] Mrs Taylor-Campbell submitted that her instructions were to the contrary as the charge of murder faced by the defendant was not raised in the Court below. She relies on the application of section 6(2)(b)(v) of the Bail Act for the submission that the defendant is likely to commit an offence while on bail. She argued that the defendant is already before the Court for the charge of murder and this offence

was alleged to have been committed while on bail for that offence. When Mr Edwards was stopped by the police he unsuccessfully attempted to evade the police by accelerating the motorcycle but was apprehended, meanwhile the pillion ran and was caught. In light of the other charge before Court and this offence, she submits that the defendant is likely to commit other offences while on bail.

**[55]** The Bail Act prescribes in section 6(2) that:

*“For the purpose of deciding the question of bail in a case falling under section 5(1)(b)—*

*(b) if the offence is punishable with imprisonment, the deciding official shall grant bail to the defendant, unless the deciding official is satisfied that there is sufficient cause for holding the defendant in custody having regard to any of the following matters—*

*(v) the defendant is charged with an offence alleged to have been committed while the defendant is released on bail;*

**[56]** I would hold that there is a duty on the defendant to approach the Court with clean hands and in good faith. There is an obligation on the defendant who is appealing a decision to this Court to supply all the material necessary for the appeal to properly be considered.

**[57]** There is nothing in the reasons of the learned parish judge to indicate that she was given information related to another charge. There is no evidence before me with which to decide that she was given the information but failed to consider it, besides the submissions of counsel. There is no mention of the murder charge in her reasons and there is no inference that I am prepared to draw from the contrary submissions on the point without any primary facts.

**[58]** However, what is as clear as crystal is that there is no mention of the defendant facing a murder charge before the Manchester Circuit Court in the affidavit of evidence before this Court. The submissions of counsel were the source of this vital information. It matters not which side advanced this information at this stage as in my view, it is a matter of evidence and record, not submissions. Neither side

provided the bail conditions accorded to the defendant on that charge. This Court can infer that there is no 24-hour curfew as a condition of bail from the Manchester Circuit Court, as Mr Godfrey is asking that the defendant be released with that condition, nothing else is on the record.

**[59]** It would seem to me that the following information should be included in an affidavit in support of any appeal from the refusal of bail:

- 1) The full name, age and date of birth of the appellant;
- 2) The usual place of abode or address where the defendant normally resides;
- 3) The length of time at that address and with whom the defendant resides;
- 4) Employment details;
- 5) The charges;
- 6) The allegations;
- 7) The next Court date/s at which Court/s;
- 8) The investigating officer's name and station.
- 9) The likely sentence if convicted;
- 10) Any particulars as to whether and, if so, in what other Court bail has been refused to the defendant;
- 11) Bail conditions if on bail;
- 12) Where the defendant is being detained;
- 13) Previous convictions;
- 14) The address at which it is proposed the defendant would reside, if granted bail;
- 15) Full particulars of all offences with which the defendant is charged and the Courts having conduct of those matters;
- 16) Identifying information such as whether the defendant is the holder of one or more passports;
- 17) The identity, address and occupation of any proposed independent surety;
- 18) The name, age, address, occupation and contact information of a surety on any previous recognizance;
- 19) Whether there have been any previous applications for bail or appeals from any refusal of bail in respect of the offences with details;

- 20) Whether any warrants have been issued in relation to the defendant;
- 21) What surety and/or other conditions relating to bail (if any) the defendant is proposing;
- 22) What are the proposed conditions of release;
- 23) The personal circumstances of the defendant;
- 24) Any other relevant circumstances.

**[60]** Mr Godfrey did not provide the vast majority of the information set out above and substantially relied on the case against the defendant to be presented at trial. The rules governing affidavit evidence apply to this application as do the relevant Practice Directions. The absence of this evidence did not do much to assist this Court in determining the issues before it nor did it assist the Court below to assess the factors set out in the statute.

**[61]** The nature and quality of the record before the Court on the application affect the issue of whether the defendant will turn up for his trial and the likelihood of re-offending as the Court must be equipped to assess the risks involved.

**[62]** This Court does have concerns for the defendant who lacks judgment. His decision to be in the Cherry Tree Lane community on August 12, 2024 was less than wise. The murder charge and the bail conditions currently in place did not prevent the defendant from seeking to avoid what would have been an extremely nervous community, expectedly blanketed by police. The affidavit gives no details as to why the defendant would place himself at such a place at such a time as that.

**[63]** The Court recognizes that the defendant was out on bail, which means he has freedom of movement, however, this liberty was with conditions. This means that there was a limitation placed on this freedom. It is incumbent on a defendant to come to Court with this limitation placed on the record as it is a derogation from his right to freedom of movement ordered by a Court of law.

**[64]** Section 6(3) of the Bail Act provides that:



*“(3) In deciding whether or not any of the circumstances specified in subsection (2) (b) (i) exist in relation to any defendant, the deciding official shall take into account—*

***(a) the nature and seriousness of the offence;***

***(b) the need for preserving public order and the likelihood of the threat to public order should the defendant be released on bail;***

*(c) the need for preventing crime and the likelihood that the defendant will commit an offence while released on bail;*

***(d) the prevalence of offences of that type in the community or in Jamaica;***

*(e) the defendant’s character, antecedents, associations and community ties;*

*(f) the defendant’s record with regard to the fulfilment of the defendant’s obligations under previous grants of bail;*

*(g) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence that the defendant committed the offence or failed to surrender to custody;*

*(h) whether the defendant has been convicted on any previous occasion of an offence punishable with imprisonment;*

*(i) whether—*

*(i) the defendant is in the same household or community as any victim of the offence, or any witness to the offence (whether or not the witness has given or will give evidence in relation to the offence);*  
*and*

*(ii) the sense of peace and security of the public, or among members of any household or community, will be undermined or jeopardised by the release of the defendant on bail;*

*(j) any evidence—*

*(i) that a firearm was used in the commission of the offence; and*  
*(ii) that the defendant came into possession of the firearm unlawfully, or that the firearm is a prohibited weapon as defined in section 2 of the Firearms (Prohibition, Restriction and Regulation) Act;*

*(k) the defendant's mental health profile, and in particular whether the defendant's mental state renders it likely that danger is posed to any person; and*

*(l) any other factors that appear to be relevant."*

**[65]** It seems to me that section 6(3) grants to the prosecution at the time of the bail application, the right to provide information to the deciding official on the antecedents of the defendant, meaning any information on previous convictions, other pending charges, any disreputable associations, unlawful and/or aberrant practices or expressions of the defendant or his known associates.<sup>6</sup>

**[66]** This is material from which the Court will determine the risk posed to the public interest in the prevention of crime, public safety and public order. Public interest criteria include:

- 1) How speedy or how delayed is the trial of the defendant likely to be?
- 2) Whether there is a risk of the defendant tampering with witnesses.
- 3) Whether there is a risk that the defendant may re-offend while on bail.
- 4) The possibility of prejudice to the defence in the preparation of the defence.
- 5) Any other special matter that is relevant in the particular circumstances to the public interest.

**[67]** All section 6(3) really does is to provide the Court with a checklist of the factors that are relevant in determining whether it is necessary to deprive the defendant of his liberty. It is well known that bail is not to be withheld as a punishment.<sup>7</sup> A failure to provide this information to the Court will deprive it of necessary material with which to make the assessment required by the section.

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<sup>6</sup> Huey Gowdie v R

<sup>7</sup>Hurnam v The State PCA No 53/2004 (delivered 15 December 2005) at para [51]

- [68] The statute by section 6(3)(i)(ii) expressly provides that the Court also consider whether *the sense of peace and security of the public, or among members of any household or community, will be undermined or jeopardised by the release of the defendant on bail.*"
- [69] The local conditions prevailing on the 11<sup>th</sup> August, 2024 have been outlined as well as the police presence on the 12<sup>th</sup> August, 2024. At approximately 10:15 am on August 12, 2024 when the unregistered motorcycle with two men aboard entered the community it attracted scrutiny for its breach of the Road Traffic Act. There was no way to identify the particulars of its owner. It is against this background that the prohibited weapon seized by the police found its way into the Cherry Tree Lane community being driven in by the defendant.
- [70] The parish judge was entitled to rely on the evidence and information before her, she was not making a decision in isolation. The record discloses that the police were on patrol in an area which had seen seventeen people shot the day before. The learned judge demonstrated an appreciation for the local conditions in her use of the words the prevalence of the offence and the likely threat to public order.
- [71] There is a relationship between the local conditions prevailing at the time and the undeniable evidence that a firearm was present. People have a reason for the things that they do. The parish judge was not to divorce common sense from her duties rather she was to pray it in aid. A bail application is not a game of three card trick in which the judge is fair game.
- [72] She is required to weigh the risk to the public and to consider whether the sense of peace and security of the public, or members of any community, would be undermined. It was her duty to consider the factual matrix, she did so by considering the nature and seriousness of the offence in context.
- [73] In **R v Mansfield Justices ex parte Sharkey and others** [1985] 1 All ER 193, in particular at pages 201j -202b, the judgment of Lord Lane CJ., it was held, that hearsay relayed by an investigator is sufficient. Further, that the justices could even use their own local knowledge of relevant circumstances.

**[74]** Lord Lane, CJ in ex parte Sharkey said:

*“The nub of the problem is how far, if at all, the magistrates were entitled to have regard to what was described by counsel as the matrix of events which brought these defendants before the Court. The answer in our judgment is that they were certainly entitled to use their knowledge of events at local collieries during the preceding weeks, because it was only on the basis of that knowledge, inter alia, that they could properly reach a conclusion as to the necessity of imposing a condition. What those events comprised has already been touched on, but there were before us affidavits sworn by certain police officers which gave more detailed information about those local events.”*

**[75]** The allegations before the Court by the police in their statements and in the cautioned statement were the substance of the prosecution’s case at the time of the bail hearing. Mr Godfrey argues that the cautioned statement would be inadmissible if it were to be treated as evidence to which the strict rules of evidence apply.

**[76]** The Bail Act, 2023 does not set out any provision which contemplates that applications for bail should be dealt with in accordance with the strict rules of evidence. Any interpretation of the Act which requires admissibility or proof at the bail stage would lead to an absurdity and render the Act inoperable. The nature of a bail hearing has been held to be an informed inquiry into whether there is sufficient cause to displace the prima facie entitlement of a defendant to bail.

**[77]** The Act now requires sufficient cause to be shown, this “sufficient cause,” does not just relate to the offence it also relates to the offender. Sufficient cause means with good reason. It places a burden on the prosecution to show why the defendant should not be released on bail. The Court is to weigh the adequacy of the good reasons given by the prosecution, satisfying itself that the reasons given displace the prima facie entitlement to bail.

**[78]** I disagree with Mr Godfrey on this ground as the plain language of the statute means that it is with sufficient cause or good reason with which the Court is

concerned. The Court has to consider whether it is satisfied that there are good reasons being advanced by the prosecution. The bail Court is not finding facts.

- [79]** It seems to me that, apart from the apparent difficulties in interpreting the Act using the application of the strict rules of evidence to what is clear, express language, the rules of evidence are neither an aid to statutory construction nor appropriate where a Court is concerned with deciding whether good reasons have or have not been advanced.
- [80]** The fact that the defendant has a murder charge arguably by itself does not constitute sufficient cause as has been submitted, however it cannot be disregarded and it is a significant factor in my view, weighing heavily in the scale.
- [81]** The greater difficulty faced by the defendant on this appeal is that the murder charge before another Court is absent from the affidavit of evidence before this Court while present in the submissions. The conditions of bail are absent from the affidavit as well from the record from the Court below. It is of note that there is the absence from the affidavit before this Court, any evidence as to whether the defendant is in breach of any of the bail conditions.
- [82]** Illegal firearms are a far too common feature of criminal activity in Jamaica, they pose a substantial risk of serious injury to members and to public order. The charges against the defendant are serious and carry lengthy sentences on conviction. The failure to provide this Court with adequate information with which to assess the risk to the public was a factor the learned parish judge considered and amounts to sufficient cause.
- [83]** Further, the affidavit of Robert Edwards says the motorcycle was being driven "along Cherry Tree Lane," not that he was coming from elsewhere into the community. The statement of Cst Nish says the motorcycle entered the community from the Bustamante Highway. The cautioned statement of Mr Jackson said that the pair left Four Paths and went to Cherry Tree Lane on the motorcycle. The motorcycle being driven along Cherry Tree Lane presents an entirely different picture from a motorcycle entering into the community from elsewhere. This is another example of the incomplete or inadequate information before the Court and

it too constitutes sufficient cause. The failure to provide the Court with sufficient information in the affidavit evidence with which to assess the risk presented by the defendant qualifies as sufficient cause as another Court of concurrent jurisdiction has always made a finding on the issue of risk, placed the defendant on bail and limited his freedom.

**[84]** In light of the foregoing the defendant is likely to commit another offence whilst on bail and likely to fail to attend for his trial given the seriousness, nature and gravity of the charge against him, this latter risk is greater given the mandatory and lengthy term of imprisonment awaiting if he is convicted.

**[85] Orders**

1. The appeal from the refusal of bail by the learned parish judge for the parish of Clarendon is dismissed.
2. The decision to refuse bail is affirmed.
3. The defendant is remanded in custody.
4. No order as to costs.