



[2016] JMSC Crim 02

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2015 HCC 00247

THE QUEEN

VS

| | |
|-----------------------------|---------------------------------|
| DEVON RICARDO MURRAY | 1ST DEFENDANT |
| DWAYNE CHAMBERS | 2ND DEFENDANT |
| ROJAY BENNETT | 3RD DEFENDANT |
| ADRIAN LEE | 4TH DEFENDANT |
| JASON MURRAY | 5TH DEFENDANT |
| DELANO MORRIS | 6TH DEFENDANT |
| JEVAREE BRYAN | 7TH DEFENDANT |

Jeremy Taylor for the Prosecution.

Bert Samuels and Bianca Samuels for 1st Defendant.

Patrick Peterkin and a female junior for 4th and 5th Defendants.

Heard: January 14, 18, 25 & 27, 2016

LAWRENCE BESWICK, J

Bail Application

[1] This is an application for bail by DEVON RICARDO MURRAY, ADRIAN LEE, JASON MURRAY, three of seven persons who have been

jointly charged under the Criminal Justice (Suppression of Criminal Organizations) Act. ("the Act"). The prosecution asks that the applications be dismissed without prejudice to make a further application,

[2] Devon Murray is indicted for leadership of a criminal organization contrary to section 7(1)(b) of the Act and also with two counts of facilitating the commission of a serious offence contrary to section 6(1)(b) of the Act.

[3] Jason Murray and Adrian Lee are each indicted for being part of a criminal organization contrary to section 6(1)(a) of the Act and for facilitating the commission of a serious offence, contrary to section 6 (1) (b) of the Act.

The Allegations

[4] The allegations which form the basis of the charges concern several incidents which the prosecution invites me to consider together, in order to infer that there is evidence that the offences for which the accused are charged are of a serious and cogent nature.

[5] The first incident to which reference was made, involved a witness called Mary Burke. Her statement referred to an incident in April 2015. She stated that Devon Murray and his nephew Jason Murray drove up to where she was "doing her job". Devon Murray told her that he did not want to see her and Teetee (by which name, Carty, another witness, is known) there, and that if he saw them together anywhere, he would kill them both.

[6] She states that she relocated. Still, Devon Murray, on two other occasions, drove to her new location on South Camp Road and stared her down.

[7] The second incident to which Mary Burke referred, according to her, occurred two weeks after the first incident. She states that the door of her house

was kicked off. Thereafter she saw Adrian Lee and two others removing pans which she had for sale and destroying and ransacking her dresser.

[8] The next witness to whom reference was made was Mark Lewinsky. He stated that he knows Devon Murray as Pepsi. He spoke of an incident on February 8, 2015 when at about 8 to 9 pm Jason Murray (whom he calls Ratty) entered his house with Pepsi and a group of about 20 men and used a 2x4 piece of wood to hit his right hand and right leg whilst saying that he should die and that he should leave the area. Lewinsky and his "baby mother" left immediately. He later received treatment at the Kingston Public Hospital for treatment of a broken leg.

[9] Sarah Hunter was the third witness on whose statement the Crown would rely concerning the allegations of the offences on the indictment. She stated that on February 8, 2015 about 8 to 9 pm. Pepsi whom she later indicated was Devon Murray, kicked open the door and ordered Mark Lewinsky to pack up and leave. She and Lewinsky and her father-in-law Brooks left. People including Devon Murray walked behind them. She went to her sister's house in Rockfort from which Mark Lewinsky left for the hospital. This incident is the same one to which Mark Lewinsky had earlier referred.

[10] Kate Goodwin is the fourth witness on whom the prosecution intends to rely at the trial. She stated that she knew of an incident in February 2015 when Devon Murray whom she knew as Pepsi and Terron Carter known as Luscious fought. Terron left and Devon Murray cursed that he must kill him.

[11] The next incident about which she speaks was again in February 2015 when she saw men whom she describes as Pepsi's gang members walking towards her. They destroyed her things and stepped on her foodstuff. One of the men said she could call Pepsi as it was he who had sent them. That person gave her a telephone and she called Devon Murray and complained to him.

According to her statement he told her that the incident was happening because her brother had disrespected him.

[12] The next incident Ms. Goodwin spoke of was on May 16, 2015 at about 11:30 pm. She stated that she heard as if the gate were being kicked off and then she saw 13 persons in the yard including Adrian Lee and Jason Murray. O' Neil Knight, o/c Ackee Pack, her neighbour, was being taken out of his house into the yard. Around him were the men, all armed with guns, pointed at him. They shot him.

[13] Jason Murray made a telephone call and told a person on the telephone, to whom he referred as "General", that Knight was making a loud noise. According to Ms. Goodwin, she heard Devon Murray's voice on the speaker phone saying that he wanted to reason with Ackee Pack. Jason Murray ended the call .

[14] One of the persons kicked Knight and said that when he gave Luscious the knife to kill Chev he never bawled. Then some of the men, including Adrian Lee , dragged him through the gate with Jason Murray behind them. She then heard 3 more shots.

[15] That incident has resulted in 5 men being charged with the murder of Knight. They include Adrian Lee and Jason Murray. Jason Murray is on bail for the murder and Adrian Lee has not yet applied for bail.

[16] Counsel for the Crown, Mr. Taylor outlined that Kate Goodwin states that one month after this incident she received a call from Devon Murray who offered her money to not attend Court for the hearing. She hung up and he called again at which stage she asked why he had sent people to kill Knight and his response was that he, Knight, had given Luscious a knife to kill.

[17] Terron Carter is the other witness on whom the prosecution will rely in seeking to prove these allegations. Counsel stated that Terron Carter is arrested and before the Court now for murder of Shevon Smith with a knife. During the alleged murder of Shevon Smith it was being said by the men present that the deceased, Knight, had handed to Terron Carter the knife which he used to kill Shevon. According to Mr. Carter, Devon Murray tried to recruit him to “lock off ends” and promised that he would give him 4 guns.

[18] Counsel recounted the statement of Mr. Carter that on Friday, February 6, 2015 about 6:30am he, Carter, and Devon Murray had an altercation on a work site when Devon Murray came up and struck him right below his right eye with keys and said it was a long time that he should be dead. Later, other men returned with shovels and guns and Devon Murray spoke to them. Still later, on February 9, 2015, he had an altercation with 2 of those men.

Apprehension

[19] As it concerns apprehension, Counsel states that Devon Murray was apprehended at his home in an operation about a week before being placed before the court in December 11, 2015,. He has not been charged with any offence other than those against “the Act”. Counsel Mr. Taylor was unable to say if the police had been looking for Mr. Lee between the months of the incidents, that is, February, March, April 2015 and the date of his arrest.

[20] In May 2015 Jason Murray had been arrested and charged for the murder of O’ Neil Wright and had been offered bail. It was while he was reporting to the Police Station as a condition of bail on that charge that he was held and charged for the offences on this indictment. .

[21] Adrian Lee was charged on December 17, 2015 for these offences while he was already in custody for the murder of O’Neil Knight.

Identification

[22] The 3 accused had been identified by the witnesses from 5 photographs shown to the witnesses in the absence of the accused and of their attorneys-at-law. Counsel Mr. Taylor submitted that that identification was acceptable because the police were simply investigating and this was really a case of recognition. When the photographs were shown to the witnesses the accused had neither been accused nor charged.

Submissions by the Crown

[23] The Crown based its opposition to bail for the three applicants on s. 4(2) Bail Act, submitting that the nature and seriousness of the offence, and also the severity of the punishment, should prevent the offer of bail. Further, Counsel submitted, even if conditions of bail were imposed they could not adequately manage the risks which would arise by the accused men being on bail.

[24] Relying on **Hurnam v The State**¹ Counsel invited the Court to consider the public interest as against the interest of the accused. To that end, he urged the Court to also consider (a) how speedy or delayed the trial is likely to be (b) the risk of the accused tampering with witnesses (c) the risk of the accused re-offending (d) the possibility of prejudice to the defence in preparing their case and (e) any other relevant matter. Mr. Taylor also urged the Court to take into account the policy considerations as stated in the Preamble to the Act.

[25] Counsel Mr. Taylor submitted that the offences with which the 3 men were charged, were mostly based on eyewitness evidence and the main issue was credibility. He stated that arising out of these incidents are the offences of murder, malicious destruction of property, causing grievous bodily harm and attempting to pervert the course of justice.

¹ PCA 53/2004 (delivered 15 Dec. 2005)

[26] As it concerns Devon Murray, Mr. Taylor submitted that there is a high risk that he will not attend for trial because he has used the false name of Owen Steve Blake and has procured official papers in that false name .

[27] Counsel presented to the court a copy of a Jamaican Passport which expired in December 2009, in the Blake name, with the image appearing to be that of Mr. Devon Murray, and he submitted that Mr. Murray had used the Blake name for a driver's licence in the United Kingdom (UK) and for his "interaction" with the UK prison system. The birth dates in the passport and on the driver's licence also differed.

Interference with witnesses

[28] Counsel submitted that there were no conditions which could be imposed to prevent Devon Murray from absconding and interfering with witnesses because the offences with which he was involved were brazenly committed, and there was blatant public intimidation and open association.

[29] . He submitted that his concern about Adrian Lee being admitted to bail is not that he is a flight risk, but rather that he will re-offend and threaten the witnesses because he is a part of an organisation and acts under instructions. Further, Adrian Lee can advance the aims of the organisation if he is on bail,.

Fear

[30] He submitted that the witnesses are fearful and have all used pseudonyms in their statements although they understand that they will have to face the accused persons at trial. However, they elected to not be part of the programme which provides protection for witnesses.

Submissions on behalf of Devon Murray

[31] Counsel Mr. Samuels submitted on behalf of Devon Murray that he should be admitted to bail. He is 55 years old and has a fixed place of abode from

which he was taken by the police. Further, he is a business proprietor and a security officer for construction sites in his area. He has been charged for no other offence than the current ones.

[32] He acknowledged that Devon Murray has used another name and explained that that was the action of a much younger Devon Murray who did that in the quest to travel to the United Kingdom. The submission is that a more mature Devon Murray returned to Jamaica and has lived a stable life since then.

[33] Counsel also provided a medical certificate to support the assertion that Devon Murray is a diabetic requiring injections of insulin and that insanitary conditions can eventually result in loss of limbs of Mr. Murray.

Submissions on behalf of Jason Murray

[34] Counsel for Jason Murray (Mr. Peterkin's junior) submitted that he is 21 years old and has a fixed place of abode and employment as a construction worker. He is charged with murder and had been faithfully reporting to the police when he was taken into custody. She urged the court to accept that he had no reason to flee.

Submissions on behalf of Adrian Lee

[35] Counsel Mr. Peterkin, on behalf of Mr. Adrian Lee, submitted that he works as a steel man and is 30 years old with no previous convictions. He is however now charged with murder but has not yet applied for bail for that offence.. It was his submission that Mr. Lee will not further the aims of a criminal organisation and is a suitable candidate to be admitted to bail.

[36] Counsel stated that the accused Lee has been in custody since September 2015. The incidents from which the current charges arise were in February, March and April 2015 and it was 3 months after being placed in custody that he was charged for the gang offences. He was the last person to be

charged. Mr Peterkin submitted that there was no evidence that would suggest that he would re-offend or that he is a flight risk.

[37] Counsel also relied on *Hurnam v The State*² to submit that the seriousness of the case is but one of the several considerations for the granting of bail. He submitted that the Court could manage any negligible risks posed by Adrian Lee being admitted to bail. According to Mr. Peterkin, Adrian Lee had not left the area where he lived and was in fact apprehended at his cousin's cookshop at Homestead, which is the area in which he lived.

[38] He argued that there was no identification parade held for Mr. Lee. He was pointed out to the police from some photographs in his absence and the absence of his attorney-at-law. This purported identification was thus tainted.

Discussion

[39] The Constitution makes it clear that the liberty of the subject is very important and must be jealously guarded. The Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011 ("the Charter") states that

"s.14(1) 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-
....."

[40] Further, s. 14(4) of the Charter states that

"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."

[41] The importance of the liberty of the subject is also reflected in the Bail Act where Section 3 provides that every person who is charged with an offence shall

^ssupra

be entitled to be granted bail. However there is the discretion granted to deny bail where it provides

“ 4.- (1) Where the offence or one of the offences in relation to which the defendant is charged or convicted is punishable with imprisonment, bail may be denied to that defendant in the following circumstances-

(a) the Court, a Justice of the Peace or police officer is satisfied that there are substantial grounds for believing that the defendant, if released on bail would-

(i) fail to surrender to custody;

(ii) commit an offence while on bail; or

(iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person...;”

The burden thereby rests on the party opposed to the grant of bail, to provide sufficient cause for the denial of bail.

[42] The Bail Act mandates in section 4(2) that in deciding whether or not any of the circumstances specified in subsection (1) (a) (supra) exists in relation to any defendant, the Court shall take into account relevant factors including

(a) the nature and seriousness of the offence;

(b) the defendant's character, antecedents, association and community ties.....

[43] The offence for which each accused is charged is serious in nature as is reflected by the term of imprisonment to which they are liable in the event of conviction. The maximum punishment for leadership of criminal organization with which Devon Murray is charged is 30 years imprisonment and for being a part of the criminal organisation with which they are all charged is 20 years imprisonment.

[44] However, in **Hurnam**³, their Lordships emphasised that the seriousness of the offence is not without more, a basis to deny bail, but should form part of the circumstances to be considered (at par. 15)

[45] To properly consider an application for bail, the allegations must be considered, although it is not necessary to “undertake an over- elaborate dissection of the evidence. [Hurman. Par. 25] I now summarise the roles played by each accused, with a view to assessing the seriousness and cogency of the offence.

[46] Devon Murray is alleged to have played the main role in breaking the law and by threatening and intimidating persons and in encouraging others to do so, and also to murder.

[47] Jason Murray is alleged to have participated in evicting Lewinsky and in causing injuries to him. Also, he is alleged to have been present and armed at the murder of O’Neil Knight and to have telephoned Devon Murray just prior to the murder.

[48] Adrian Lee is alleged to have participated in taking items out of Mary Burke’s house. He was not charged for that and the prosecution does not know why this is so. He is also alleged to have been present and armed at the murder of O’Neil Knight and to have hit and kicked O’Neil Knight prior to his death. He was charged for that murder in September 2015. He has not applied for bail yet for that offence.

[49] Adrian Lee is said to have no previous convictions. There is no evidence presented concerning his association and community ties, save for the allegations contained in the offence for which he is before the court, of being part of a criminal organisation.

³ supra

[50] The allegations are that the last criminal activity with which Adrian Lee is known to be associated was the murder of O' Neil Wright for which he was placed in custody and charged in May 2015. It was not until December 17, 2015, 3 months after having been placed in custody for the murder that he was charged with this offence of being part of a criminal organization .

[51] There is no allegation that he was involved in any criminal activity in that time period between May and December 2015, nor that the police had been searching unsuccessfully for him. Indeed it is undisputed that he was apprehended at his cousin's cookshop in the area in which he, Adrian Lee, lives.

[52] Similarly there is no allegation that he has sought in any way to interfere with the witnesses in the time between the allegation of the last incident and the time when he was charged. In any event section 5 of the Bail Act provides for the imposition of conditions if it appears to the Court that it is necessary to do so to prevent the occurrence of any of the events referred to in section 4.

[53] In section 6(3) of the Bail Act are conditions which may be imposed by the Court if it is deemed necessary to ensure that the defendant while on bail

- (i) surrenders to custody:
- (ii) does not commit an offence while on bail:
- (iii) does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person.

[54] Therefore, to that end, a person to whom bail is granted may be required-

- (a) to surrender his travel documents to the Court;
- (b) to inform the Court if he intends to leave Jamaica:
- (c) to report at specified times and dates to a police station:

[s.6 (3)Bail Act]

[55] There is further protection provided in the Act to ensure that an accused person surrenders to custody and honours the terms of his bail. Section 6(4) provides that the requirements may include the imposition of a curfew, in respect of any person to whom bail is granted, between the hours specified by the Court, and requiring the person to remain within a specified locality during the hours so specified.

[56] There is no evidence here showing the probability of any of the accused not attending his trial, nor that any will commit an offence whilst on bail or interfere with witnesses.

Conclusion

[57] The accused are entitled to bail and are to be deprived of it only in certain circumstances. In my view there are no substantial grounds for believing that any of the defendants, if released on bail would fail to surrender to custody, or commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice. Further, as it concerns Devon Murray, the circumstances are such that bail should be offered to him based on humanitarian grounds.

[58] However, I am mindful of the allegations of criminal activities in an organisation and whilst I will offer each accused bail, I will attach conditions to minimise the risk of either or all not attending Court or of committing an offence whilst on bail or of interfering with the witnesses.

[59] Each is offered bail in the sum of \$300,000.00

Conditions

- a) not to be in the Rockfort/Mountain View area
- b) to reside at a named location outside of that area
- c) to report to the Police Station nearest to that residence every Wednesday and Saturday between 7am and 7pm

d) to be under curfew between 8 pm and 6 am