

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO: DOMHCV 2024/0213

IN THE MATTER OF THE BAIL ACT, NO 20 OF 2020, SECTIONS 4(3) AND 4(4), AND SECTIONS 7(1)
AND 7(2)

AND

IN THE MATTER OF AN APPLICATION BY JONATHAN LEHRER THAT BAIL BE GRANTED HIM WITH
OR WITHOUT CONDITION [Application No 2]

BETWEEN:

JONATHAN LEHRER	-	Claimant
V		
THE CHIEF OF POLICE	-	1 st Defendant
THE DIRECTOR OF PUBLIC PROSECUTIONS	-	2 nd Defendant

APPEARANCES:

Mr Andrew Pilgrim KC, Mr Lennox Lawrence, of Platinum Chambers and Mr Wayne Norde, of Norde and Lambert for the Claimant
Mr Thomas Astaphan KC, State Attorneys Ms Daina Matthew, Ms Marie Louise Pierre-Louis, and Mr Kevin Julien for the Defendants

2024: November 19th, 26th

JUDGMENT

Introduction

1. **COLIN WILLIAMS J:** This is a further application for bail, filed by the Claimant, Mr Jonathan Lehrer, on the 24th of October 2024.
2. The First Defendant is the Chief of Police and the Second Defendant is the Director of Public Prosecutions. Collectively they are referred to as the Defendants.

3. There was a previous bail application that was heard on the 8th of April 2024.¹ A written decision was given on the 18th of April 2024, *inter alia*, refusing the Claimant's first application for bail.
4. The April 2024 judgment concluded by stating:²

"It is Ordered that:

- 1) The Claimant's application for bail is refused.
 - 2) The Claimant has not demonstrated that there is any just cause or circumstances to justify the granting of bail.
 - 3) The committal proceedings against the Claimant and his co-accused is to proceed by way of paper committal on Tuesday the 16th of July 2024.
 - 4) The State is to disclose all statements in its possession as soon as possible, but in any event not later than Tuesday the 18th of June 2024, that is to say one month before the committal proceedings. The State must indicate to the Claimant which of the statements they are relying on, and which statements are to be categorized as unused, having been obtained during the course of the investigation but is (sic) not being relied on by the State.
 - 5) Any indictment to be filed and served ahead of the September sitting of the High Court in its Criminal Jurisdiction."
5. The order of 18th April 2024 provided case management directions for the timely disposition of the case.³ The matter against the Claimant and his co-accused for the murder of Daniel Joseph Langolis and Dominique Marchand was to be available for trial during the term of the High Court which commenced in September 2024.
 6. In the present matter, the Claimant filed a Fixed Date Claim Form, supported by an affidavit with three exhibits attached, and a Certificate of Extreme Urgency. There was no separate affidavit supporting the Certificate of Extreme Urgency.⁴ (The Defendants did not make the

¹ DOMHCV: 2024/0059

² At paragraph 114

³ The timeline was arrived at following input from counsel for the State and the Claimant/Defendant. The timeline was notably in keeping with Goal 19 of the Needham's Point Declaration: "That as a rule, trials should be held within one (1) year of the accused being charged (for indictable offences)."

⁴ All the stated documents from the Claimant were submitted and filed on the 24th of October 2024.

absence of a separate affidavit in support of the urgency an issue. In any event, an application concerning the liberty of the subject is by its nature an urgent matter).

7. The Claimants filed an affidavit of service⁵ on the 8th of November 2024 indicating that the Second Defendant was served with the requisite documents⁶ on Monday the 28th of October 2024 in the afternoon and the First Defendant was served the following morning, Tuesday the 29th of October 2024. (At the sitting of 19th November 2024, State Attorney, Ms Daina Matthew, counsel for the Defendants, confirmed that the documents were received on the 29th of October 2024).
8. The Claimant's application was listed to be heard on Tuesday, the 19th of November 2024, at 9:00 am.
9. At 8:30 am on Tuesday the 19th of November 2024, that is, half an hour before the time scheduled for the bail hearing, an 'Affidavit in Opposition to Bail' from the Assistant Police Commissioner, Joeffrey James, was filed on behalf of the Defendants. ACP James's affidavit was signed that very day, the 19th November 2024, before Commissioner of Oaths Natasha Pond.
10. The Claimant listed four grounds upon which his renewed application for bail was based.⁷ They were:

Ground 1: The factual and evidential ground and the defendants default in causing delay.

Ground 2: The Constitutional ground.

Ground 3: The statutory ground – the **Bail Act**.⁸

Ground 4: The medical ground

11. The Claimant's Ground 1 appeared to be an interweaving of two points:

(a) There has been non-compliance by the State with the Court Order of 18th April 2024 which has caused unnecessary delay.

(b) There was impropriety on the part of the State's witnesses when the State objected to bail on the previous occasion, in April, in that they misrepresented the quality of the evidence against the Claimant.

⁵ Deposited to by Jaad Doctrove, Office Attendant of Platinum Chambers

⁶ 1. Fixed Date Claim Form; 2. Affidavit in Support of Fixed Date Claim Form; 3. Certificate Identifying Exhibits; 4. Certificate of Urgency; 5. Authorization Code; 6. Defence Form; 7. Acknowledgement of Service

⁷ See the Fixed Date Claim Form

⁸ Act No 20 of 2020

12. At the hearing of this matter, it was determined that a convenient way of proceeding would be to consider the renewed application for bail by assessing:
- 1) The Defendants' Default.
 - 2) Evidential considerations, which would involve a consideration as to:
 - (a) whether misleading representations were made on behalf of the State at the previous bail hearing; and
 - (b) the quality of the evidence against the Claimant.
 - 3) Health/medical issue.
 - 4) The **Bail Act**.
13. It was felt that it was not necessary to assess separately matters relating to the **Constitution of the Commonwealth of Dominica**⁹ as the fundamental rights provisions of the **Constitution** are the bedrock principles or foundation upon which any consideration of bail rests.
14. Both sides were given time to file and serve written submissions on the 'live issues.' They both did so.

Preliminary issue

15. The Defendants, for the very first time in this matter, in their submissions¹⁰ sought to raise that the Claimant was barred from making this second application for bail. This issue was not raised by the Defendants in their affidavit in opposition to bail. In the Defendants submissions, it was stated:
- At paragraph 9: "Where a previous bail application was denied, there must be a change in circumstances in order to reapply."
 - Paragraph 30: "Having regard to excerpts of the judgment... in the first bail application it is clear that the Applicant has to prove that in any fresh or renewed bail application there must be change in his circumstances...."
 - Paragraph 42: "The fresh bail application does not show a change in circumstances warranting the court's review of the previous bail decision."
 - Paragraph 55: "In light of a fresh or renewed bail application before the Court, the Applicant has to present evidence of a change of circumstances warranting the court's review of the previous bail decision."

⁹ Chapter 1.01 of the Laws of the Commonwealth of Dominica, Revised Edition

¹⁰ Submission filed on behalf of the Defendants at 3:52 pm on the 21st of November 2024

- Paragraph 70: "The Applicant's affidavit before the court has not provided a basis that there has been a change of circumstances."
16. The Defendants' submissions on this point flows from the maxim '*res judicata pro veritate accipitur*' (a judicial decision must be accepted as correct). There is a lot of jurisprudence that suggest that a judicial officer on a renewed application for bail, ought not to consider the entire case but restrict themselves to the circumstances that occurred since the last application.
 17. The Defendants observations or complaints that the Claimant could not bring a fresh application or reapply for bail unless he could show that there was some change in his circumstances were wrong in law and wrong on the facts.
 18. The issue of 'Subsequent hearings for bail' is clearly addressed in the **Bail Act**. The statute provides that:

"Where a court decides not to grant bail to a defendant –

(a) the court shall at each subsequent hearing consider whether the defendant should be granted bail;

(b) the defendant may support an application with any argument as to fact or law that he wishes whether or not he has advanced that argument previously;

(c) the court at subsequent hearings need not hear any arguments as to fact or law that it has heard previously."¹¹
 19. Dominica's statute does not place any restriction, limitation or hurdle in the way of an accused person who was previously denied bail from a "subsequent hearing" for bail. The **Bail Act** permits an applicant who was previously denied bail to reapply for bail and to argue fresh grounds of fact or law, or the applicant may rely on previous submissions that were canvassed at the earlier application.
 20. Once a fresh, new or renewed application is made, the judicial officer is required to exercise his or her discretion and determine whether the applicant ought to be granted bail. It is mandatory for the judicial officer to do so on every subsequent occasion.
 21. Even if the law required, as the Defendants submitted, that the Claimant must demonstrate a change in circumstances, the facts on the face of the pleadings show that the Claimant was saying that there were indeed changes in his circumstances which gave rise to a right to reapply for bail. These facts included:

¹¹ Section 14 of the Bail Act

- 1) The effluxion of time since the last application.
- 2) The failure of the Defendants to observe the trial timeline as ordered.
- 3) The committal proceedings in his matters have been delayed because of the Defendants' actions.
- 4) The allegation that the previous decision to refuse the Claimant bail may have been arrived at on the basis of misleading information from the Defendants.
- 5) The disclosed evidence does not implicate the Claimant.
- 6) The Claimant's perceived deteriorating health.

State's opposition?

22. Counsel Mr Lennox Lawrence, in his submissions¹² on behalf of the Claimant noted that even though the Defendants were served with the documents in this matter (inclusive of a Certificate of Urgency) on the 29th of October 2024,¹³ the Defendants were dilatory in demonstrating any opposition to the renewed bail application:

"On the 19th November, 2024 at 8:30 a.m. the Defendants filed an Affidavit in Opposition to Bail.... Effectively... up till half [an] hour before the hearing of this application the application was unopposed."¹⁴

23. The affidavit of Assistant Police Commissioner James recited that it was made "in opposition to the accused Johnathan Lehrer being granted bail."¹⁵

24. Officer James concluded his affidavit by deposing:

"Based on the above premises I state that the Applicant ought not to be granted bail. I am informed by the Director of Public Prosecutions and verily believe to be so that based on section 7 of the **Bail Act** of the Commonwealth of Dominica the Applicant ought not to be granted bail as the appropriate circumstances do not exist for the grant of bail. Further, I state that the court ought to consider the fact that the accused has strong ties to the United States of America he is being (sic) a U.S citizen and that there is a great level of public interest in the matter."¹⁶

25. Nowhere in the Assistant Police Commissioner's affidavit in opposition to bail, did he expressly disagree, deny or doubt any of the averments made by the Claimant. Officer

¹² Filed at 3:28 pm on the 21st of November 2024

¹³ Paragraph 2 of Mr Lawrence's submissions

¹⁴ Paragraph 4 of Mr Lawrence's submissions

¹⁵ Paragraph 1 of ACP James's affidavit

¹⁶ Paragraph 20 of ACP James's affidavit

James either remained silent in response to what was stated,¹⁷ agreed with the Claimant,¹⁸ or stated that he wished to “put the Applicant on strict proof.”¹⁹

26. ACP James however sought to explain or express his view as to why there was delayed disclosure,²⁰ how the evidence was interpreted,²¹ the forensic evidence,²² individuals whom he viewed as eyewitnesses,²³ and report on what was said to him by the Superintendent of Prisons about the Claimant’s medical situation.²⁴

Non-disclosure

27. The Defendants in their submissions recast the first issue to be resolved as being:

“Whether the lack of timely disclosure is sufficient to grant bail and the consequences of non-disclosure?”²⁵

28. An explanation of the committal process may be necessary so that there may be a full understanding of the role, function and importance of disclosure in this matter as mandated in the April 2024 order.

29. Before a matter reaches the High Court for trial, there must first be committal proceedings in the Magistrate’s Court. If the accused person’s matter is committed for trial, the Director of Public Prosecutions may or may not indict the person to stand trial. The committal proceedings is where the State discloses its case against the accused person.

30. The committal proceedings may take different forms.

- The vast majority of matters in Dominica are by way of a Preliminary Inquiry. In Dominica, there are preliminary inquiries which last upwards of five and six years.
- Another type of committal proceedings is by way of paper committals. This requires the State serves a bundle of the evidence upon which it wishes to rely on the counsel for the Defendant as well as the Magistrate.

¹⁷ For example, ACP James did not respond to paragraph 7 of the Claimant’s affidavit which referred to the contents of the previous affidavit sworn to by ACP James, nor to paragraphs 15, 16, 17, 18, 19 of the Claimant’s affidavit

¹⁸ See for example paragraphs 6, 7, 10 and 13 of ACP James’ affidavit

¹⁹ See for example paragraphs 9, 11, 12, 15, 16 and 19 of ACP James’ affidavit

²⁰ Paragraph 7

²¹ Paragraph 8

²² Paragraph 10

²³ Paragraph 13

²⁴ Paragraphs 16, 17 and 18

²⁵ States as Issue 1 (a) at paragraph 11 of the Defendants’ submissions

All parties peruse the documents and the formalities are completed before a magistrate within minutes.

31. In the past, when the committal proceedings was by way of a preliminary inquiry, the practice was to not necessarily to disclose witness statements, as the preliminary inquiry was deemed to be the disclosure of the case against the accused. A defendant would only be provided with statements of a witness whom in the prosecution's view supported the defendant's narrative. That '*ancien régime*' has given way to more progressive and fairer practices. Initially, there was the move to provide specialists and expert reports and analyses to defendants to enable them to consult their own experts. Later, there was a further development with a move to full disclosure of all statements.
32. No disclosure challenge confronted the committal proceeding by way of paper committal, as it was necessary for all the evidence, inclusive of witness statements, expert reports and analyses upon which the prosecution wished to rely, to be disclosed ahead of the proceedings for the counsel for the defendant to peruse.
33. At the bail hearing in April 2024, the parties all said that they were committed to proceeding by way of paper committal.²⁶ The Defendants at the bail hearing indicated when they can complete the disclosure. Based upon the representations made, the order was made. Full disclosure was to take place at the very latest by Tuesday the 18th of June 2024.
34. The High Court decisions submitted by the Defendants in reference to disclosure, **The State v Martin Seaman and Devin Challenger**,²⁷ and **Glenville Nkomo Kenyatta Hodge v Commissioner of Police**,²⁸ do not assist the Defendants. In the Court of Appeal matter, **Anjay Charles v The Queen**,²⁹ also submitted by the Defendants, non-disclosure was a mere allegation which was being raised by the Appellant for the first time at the Court of Appeal and was unsupported by any documentary evidence.
35. This matter concerned a paper committal proceeding. Full disclosure was not optional. It was not discretionary. It was mandatory.

Defendants default

36. The Claimant, in the Fixed Date Claim Form outlined the basis of his allegation of non-compliance by the Defendants with the Court's Order:

"1.0 The Defendants have breached the Order of this Honourable Court on disclosure and have delayed and otherwise adversely impacted the criminal trial.

²⁶ See paragraph 96 (1) of the April 2024 judgment

²⁷ DOMHCR 2017/0029

²⁸ AXAHCV 2020/0008

²⁹ SVGHCRAP 2013/0016

As a result, no indictment has been filed and served ahead of the September 2024 sitting of the High Court in its Criminal jurisdiction in breach of the Orders and direction of... 19th April, 2024.

"1.1 To date the paper committal which the Honourable Court ordered to be held on Tuesday 16th July, 2024 has not occurred due to the failure of the prosecution to provide disclosure in accordance with the Order of both the High Court and the Magistrates Court.

"1.2 On the 16th July, 2024 the Preliminary Inquiry had to be adjourned to 23rd September, 2024 due to noncompliance by the Defendants. The Prosecution requested three (3) additional weeks to disclose their Core bundle. The Learned Magistrate ordered the Prosecution to make disclosure to the defence no later than 23rd August, 2024.

"1.3 To date no Core Bundle has been submitted by the Prosecution and no photographic, pathologist, crime scene photos, vehicle or forensic report or evidence has or have been disclosed.

"1.4 On 23rd September, 2024 the Prosecution requested a further adjournment to present the ballistics report which they alleged was not yet available. As a result, the preliminary inquiry was further adjourned to 10th December, 2024.

"Submission: The net effect of these failures by the Prosecution is that the dates for disclosure and for the Paper Committal were all missed and no indictment has been filed and served ahead of the September 2024 sitting of the High Court in its Criminal jurisdiction as Ordered and directed... on 19th April, 2024."³⁰

37. The Claimant, in paragraphs 3 to 9 of his affidavit, under separate headings titled "The First Bail Application" and "Prosecution's Non-Compliance With Disclosure & Adverse Impact on the Trial Schedule," detailed the issues outlined in 1.1 to 1.4 of the Fixed Date Claim Form.
38. The Defendants generally admitted all of the Claimant's averments on missing the timeline. ACP James remained silent on and did not respond to what the Claimant said in paragraph 7 of the Claimant's affidavit, that:

"To date the paper committal which the Honourable Court ordered to be held on Tuesday 16th of July, 2024 did not occur due to the failure of the Defendants to provide disclosure in a timeous manner in disregard of the clear undertaking at paragraph 14 of the affidavit sworn by Mr Joeffrey James filed on 9th April, 2024 and the Order of the Honourable Court."

³⁰ Fixed Date Claim Form filed on the 24th of October 2024

39. The Claimant then went on to detail specific things which the Defendants failed to do, which caused the matter to be delayed.³¹

- 1) The State has not yet indicated which statements they are relying on.
- 2) ACP Joseph did not disclose his statement until the 15th of July.
- 3) No scientific evidence was disclosed by the deadline of the 18th of June 2024 (but a Forensic DNA Analyst report dated the 10th of May was subsequently disclosed.)
- 4) No pathologist report has been disclosed.
- 5) No photographs have been disclosed.
- 6) No ballistics report has been disclosed.

40. According to the Claimant, on the date set for the committal proceedings, the Defendants, who submitted the Witness Statement Bundles the previous day, requested the Magistrate to give them three additional weeks to disclose their core bundle.

“The Learned Magistrate ordered the Defendants to make disclosure to the defence no later than [the] 23rd [of] August, 2024. To date no Core Bundle has been submitted by the Defendants in flagrant disregard of the Order.”³²

“On [the] 23rd [of] September, 2024 the Defendants requested a further adjournment to present the ballistic[s] report which they allege was not yet available. As a result, the preliminary inquiry was further adjourned to [the] 10th [of] December, 2024.”³³

41. The Claimant stated that:

“The net effect of these failures by the Defendants is that the dates for disclosure and for Paper Committal were all missed and as a result no indictment has been filed and served ahead of the September sitting of the High Court in its [C]riminal Jurisdiction as Ordered and directed... on 19th April, 2024. All the while I am languishing in prison with a deteriorating medical condition.”³⁴

42. ACP James admitted³⁵ that they failed to meet the requirements of disclosure, failed to comply with the order of Court and that the Claimant was as a result languishing in prison as his medical condition deteriorated. ACP after admitting the Claimant's averments (as stated at paragraphs 8 and 9 of the Claimant's affidavit), said that he however

³¹ Paragraph 8 of the Claimant's affidavit

³² Paragraph 8 (vii) of the Claimant's affidavit

³³ Paragraph 8 (viii) of the Claimant's affidavit

³⁴ Paragraph 9 of the Claimant's affidavit

³⁵ Paragraph 7 of ACP Joseph's affidavit

“wishes to state further that non-compliance of the order was in no way out of disrespect to the court and the proceedings in the court but as a result of the prosecution not having the necessary documents in its possession to disclose and prepare the documentary exhibit bundle. This was due to the DNA reports and ballistics reports were coming from outside the jurisdiction of Dominica as the Commonwealth of Dominica does not have the necessary lab and hum[an] resources to do forensics and ballistic testing. However, the prosecution none the less has disclosed everything in its possession.”³⁶

43. At the prior sitting, in April 2024, the same affiant, ACP Joseph, stated that “the physical evidence which includes and is not limited to spent shells, a firearm, a spent shell casing and a spent bullet which is awaiting forensic analysis.”³⁷
44. Clearly, because the contents of the reports of any analysis were not in the possession of the authorities in December 2023, they played and could not have played any role in the decision to charge the claimant at that time with the offences he faces. At the time of charging the Defendants considered that they had a strong *prima facie* case which did not depend of the ballistics evidence. If the ballistics evidence was that important to the State’s case, then they would not have been in a position to charge the Claimant.
45. In April 2024, the sworn statement of the Assistant Commissioner of Police was that the State already had eye witness and scientific evidence in its possession. ACP James in his earlier affidavit stated that there was “overwhelming evidence obtained by the team of investigators... including and not limited to direct eye witness evidence... and scientific evidence.”³⁸

DNA results

46. The Claimant stated that on the 24th of June 2024, he received from the Defendants a Forensic DNA Analysis Report dated the 10th of May 2024. He noted however that: “This report has no connection to me whatsoever.”³⁹
47. According to Officer James, the DNA analysis “does have probative value in the sense that it proved that the remains found is that of the deceased whom at the time of the deceased’s death the accused had an outstanding land dispute with.”⁴⁰
48. Clearly, the DNA analysis is useful to the State’s case in establishing an element of the offence as alleged: that is, the identity of the deceased.

³⁶ As above

³⁷ See paragraph 55 of the judgment in the first bail application

³⁸ As above

³⁹ Paragraph 12 of the Claimant’s affidavit

⁴⁰ Paragraph 10 of ACP Joseph’s affidavit

49. What the DNA Analysis Report does not do, according to the Claimant's contention and implicit in ACP James's response, is connect the Claimant to the crime scene. The lead investigator did not suggest that the DNA evidence directly linked the Claimant to the offence, but seemingly pointed to what he considered as additional relevance, in that since the DNA Report confirms the identity of the deceased, and the Claimant and the deceased had a land dispute, then it is probative of the Claimant's guilt. The merits of that assertion is entirely for another forum.

Evidential considerations

50. The Claimant asserts that: "The Defendants have misled the Honourable Court in their evidential objection to the claimant's first bail application."⁴¹

51. The Claimant drew attention to the affidavit sworn to by ACP James on the 9th of April 2024, in opposing the previous bail application. The Claimant pointed to paragraphs 8 and 12 of ACP James' affidavit in which he said that "overwhelming evidence was obtained by the team of investigators and I" against the Claimant and his co-accused. The Claimant also quoted from ACP James' affidavit where the officer stated that "the State does have eye witnesses in the matter and that besides the eye witness evidence there is strong circumstantial evidence...."⁴²

52. The Claimant asserted that:

"The witness statements served by the Defendants... specifically confirms that the assertions of overwhelming evidence and of eyewitness[es] in relation to the Claimant are materially false."⁴³

53. The Claimant further asserted that:

"There is no disclosed evidence to date linking [the] [C]laimant to the alleged crime. The continued incarceration of the Claimant offends settled principles on the granting of bail."⁴⁴

54. The Claimant stated in his affidavit that:

"On [the] 17th [of] July, 2024, the Defendants served my attorneys' Chambers one volume of witness statements and one volume of Unused Documents. I am informed by my legal practitioners and verily believe that no eyewitness statement has been provided even as much as suggesting that I was present at the scene of

⁴¹ At 2.0 of the Statement of Claim

⁴² Paragraph 10 of the Claimant's affidavit

⁴³ At 2.2 of the Fixed Date Claim Form

⁴⁴ At 3.0 of the Fixed Date Claim Form

the alleged incident.... I say that Officer Joeffrey James, Assistant Chief of Police (Acting) has not been fair and frank with the Court."

55. Statements from two witnesses,⁴⁵ one a local person, and the other a tourist, were annexed to the Claimant's affidavit. Those individuals may respectively be referred to as Witness 1 and Witness 2.
56. ACP James confirmed that Witness 1 and Witness 2 are the two individuals that he referred to as eye witnesses, as they "saw and heard certain things on the day of the alleged incident which can have probative value in the matter before the court."⁴⁶
57. Witness 1 knows the Claimant and the co-accused. Witness 1 also knew the deceased. Sometime between 4:30 pm and 5:00 pm on the 30th of November 2023 Witness 1 heard the sound of vehicles on the road. Sometime after he saw a short white male walking towards him. They exchanged words and the individual left. Afterwards he saw the co-accused, who was about 40 feet away. Witness 1 heard the sound of a vehicle approaching from Soufriere direction. He then heard three gun shots and a female voice screaming. He heard two more gunshots and another loud noise. The gunshots were not loud. He heard like the vehicle collide with a wall; the vehicle's engine was revving. After a few minutes he went in a particular direction. He saw a grey SUV and a white man's hand closing the door on the right side. The vehicle then sped away in the direction of Soufriere. He used to see the deceased driving that SUV. He did not see the Claimant nor his co-accused at that time. He next saw the co-accused about 7:30 pm and he saw the Claimant about 9:00 pm. Two days later, on Saturday the 2nd of December 2023, ACP James arrested him on suspicion for the murders of Daniel Langlois and Dominique Marchand. When Witness 1 gave his statement on Tuesday the 5th of December 2023, he was apparently still in police custody.
58. Witness 2 gave a statement on the 5th of December 2023. He did not know the Claimant or the deceased. He was on a month's vacation in Dominica. On Thursday the 30th of November 2023, he was walking up Coulibri Ridge. About 4:32 pm, he saw a dark skin local guy with a dog. There was an exchange of words between himself and the local guy. Witness 2 turned back. He then heard a noise like gunshots: two first then a few seconds later two more. About 4:50 pm he saw a white guy coming towards him with hands raised and crossed. The white guy told him to turn back. Witness 2 started to make a video. About 5:02 pm he heard a loud explosion; five minutes later he saw black smoke rising from the direction that he heard the explosion. Five days later, on Tuesday the 5th of December 2023, about 12:30 pm, the police picked him up in a bus. On board he saw the same dark skin local man and the white guy he saw on the 30th of November 2023, as well as another white man.

⁴⁵ The names and identity are intentionally withheld in this judgment

⁴⁶ Paragraph 13 of ACP James' affidavit

59. It should be noted that no identification parade was conducted for Witness 2 to identify the “white guy” whom he said he saw on the 30th of November 2023. Further, based on the statement that was disclosed, the first time Witness 2 gave a statement in writing describing the appearance of the white guy was after he was driven around by the police in a bus along with the Claimant and the co-accused and Witness 1.
60. Assistant Commissioner of Police James said that “the two witnesses can be considered eyewitnesses as they did say certain occurrences which has probative value and are relevant to the matter.”⁴⁷
61. At the bail hearing on the 19th of November 2024, counsel for the Defendants appeared to be conceding that the evidence from the two witnesses did not reach the threshold of eyewitness evidence. The Defendants, however, in their submissions said that according to the **Merriam-Webster’s Dictionary of Law 1996**, an eyewitness is one “who sees an occurrence or object or sometimes experiences it through other senses (as hearing) and usually report or testifies about it.”⁴⁸
62. Neither Witness 1 nor Witness 2 saw any unlawful act being committed. Both said that they heard certain sounds, including gunshots, but they do not say that they saw anyone doing anything at that time. It is apparent that neither Witness 1 nor Witness 2 provide any eye witness account of any crime. Witness 1 said that he saw the Claimant at 9:00 pm on the day in question. Witness 2 does not know the Claimant and never identified him.
63. The second part of the evidential consideration has to do with the quality of the evidence against the Claimant, or put another way, the strength of the case against the Claimant.
64. In **Phillip Stephens v The Director of Public Prosecutions**,⁴⁹ which was an application under the Jamaica **Bail Act of 2000**, Sykes J, (as he was then), stated:
- “In the pre-trial stage, the presumption of innocence must play a significant role in determining whether the person is granted bail. The allegations made against the defendant must also be taken into account. However the allegations, regardless of how serious, until a conviction by a properly constituted court, remains allegations. It is the finding of guilt that demonstrates that the finder of fact have accepted the allegations as true. It is only after this has occurred that one can properly speak of the facts established by the trial.”⁵⁰
65. Sykes J then went on to say:

⁴⁷ Paragraph 14 of ACP James’ statement

⁴⁸ Paragraph 47 of the Submissions on behalf of the Defendants

⁴⁹ Claim No HCV 05020 of 2006

⁵⁰ At paragraph 13

“In assessing the allegations against the defendant, the court should refrain from conducting too minute analysis of the proposed evidence. The cogency of the evidence cannot be ignored since clearly, the stronger the evidence the greater the incentive for the defendant to abscond. The nature and seriousness of the offence is important, but not determinative... the seriousness of the offence is but one factor to be taken into account and ought not in the majority of cases, to be the determining factor.”⁵¹

66. The Defendants contend that in “the absence of direct testimony to the killing”⁵² that the guilt of an accused person may be proven through “circumstantial evidence, provided that such evidence is cogent and leads irresistibly to the conclusion of guilt.”⁵³

67. Dominica’s Apex Court, the Caribbean Court of Justice, CCJ, noted in **Gregory August and Alwin Gabb v The Queen**⁵⁴ that:

“It is well established that it is ‘no derogation of evidence to say that it is circumstantial’.”⁵⁵

68. Sir Dennis Byron, President of the CCJ, went on to note in **August**:

“A case built on circumstantial evidence often amounts to an accumulation of what might otherwise be dismissed as happenstance. The nature of circumstantial evidence is such that while no single strand of evidence would be sufficient to prove a defendant’s guilt beyond reasonable doubt, when the strands are woven together, they all lead to the inexorable view that the defendant’s guilt is proved beyond reasonable doubt.”⁵⁶

69. Assessing whether there is eyewitness evidence can be easily determined by examining the statements. Circumstantial evidence requires the drawing of inferences from several different sources and is really in the province of the jury.

Health/Medical issue

70. **The State v Lynette Scantlebury**⁵⁷ is a case out of Guyana. The convicted person was seeking bail pending appeal. One of the grounds was the applicant’s ill health. Chancellor Haynes of the Guyana Court of Appeal granted the applicant bail, although not on the ground of ill health. In that case it was noted that the affidavit in support of the applicant’s bail recited that the applicant was ill, in great pain and in receipt of medical treatment. It

⁵¹ At paragraph 14

⁵² See paragraph 51 of the Defendants submissions

⁵³ As above

⁵⁴ [2018] CCJ 7 (AJ)

⁵⁵ Paragraph [32]

⁵⁶ Paragraph [38]

⁵⁷ (1976) 27 WIR 103

was also known that the claimant was admitted as a patient in the Georgetown Hospital. Chancellor Haynes noted:

“But this condition is not at all supported by any affidavit evidence in support from any medical practitioner under whose care the petitioner must be. This evidence should have been easy to obtain. I would have thought that such corroborative proof or maybe at least a medical certificate would have been made available to this court. Applicants in matters of this kind should consider the advisability of assisting the judge who has to determine this matter with evidence of this nature if the condition of ill-health is to be relied on as a material consideration in deciding whether or not to admit the suppliant to bail.”⁵⁸

71. It is apparent from **Scantlebury** that the bare assertion in the Claimant's affidavit about the individual's medical condition was not sufficient; there must be “corroborative proof of allegations of ill-health.”
72. The Claimant's medical condition was canvassed at the previous bail application.⁵⁹ It was documented in the judgment of the 18th of April 2024.⁶⁰
73. The Claimant indicated that since the hearing of the last bail application “my medical condition has deteriorated, and on two occasions I have had to be rushed to the Hospital for prostate related complaints.”⁶¹
74. The Claimant stated that on several occasions, his counsel sent correspondence to the Superintendent of Prisons seeking confirmation whether permission was granted for a phone consultation with an urologist based in the United States of America.⁶² “The Superintendent replied that my attorney should make a request in writing so that he could engage the prison doctor and the resident urologist.”⁶³
75. Towards the end of August 2024, the Claimant did some blood tests and he had a PSA of 14.7. The MRI at the hospital was not functional and an ultrasound was ordered.⁶⁴
76. The Claimant detailed having to be fitted with an emergency catheter on the 8th of September 2024,⁶⁵ and outlined several challenges with a blocked catheter. He was taken to the urologist on the 13th of September 2024. Then on the 21st of September 2024, there

⁵⁸ At page 104, letters h to j

⁵⁹ DOMHCV: 2024/0059

⁶⁰ See paragraphs 46 to 60

⁶¹ Paragraph 23 of the Claimant's affidavit

⁶² 9th, 13th and 27th of August 2024 and the 3rd of September 2024. See paragraphs 24, 25, 27 and 28

⁶³ Paragraph 25 of the Claimant's affidavit

⁶⁴ Paragraph 26

⁶⁵ Paragraph 28

was another emergency necessitating a visit from the doctor and it “was discovered that there was heavy calcification and sediments in the catheter.”⁶⁶

77. According to the Claimant, as a result of the increasing frequency in catheter emergencies, the elevated PSA “and the Prison’s continuing failure to allow the telephone consulting with the US based urologist, and my extreme fear and concern for my prostate cancer diagnosis I have had to have my medical notes forwarded to a renown[ed] US based urologist.”⁶⁷

78. A report from Dr Dudley Seth Danoff of Tower Urology, Los Angeles, California, dated the 9th of September 2024, was annexed to the Claimant’s affidavit. According to Dr Danoff:

“The most recent PSA result in 08/2024 was 14.7, but since the patient is on finasteride we can assume that the true value of his PSA is at least 28.”⁶⁸

79. The Claimant stated that:

“On Friday 18th October, 2024 I had to visit the Defendants’ urologist who confirmed that in addition to my prostate problems, I have suffered from kidney infection which is causing kidney stones. I did not suffer from those kidney problems in the past. I say therefore that my medical condition is deteriorating rapidly.”⁶⁹

80. The Defendants have not put in an alternative view of the medical evidence, even though a State urologist examined the Claimant on the 13th of September 2024 and 18th of October 2024. Neither was there any direct evidence from the Superintendent of Prisons to contradict anything the Claimant said.

81. What ACP James stated, however, was that based on what he was told, by the Superintendent of Prisons, the Claimant was “not accepting the medical advise (sic) of the doctors that deal with him.”⁷⁰ Officer James said that he was told that the Claimant “has refused on several occasions to have the proper catheter inserted, which was a bigger one as recommended by the doctor.”⁷¹

82. The Assistant Commissioner stated that he was told that a search was conducted of the Claimant’s cell on the 6th of November 2024 and “nineteen bottles of water was found... though he had been given a lot of water to drink to prevent his catheter from blocking.”⁷²

⁶⁶ Paragraph 33

⁶⁷ Paragraph 34

⁶⁸ Exhibit ‘JL3’

⁶⁹ Paragraph 37

⁷⁰ Paragraph 16 of ACP James’ affidavit

⁷¹ Paragraph 18 of ACP James’ affidavit

⁷² Paragraph 17 of ACP James’ affidavit

The Bail Act

83. The **Bail Act** at section 7(1) mandates that where a person is accused of murder, “the court shall not grant bail to that defendant unless it is satisfied that appropriate circumstances exist to justify the granting of bail.”
84. The law does not prohibit the granting of bail. Rather, the **Bail Act** requires that an assessment be done as to whether “appropriate circumstances exist to justify the granting of bail.”

“The appropriate circumstances referred to under subsection (1) of which the court must be satisfied include the court being satisfied that –

- (a) the defendant will surrender to custody,
 - (b) the defendant will not commit any offence whilst on bail,
 - (c) the defendant will not interfere with witnesses,
 - (d) the defendant should not be kept in custody for his own protection or for the protection of the community, and
 - (e) that it is in the public interest to grant the defendant bail.”⁷³
85. In deciding whether or not to grant bail, requires an assessment to be done in relation to the five factors enumerated at section 7(2).⁷⁴
86. The likelihood that the Claimant will surrender to custody/answering to his bail, revolves around the answers to four questions:

- 1) The nature and seriousness of the offences charged.
 - The Claimant is charged with two counts of murder – a double homicide. Those offences are extremely serious. (Note what Justice Sykes said about this in **Phillip Stephens v The Director of Public Prosecutions**.⁷⁵)
- 2) The strength of the evidence and probability of conviction.
 - Based on the disclosed evidence, the strength appears to favour the Claimant.

⁷³ Section 7(2)

⁷⁴ The Defendants’ Submissions at paragraph 67 noted that “before the learned Justice can grant bail to the applicant, he must satisfy himself that the applicant qualifies or satisfy (a) to (e) above.”

⁷⁵ At note 65 above

- 3) The seriousness of the punishment for the relevant offences.
 - Upon conviction, the Claimant is liable to be imprisoned for the rest of his life.
- 4) Character and past conduct of the accused.
 - The Claimant does not have an adverse antecedent history.

87. In relation to the factor at section 7(2)(b), that the Claimant will not commit any offence whilst on bail, there was no suggestion that the Claimant has a propensity to offend. He is not a repeat offender. (Notably, the Claimant's circumstances contrast significantly with that of **Desmond Rocque v The Chief of Police**,⁷⁶ a case that was actually submitted by the Defendants. Mr Rocque was charged with murder and he later obtained bail. While on bail for the first murder, Mr Rocque was charged again with a subsequent offence of murder, and he was given bail a second time. While on bail for the two separate murder offences, he was charged with several prohibited firearm matters and was again seeking bail. Likewise, Mr Samron Thomas was charged with murder and accessed bail. While on bail he was charged with a subsequent murder and was again given bail. Soon after accessing bail for the second murder, he was charged with firearm possession.)

88. The next consideration is at section 7(2)(c), that the Claimant will not interfere with witnesses. This circumstance can be managed by imposing appropriate conditions and restrictions upon the Claimant.

89. No suggestion had been made that there is a need to keep the Claimant in custody for his own protection or for the protection of the community.

90. Where does the public interest lie in this matter? The public interest is not public curiosity; it requires that consideration be given to:

- 1) The length of time before the trial is likely to take place.
 - Given the conduct of the Defendants, the failure to meet deadlines and related factors, it is difficult to conclude when the trial is likely to take place.
- 2) Whether there is any risk of interference with witnesses.
 - This was considered under section 7(2)(c) earlier.
- 3) Is there a risk of the accused offending while on bail.
 - This was considered under section 7(2)(b) earlier.
- 4) Is there a possibility of prejudice to the preparation of defence.

⁷⁶ DOMHCV 2023/0008

- The Claimant has access to his legal team.

91. There are two public interest factors which are not among the general considerations, but which are relevant to this case. These can be described as:

(1) Are there any factors relevant to the personal circumstances of the Claimant. This involves a consideration of whether it is reasonable to keep the Claimant in custody.

(2) Interest of justice. It was submitted that "The failure of the State to comply with certain orders from the court is not a consideration in granting bail.... The chastisement of the State for non-compliance cannot be the granting of bail where the applicant cannot satisfy the conditions set out under the Act under section 7(2); disclosure or non-compliance with a court order is not one of the enumerated conditions which must be satisfied."⁷⁷ While that may be true, the public has an interest in the preservation of the rule of law and that the administration of justice is complied with.

Determination

92. When the bail application was denied in April, two of the fundamental propositions which influenced that decision were that it was possible for the trial to take place in a timely manner and the acceptance of the State's proposition that it possessed cogent eyewitness and scientific evidence against the Claimant.

93. Both sides were committed to having the matter proceed by way of paper committal. To achieve that, the State needed to disclose all the evidence, inclusive of statements, reports, analyses, photographs and documentary evidence that it intended to rely on ahead of the preliminary inquiries. The schedule of disclosure was based on the undertaking given by the State. The preliminary inquiries were for the 16th of July 2024. As noted in the written decision of the 18th of April 2024:

"This means that if the matters are committed to the High Court, the trial can take place during the sitting of the Criminal Court that commences in September 2024. That schedule fits the timeline mentioned in the **Needham's Point Declaration on Criminal Justice Reform: Achieving A Modern Criminal Justice System** (in the Caribbean) which states that: "As a rule, trials should be held within one (1) year of the accused being charged (for indictable offences)."

94. The Defendants, as pointed out earlier, conceded in the Affidavit in Opposition to Bail, that they did not meet the schedule as outlined in the Order.

⁷⁷ Paragraph 69 of the Submissions of the Defendants

95. Even if it was accepted that the Defendants experienced delays in obtaining certain scientific reports from overseas – which in any event are not the principal items of evidence in the case against the Claimant – the Defendants did not do the prudent, proper and practical thing of making an application to the High Court for a variation of the order and an extension of time. The point was made recently⁷⁸ in **Niam Alexander St Rose v The State**⁷⁹ that the prosecution cannot disregard orders of the court for disclosure without there being consequences. The applicant in the St Rose matter was charged with murder; he was granted bail after the State failed to comply with orders for disclosure by specified dates so as to ensure that the preliminary inquiry could proceed by a given date.
96. The authority of the Director of Public Prosecutions to indict or not to indict following a committal by a Magistrate is not in question.⁸⁰ It would not however, be fair and just to permit a Director of Public Prosecutions to take as much time as he or she wishes to decide whether or not to indict a person who has been committed by the Magistrate to stand trial at the next practicable sitting of the High Court. An appreciation of the independence of the office of the Director of Public Prosecutions is captured in the April 2024 order when it stated: “Any indictment to be filed and served ahead of the September sitting of the High Court in its Criminal Jurisdiction.”⁸¹ There was no instruction that the Director of Public Prosecutions must indict, only a requirement that if there is to be an indictment following the committal proceedings, it must be done by a certain time.
97. The Defendants submitted that: “The time in law pursuant to section 12(2) of the **Criminal Law and Procedure Act, Chapter 12.01** has not yet arisen for the Director of Public Prosecutions to file an indictment against the Applicant.”⁸² That may be indeed so; but it was the duty and responsibility of the distinguished officer holder to ensure that such time, as scheduled, did arise.
98. The order of court was flagrantly disregarded.
99. Had the Claimant’s matter proceed according to schedule, the trial of this matter could have been completed by this time, one way or the other.
100. The panel of jurors summoned to sit from September through to the 22nd of December 2024, when the High Court goes on its Christmas break, last sat on the 9th of October 2024. The Assizes was brought to a close on the 29th of October 2024, with all the matters listed for the sitting completed.

⁷⁸ On the 29th of October 2024

⁷⁹ DOMHCV: 2024/0158

⁸⁰ The submission on behalf of the Defendants at paragraph 38 states: “The Constitution of the Commonwealth of Dominica at section 72 (4) states that the power of the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (2) of this section shall be vested in him to the exclusion of any other person or authority.” That is accepted.

⁸¹ At 5) of the order

⁸² Paragraph 43 of the Defendants’ Submissions

101. The classification of the compelling eye witness evidence used by ACP James at the previous application certainly strains and stretches that term. The disclosed evidence does not reach the legal threshold of eyewitness evidence. Neither does the the scientific evidence report the police possess affirmatively tie the Claimant to the offence.

102. The Claimant has successfully challenged the fundamental premises which informed the refusal of bail at the first sitting, that is, a timely hearing of the matter and the quality of the evidence against the Claimant. To that must be added the health situation of the Claimant and the fact that the affidavit from Defendants essentially admitted all the critical averments from the Claimant.

103. In **Attorney General's Reference (No 2 of 2001)**,⁸³ the Law Lords held, that:

"If through the action or inaction of a public authority, a criminal charge was not determined within a reasonable time there was necessarily a breach of the defendant's rights... for such a breach there had to be afforded such remedy as to what was just and appropriate... the appropriate remedy would depend on the nature of the breach and all the circumstances, including particularly the stage of the proceedings at which the breach was established."

Disposition

104. At the previous bail hearing, consideration was given to the conditions which could be imposed on the Claimant to mitigate risks and ensure that if he is given bail, that he returns to the Commonwealth of Dominica in good time for his trial.⁸⁴ Many of the earlier considerations remain valid.

105. Bail is offered to the Claimant, Johnathan Lehrer, in the sum of One Million dollars Eastern Caribbean Currency, with one surety in the like sum of One Million dollars.

106. The conditions of the bail are:

- 1) The surety, who is to be approved by the Registrar of the High Court, must be a family member, or a business associate, or someone of similar stature, who in the opinion of the Registrar has significant influence in relation to the Claimant and is capable of ensuring that the Claimant abides by the conditions of his bail.
- 2) The Claimant must not communicate, directly or indirectly (including via social media or through a third party) with any witness about this case.

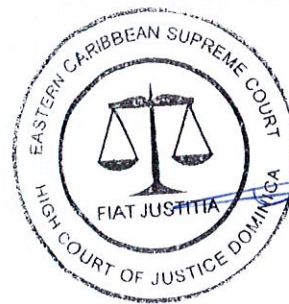
⁸³ [2003] UKHL 68; [2004] 2 AC 72

⁸⁴ Paragraph 99 of the previous judgment

- 3) The Claimant must attend Court on the 10th of December 2024 and all adjourned dates until the conclusion of this matter.
- 4) The Claimant may be permitted to travel out of the Commonwealth of Dominica for medical purposes, but must first secure the approval of a Judge of the High Court, and provide details as to the dates of travel (including date of return), proposed address while overseas, and the medical facility he intends to visit.
- 5) The Claimant would have to provide proof to the Registrar that he has revoked his American citizenship prior to being allowed to travel out of the Commonwealth Dominica.
- 6) The Claimant must provide a sworn undertaking that he would not seek to reactivate his American citizenship while on bail.
- 7) The Claimant shall file, if necessary under seal, an updated medical report upon any travel overseas.
- 8) The Claimant must commit to returning to the Commonwealth of Dominica upon conclusion of any medical procedure; and to not travel to and remain in any third country, that is, any country other than that to which approval was given.
- 9) The Claimant shall provide a solemn guarantee to pay for any and all expenses that may be incurred by the State in seeking to have him returned to Dominica, in the event that he does not do so voluntarily and immediately after his medical procedures.
- 10) The Claimant shall provide an irrevocable consent to be extradited. Such an undertaking should indicate that he would not contest extradition, (should it become necessary to seek his extradition).
- 11) The Claimant undertakes not to breach the laws of the United States of America or any county to which he travels for medical attention, while he is within such other country's borders.
- 12) The Claimant prior to any overseas travel shall consent to having a tracking device fitted to his body.
- 13) The Claimant upon his return to Dominica, shall reside at Bois Cotlette Estate, and not leave the Commonwealth of Dominica without first getting the approval of a Judge of the High Court.

- 14) The Claimant upon his return to Dominica, must report to the Grand Bay Police Station, once a week, on Monday's, to sign in, sometime between 6:00 am and 6:00 pm.
 - 15) If the Claimant breaches any condition of his bail, or if he is charged with any offence anywhere which has a prescribed penalty of at least two years imprisonment, then his recognizance becomes liable to be forfeited and his bail may be revoked.
107. Copies of the bail order are to be served on the Chief of Police, the Chief Immigration Officer, the Superintendent of Prisons, the Clerk of the Magistrate's Court and the Office of the Director of Public Prosecutions.

**Colin Williams
High Court Judge**



By The Court

[Handwritten Signature]
Registrar (Hq)