



[2022] JMSC CIV.151

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. SU2022CV02576

BETWEEN	PURCELL CARTER	CLAIMANT
AND	DIRECTOR OF PUBLIC PROSECUTIONS	DEFENDANT

HEARD TOGETHER WITH

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. SU2022CV02570

BETWEEN	KEMAR DENNIS	CLAIMANT
AND	DIRECTOR OF PUBLIC PROSECUTIONS	DEFENDANT

Mrs Valerie Neita-Roberston QC and Ms Kimberly Whittaker Attorneys-at-law for and on behalf of the Applicant, Purcell Carter

Mr Peter Champagnie QC, Mr Richard Lynch and Mr Javed Grant Attorneys-at-law for and on behalf of the Applicant, Kemar Dennis

Ms Debra Byran, Crown Counsel for and on behalf of the Respondent

Heard: 24th and 31st August, 2022

MOTT TULLOCH-REID, J

Background

[1] The Applicants have approached the Court for a review of the decision of the Parish Court Judge who, in respect of Constable Purcell Carter (“Carter”), on August 5, 2022, denied him bail for the offences of murder, shooting with intent,

illegal possession of firearm and illegal possession of ammunition and with respect to Constable Kemar Dennis ("Dennis") who was charged with illegal possession of firearm, illegal possession of ammunition and murder, denied him bail on August 11, 2022.

- [2] As the applications concerned incidents which took place on July 14 and 16, 2022 in which both Applicants were said to be involved, their attorneys-at-law made a request for the applications to be heard together. Crown Counsel who acts for the Director of Public Prosecutions in both matters, agreed to this course of action and as such, the matters were heard by me at the same time.
- [3] The applications are supported by Affidavits. No Affidavits were filed in response. Although not required by law, Affidavits filed in response would have indeed been helpful. The Affidavit of Javed Grant, filed in support of the application made on behalf of Dennis, has the case file and the reasons the Parish Judge put forward for refusing bail exhibited to it to support the grounds on which the application was made. The Respondent has not by way of Affidavit sought to rebut any of the statements made in the Affidavit or put forward any exhibits which would refute the allegations made in the documents exhibited to Mr Grant's Affidavit. The Respondent instead has relied solely on the submissions made by counsel, Ms Bryan.
- [4] I will say here that I am grateful to counsel for the Applicants and the Respondent for the assistance they provided through affidavit evidence and submissions made with respect to their clients. I also wish to thank my judicial clerk, Ms Abigail Leiba, for the support she provided through research.
- [5] The allegations leading up to the charges made against the Applicants are that on July 14, 2022, Carter and Dennis were a part of a team of police officers who carried out an operation at the home of Phillip Wallace and his girlfriend, Monique Ellis, in East Kirkland Heights, Red Hills, Saint Andrew. Mr Wallace and Ms Ellis were taken to the Constant Spring Police Station where Mr Wallace was charged

by Constable Dennis for dealing in and being in possession of ganja. It was later brought to the attention of the Inspector on duty by both Wallace and Ellis that the corporal who was on the operation had collected \$15,000.00 from them and that "Tallist", the alleged pseudonym of Carter, and Dennis had also demanded money from Wallace so that the matter would not be taken to Court.

- [6] Ms Ellis further alleges that on July 16, 2022 sometime after 10:00am, while both she and Mr Wallace were at home, she saw a white Toyota Axio drive up to the bar and "Tallist" came out of the passenger seat of the motor car with gun in hand and fire at Mr Wallace who was outside speaking on his phone. Dennis also alighted from the rear of the motor car and began to fire his weapon. She heard "Tallist" say "see the gyal dey" and she ran away while hearing shots being fired. She later returned to the scene where she saw Wallace's lifeless body.
- [7] Both police officers were charged with the offences mentioned in paragraph 1 above. They have not been charged with any offences concerning the alleged solicitation.
- [8] Ms Ellis identified both Carter and Dennis at an identification parade.
- [9] The prosecution has put forward as a motive for the murder and shooting with intent, the fact that the police officers were seeking to cover up the allegation of solicitation.

The findings of the Parish Judge

- [10] The Parish Judge denied both Carter and Dennis bail. Of concern to the learned Judge were:
- a. The safety and vulnerability of the Crown's sole witness;
 - b. The need to preserve the integrity of the investigation especially since Wallace was allegedly killed to cover up or silence the potential corruption investigation;

- c. The interest of the public to take into consideration that police officers were alleged to have committed murder to punish or silence victims of alleged corruption. This, he said, would affect “public sensibilities” and ‘investigative integrity” which “must be preserved and seen to be preserved to further secure public trust in its institutions”;
- d. The seriousness of the offence of murder which when allegedly done by police officers “takes the seriousness to a level of deeper concern, particularly given the alleged motive.”;
- e. The alleged sinister motive behind the murder which was embarked upon to destroy potential evidence at the very source to obstruct any potential investigation or worse, to punish the alleged victims of corruption for a foiled effort;
- f. The Crown’s relatively strong case which depended on a single witness whose safety was brought into question when she was allegedly attacked on July 16, 2022 at her home. She was in danger on July 16, 2022 and should not be considered less in danger. Interventions should be made to secure her safety;
- g. Imposing conditions would not be sufficient to address the concerns the Court had concerning the witness’s safety;
- h. Effort should be taken to remove the possibility of further undermining the investigative process;
- i. The witness had expressed fear, and bail, in the circumstances that led to the murder of Wallace, would “only serve to exacerbate that state and slow justice’s overall ends and objectives.”; and
- j. With respect to Dennis, the Court found it “beyond coincidence that his departure from the island should so curiously coincide with allegations of soliciting ... and allegations of murder the very morning of 16.07.22 when

he actually leaves the island. There is a flight risk concern here, notwithstanding his explanations.”

The grounds of appeal

[11] The Applicants grounds for review of the Parish Judge’s decision are similar and can be summarised as follows:

- a. The Parish Judge failed to consider that the Applicants are presumed innocent until proven guilty pursuant to Section 20(5) of the **Bail Act** and Section 16(1) of the Constitution.
- b. The Parish Judge erred when he found that if the Applicants were released on bail they would impede the integrity of the investigation and threaten the vulnerability and safety of the Crown’s sole witness.
- c. The Parish Judge erred when in refusing bail, he took into account the fact that the Applicants were both police officers.
- d. The Parish Judge erred when in refusing bail he took into account “public sensibilities” and “investigative integrity” which are not considerations prescribed by the **Bail Act**.
- e. The Parish Judge failed to consider the alibi presented by both Applicants.
- f. The Parish Judge erred when he took into consideration not only the seriousness of the offence but the alleged motive which led to the offence being committed.
- g. The Parish Judge erred when he concluded that the Crown had a strong case against Carter in light of the fact that although Carter was identified by the witness,
 - i. The identification parade took place under less than ideal circumstances;

- ii. the description of Carter, in particular is flawed; and
 - iii. the circumstances in which the identification was made were difficult.
- h. The Parish Judge failed to consider the Applicants' good antecedents.
- i. With respect to Dennis, the Parish Judge failed to take into account the fact that he had booked his flight to Florida prior to June 14, 2022 and that he returned to the jurisdiction on his own volition and surrendered into custody, when he concluded that Dennis was a flight risk.
- j. The Parish Judge failed to take into account the bail conditions available to him which could alleviate his concerns about witness intimidation and safety and interference with the prosecution of the case.

Submissions on behalf of Carter

[12] For the most part, the submissions made by Mrs Neita-Robertson on behalf of Carter are contained in her affidavit in support of the application on August 18, 2022. She however emphasised the fact that the Parish Judge concentrated on the fact that Carter was a police officer and therefore because he was a police officer he was to be held to a higher standard than an ordinary citizen. This, Mrs Neita-Robertson said, was wrong as no matter our occupation, we are all equal before the law. The fact that the Applicant is a police officer, she said, would be an issue to be considered at his sentencing, not at the hearing of his bail application.

[13] Mrs Neita-Robertson also argued that for the learned Judge to emphasise "public sensibilities" was incorrect as this was not one of the issues which the **Bail Act** says is to be considered. She said that when a court considers "public sensibilities", it does not consider justice. The public will not know that the Applicant has an alibi which would affect the strength or weakness of the Crown's case. She said that "public sensibilities" do not take into account the fact that a person is presumed innocent until proven guilty. She said "public sensibilities" is uncontrolled and is not based on law or fact but on bare emotion.

- [14] Another submission is with respect to the identification of Carter. The identification was being challenged as Carter was put before the ID parade even though he was given an alias of “Tallist” by the witness when his nickname is “Spangy” and that is what all the police officers at Constant Spring Police Station call him. Mrs Neita-Robertson argues that Carter’s name is wrong and his description is wrong (he has no keloid scars nor is he bleached or brown skinned). She also argues that it is very likely that the witness would also have been shot since she was only 7ft away from the police officers when the shooting took place. It was also brought to my attention that the witness was being held in a room with police officers prior to the video ID parade and those police officers could have prompted her decision.
- [15] Mrs Neita-Robertson also pointed to the strong evidence of alibi put forward on behalf of Carter. Mrs Neita-Robertson indicates that from the get go Carter presented an alibi.
- [16] Mrs Neita-Robertson submitted that Ms Ellis has indicated a willingness to participate in the witness protection programme as she was concerned about her safety and that she has also left the community and so there is no threat that her client will pose a threat to her.

The Crown’s response

- [17] Ms Bryan informed the Court that the matter is not ready for trial as there are several outstanding documents. Major Investigation Division is responsible for carrying out the investigation and in addition to call data, forensic certificate and video footage, the investigating officer’s statement is still outstanding.
- [18] Ms Bryan relied on Section 3(4)(A) of the **Bail Act** which says that a person charged with murder can only be granted bail by a Resident Magistrate (now Parish Judge) or a Judge. She argued that in coming to his decision, the Judge was entitled under the **Bail Act** to take into account “any other factor that was relevant”. This is what the Judge did after the Applicant’s attorney put everything before him. She argued that police officers soliciting money for charges not to be

laid could not be seen as irrelevant. The three police officers who did this, were identified by the witness and returned on July 16, 2022 to her house and shot and killed one witness and attempted to do the same to the other. It was not irrelevant for the Judge to consider the July 16, 2022 incident in the context of what happened on July 14, 2022.

- [19]** Ms Bryan further argued that there was no requirement for all reasons to be satisfied but that the ground for refusing bail should be substantial. The reasons the Judge gave for refusing to grant bail are summarised under two main headings:
- a. Public interest;
 - b. Obstruction of justice/witness tampering.

The Judge had to take into account the nature and seriousness of the offence and the fear of the witness which was contained in her July 16, 2022 statement.

- [20]** Ms Bryan argued that with respect to the issue of identification, there is no doubt that the witness could identify Carter. She travelled in a vehicle with him, saw him interact with officers at the police station, he demanded \$120,000.00 from her. (I will note here that Mrs Neita-Robertson corrected this statement to say that it was the witness's deceased boyfriend who told her that "Tallist" had demanded \$120,000.00 from her).

- [21]** With respect to the alibis, Ms Bryan submitted that there are discrepancies in the alibi which are issues for trial. She did not say what those discrepancies were. She then informed me that further disclosure from the deceased's sister puts the time of shooting at somewhere between 9:17am and 9:27am as Phillipa Wallace's newly disclosed statement says she was on the phone with her brother between 9:00am and 9:10am and the call lasted approximately 17 minutes. She also opposes bail on the basis that investigations carried out by a police officer are still ongoing.

Submissions on behalf of Dennis

- [22] Mr Champagnie adopted the submissions made by Mrs Neita-Robertson QC. He also relied on the Affidavits of Javed Grant, Dewayne Grant and of Peta-Gaye Hudson filed in support of Dennis' application filed on August 18, 2022. He argued that nothing in the Affidavits filed on behalf of Dennis has been rebutted by the Respondent and that was also the Respondent's posture at the hearing in the lower Court.
- [23] Mr Champagnie relies on the decision of Batts J in the case of **Leeford Gordon and Damon Robinson v Director of Public Prosecutions and Romaine De La Haye v Director of Public Prosecutions [2014] JMSC Civ 105** which states that in bail hearings, police officers are not to be treated any differently from normal persons. The Constitution of Jamaica protects every citizen equally. He pointed out that like the case before me, the **Gordon case** concerned an alleged murder carried out by police officers.
- [24] With respect to alibi, Mr Champagnie relied on the case of **The State v Sithole [1999] 1 SACR 585** in which it was held that an alibi need not be absolute but once it is probable that it might be true, then the person must be acquitted. He argued that the Parish Judge failed to take into account the unrebutted alibi in refusing to grant bail.
- [25] Concerning the witness, Mr Champagnie's argument was that Dennis would not wish to see harm come to her as she is his witness. By her own statement of the time in which the incident unfolded, it would have been impossible for Dennis to be at the scene of the incident in Kirkland Heights, then make his way to Norman Manley International Airport to board his flight. In addition, he had his 18-month old stepdaughter with him and unless he had taken her to commit the murder, it was not possible that he could commit the murder, then pick up the child, then head to the airport to board his flight. Mr Champagnie further argued that depending on the route a person takes, according to Google Maps it takes

approximately 1 hour from Kirkland Heights to the Norman Manley International Airport.

- [26] The new statement presented by Phillipa Wallace concerning the time of the incident should not be taken into consideration as it was made on August 16, 2022 when the bail hearing took place on August 11, 2022 and in circumstances where the Crown did not put the Court or the Applicants' attorneys-at-law on notice that a new statement with a new time line in which the shooting took place was forthcoming.
- [27] Mr Champagnie also relied on the case of **Phillip Stevens v Director of Public Prosecutions 2006 HCV 05020** decision of Sykes J (as he then was) delivered on January 23, 2007 for the purpose of setting out the five factors which the Court is to consider when making a decision as to whether or not bail is to be granted. The case will be considered when the law is analysed below.
- [28] Mr Champagnie ended by saying that Dennis was a fit and proper person to be granted bail.

The Crown's response

- [29] Ms Bryan indicated that the new statement of Phillipa Wallace was disclosed on August 24, 2022 as soon as it was received by her.
- [30] She relied on the submissions made by her with respect to Carter but mentioned that only the call data could assist with the time, duration and location of the call that was placed by Phillipa Wallace to Ms Ellis and in which she later spoke to her brother, Mr Wallace. This she said was not yet available. She said everything that is before me today was before the Parish Judge at the August 11, 2022 bail hearing. She argued that the Parish Judge could have granted bail with conditions imposed but he did not do that because he did not believe this was a suitable case for bail to be granted. The witness' safety had to be considered, the likelihood of interference in the investigation which was being done by a police officer had to be

considered and what was in the interest of the public had to be considered. Ms Bryan also submitted that there was no issue with identification as Ms Ellis had many opportunities to interact with Dennis and therefore could identify him. The Judge therefore did not err in the exercise of his discretion.

- [31] In responding to the case of **Sithole**, Ms Bryan argued that because of the timeline of when the shooting took place, it detracted from the strength of the alibi and agreed that in the **Gordon case**, no undue weight was put on the fact that the Applicants were police officers.

Concluding submissions

- [32] On my request with respect to receiving information on the status of matter and its readiness for Court, Mr Champagnie informed me that it was still at the Parish Court, it was still on the Mention List, it was unlikely that a Committal Hearing Date would be given any time in the near future and that trial dates for ready matters were now in 2025.

The Law

- [33] The applications are for a review of the decision of the learned Parish Judge in refusing to grant bail to Carter and Dennis. There are two schools of thought with respect to how the application is to be approached. One school of thought says the hearing of the application is to be treated as a review of the decision of the Parish Judge (the “Brooks approach”) and the other school of thought says it is to be treated as an appeal (the “Sykes approach”). Having read the cases, I am more inclined towards the Sykes approach.
- [34] The Sykes approach came out of the case of **Phillip Stephens v The Director of Public Prosecutions** wherein Sykes J (as he then was) said that despite the wording of Part 58 of the CPR, the hearing of the application for bail before a Judge in Chambers is an appeal and not review. He considered the **Bail Act** and the

interpretation of sections 9-11 in particular in forming his opinion. Section 11(1) of the **Bail Act** provides that:

“Where a Resident Magistrate’s Court refuses bail in criminal proceedings or imposes conditions on the grant of bail in criminal proceedings, the Judge in Chambers may grant or refuse bail or vary the conditions.”

At paragraph 31 of the **Stephens** decision, Sykes J said that on an appeal, the parties are able to reargue the case since Section 11 of the **Bail Act** gives the Judge in Chambers the power to grant, refuse or vary the conditions of bail. The Judge can make the same orders that the Parish Judge could have made. This is in keeping with the function of the appeal court, *“which is free to make such orders as the original court could have made.”* Sykes J went on to say that although this was the case, *“it was not a licence for the Judge in Chambers to ignore the reasons of the lower court. They are entitled to great respect.”*

[35] Whether the Brooks approach or the Sykes approach is used, what is clear is the decision of the Parish Judge ought not to be disturbed if he/she has taken into account all the relevant factors when coming to his decision. Sykes J at paragraph 39 of the **Stephens case** referred to Lord Fraser in **G v G [1985] 1 WLR 647** who said that an appellate court should only interfere with the decision of a Resident Magistrate if the Resident Magistrate has “exceeded the generous ambit within which a reasonable disagreement is possible.” And according to Sykes J “after taking into account the relevant factors and giving them the appropriate weight.”

Analysis

[36] The factors which the Parish Judge took into consideration in the cases before me are set out in paragraph 9 above. I will deal with each of them in combined subheadings.

The safety and vulnerability of the Crown’s sole witness

[37] Ms Ellis who is the main witness to the events of July 16, 2022 has expressed fear for her life. She not only witnessed the murder of her boyfriend but she says she

was also shot at and while running away she heard one of the policemen shouting at her that he knew where her family lived. I have considered whether if Ms Ellis comes to realise that the very police officers who she alleges murdered her boyfriend and attempted to kill her are out on bail, just about one month after the incident took place, whether she would come forward to assist the case. Although Mrs Neita-Robertson has argued that Ms Ellis has since left the community and has in her statement indicated that she would submit to the witness protection programme, we are all very aware that neither course of action is likely to satisfy the safety concerns which Ms Ellis may have once the police officers are back on the road. In fact, being on the witness protection programme is not a feat that is easily achieved given that it may mean that she is not the only person who would have to be facilitated. I have to weigh the security of the witness in the balance of what is in the public interest against the Applicants' fundamental right to liberty.

[38] Section 16(5) of the **Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011** reads as follows:

“Every person charged with a criminal offence shall be presumed innocent until he is proved guilty or has pleaded guilty.”

Pursuant to Section 13(3)(a) of the **Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011**, every Jamaican citizen is guaranteed:

“the right to life liberty and security of the person and the right not to be deprived thereof except in the execution of the sentence of a court in respect of a criminal offence of which the person has been convicted.”

I have taken into account the fact that the Applicants are to be presumed innocent until proven guilty. Based on what Crown Counsel has indicated to me, it will be some time before the matter is ready for trial for a decision of guilt to be determined. The question I must therefore ask myself is whether it is just to keep presumably innocent men in custody while the Prosecution completes its investigation? Would that be just in light of the Constitution which guarantees Jamaican citizens a fundamental right to liberty.

[39] The **Bail Act** is helpful in this regard. Section 3(1) provides that:

“Every person who is charged with an offence shall be entitled to be granted bail by a Court... as the case may require.”

Section 4(1) sets out the circumstances in which bail may be denied and include the following:

“(a) The Court... 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...*

(c) the Court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this section for want of time since the institution of the proceedings against the defendant;...”

In deciding whether or not any of the circumstances in 1(a) above have been satisfied, the **Bail Act** provides that the Court can consider:

“(a) the nature and seriousness of the offence

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

(c) ... the strength of the evidence of his having committed the offence or having failed to surrender to custody;...

(d) any other factor which appears to be relevant including the defendant’s health profile.”

Seriousness of the charges and treatment of police officers

[40] I agree that the charge of murder is a serious one and I also agree with Crown Counsel that the motive behind the murder is one which should be considered as it was an attempt to cover up an alleged solicitation, which in and of itself is a serious crime.

[41] I also take into consideration the fact that Police officers are not to be treated any differently from ordinary citizens in these matters. I adopt the reasoning of Batts J at paragraph 11 of his judgment in the case of **Leaford Gordon and anor v The Director of Public Prosecutions [2014] JMSC Civ 105** where he said:

“...the rights of these police officers are not to be reduced or made different from the rights guaranteed by our Constitution to the ordinary citizen. It would be wrong to refuse bail based on prejudice, conjecture or reputation connected to or deriving from the fact that these men are members of the Jamaica Constabulary Force.”

[42] While it is true that police officers enjoy the same rights under the constitution as do ordinary citizens, the Court must take into consideration, at a bail hearing, the resources they have available to them by virtue of the fact that they are police officers. This is what is also done for ordinary citizens. In considering bail and whether to grant or refuse it and if granted, what if any conditions are to be attached, the Court will look at who is before it, what offence was committed, the circumstances in which the offence was committed and what resources are available to the accused person to affect the process of investigation. I believe this is what was in the Parish Judge’s contemplation when he came to his decision.

Witness tampering and public interest

[43] Ms Bryan was concerned about the interest of the public and obstruction of justice by way of witness tampering. She submitted that the investigations were being carried out by police officers and by virtue of the fact that the Applicants are police officers they could interfere with the investigative process. Ms Bryan did not however tell me how this interference would be achieved and saying so without more is not sufficient when it comes to the liberty of one of the Queen’s subjects.

[44] Of more importance is the Parish Judge’s note on the issue. He said:

“Public interest – There is a strong public interest component in which this matter gives rise. It is being alleged that the enforcement arm of the state apparatus in the person of the accused police men, together with each other and at least one other committed murder to either punish or silence victims of alleged corruption.”

- ***This matter affects public sensibilities and investigative integrity must be preserved and BE SEEN TO BE PRESERVED to further secure public trust in its institutions*** (my emphasis in bold)

[45] While Ms Bryan argues that the Parish Judge is permitted under the **Bail Act** to take any other factor into account when coming to his decision, I agree with Mrs Neita-Robertson that those factors that are taken into account must be judicious. The Court must follow the law regardless of the sensibilities of the public, which are as shifting as the sands of time. How the public feels or is likely to feel about a particular event is not contemplated by the **Bail Act** and “any other factor” which the Court may wish to take into account in the exercise of its discretion must in my view be *ejusdem generis* with what is contemplated by the **Bail Act**. I believe that when the Parish Judge took into account “*public sensibilities*” in forming his decision to refuse bail to the Applicants, he was wrong.

Alibi and flight risk

[46] I do not see any note from the Parish to Judge as to how he treated with the issue of alibis put forward on behalf of Carter. He does however speak at paragraph 11 of his reasons to the flight risk concern he had for Dennis. According to Mrs Neita-Robertson, Carter indicated that at the time of the alleged murder and shooting he was at his house in Mona. His alibi is supported by statements given by his “brother-in-law”, Jovian Tomlinson, who is the brother of Carter’s girlfriend, Krystal Tomlinson. Krystal Tomlinson also gave a statement supporting Carter’s alibi. Carter’s landlord, Garfield Martin, also gave a statement to the effect that when he visited the house at Mona on July 16, 2022 at about 10:00am, Carter was there. Martin also indicated that when he left the house at 1:00pm, Carter was still there.

[47] With respect to Dennis - the shooting is said to have taken place at or about 10am. He is said to have been at the airport at 10:10am. He has presented a boarding pass to support that alibi and a booking confirmation to show that he had booked his trip way in advance of the July 16, 2022 murder.

[48] One of the bases on which a bail application can be refused is set out at Section 4(c) of the **Bail Act**. I write it out again for ease of reference.

“the Court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this section for want of time since the institution of the proceedings against the defendant;...”

It is not likely that a little over one month after a crime has been committed that the investigation would be completed or so far underway to give the Prosecution much to work with in terms of bringing the matter to trial. The **Bail Act** provides that insufficient information is a basis on which bail can be denied. I took this into consideration when weighing the relevant factors to be considered. That inability to obtain sufficient information when juxtaposed against unrefuted alibis again tips the balance in favour of the Applicants.

[49] Carter had three (3) statements from witnesses who have supported his alibi. There is no burden on the accused to establish his alibi. It is for the prosecution to negative the alibi and it must do so to the criminal standard. An alibi is a strong defence but the Crown did not make any attempt to rebut it at this hearing save and except to say that “there were inconsistencies in the alibi which were issues that should be dealt with at the trial.”

[50] As it relates to Dennis, I am not aware that boarding passes are stamped with the time a passenger checks in especially in circumstances where check-in can be done online or by someone on behalf of the passenger at a kiosk. I put very little weight on the evidence in the form of the boarding pass in coming to my decision. What was more important to me in my consideration of the issue is the fact that Dennis was already overseas but returned to the island and surrendered to custody even though he knew that on his return he would be charged for murder, among other things. This, to my mind, supports Mr Champagnie’s argument that Dennis is not a flight risk, will not abscond bail and will present himself for the trial.

[51] I am of the view that the learned Parish Judge erred when he failed to consider the alibis presented by the Applicants especially in circumstances where failure of the prosecution to negative an alibi can lead to an acquittal. I also believe that the learned Judge erred when he found that, Dennis, who had returned to the island, having already been overseas, and who had surrendered to custody, was a flight risk.

Concluding remarks

[52] I am aware that at this point I am not required to make a determination one way or the other as to how the evidence will be received by judges of fact. I must consider whether the Parish Judge has “*exceeded the generous ambit within which a reasonable disagreement is possible.*” I find that the Parish Judge erred when he failed to take into consideration the alibis presented by the Applicants, when he concluded that Dennis posed a flight risk, when he took into account the sensibilities of the public and when he considered the “sinister motives” of the Applicants who had not up to the date of the hearing been charged with any offence concerning the alleged solicitation, when coming to his decision to refuse bail.

[53] I have also contemplated the strength of the Crown’s case in the prosecution of the Applicants and whether the case is so strong as to deprive them of their liberty. On what is before me, I do not find that it is. The sole eyewitness cannot even settle on the time that the incident is said to have taken place. I could rule that the Applicants ought not to be granted bail at this time until the outstanding documents are disclosed to their attorneys and this course of action was seriously considered (see section 4(c) of the **Bail Act**). However, I do not believe it would be fair to make such an order since Ms Bryan was not able to say when the outstanding documents would become available and in my opinion, it would not be fair, given their unrefuted alibis, to deprive the Applicants of their liberty until the investigation is concluded when it is not certain when that will be.

[54] I am of the view that in this situation, bail can be granted to both Carter and Ennis with conditions applied and this will protect the interest of the public as well as the integrity of investigation while at the same time preserving to the Applicants their fundamental right to liberty and the presumption of innocence until guilt is proved. In making these orders I do not seek to undermine the decision of learned Parish Judge. However, given the circumstances of the case and the weight that is to be applied to each of the relevant factors that was considered, I find that the evidence before me is more heavily weighted towards me exercising my discretion in favour of the Applicants.

[55] To that end, I hereby order as follows:

- a. Bail is granted to Constable Purcell Carter in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) with one or two sureties.
- b. Bail is granted to Constable Kemar Dennis in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) with one or two sureties.
- c. Constable Purcell Carter and Constable Kemar Dennis are to surrender all travel documents, including green cards, if any.
- d. A stop order is imposed at all seaports and airports with respect to Constable Purcell Carter and Constable Kemar Dennis.
- e. Constable Purcell Carter is to reside at the address provided to the Court by his attorneys-at-law.
- f. Constable Kemar Dennis is to reside at the address provided to the Court by his attorneys-at-law.
- g. Curfew is ordered with respect to Constable Purcell Carter and Constable Kemar Dennis between the hours of 5pm and 6am daily.

- h. Constable Purcell Carter is to report to Matilda's Corner Police Station on Sundays, Tuesdays, Thursdays and Saturdays between the hours of 7am and 3pm or until further Order.
- i. Constable Kemar Dennis is to report to the Central Police Station on Sundays, Tuesdays, Thursdays and Saturdays between the hours of 7am and 3pm or until further Order.
- j. Constable Purcell Carter and Constable Kemar Dennis are restrained from visiting or going to any place situated in the communities of Constant Spring or Red Hills including Leas Flat and Kirkland Heights.
- k. Constable Purcell Carter and Constable Kemar Dennis are restrained from communicating whether directly or indirectly with the officer in charge of the murder investigation or with any Crown witnesses including Monique Ellis and Phillipa Wallace or with any member of the witnesses' respective families.