

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE

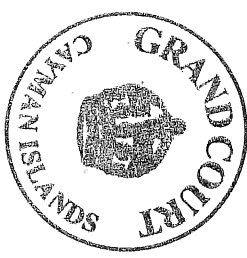
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INDICTMENT NO.: 77/12

BRIAN EMMANUEL BORDEN

v.

REGINA



Appearances:

Mr. Nick Hoffman of Priestleys for the Applicant/Defendant

Ms. Candia James for the Respondent/Crown

Before:

Justice Carol Beswick (Actg.)

Heard:

7th September 2012

RULING ON APPLICATION FOR BAIL

1. Mr. Robert Mackford Bush was murdered on the 13th September 2011. He was shot by two gunmen whilst seated in a car and he died as a result of multiple gunshot wounds. There is no dispute about those facts.

2. The Applicant, Brian Borden, has been charged with his murder and also with unlawful possession of a firearm, and has been in custody since the 7th August 2012. He now applies for bail.

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To be filed.

SUBMISSIONS FROM THE RESPONDENT/CROWN

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3 The Crown objects to the Court granting bail to the Applicant/Defendant on three
4 grounds, submitting that the Defendant is a flight risk, he is likely to interfere with
5 witnesses; and there is a risk of re-offending.
6

7 4. Counsel for the Crown submits that the case for the Prosecution is very strong, and
8 the offences facing the Defendant are serious – carrying the possibility of lengthy
9 sentences – and because of that, the Defendant is likely to flee from the Cayman
10 Islands and is also likely to interfere with witnesses.
11

12 5. The Crown regards its case against this Applicant as being strong, primarily
13 because Mr. Marlon Dillon, on the 10th July 2012, gave a statement in which he
14 says that this Defendant boasted to him that he had killed Mr. Robert Mackford
15 Bush, and described the incident in detail, including the extent of the injury to Mr.
16 Bush's body.
17

18 6. The Crown submits further that the information in Mr. Dillon's statement is
19 supported by other independent evidence, including medical evidence.
20

21 7. The Crown argues that the murder involved warfare between gangs and alleges that
22 the deceased and the Defendant were associated with opposing gangs. According to
23 the Prosecution, Mr. Dillon also had a close association with a member of a gang,
24 and therefore was privy to gang-related activities.
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SUBMISSIONS FROM THE APPLICANT/DEFENDANT

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3 8. The Defence submits that details of the manner of killing Mr. Robert Bush, and the
4 condition of his body were public knowledge in the communities involved and Mr.
5 Dillon did not obtain any information on the killing from the Defendant himself,
6 but most likely by simply being a member of the community.
7

8 9. Counsel for the Defendant urges the Court to regard Mr. Marlon Dillon as being an
9 unreliable witness, because it was not until he himself was charged with serious
10 offences, including robbery, and had been incarcerated for eleven days, that he
11 chose to give the police all this alleged information. This should be viewed with
12 some suspicion because Mr. Dillon had allegedly had the information from this
13 Applicant for months prior to his incarceration that is, from February or March
14 2012.

15 10. Counsel for the Defendant submits that the eyewitness who was present at the
16 murder scene has made conflicting statements as to what occurred, and obviously
17 would therefore not be reliable.
18

19 11. In summary, the Defence submits that the evidence is weak and it would follow that
20 the Defendant would be anxious to have his day in Court and would not be a flight
21 risk.
22

THE LAW

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24 12. In the matter of *R v. Whorms* [2008] CLR 188 the learned Chief Justice provided
25 guidance on the interpretation of the Bail Law as it affects entitlement to bail.
26
27

1 13. Section 17(2) of the Bail Law provides that a person accused of murder and also a
2 person accused of any offence against the Firearms Law is not entitled to bail.

3
4 14. This Applicant is accused of murder and unlawful possession of a firearm and is
5 thus regarded as not enjoying an entitlement to bail.

6
7 However, s.19 of the Bail Law allows for the exercise of judicial discretion to offer
8 bail, even where bail is not an entitlement, after certain relevant circumstances are
9 considered. Section 19 provides:

10 “19. A court or police officer, in order to come to a conclusion for the
11 purpose of section 18, may take into consideration (amongst other things) –
12 (a) the nature and seriousness of the offence (and the probable
13 method of dealing with the defendant or offender);
14 (b) the character, antecedents, associations and community
15 ties of the defendant or offender;
16 (c) the defendant’s or offender’s record as respect the
17 fulfilment of his obligations under previous grants of bail
18 (whether granted under this Law or otherwise); and
19 (d) in the case of a person referred to in section 17(1)(a), the
20 strength of evidence of the defendant having committed the
21 offence.”

22
23
24 15. Section 18 of the Bail Law (2010 Revision) provides for certain circumstances in
25 which bail should not be granted.

26 “18. A court or police officer shall grant bail to a person who is entitled to
27 bail under this Part unless –
28 (a) the court or police officer is satisfied the person, if
29 released on bail would –
30 (i) fail to surrender to custody;
31 (ii) commit an offence while on bail; or
32 (iii) interfere with witnesses or otherwise obstruct
33 the course of justice, whether in relation to
34 himself or another person;
35 (b) the court or police officer is satisfied the person should
36 remain in custody for his protection or welfare;”
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ANALYSIS

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3 16. It may well be that, as Defence counsel posits, most community members know the
4 details of the killing of Mr. Robert Mackford Bush. The reality, however, is that
5 Mr. Dillon has made himself available to testify in that regard, relying, as he
6 alleges, on the actual words of Mr. Borden, who is accused of the crime.
7

8 17. The fact that almost a year had elapsed between the murder of Mr. Robert Bush on
9 the 13th September 2011 and the statement by Mr. Dillon on the 10th July 2012
10 makes clear to me that any witness or witnesses that there may be are slow to come
11 forward. Indeed, the witness who was with the deceased at the moment of his fatal
12 wounding vacillates in her account of the killing.
13

14 18. I view these facts as being indicative of an offence having been committed in which
15 there is difficulty in obtaining evidence to put before the Court to allow for timely
16 prosecution. It is likely therefore that any such witnesses who might be available
17 would have the real risk of being interfered with, in order to continue the delay or
18 prevent the trial, thereby thwarting the course of justice.
19

20 19. At this time, the evidence against this Defendant in my view is very strong.
21

22 20. There is, to my mind, a very real risk of the Defendant committing an offence if
23 released on bail – especially in circumstances where, for so many months, the
24 situation has been such that evidence, sufficient to identify the murderer, has been
25 slow in being obtained.
26

1 21. I bear in mind that the main witness, Mr. Dillion is, at the moment, not at liberty to
2 move freely within the community and therefore the possibility of committing an
3 offence directed at Mr. Dillion, or interfering with him, is small.

4
5 22. There are, however, other witnesses whose evidence, when considered with
6 evidence from Mr. Dillon, may be useful. They too must be considered.

7
8 23. The offences this Defendant faces are very serious and they carry with them the
9 possibility of lengthy sentences. He has several previous convictions which may
10 result in an increase in any sentence which might be imposed in the event of a
11 verdict of guilt.

12
13 24. Given all the circumstances, I conclude that this Applicant, Mr. Borden, despite his
14 Caymanian connection, is a flight risk.

15
16 25. It is my opinion that the Prosecution has established that bail should not be granted.
17 I see no exceptional circumstances to cause me to exercise my discretion and grant
18 this Applicant bail.

19
20 26. I am mindful of the fact that the Defendant's trial date would likely not be
21 proximate, and that he has been in custody for more than a month. However, there
22 exists the very real risk of him offending while he is on bail, and/or of his fleeing
23 these Islands.

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1 27. Consequently, the Defendant's application for bail is refused.

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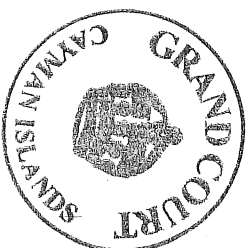
4 Dated this the 13th September 2012

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9 Madam Justice Carol Beswick (Actg.)
10 Judge of the Grand Court