COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

SCCrApp No. 94 of 2020

B E T W E E N

BARTHOLOMEW PINDER

Appellant

AND

THE QUEEN

Respondent

BEFORE: **The Honourable Sir Michael Barnett, P**
The Honourable Mr. Justice Roy Jones, JA
The Honourable Mr. Justice Milton Evans, JA

APPEARANCES: **Mr. Geoffrey Farquharson, Counsel for the Appellant**
Ms. Zoe Gibson-Bowleg with Mr. Rodger Thompson, Counsel for the Respondent

DATES: **10 November 2020; 11 February 2021**

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Criminal Appeal – Bail - Revocation of Bail – Bail Act – Hearsay evidence in bail hearings –Whether there was inadmissible evidence in the bail hearing - Whether the judge had jurisdiction to revoke bail - Whether the conditions imposed were unconstitutional

The appellant was charged with various offences including murder and offences under the Dangerous Drugs Act and was granted bail by the Supreme Court. One of the conditions of his bail was that he surrender all his travel documents until the completion of the case. He was later convicted in the Magistrates Court of the offences under the Dangerous Drugs Act and appealed that conviction. His bail continued pending that appeal. Whilst still on bail the appellant was arrested in another Country and when he returned to Bahamas he was arrested and brought to the Supreme Court on summons. The judge revoked the bail of the appellant and had him remanded into custody. The revocation of bail is the basis for this appeal.

Held: appeal is dismissed.

There is ample jurisdiction in a judge of the Supreme Court to revoke bail granted by that court. The fact that section 12 was recited in the summons is inconsequential. If the issue of jurisdiction had been raised by the appellant before the Justice he could have readily granted leave to the Crown to amend the summons to refer to the courts inherent jurisdiction.

It has been accepted for years that the strict rules of evidence do not apply to bail applications and that hearsay evidence may be relied upon. Reliance upon hearsay evidence, although permitted, should not be the norm in bail applications, particularly when direct evidence is readily available.

Attorney General v. Bradley Ferguson, et al SCCrApp. No.'s 57, 106, 108, 116 of 2008 followed
Toni Sweeting v Commissioner of Police MCCrApp No. 133 of 2013 considered
Pritam Kaur v Russell & Co [1973] 2 WLR 147 considered
R v Culley [2007] EWHC 109 (Admin) considered
DPP v McLoughlin [2009] IESC 65 considered
Vickers v DPP [2010] 1 IR 548 considered
Huey Gowdie v R [2012] JMCA Crim considered

JUDGMENT

Judgment delivered by The Honourable Sir Michael Barnett, P:

1. This is an appeal against the decision of Turner J revoking the appellant's bail and remanding the appellant into custody.

2. The appellant was charged with various offences including murder and offences under the Dangerous Drugs Act.

3. On the 16 November, 2017 he was granted bail by the Supreme Court in the amount of $20,000.00 with two sureties. There were other conditions attached to the bail. They were:

> **"a. That the Respondent is to report to Wulff Road Police Station every Monday, Wednesday and Friday before 6pm.**
>
> **b. That the Respondent is to surrender all travel documents to the Court until the completion of this matter**
>
> **c. That a breach of any of the conditions renders the Respondent liable to further remand."**

4. The appellant was subsequently convicted in the Magistrates Court of the offences under the Dangerous Drugs Act. He appealed his conviction and his bail continued pending the appeal.

5. In June 2020 the appellant was arrested in Kingston Jamaica. Upon his return to Nassau was arrested. It is not clear the basis for the arrest. In his Ruling, Turner J notes that the arrest was "for breach of a Supreme Court order". This is what Sgt. Fowler said in his report attached to the affidavit of Insp. Monique Turnquest.

6. The appellant was brought before Turner J, pursuant to a summons dated 10 August, 2020. The Summons was in the following terms:

> **"on the hearing of an application for the revocation of bail under section 12 of the Bail Act".**

7. The summons was supported by two affidavits of Monique Turnquest.

8. The affidavits were in the following terms:

> **"l, W/lnspector Monique Turnquest, of the Southern District of the lsland of New Providence, one of the lslands of the Commonwealth of The Bahamas, being duly sworn, make oath and say as follows:**
>
> **1. That I am an Officer of the Royal Bahamas' Police Force attached to the Court Liaison Section of The Office of the Director of Public Prosecutions and l am duly authorized to make this Affidavit on behalf of the Attorney General from my own knowledge and from information received by me in my capacity aforesaid.**
>
> **2. That this Affidavit is made in support of an application for the revocation of the Respondent's bail.**
>
> **3. That the Respondent was charged with the following offences:**
>
> **a. One (1) count of Possession of Dangerous Drugs with lntent to Supply contrary to Section 22(1) of the Dangerous Drugs Act, Chapter 228.**
>
> **b. One (1) count of Conspiracy to Possess Dangerous Drugs with lntent to Supply contrary to Section 22(1) of the Dangerous Drugs Act, Chapter 228.**
>
> **4. That the Respondent was granted bail by the Supreme Court on November 16, 2O17 in the amount of Twenty Thousand Dollars ($20,000) with one (1) or two (2) sureties.**
>
> **5. That the conditions of his bail were as follows:**
>
> **a. That the Respondent is to report to Wulff Road Police Station every Monday, Wednesday and Friday before 6pm.**
>
> **b. That the Respondent is to surrender all travel documents to the Court until the completion of this matter**
>
> **c. That a breach of any of the conditions renders the Respondent liable to further remand.**

A copy of the Bail Bond is attached and marked as "MT 1"

6. That the Respondent's suretors are Sabrina Neymour and Sandy Salomie Bethel.

7. That the Respondent signed the Bail Bond agreeing to comply with all the conditions listed on his Bail Bond.

8. That the Respondent was found guilty of the charges listed in paragraph 3 above in the Magistrates' Court of the Commonwealth of The Bahamas. That the Respondent was sentenced to four years in prison on each count to run concurrently.

9. That subsequently, the Respondent may have lodged an Appeal with the Court of Appeal. His bail was to continue with the conditions listed in paragraph 5 above.

10. That the Respondent did surrender his travel documents.

11. That information given to me from Chief Superintendent Walter Evans, the Officer in Charge of the Wulff Road Police Station, confirms that the Applicant has not been compliant with the said reporting condition. That the Applicant has not signed in at the Wulff Road Police Station since June 25, 2018.

12. That the Respondent was arrested in Kingston, Jamaica in June 2020 and subsequently charged in the Magistrates Court. On July 1, 2020 he paid a fine of Five Thousand Dollars ($5000.00) to the Government of Jamaica at the Magistrates; Court. A copy of the receipt of payment is attached and marked as "MT 2". On August 7, 2020, the Respondent travelled from Kingston, Jamaica to Nassau, Bahamas on Caribbean Air Flight BW114. A copy of the boarding pass of the Respondent is attached and marked "MT 2" and a copy of the manifest of Caribbean Air Flight BW114 is attached and marked 'MT 3". The Respondent was further arrested on August 7, 2020 at the Lynden Pindling lnternational Airport by D/Sgt 829 Ray Fowler who arrested and cautioned him upon arrival of Caribbean Air Flight 8W114 which departed Kingston, Jamaica for Nassau, Bahamas. A copy of the report of D/Sgt 829 Ray Fowler is attached and marked as "MT 4."

13. That the Respondent for the above reasons did not comply with the conditions imposed by this Honourable Court and in the circumstances bail should be revoked.

14. That the contents of this Affidavit are true to the best of my knowledge, information and belief."

9. The report of Sgt. Fowler's which was exhibited to that affidavit was in the following terms:

> **"On Friday 7th August 2020 at about 2:00pm while on duty at DEU office l received certain information. Acting on the information I along with Cpl. 3351 Wright and other officers went to the Sir Lynden Pindling International Airport to wait on the arrival of Caribbean Air Flight #BW114 from Kingston Jamaica to Nassau which arrived around 3:00pm today's date. While at the arrival gate # B29 I met a male passenger known to me as Bartholomew Pinder around 3:10pm today's date who disembarked the aircraft. I identified myself via my police warrant card and informed him that a search of his person would be conducted reference to dangerous drugs and firearms. Same was done with negative results to anything illegal being found. I then arrested and cautioned Bartholomew Pinder reference to breach of a Supreme Court order which I had in my possession. Same was shown to him for him for to read over.**
>
> **The suspect was transported to Bahamas Immigration for processing, then to the nursing station where he was tested for Covid-19. Upon completion of the mentioned steps, the suspect was then transported to the Airport Police Station where he was booked in, then transported to The Drug Enforcement Unit where I later handed the suspect over to D/Sgt. 3322 for further processing. All evidence collected in this matter were signed and dated by myself for future identification purpose and also handed over to D/Sgt 3322 Clarke.**
>
> **While at the Drug Enforcement Unit, the suspect gave his name as Bartholomew Arlington Pinder DOB 5th April, 1979 of Sandy Point, Abaco""**

10. The other affidavit of Insp Turnquest was as follows:

> **"I, W/lnspector Monique Turnquest,….**
>
> **2. That I adopt my previous Affidavit made in support of Bail Revocation of the Respondent's bail filed at the Registry of the supreme court of the Commonwealth of The Bahamas on August 10, 2020.**

3. That the Applicant was arrested in 2011 and brought before the Court. At that time he was charged with the murder of Celey Smith in Stuart Manor, Exuma. He was granted bail in this matter.

4. That that Applicant was arrested in 2014 and brought before the Court. At that time he was charged with the Possession of Dangerous Drugs. This offence was alleged to have occurred while he was on bail for Murder.

5. That the Applicant was arrested in 2014 for Possession of an Unlicensed Firearm and Possession of Ammunition.

6. That the Applicant was arrested in 2016 and brought before the Court. At that time he was charged with the Possession of Dangerous Drugs with lntent to Supply and Conspiracy. He was granted bail ln this matter. A Warrant of Arrest was issued to the Applicant for failure to attend his Court date.

7 That the Applicant was arrested in 2017 and brought before the Court. At that time he was charged with the Possession of Dangerous Drugs with lntent to Supply and Conspiracy. He was granted bail in this matter.

8. That the Respondent for the above reasons did not comply with the conditions imposed by this Honourable Court and in the circumstances bail should be revoked.

9. That the contents of this affidavit are true to the best of my knowledge information and belief."

11. The appellant did not file any affidavit in response.

12. The hearing took place before Turner J. After hearing submissions by the Crown and by Mr. Pinder's attorney, Geoffrey Farquarson, Turner J revoked the bail and remanded the appellant to custody.

13. In his ruling, after reciting the evidence and the history, Turner said:

"11. When Counsel did appear before the court in this matter for the first time, on 7 September 2020, he demanded to know the basis on which his client was in custody and alluded to an intention to publicize this matter.

12. In respect of the actual information before the Court as to apparent breaches of the conditions of his bail, the Respondent responded through the mouth of his counsel speaking from Bar Table.

13. Those statements from counsel asserted that in respect of his failure to report to the Wulff Road Police Station since June of 2018, that the Respondent was not permitted to sign in, since his passport was in the custody of the court and he required government issued identification, like his passport, in order to sign in. That explanation seems peculiar, given that he was on bail for some considerable time before then and only began to not report to the station in June of 2018. Counsel's explanation was that depending on which officer was on duty, they may or may not permit a person who has reporting conditions to sign in without government issued identification. Of course, if the Respondent had an issue with signing in, he had ample opportunity to approach the court, since June of 2018 to present his predicament. I do not accept that proffered explanation through the ipsi dixit of counsel.

14. In respect of the further issue of his leaving the jurisdiction of the court, clearly prohibited by the requirement that he surrender all of his travel documents, counsel gamely proffered the explanation that the Respondent is known to be a fisherman and that on one of his fishing ventures (the date and place of departure unstated), he lost power in his fishing vessel and somehow drifted to Jamaica from The Bahamas, improbably adding that if he missed Jamaica he was likely to drift to Africa.

15. It is, to say the least, surprising that no attempt to proffer this 'innocent explanation' as to how he came to find himself in Jamaica was ever proffered, or even attempted at being proffered, before the court by the Respondent at any of his appearances. Even now, the Respondent is content with providing this explanation through the mouth of his counsel. It is of course his right to remain silent.

16. I find on the available evidence that the Applicant, the Director of Public Prosecutions, has established that the Respondent has breached several of his conditions of bail,

including a willful failure to report into the Wulff Road Police Station on over three hundred (300) separate occasions. He has also, in breach of his conditions left the jurisdiction of the courts of The Bahamas. The so called explanation for this departure is wildly improbable. He has clearly evinced an intention not to appear before the court for his several matters, inclusive of drug and murder allegations.

17. I find that no conditions can be imposed upon the Respondent, if he were returned to bail, which could ensure that he appear before the several courts where he has matters to take his trial.

18. For these reasons, the bail granted to the Respondent on his several matters was revoked and he was remanded to await his trials."

The Appellant appeals.

14. The grounds of the appeal in his Notice of Appeal are:

> **"That in all the circumstances of the case, the verdict was unsafe and unsatisfactory.**
>
> **That inadmissible evidence was wrongly admitted**
>
> **That the ruling was unreasonable and could not be supported having regard to the evidence**
>
> **That some specific illegality or irregularity, other than hereinbefore mentioned substantially affecting the merits of the case was committed in the course of the hearing.**
>
> **It is readily apparent that the grounds of appeal are boilerplate grounds and it is not apparent from those grounds the precise complaint by the appellant."**

15. However in the submissions laid over to the court in support of the appeal, counsel for the appellant identified the issues which formed the basis of the appeal. They were:

> **"1. Did the imposition of conditions of bail satisfy the constitutional requirements or was it unlawful and void?**
>
> **2. Was there any sufficient evidence to support the revocation of the appellant's bail?**

3. Was the appellant's arrest lawful?

4. Did the learned Judge proceed reasonably in hearing and determining the revocation application?"

16. It became apparent from the written and oral submissions made at the appeal that the primary ground of attack by Mr. Farquarson was that the judge had no jurisdiction to consider that application and therefore his decision was wrong as a matter of law. He could not on that application revoke the appellant's bail.

17. This requires an analysis of the Bail Act. Section 12 of the Bail Act provides:

> **"12. (1) Where a person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a Court fails to surrender to custody at the time appointed for him to do so, the Court may issue a warrant for his arrest.**
>
> **(2) Where a person who has been released on bail in criminal proceedings absents himself from the Court at any time after he has surrendered into the custody of the Court and before the Court is ready to begin or to resume the hearing of the proceedings, the Court may issue a warrant for his arrest, but no warrant shall be issued under this subsection where that person is absent in accordance with leave given to him by or on behalf of the Court.**
>
> **(3) A person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a Court may be arrested without warrant by a police officer where —**
>
> **(a) the police officer has reasonable grounds for believing that that person is not likely to surrender to custody**
>
> **(b) the police officer has reasonable grounds for believing that that person has committed another offence while on bail;**
>
> **(c) the police officer has reasonable grounds for believing that that person is likely to break any of the conditions of his bail or has reasonable grounds for suspecting that that person has broken any of those conditions; or**

(d) in a case where that person was released on bail with one or more surety or sureties, a surety notifies a police officer in writing that that person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as a surety.

(4) A person arrested in pursuance of subsection (3) shall be brought as soon as practicable, and in any event within forty-eight hours after his arrest —

(a) before a Magistrate; or

(b) where a person is arrested within forty-eight hours of the time appointed for him to surrender to custody, before the Court at which he is to surrender to custody.

(5) Subject to paragraphs (a) and (f) of Part A of the First Schedule where a Magistrate before whom a person is brought under subsection (4) is of the opinion that that

person —

(a) is not likely to surrender to custody;

(b) has committed another offence; or

(c) has broken or is likely to break any condition of his bail,

the Magistrate may, subject to subsection (6), remand him in custody or commit him to custody, as the case may require or, alternatively, grant him bail subject to the same or different conditions, save that where the Magistrate is not of any such opinion, the Magistrate shall grant him bail subject to the same conditions, if any, as were originally imposed.

(6) Where the person brought before the Magistrate under subsection (4) is a child or young person and the Magistrate does not grant him bail, subsection (5) shall have effect subject to the provisions of section 36(1) of the Children and Young Persons (Administration of Justice) Act."

18. The submission for the appellant is to the effect that an application for revocation of bail under section 12 can only be made to a Supreme Court judge if that court is the court to which a person on bail was obliged to surrender to custody within forty eight hours of his arrest.

19. As the summons of the 10 August, 2020 stated that the application was made "under section 12 of the Bail Act" the appellant argues that judge had no jurisdiction to hear the application and to revoke the bail.

20. The first point to be noted is that there is nothing in the record before us which suggests that this issue of jurisdiction was ever raised by counsel for the appellant at the hearing before Justice Turner.

21. We agree with Mr. Farquarson (and the Crown concedes) that the application to revoke the bail could not properly be made to a Supreme Court judge under section 12 of the Bail Act.

22. But that is not the end of the matter. Whether or not section 12 existed there has always been an inherent jurisdiction in the Supreme Court to grant and revoke bail.

23. The history of the power of the Supreme Court to grant bail is admirably set out in the judgment of Sawyer P in **Attorney General v Bradley Ferguson and others** SCCr. Bail Application Nos. 57, 106, 108 and 116 of 2008. I do not propose to repeat the jurisprudence contained in that classic judgment. Suffice it to say that at paragraph 21 the President said:

> **"At common law, as the Supreme Court of The Bahamas had, and still has, all the jurisdiction and powers of the Court of Queen's Bench in England, it also had power, in exercise of its judicial discretion, to grant bail even in murder and treason cases".**

24. The point was also recently made by the High Court of Ireland in **Minister of Justice v T.M.** [2018] IEHC 320 where at paragraph 27 Donnelly J accepted that "the power of the Central Criminal Court to grant bail is an inherent power of that court arising out of its trial functions".

25. Moreover, the Bail Act in sections 8 and 8A recognized the Supreme Court's power to grant and revoke bail.

> **"8. (1) Where a Magistrate's Court grants or refuses bail in criminal proceedings or imposes conditions in granting bail in criminal proceedings, the Supreme Court may, on application by an accused person or the police, grant or refuse bail or vary the conditions.**
>
> **(2) Where a Magistrate grants bail to an accused person or a convicted person he shall where notice is given by or on behalf of the police of the intention to apply to the Supreme Court for a review of the decision remand the accused person or convicted person, as the case may be, into custody and order**

him to be brought before a judge at such time and place as the Registrar may direct for the hearing of the review by the Supreme Court which shall not be later than the next two sitting days of that Court.

(3) Where the Supreme Court grants an accused person bail under subsection (1), the Court may direct that person to appear at a time and place which the Magistrate's Court could have directed and the recognisance of any surety shall be conditioned accordingly.
(4) Where the Supreme Court refuses an accused person bail under subsection (1) and the accused person is not then in custody, the Court shall issue a warrant for the arrest of the accused person, who shall be brought before a Magistrate's Court and shall be remanded in custody.

(5) The powers of the Supreme Court under this section are without prejudice to the jurisdiction vested in the Supreme Court under any other law.

8A. (1) Where the Supreme Court grants or refuses a person bail, or refuses to revoke bail, the prosecution or the person, as the case may be, shall have a right of appeal to the Court of Appeal.

(2) An appeal shall be filed within two days of the making of the decision, the subject matter of the appeal, and pending the hearing of an appeal against an order admitting an accused person to bail that order shall be suspended.
[Emphasis added]

26. In my judgment there was ample jurisdiction in a judge of the Supreme Court to revoke bail granted by that court. The fact that section 12 was recited in the summons is inconsequential. If the issue of jurisdiction had been raised by the appellant before Justice Turner he could have readily granted leave to the Crown to amend the summons to refer to the courts inherent jurisdiction. This ground has no merit and cannot be the basis for allowing an appeal against the judge's decision to revoke the bail if the decision was otherwise correct.

Inadmissible evidence.

27. The appellant challenges the reliance on the affidavits of Insp. Turnquest as it contains hearsay evidence. That hearsay evidence is (a) the uncontroverted statement of Chief Supt Evans that the appellant did not report to the police station since 2018 as required by his

conditions of bail and (b) the report of Sgt. Fowler as to the circumstances of the arrest when he arrived from Jamaica. He asserts that it was a "notorious fact" that Evans did not assume command of the Wulff Road police station until April, 2020 and could not speak to whether the appellant reported to the station prior to that date. It is not clear why Sgt. Fowler could not have made an affidavit as opposed to his report being exhibited to Insp. Turnquest's affidavit.

28. It has been accepted for years that the strict rules of evidence do not apply to bail applications and that hearsay evidence may be relied upon. In **Attorney General v Ferguson et al** the Attorney General appealed a decision by a judge of the Supreme Court granting bail to the respondents. It the judgment allowing the appeal, the Court of Appeal said:

> **"35. In a bail hearing it is for the prosecution to produce evidence to show why the defendant should not be released on bail. The prosecution is not required to prove beyond reasonable doubt that the defendant would not report for his trial or to produce formal evidence to that effect. A prosecutor objecting to bail may state his opinion based on the evidence produced that if bail is granted the defendant, because of the circumstances, may fail to appear to take his trial or that given bail the defendant is likely to interfere with witnesses. A bail application is an informal inquiry and no strict rules of evidence are to be applied: R.V. Mansfield Justices, ex parte Sharkey [1985] QB. 613, Re Moles [1981] Crim. L. R. 170."**

29. That paragraph was cited with approval by the majority of this Court in **Toni Sweeting v Commissioner of Police** MCCrApp No 133 of 2013 (see paragraph 11 of majority judgment). However, Conteh JA in his dissenting judgment suggested that the principle of informality and non-adherence to the rules of evidence only applied to applications for bail in the Magistrates Court and did not apply to application for bail in the Supreme Court. At paragraph 32 of his dissenting judgment he said:

> **"This was an application for bail before the Supreme Court, and not a magistrate's court, where because of the informal nature of the inquiry as to whether an applicant should be granted bail, it may be said that the strict rules of evidence do not necessarily apply. But in the Supreme Court, it is expected that the rules of evidence, including the rule against hearsay evidence, would be observed. The Inspector's averment regarding the flight risk of the appellant was clearly hearsay evidence."**

30. With respect, it is unclear to me why a distinction should be made between an inquiry by a magistrate as to whether or not to grant bail and an inquiry by a judge as to whether a person should be granted bail. The distinction suggested by Conteh JA was not accepted by the majority in **Sweeting**.

31. This in my view is consistent with the approach of the Court of Appeal of Jamaica in **Huey Gowdie v R** [2012] JMCA Crim where it said of an application for bail:

> **"In this context, the court may receive information which would not normally be receivable at a trial, including hearsay evidence. This information could concern previous convictions and unsavoury associations or practices of the accused person (see section 4 (2) of the Act). In *re Moles* [1981] Crim. L.R. 170 is authority for stating that the "strict rules of evidence were inherently inappropriate in a court concerned to decide whether there were substantial grounds for believing something, such as a court considering an application [for bail]".**

32. The issue is whether the principle as to informality and rules of evidence applies to applications to revoke bail already granted.

33. Indeed in **Vickers v DPP** [2010] 1 IR 548 at para 17 the Supreme Court of Ireland said: "That hearsay evidence is admissible in the context of a bail application has been established in a number of Irish cases."

34. In my judgment the nature of the inquiry whether to grant bail is not materially different from the inquiry whether to revoke bail already granted. In both instances, it is an inquiry as to whether a person who is at large pending a trial should be deprived of his liberty pending trial.

35. It is not simply a factual inquiry whether the accused has breached conditions already imposed. There may be reasons for the breach. Furthermore, rather that revoke bail a judge could continue the bail and impose different conditions.

36. However, the views of Conteh JA on the use hearsay evidence in relation to bail matters whether in the Magistrates or Supreme Court has much force. Reliance upon hearsay evidence, although permitted, should not be the norm in bail applications, particularly when direct evidence is readily available. I agree with the cautionary observations of Hardiman J of the Supreme Court of Ireland in **DPP v McLoughlin** [2009] IESC 65 where he said:

> **[46] Accordingly, the position about the use of hearsay evidence in bail applications is tolerably clear; there is a prima**

facie right in an applicant for bail to have the evidence deployed against his application given orally, by its author and not simply by a person who heard it said. The reason for this has already been alluded to, but cannot be too often repeated. To allow hearsay evidence, or written evidence, or certificate evidence, in an important matter (and a grant or refusal to bail is certainly such) is to deny to an applicant the essential and vital tool of cross-examination of the persons giving evidence against him, without which, in the great majority of cases, he cannot hope to be successful in his application. It wholly stymies the applicant and confers a huge and normally insuperable advantage on his opponent.

[47] The significance of the immemorial right to cross-examine the opposite party is discussed at some length in my judgment in Maguire v Ardagh [2002]1 IR 385.

[48] Having thus drawn attention to that material, I need not repeat it here.

[49] Nevertheless, the exigencies of the practice of criminal law, particularly in interlocutory applications, make it absolutely necessary that hearsay be admissible in some such interlocutory applications, but on a very restricted basis.

[50] There is no doubt that, as Keane J said, the general rule must be that all such applications and objections must be conducted on normally admissible evidence which permits of cross-examination in the ordinary way. There is no question of there being a general exception allowing hearsay in bail applications as such. Insofar as any analogy is drawn with interlocutory proceedings in civil cases, I would reject it for the reasons offered by Keane J and quoted above.

[51] The result of this is that hearsay evidence may be admissible in a bail application, but quite exceptionally, and when a specific, recognised, ground for its admission has been properly established by ordinary evidence.

[52] There can be no question of hearsay being admitted in all bail applications as such. I wish to say that the rule against hearsay is of full force and effect in bail applications and that the exceptions which permit its use are just that: rare

> **exceptions. It will be for the courts to monitor the extent of the attempted use of hearsay, and to keep it within proper bounds."**

37. In that case the accused had been charged with assault and the objection to bail was that the witnesses had been intimidated. Hearsay evidence from police officers was given in respect of this and the court found that that was unsatisfactory.

38. In my view, parties before the court in bail applications should be more circumspect in their use of hearsay evidence. Although at the end of the day it is a matter of weight, judges should be less likely to attach much weight to hearsay evidence when there is no explanation as to why direct evidence was not lead.

39. Having said that, in my judgment, the challenge to the decision that it relied upon hearsay evidence in this case is in my judgment without real substance. It would have been preferable for Supt Evans to give his own affidavit. There was no challenge to the material in the Fowler report and Supt Evans was testifying as to information in the records of the Wulff Road police station. Indeed, the appellant was confirming that the records of the police station would not record that he reported as required. His explanation was that he was not permitted to report because he did not have proper identification. The judge was entitled to consider the evidence in the Turnquest affidavit just as he was entitled to take into account the statements of the appellants counsel made from the Bar as he did. It was a question of what weight or credence given to the different pieces of information placed before him. In this case he accepted the evidence in the statement of Supt Evans and found that the explanation given by counsel on behalf of the appellant as to why the records would not show his reporting to the police station as "peculiar" and how he found his way into Jamaica as "improbable".

40. The trial judge said:

> **"13. Those statements from counsel asserted that in respect of his failure to report to the Wulff Road Police Station since June of 2018, that the Respondent was not permitted to sign in, since his passport was in the custody of the court and he required government issued identification, like his passport, in order to sign in. That explanation seems peculiar, given that he was on bail for some considerable time before then and only began to not report to the station in June of 2018. Counsel's explanation was that depending on which officer was on duty, they may or may not permit a person who has reporting conditions to sign in without government issued identification. Of course, if the Respondent had an issue with signing in, he**

> **had ample opportunity to approach the court, since June of 2018 to present his predicament. I do not accept that proffered explanation through the ipsi dixit of counsel."**

41. And later:

> **"16. I find on the available evidence that the Applicant, the Director of Public Prosecutions, has established that the Respondent has breached several of his conditions of bail, including a willful failure to report into the Wulff Road Police Station on over three hundred (300) separate occasions. He has also, in breach of his conditions left the jurisdiction of the courts of The Bahamas. The so called explanation for this departure is wildly improbable. He has clearly evinced an intention not to appear before the court for his several matters, inclusive of drug and murder allegations."**

42. In my judgment the judge cannot be faulted for relying upon the information from Supt Evans as to the appellant's failure to report to the Wulff Road Police Station as evidence of a failure to comply with the conditions of his bail.

43. Although a failure in and of itself does not automatically warrant a revocation of the bail, in this case the judge found that the failure to do so since 2018 and the fact that it was not done in July 2020 when he was in Jamaica was sufficiently egregious to warrant the revocation of his bail. The appellant explanation for the fact that his reporting was not recorded or the manner in which he found his way into Jamaica was clearly rejected by the judge as improbable.

44. In the circumstances I cannot accept that the decision of the judge to revoke the bail was unreasonable.

Unconstitutional Conditions

45. The appellant argues that the conditions imposed were in breach of his constitutional rights as they were unreasonable and were not imposed to meet any perceived risk.

46. The Appellant did not identify what provision of the Constitution the conditions violated.

47. Article 19 (3) of the Constitution provides:

> **"(3) Any person who is arrested or detained in such a case as is mentioned in subparagraph (1)(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a**

case as is mentioned in the said subparagraph (1)(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally <u>or upon reasonable conditions,</u> including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

48. Clearly, the imposition of conditions on the grant of bail is not in and of itself unconstitutional.

49. The Bail Act provides that the matters a court should take into account are:

> **"FIRST SCHEDULE (Section 3) PART A**
>
> **The Court shall deny bail to a defendant in any of the following circumstances —**
>
> **(a) where the Court is satisfied that there are substantial grounds for believing that the defendant, if released on bail, whether subject to conditions or not would —**
>
> **(i) fail to surrender to custody or appear at his trial;**
>
> **(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;**
>
> **(b) where the Court is satisfied that the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;**
>
> **(c) where he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;**
>
> **(d) where the Court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this part for want of time since the institution of the proceedings against him;**
>
> **(e) where, having been released on bail in or in connection with the proceedings for the offence, he is arrested in pursuance of section 12;**

(f) while he is released on bail and is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year."

50. The first point to be noted is that the appellant never challenged any of the conditions as being unreasonable or unconstitutional when they were imposed. He never suggested that they were overly and unreasonably burdensome. Indeed his case was that he always complied with them.

51. The second point is that the appellant has not identified what condition was unreasonable. The surrender of his travel documents was not unreasonable. They were to guard against his absconding the jurisdiction and therefore not appearing for his trial.

52. The requirement to report to the police station three times a week could not be said to be unreasonable. Indeed it is a frequent condition imposed on the grant of bail both here in The Bahamas and elsewhere in the common law world. It is design to ensure that the appellant's presence in the jurisdiction is noted that in the event he does not report the police would be alerted to the possibility that he may have absconded.

53. In my judgment there is simply no merit to the argument that the conditions were unconstitutional.

Was the arrest lawful?

54. This is in reality a reformulation of the issue of jurisdiction and section 12 of the Bail Act.

55. Clearly the arrest was not unlawful ab initio as suggested by the appellant.

56. There is no dispute that the appellant was in Jamaica in July, 2020 and did not report to the Wulff Road police station in breach of his conditions of bail. The police were entitled to arrest him.

57. The argument is that the appellant was entitled to be brought before the court in 24 hours and he was not. The 24 hours contained in paragraph 28 of the appellants written submissions is clearly an error. Section 12 of the Bail Act provides from the person to be brought before the court within 48 hours of his arrest (not 24 hours as in the English statute)

58. The appellant was arrested on Friday, 7th August, 2020 and was first brought before Turner J on Monday, 10th August, 2020. The matter was then adjourned at the request of the appellant in order for him to retain a lawyer.

59. The appellant's reliance on the decision in R v Culley [2007] EWHC 109 (Admin) is misplaced. In that case the court dealing with an application under section 7 of the English Bail Act said that the court had no jurisdiction to hear an application to remand an arrested

person to custody if 24 hours had elapsed after he had been arrested for reach of conditions of bail.

60. But the factual predicate does not exist in this case. The appellant was brought before the court on the next day the court was opened for business after the appellant was arrested.

61. Where the time fixed by a statute for doing something in the courts expires at a time that the court is not available, then if that thing is done on the next day that the court is available, then it will be considered as satisfying the statutory requirement. See **Pritam Kaur v Russell & Co** [1973] 2 WLR 147.

62. In the circumstances, the appellant having been brought before the court on the Monday after he was arrested on the Friday, the complaint has no merit.

63. In summary, there is simply no basis for interfering with the judge's decision to revoke the bail granted by the Supreme Court.

64. This appeal is dismissed.

The Honourable Sir Michael Barnett, P

The Honourable Mr. Justice Jones, JA

The Honourable Mr. Justice Evans, JA