COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

SCCrApp & CAIS No. 132 of 2026

Director of Public Prosecutions
(For the Government of Switzerland in an Extradition Matter)

Appellant

vs

Stcherbatcheff (nee Davis) Barbara Lynn
a.k.a. "Barbara Vivian Murphy"

Respondent

(Appeal against the grant of variation of bail)

Before: The Hon Mr Justice Smith, P (Actg)
The Hon Madam Justice Fraser, JA
The Hon Mr Justice Kokaram, JA

Ms Darnell Dorsette, Counsel for Appellant
Mr Brian Bastian, Counsel for Respondent

21 August 2026

The oral judgment of the court was delivered by

Smith, P (Actg):

We have considered this matter, and before us is a decision of Justice Ellis of 18th August, 2026, whereby he varied the bail conditions for one day, namely:

> "The condition restricting the Applicant to New Providence is varied solely to permit her to travel by boat from New Providence to Green Cay in the vicinity of Rose Island, for the purpose of attending the funeral/memorial observance identified [...].
>
> "The permission is effective only between 9:00 a.m. and 5:30 p.m. on 23 August 2026. The Applicant shall return to New Providence no later than 5:30 p.m. that day."

We have examined the decision of the trial judge, and while he seems to have considered most of the material factors, he ruled the following. It is accepted that this respondent is a flight risk. In fact, Justice Brathwaite described it as a material flight risk, and at paragraphs [26] and [31] of the decision, the trial judge accepted that substantial safeguards remain appropriate and that she is a flight risk. However, at paragraph [33], all he said was, "[...] the restriction against leaving New Providence remains a material safeguard."

He considered it in the balance against a substantial cash bail. In other words, a substantial cash bail was a matter that would militate against there being a

substantial flight risk. However, we look at paragraph 34 of the affidavit of Davina Pinder that was filed on 14th April, 2026. In that paragraph, she states:

> "That there is no condition of bail that will prevent the Applicant from absconding from the jurisdiction of The Bahamas as the Prosecution has been informed and verily do believe that the Applicant has the financial means and is well-connected in various countries including the USA, Great Britain, and Europe, to leave the country at any time."

In his otherwise well-reasoned decision, the trial judge failed to consider the financial means of the respondent. In fact, counsel has accepted that the trial judge has not considered her financial means as being a counterpoint to the substantial cash bail. In fact, it will militate against the cash bail as being a safeguard or failsafe against her being a flight risk. This was a material matter which the trial judge failed to consider, and now that we consider it, we consider that this is a substantial reason not to allow this variation of the bail conditions.

Justice Kokaram will also expound on another reason for our decision.

In the circumstances, the order we make today is we set aside the decision of the trial judge that was made on 19th August, 2026, varying the bail conditions that were imposed on 8th July, 2026, and we reaffirm and reimpose the conditions of bail that the trial judge imposed on 8th July,

2026.

Dated this 21st day of August, 2026.

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SMITH, P (Actg)

Kokaram, JA:

In addition, it is clear that the trial judge intended for any variation to be a proportionate means of accommodating the request of the applicant without compromising the objective of securing the applicant's attendance before the court. That much has been expressed in the trial judge's judgment at paragraph [35]. However, in making the assessment of the proportionality of the measure, the trial judge failed to consider that there was no evidence before the court, firstly, to support the request of the applicant to attend a funeral service. The evidence attached to the affidavit of the applicant clearly demonstrates that there were two celebrations of the life of the deceased that were being marked, one in the UK and one in The Bahamas, and they were not to be characterised as a wake or a funeral.

Second, the trial judge failed to take into account the fact that her attendance was not necessary, nor so important, to justify a further variation on the conditions of her bail. In fact, the Facebook post attached to the

applicant's affidavit demonstrates that the invitation to her friends was conditioned on the fact that:

> "If you can't make either of these events, then please don't worry. Absolutely no pressure or judgment!"

Therefore, while the request is for a limited purpose and for a limited time, and, indeed, the order or the conditions on which bail was granted contemplate that the appellant will seek the leave of the court to leave the island of New Providence, one would expect that such requests will be made on compelling and serious grounds.

The trial judge failed to take into account the lack of substance in the request that was being made in the context of the serious nature of the proceedings and the accepted flight risk, as the President had pointed out, that had been determined by the previous judges in this matter.

Therefore, for those reasons as well, the trial judge erred in granting the further variation to the conditions of bail.

Dated this 21st day of August, 2026.

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KOKARAM, JA

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