



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

3
4 **INDICTMENT No. 38/21**
5

6
7 **REGINA**

8
9 **V.**

10
11 **ROGER DAVARD BUSH**
12

13
14 **Appearances:** **Mr. Andrew Radcliffe K.C. with Ms. Sarah Lewis Crown**
15 **Counsel, for the Prosecution**

16
17 **Mr. Oliver Blunt K.C. with Mrs. Lee Halliday-Davis of**
18 **Bradys for the Defendant**

19
20 **Before:** **Hon. Mrs. Justice Marlene I. Carter (Actg.)**

21 **Heard:** **28th November 2022**

22 **Sentence** **8th December 2022**
23

24 **HEADNOTE**

25 *Criminal Law—Pursuant to the Conditional Release Law 2014 – Murder - s.14 – Aggravating and*
26 *Extenuating circumstances – Schedule 12 of the Conditional Release Law Regulations – Cayman Islands*
27 *Sentencing Guidelines- Minimum term.*

28
29 **TARIFF JUDGMENT**
30

- 31 1. On 12 November 2019 Shaquille Demario Bush was murdered.
- 32 2. The defendant, Roger Davard Bush, was charged with the murder.
- 33 3. The defendant was tried by Judge Alone between 10 and 27 June 2022. On 28 September 2022
34 the defendant was found guilty of the offences of Murder and Possession of an Unlicensed
35 Firearm.
- 36 4. The Defendant was born on the 4th of January 1975 and is now 47 years of age.



1
2 **THE LAW**

3 5. Section 182 of the **Penal Code** (2019 Revision) prescribes the punishment for murder.

4 ***“Punishment of murder***

5 *182. Any person convicted of murder shall be sentenced to imprisonment for*
6 *life.”*

7 6. Section 15(1) and s.15(5) of the **Firearms Act** (2008 Rev), provides:

8 ***“Possession and use of firearms and bullet-proof vests***

9 *15. (1) Subject to subsection (2), no person shall be in possession of any firearm*
10 *except under and in accordance with the terms of a Firearm User’s*
11 *(Restricted) Licence*

12 ...
13 ...

14 *(5) Whoever contravenes this section is guilty of an offence and, subject to*
15 *section 39, is liable on conviction to a fine of one hundred thousand*
16 *dollars and to imprisonment for twenty years.”*

17 7. Section 39 of the **Firearms Act** prescribes a minimum sentence of imprisonment for anyone
18 found guilty of possession of a firearm of at least 10 years imprisonment.

19 ***“Minimum sentences for certain offences.***

20 *(1) This section applies where —*

21 *(a) an individual is convicted following a trial or a plea of guilty, by a*
22 *court of summary jurisdiction or the Grand Court, of an offence under*
23 *section 3(3), 15(5) or 18(6);*

24 *(b) the offence was committed on or after 15th November, 2005; and*

25 *(c) the offence is in respect of a machine gun, sub-machine gun, rifle,*
26 *shotgun, pistol, or any lethal barrelled weapon from which any shot,*
27 *bullet or other missile can be discharged.*

28

1 (2) *Notwithstanding sections 6(2) and 8 of the Criminal Procedure Code (2006*
2 *Revision), the court of summary jurisdiction or the Grand Court before which*
3 *the individual pleads guilty or is convicted, shall —*

4 (a) *in a case where the individual pleads guilty, impose a sentence of*
5 *imprisonment for a term of at least seven years (with or without a fine);*
6 *or*

7 (b) *in any other case, impose a sentence of imprisonment for a term of at*
8 *least ten years (with or without a fine), unless the relevant court is of*
9 *the opinion that there are exceptional circumstances relating to the*
10 *offence or to the offender which justify its not doing so; and such*
11 *exceptional circumstances shall be stated by the relevant court.”*

12 8. The Conditional Release Act (2019 Revision) (“the Act”) at Section 7 provides:

13 ***“Minimum periods of incarceration***

14
15 7. (1) *Prisoners shall be eligible for conditional release as follows —*

16 (a) *prisoners sentenced to imprisonment for life shall be eligible to be*
17 *considered for conditional release on licence after serving the*
18 *minimum period of incarceration imposed under section 14(1)”*

19 9. Section 14 of the Act states, so far as is immediately relevant:

20 ***“Release of life prisoners***

21 14. (1) *Notwithstanding any other Law to the contrary, when sentencing a prisoner*
22 *to a term of imprisonment for life, the court shall specify the period of*
23 *incarceration the prisoner shall serve before the prisoner is eligible to be*
24 *considered for conditional release on licence, the period being such as the*
25 *court considers appropriate to satisfy requirements of retribution,*
26 *deterrence and rehabilitation, but for murder, the period shall be thirty*
27 *years before the prisoner is eligible for conditional release unless there are*
28 *—*

29 (a) *extenuating circumstances, exceptional in nature, in which case the*
30 *court may impose a lower period of incarceration; or*

1 (b) *aggravating circumstances, exceptional in nature, in which case the*
2 *court may impose a longer period of incarceration.*

3 (1A) ... [Whole life sentences – not applicable in the present case, the statutory
4 criteria not being met]

5

6 (2) *In making a decision under subsection (1)(a) or (b)... the court shall state*
7 *the extenuating circumstances or the aggravating circumstances, as the*
8 *case may be.*

9 (3) *The Board may, after considering the factors referred to in sections 9 and*
10 *10 and in accordance with the procedures set out therein, order conditional*
11 *release on licence of a prisoner sentenced to a term of imprisonment for life*
12 *after the prisoner has served the period of imprisonment specified by the*
13 *court under subsection (1)...”*

14 10. Section 21 of the Act states:

15 ***“Regulations***

16 *21. The Cabinet may make regulations prescribing all matters that are required*
17 *or permitted by this Law to be prescribed, or are necessary or convenient to be*
18 *prescribed for giving effect to the purposes of this Law.”*

19 11. In accordance with s.21 of *the Act*, Cabinet enacted *The Conditional Release of Prisoners*
20 *Regulations 2016 (the Regulations).*

21 12. Regulation 14 provides:

22 *“For the purposes of determining the earliest possible conditional release date in*
23 *relation to a prisoner on a term of imprisonment for life, the circumstances set*
24 *out in Schedule 12 shall be considered.”*

26 13. The first two paragraphs of Schedule 12 of the *Regulations* (the Schedule) are as follows:

27 ***“Introduction***
28

1 1. (1) *Where a mandatory life sentence for murder is prescribed by any Law,*
2 *for the purposes of section 14 of the Law the aggravating and*
3 *extenuating circumstances are outlined in this schedule.*

4 (2) *For offences other than murder, for the purposes of section 14 of the*
5 *Law, the aggravating and extenuating circumstances may include all the*
6 *relevant circumstances of the offence and or the offender.*

7 (3) *For murder, the period shall be thirty years before the prisoner is*
8 *eligible for conditional release unless there are extenuating or*
9 *aggravating circumstances, exceptional in nature, in which case the*
10 *court may impose a shorter or longer period of incarceration*
11 *respectively;*

12
13 14. Paragraph 2 details aggravating and extenuating circumstances:

14
15 ***“Aggravating circumstances and extenuating circumstances***

16 2. (1) *Detailed consideration of aggravating or mitigating circumstances may*
17 *result in a minimum term of any length.*

18 (2) *Aggravating circumstances that may be relevant to the offence of murder*
19 *include –*

- 20 (a) *a significant degree of planning or premeditation;*
21 (b) *the fact that the victim was particularly vulnerable because*
22 *of age or disability;*
23 (c) *mental or physical suffering inflicted on the victim before*
24 *death,*
25 (d) *the abuse of a position of trust;*
26 (e) *the use of duress or threats against another person to*
27 *facilitate the commission of the offence;*
28 (f) *the fact that the victim was providing a public service or*
29 *performing a public duty;*
30 (g) *concealment, destruction or dismemberment of the body;*
31 (h) *previous convictions;*
32 (i) *abduction and sexual or sadistic conduct; and*
33 (j) *any other circumstances which may be considered relevant.*

34
35 (3) *Extenuating circumstances that may be relevant to the offence of murder*
36 *include –*

- 37 (a) *an intention to cause serious bodily harm rather than to kill;*
38 (b) *lack of premeditation;*

- 1 (c) *the fact that the offender suffered from any mental disorder*
2 *or mental disability which (although not falling within*
3 *section 185(1) of the Penal Code (2013 Revision)), lowered*
4 *the offender's degree of culpability;*
5 (d) *the fact that the offender was provoked (for example, by*
6 *prolonged stress);*
7 (e) *the fact that the offender acted to any extent in self-defence*
8 *or in fear of violence;*
9 (f) *a belief by the offender that the murder was an act of mercy;*
10 (g) *the age of the offender; and*
11 (h) *any other circumstances which may be considered relevant."*
12

13 15. The Schedule also provides the following regarding previous convictions and offences committed
14 on bail:

15 ***“Previous convictions***

- 16 3. (1) *In considering the seriousness of an offence committed by an offender*
17 *who has one or more previous convictions, the court must treat each*
18 *previous conviction as an aggravating circumstance if (in the case of*
19 *that conviction) the court considers that it can reasonably be so treated*
20 *having regard, in particular, to –*
21 *(a) the nature of the offence to which the conviction relates and its*
22 *relevance to the current offence; and*
23 *(b) the time that has elapsed since the conviction.*
24 (2) *Any reference in this schedule to a previous conviction is to be read as a*
25 *reference to a previous conviction by a court in the Cayman Islands.*
26 (3) *The court may treat a previous conviction by a court outside the Cayman*
27 *Islands as an aggravating circumstance in any case where the court*
28 *considers it appropriate to do so.*
29

30 ***Offences committed on Bail***

- 31 4. *In considering the seriousness of any offence committed while the*
32 *offender was on bail, the court must treat the fact that it was committed*
33 *in those circumstances as an aggravating circumstance.*
34

35 16. At paragraph 5 the Schedule states:

36 ***“Duty to give reasons***

- 37 5. (1) *Any court making an order pursuant to section 14 must state in open*
38 *court, in ordinary language, its reasons for deciding on the order made.”*



1
2 17. The Crown's submissions included a useful summary of these statutory provisions:

3 *"In short summary of the statutory provisions, sentence upon conviction for*
4 *murder shall be:*

- 5 • *Life imprisonment [s.182 Penal Code]*
- 6 • *In the case of a life sentence, when read as a whole, s.14 of the Act*

7 *requires the court to consider what is appropriate*

8 *"...to satisfy the requirements of retribution, deterrence and rehabilitation"*
9 *[s.14(1) of the Act, Ramoon v The Queen, Douglas v The Queen para 103]*

- 10 • *However, for murder, the period of incarceration before the*
11 *convicted person is eligible for consideration of conditional*
12 *release on licence is 30 years unless -*

- 13 o *There are extenuating or aggravating circumstances,*
14 *exceptional in nature, when the court may impose a shorter,*
15 *alternatively a longer period of incarceration [s.14(1) of the*
16 *Act, Sch 12 para 1(3) Regs]*

- 17 o *Examples of aggravating and mitigating circumstances,*
18 *detailed consideration of which may result in a minimum term*
19 *of any length are provided in Schedule 12 of the Regulations*
20 *[Sch12,para2Regs]*

- 21 o *Relevant previous convictions, as defined, and the fact that*
22 *the offender was on bail when the offence was committed*
23 *must be treated as an aggravating circumstance when*
24 *considering the seriousness of the offence [Sch 12, paras 3, 4*
25 *Regs]*

- 26 o *In specifying the minimum term, the sentencing judge must*
27 *state in open court in ordinary language his or her reasons*
28 *for deciding the order made [Sch 12 para 5 Regs] and shall*



1 *state the extenuating and/or aggravating circumstances as the*
2 *case may be [s.14(2) of the Act].*

3 *o Eligibility for conditional release on licence will be*
4 *considered by the Conditional Release Board after the*
5 *minimum period of incarceration has been served [s.7 of the*
6 *Act]. A prisoner sentenced to life imprisonment will not*
7 *necessarily, still less automatically be released once the*
8 *minimum term has been served.”*

9 **AUTHORITIES**

10 18. The Cayman Islands Court of Appeal (the “CICA”)¹ has considered several appeals wherein the
11 provisions of the Schedule have been examined. The following points are particularly relevant to
12 the sentencing exercise in connection with this Defendant:

13 (i) The lists of aggravating and extenuating circumstances in Schedule 12 paras 2(2) and
14 2(3) are non exhaustive²

15 (ii) The words ‘*Exceptional in nature*’ in regards to aggravating and extenuating
16 circumstances do not relate to the frequency with which a circumstance occurs but rather
17 to its seriousness.³ The factor must be of sufficient weight and seriousness so as to take
18 the case into the exceptional category and move the minimum period of incarceration
19 either upwards or downwards from the 30-year starting point in a life sentence for
20 murder. The non exhaustive lists of aggravating and extenuating circumstances in
21 Schedule 12, paras 2(2) and 2(3) respectively are, in themselves, examples of
22 circumstances exceptional in nature.

23 (iii) The use of an illegal firearm, although not specifically referred to in Schedule 12
24 paragraph 2(2) as an aggravating circumstance is generally likely to amount to such

¹ Ricketts and others v The Queen (Criminal Appeals Nos. 3, 7, 7, 10, 11 and 13 of 2018 - Judgment 2nd September 2019) and in Ramoon v The Queen, Douglas v The Queen (Criminal Appeals Nos. 34 and 35 of 2016 – Judgment 7th December 2018).

² Per Goldring P., Ricketts and others v The Queen at para 17

³ Ramoon v The Queen, Douglas v The Queen at paras 101, 105 and 106; Ricketts and ors v The Queen paras 17-19



1 under para 2(2)(j) ('any other circumstances which may be considered relevant').
2 In Ramoon v The Queen, Douglas v The Queen Goldring P stated:

3 *"109. In our view, whether or not in any given case the use of a particular*
4 *weapon, such as a firearm, amounts to an aggravating circumstance*
5 *must depend on all the circumstances of the case as a whole. That having*
6 *been said, it does seem to us that in most cases the pre-possession and*
7 *use of firearms is likely to amount to an aggravating feature."*

8 19. These principles have now been distilled into the Sentencing Guidelines of for Violent Offences.
9 Specifically at page 6, the Chief Justice states:

10 *"8. Where the offence was committed using a weapon such as a firearm, the use of*
11 *an unlicensed illegal firearm makes the offence more serious than, for*
12 *example, a spontaneous knife crime or drunken strangulation, since it*
13 *generally involves planning, premeditation and longer period of intent.*

14 *9. Any deliberate and calculating acquisition, storage and use of a firearm will*
15 *take it well beyond what would be considered to be regular, normal or routine.*
16 *In most cases it is likely to be an aggravating feature where the firearm was*
17 *brought to the scene with the intention of it being used.*

18 *10. If the weapon was illegal, the process through which it was acquired by the*
19 *offender may contribute to the assessment of whether there had been a*
20 *significant degree of planning or premeditation, one of the factors listed in*
21 *Schedule 12, or it may be a separate aggravating factor under 'any other*
22 *circumstances.*

23 *11. Where the murder took place in a public place where others were present and*
24 *put at risk, this is likely to aggravate the seriousness of the offence and to meet*
25 *the test of being exceptional in nature."*

26 SUMMARY OF FACTS

27 20. From this court's verdict judgment, the facts in brief are as follows:

- 1 (i) On the 12 of November 2019 the Police received a 911 call in the early evening and as a
2 result went to Miss Daisy Lane in West Bay. The body of the deceased, Shaquille Bush
3 was found at the scene.
- 4 (ii) 15 spent 9mm cartridge casings were recovered from the scene, as well as 3 expended
5 bullets and 5 bullet fragments. 3 bullets were subsequently recovered from the body of
6 the deceased.
- 7 (iii) The distribution of the fired cartridge casings found at the scene led to the conclusion
8 that the deceased was pursued by his attacker. There was no evidence of a second
9 weapon at the scene. The evidence led to the conclusion that the deceased was unarmed
10 at the time that he was shot.
- 11 (iv) The deceased had been shot several times to the shoulder, neck, back, head and left arm.
- 12 (v) Two of the deceased injuries were noted to have been inflicted from the back, one to the
13 back of the head and the other to the left chest. Each of these were accepted to have been
14 individually fatal, and each would have caused the immediate collapse and or death or
15 the deceased. Each of these was therefore inflicted where the deceased body was found.

16 **CROWN'S SUBMISSIONS**

- 17 21. Kings Counsel submits that there are a number of aggravating circumstances relevant to the
18 offence of murder in this case. These he set out as follows:
- 19 i The use of an unlicensed firearm to commit the murder
20 ii The Defendant's enlistment of the assistance of a serving police officer to intimidate a
21 witness into remaining silent and not implicate him in the murder in an attempt to evade
22 prosecution and sentence,
23 iii The Defendant has previous convictions.
24 iv This offence of murder was committed while the Defendant was on bail.
- 25 22. The Crown submitted that there were no extenuating circumstances for the Court's consideration.
- 26 23. Kings Counsel for the Defendant responded to each of these submissions and argued that there
27 were extenuating circumstances in this case to be considered by the Court.



1 24. It was submitted that the factors at Schedule 12 at 3(b) A 'lack of premeditation' that this
2 circumstance should be read in conjunction with 3(d) *the fact that the offender was provoked*.
3 Kings Counsel's argument was that if the defendant was the assailant, there is an explanation for
4 how an initially innocent expedition to Miss Daisy Lane quickly, without premeditation,
5 descended into fatal violence arising from the evidence of the prosecution witnesses.

6 COURT'S ANALYSIS

7 25. As Henderson J., pointed out a paragraph 10 of his Judgment in **R v. Ricketts (Tareek Ricardo)**

8 *“When deciding whether one or more aggravating circumstances are present, the*
9 *standard of proof is the same as that applied by the jury in reaching their verdict.*
10 *Before a circumstance can be viewed as aggravating, the Court must be sure of*
11 *its existence; the evidence must establish that beyond a reasonable doubt.”*
12

13 26. This is also the position under the sentencing scheme in England & Wales factors advanced by
14 the Crown to lift the starting point from the lowest category must be proved to the criminal
15 standard.⁴

16 27. As I consider the submissions on behalf of the Crown and for the Defendant, I bear in mind the
17 clear expression of the intention of the Legislative Assembly; the minimum term shall be thirty
18 (30) years, unless there are “*extenuating*” or “*aggravating*” circumstances which are exceptional
19 in nature. I also have in mind the following from the Guidelines:

20 *“Exceptional in nature*

21 *6. In determining whether the circumstances of a case, taken as a whole, were*
22 *‘exceptional in nature’ so as to justify a minimum term for an offence of*
23 *murder other than 30 years or whole life, the court will undertake a two-stage*
24 *analysis. The first step will be to decide whether there were circumstances*
25 *that were exceptional in nature. The second step will be to decide whether, in*
26 *light of any exceptional circumstances that had been found to exist, a*
27 *minimum term of 30 years would be arbitrary and disproportionate. In*
28 *considering the second step, the court will keep in mind the intent behind the*
29 *legislation which was the protection of the public.*

⁴ *R v Davies [2009] 1 Cr App R (S) 15*].

1 7. *In considering the first step, in order to be ‘exceptional’ the circumstances had*
2 *to be unusual or uncommon, although they do not need to be unprecedented*
3 *or very rare. The assessment should be holistic, taking into account all of the*
4 *circumstances. The test is not related to the frequency with which the*
5 *circumstances occur but to their seriousness. The question for the court is*
6 *whether the circumstances of the murder in question were so serious as to*
7 *mark out the nature of the case as exceptional and to justify imposing a longer*
8 *period of imprisonment.”*

9 **Aggravating circumstances**

10
11 *Previous Convictions*

12 28. Section 3(1) of Schedule 12 of the *Conditional Release of Prisoners Regulations* states:

13 “3. (1) *In considering the seriousness of an offence committed by an offender*
14 *who has one or more previous convictions, the court must treat each*
15 *previous conviction as an aggravating circumstance if (in the case of*
16 *that conviction) the court considers that it can reasonably be so treated*
17 *having regard, in particular, to –*
18 (i) *the nature of the offence to which the conviction relates and*
19 *its relevance to the current offence; and*
20 (ii) *the time that has elapsed since the conviction.”*

21
22 29. The Defendant has 32 previous convictions in the Summary Court. He was sentenced for these
23 on 10 separate occasions between 19th November 1993 and 8th February 2010. The Crown has
24 helpfully set out the more serious of these were as follows:

- 25 (i) 19.11.93 (1, 2) – Possession of an unlicensed firearm and threatening behaviour -
26 9 months imprisonment on each, consecutive (making 18 months in all),
27 suspended for 2 years;
- 28 (ii) 07.12.98 (12) – Assault Occasioning Actual Bodily Harm – 6 months’
29 imprisonment;
- 30 (iii) 07.12.98 (14) – Threatening violence – 3 months’ consecutive to the above;
- 31 (iv) 27.06.02 (19) – Escaping lawful custody – 1 week imprisonment 27.06.02 (20) –
32 Assaulting a police officer – 1 week imprisonment 27.06.02 (21) – Threatening



- 1 violence – 6 months, suspended for 2 years 27.06.02 (22) – Disorderly conduct at
2 a police station – fined \$100;
- 3 (v) 29.08.06 (29) – Assault Occasioning Actual Bodily Harm – fined \$350;
- 4 (vi) 08.02.10 (32) – Disorderly conduct – fined \$100.
- 5 30. Guided by para 3(1)(a) and (b) of the Regulations, it is for the court to determine whether any of
6 these convictions can reasonably be treated as an aggravating circumstance.
- 7 31. The Crown has very fairly highlighted the following relating to the defendant’s complete
8 conviction record: That Conviction 1 is perhaps the most serious of the defendant’s previous
9 convictions. It relates to possession of an unlicensed firearm, the general nature of which is
10 identical to count 2 of the present Indictment. However, a suspended sentence of imprisonment
11 was imposed for this offence some 29 years ago. Convictions 12 and 14 [ABH and Threatening
12 Violence] were sentenced nearly 24 years ago. Convictions 19-22, [Assaulting a Police Officer
13 and Escaping from Legal Custody etc.] over 20 years ago. Conviction 29 for ABH is now 16
14 years old. Even the most recent conviction (Conviction 32) for which the defendant was fined
15 was imposed is over 12 1/2 years old.
- 16 32. Counsel for the defence has submitted that “*it is not reasonable to treat any of the previous*
17 *convictions as an aggravating circumstance in light of the antiquity of the defendant’s*
18 *convictions.*” To emphasize this point counsel noted in particular that the most serious conviction
19 to which I have already referred being 29 years old was imposed when the defendant was himself
20 18 years old.
- 21 33. I have considered the entire antecedent history of the defendant. The only offence which to this
22 court’s mind could merit consideration as being relevant on this sentencing exercise is that which
23 has been referred to as Conviction 1, possession of an unlicensed firearm. The other offences are
24 minor in nature the last being an offence for which a fine was found to be appropriate.
- 25 34. This court is guided to treat each previous conviction as an aggravating circumstance after
26 consideration whether it can reasonably be so treated having regard, in particular, to both the
27 nature of the offence to which the conviction relates and its relevance to the current offence; and
28 the time that has elapsed since the conviction.
- 29 35. The circumstances regarding of the possession of the unlicensed firearm are not before this court.
30 In any event the manner of disposition of the offence, a suspended sentence, to this court’s mind,

1 itself speaks to the seriousness, or lack thereof, of the circumstances surrounding that offence.
2 The time which has elapsed since the conviction for this and the other offences cause me to
3 conclude that none of the defendant's previous convictions should not be treated as an
4 aggravating circumstance.

5 Offences Committed Whilst on Bail

6 36. Paragraph 4 of the Schedule:

7 *"4. In considering the seriousness of any offence committed while the offender was*
8 *on bail, the court must treat the fact that it was committed in those circumstances*
9 *as an aggravating circumstance."*

10 37. At the time that he murdered Shaquille Bush on 12 November 2019 the Defendant was on
11 conditional bail, granted to him on 8 November 2019, in relation to an arrest for assault
12 committed on the 14 October 2019. The defendant subsequently pleaded guilty to the offence of
13 Common Assault.

14 38. The Crown has submitted that the court must treat the fact that the offences for which the
15 defendant is being sentenced were committed while the Defendant was on bail as an aggravating
16 circumstance. Counsel for the defendant submitted that if the court were to find that this was an
17 aggravating circumstance, it is of negligible importance in the context of the offences for which
18 the defendant falls to be sentenced.

19 39. The court is constrained by the mandatory provision as to how this factor is to be considered.
20 The fact that the defendant was on conditional bail at the time that the offences for which he is to
21 be sentenced were committed is an aggravating circumstance. It is for the court to consider its
22 ultimate impact on the final sentence.

23 'Any other circumstances which may be considered relevant' as an aggravating circumstance: Auxiliary
24 Constable "CL".

25 40. The Crown submitted that *"As part of the overall circumstances of the murder, and in an attempt*
26 *to evade prosecution and sentence, the Defendant enlisted the assistance of CL"*, a serving police
27 officer, to intimidate the witness NE into remaining silent, thereby not implicating him in the
28 murder, in her police interview on 17 November 2019."

1 41. The evidence at trial from the witness NE was of being approached by CL while she was at the
2 Police Detention Centre on the morning before she was to be interviewed by the Police about her
3 knowledge of matters relevant to the deceased's murder.

4 *“He said the boss man say you must say nothing and hold it down that is the first*
5 *thing he said.” When she asked what he meant she stated he “got more*
6 *aggressive with me and said the boss man say you must say no comment to*
7 *everything” NE stated: “I understand the boss man he was referring to as*
8 *Devard.” The defendant.*

9
10 *She stated that she was shocked that a person “being a pro in such a dept of such*
11 *high rank had threatened me on behalf of Roger.” When she went to the*
12 *interview she had “lost all trust in the police force” and when questioned later*
13 *that morning by the Police she related that the effect of this approach by CL was*
14 *“I didn’t make any comment about the questions about the allegations being*
15 *made.”*

16 42. The action of having someone approach a witness is, as the Crown submitted, in itself, a serious
17 criminal offence. It is an attempt to interfere with the course of justice.

18 43. Counsel for the defendant conceded that the finding that CL did approach NE with the intention
19 of intimidating her at the behest of the defendant, that this was unarguably an aggravating
20 circumstance.

21 44. The Crown drew to the Court's attention the case of *Ramoon v The Queen, Douglas v The Queen*
22 wherein it was argued that the judge at first instance should have ignored the fact that, following
23 the fatal shooting, one of the Defendants there attempted to shoot a witness, but the gun jammed.
24 Goldring P observed that *‘it would have been wholly artificial for the judge simply to have*
25 *ignored this evidence in his overall assessment.*⁵

26 45. I find that this matter is relevant to the offence and the offender in all the circumstances and that
27 it can be properly taken into account on this sentencing exercise as an aggravating circumstance.

28

⁵ *Ramoon v The Queen, Douglas v The Queen* (Criminal Appeals Nos. 34 and 35 of 2016 – Judgment 7th December 2018) paragraph 113.



1 'Any other circumstances which may be considered relevant' – the Firearm

2 46. The Crown submitted that there were three separate aspects constituting aggravating
3 circumstances all surrounding the firearm in this case.

4 47. The first of these is the use of an unlicensed firearm to commit the murder. The Crown's case
5 was not one of premeditated murder. However it was that this defendant has access to and
6 possession of a firearm, a firearm which he used to murder the deceased. The Crown case is that
7 while there was no premeditation the evidence of the Defendat calling NE and telling her not to
8 come to Miss Daisy Lane at just about 5:01 pm some 15 minutes before the murder occurred is
9 evidence of anticipation on the part of the defendant that something was to occur. The Crown did
10 not put if further than that.

11 48. The second aspect with regard to the firearm is its Acquisition, storage and use of the firearm.
12 The Crown submit that the evidence that the gun had been used in 8 previous incidents prior to
13 the date of the murder shows that the gun was one that was in general criminal circulation. The
14 Crown submitted further that if the court accepts that there was no evidence of premeditation on
15 the part of the defendant it must follow that the defendant must have had the firearm used it in
16 his possession or under his control for the purposes of other serious crime and for use as and
17 when the situation required. The Crown submits that the court does not have to find that the
18 defendant was the effective owner of the gun. It is the defendant's seemingly ready access to the
19 firearm that is being emphasized.

20 49. The third point raised relating to the firearm was the use to which the firearm was put, essentially
21 the manner in which the firearm was used to commit the offence in this case. The Crown point to
22 the medical evidence presented by the Crown at trial and submit that from that evidene it was
23 clear that the firearm was used effectively to execute the deceased.

24 50. Counsel for the defendant emphasized the lack of premeditation on the facts of this case. He
25 submitted that the Crown's attempt to link the firearm to other gang violence was tenuous. In
26 this regard he invited the court to consider that all of the previous use of the firearm which may
27 have been linked to gang activity was associated with the Birch Tree Hill Gang and not
28 Logwoods or indeed the defendant. He submitted to the court that there was no evidence that the
29 defendant has had access to this gun and or stored it for some time before the incident.

1 51. Counsel reminded the court that the defendant did not dispute the manner of the deceased death,
2 that the deceased was in effect executed on the 12th of November 2019, only that the defendant
3 maintained that he was not the executioner.

4 52. I bear in mind the following from the CICA referred to at paragraph 18 above:

5 *“whether or not in any given case the use of a particular weapon, such as a*
6 *firearm, amounts to an aggravating circumstance must depend on all the*
7 *circumstances of the case as a whole. That having been said, it does seem to us*
8 *that in most cases the pre-possession and use of firearms is likely to amount to an*
9 *aggravating feature.”*

10 53. In the particular circumstances of this case, there is nothing before this court to signal that the use
11 of the firearm showed planning premeditation and a longer period of intent. There is no evidence
12 of a deliberate and calculating acquisition nor of the process by which it was acquired.

13 54. I find that the fact of prepossession and use of the firearm to commit the offence an aggravating
14 circumstance in this case. I find that the manner in which the firearm was used to commit the
15 offence was particularly gruesome.

16 55. As described in the evidence of Dr. Rouse and accepted by this court, the deceased was unarmed,
17 pursued through the yard at Miss Daisy Lane, shot five times and the last two of these not only
18 inflicted further extensive damage but were inflicted as the defendant lay unarmed and injured on
19 the Ground. The evidence accepted at trial was:

20 *“Shaquille received two gunshot wounds each of which would have been fatal in*
21 *their own right. Wound 2 penetrated Shaquille’s left chest, left lung, aorta and*
22 *spine and would, on the expert evidence have likely caused his immediate*
23 *collapse and/or death. Wound 1, which would have had similar consequences,*
24 *was a bullet to the back of his head, angled downwards, indicating that the*
25 *deceased was collapsing or had already collapsed, giving rise to the possible*
26 *inference that this was a coup de grace.”*

27 56. On the evidence, it is plain that Shaquille Bush, was unarmed (all 15 fired shell casings recovered
28 were fired by the same firearm) and executed in cold blood by the Defendant, who, from the

1 positioning of the recovered casings, pursued his unarmed victim around the area of the houses in
2 Miss Daisy Lane repeatedly firing at him.

3 57. The manner in which the firearm was used in these circumstances related to the offence and the
4 offender and constitutes an aggravating circumstance.

5 58. I do not find that there is sufficient before me to say that the storage and acquisition of the
6 firearm was such exceptional in nature so as to amount to an aggravating circumstance.

7 **Extenuating circumstances**

8 59. Counsel for the defendant argued that there was an extenuating circumstance in this case, that
9 two of the factors identified at paragraph 3 of Schedule 12 of the Regulations should be
10 considered together, these being factors 3(b) and 3 (d), A 'lack of premeditation.' It is submitted
11 should be read in conjunction with 3(d) *the fact that the offender was provoked*

12 60. The submission advanced was that it was clear that something said may have tipped the
13 defendant over between 5:01 and 5:15 on the evening of the 12 of November 2019. Counsel
14 argued that the lack of evidence of premeditation strengthened this submission. He submitted
15 that the court was entitled in its consideration of all of the circumstances of the case to find that
16 the defendant may have been provoked to act. Counsel was careful to state that these were not
17 the defendant's instructions however that he was constrained to make the submission given his
18 consideration of the evidence presented and accepted by the court.

19 61. Counsel for the Crown did not agree with this submission. Counsel submitted that neither
20 individually nor taken together could the court consider these as extenuating circumstances.
21 Counsel submitted that although there was a lack of premeditation that this did not mean that
22 there was no premeditation. He reminded the court that on the Crown's case the call to NE as she
23 approached as driving to MDL to turn around and not approach was at approx. 5:01 and the
24 murder at approx. 5:15pm.

25 62. Counsel asserted that there was no basis upon which the court could consider provocation as an
26 extenuating circumstance. While counsel for the defendant had pointed to matters related by the
27 witness COE which she testified were said to her by the defendant and accepted by the Court as
28 being said, this was never part of the defence case at trial. Counsel urged the court to consider



1 that what COE said was what the def had said to her no more. The defendant never asserted the
2 truth of any of those matters that could be considered as contributing to provocation as a defence.

3 CONCLUSION

4 63. I find that there are no extenuating circumstances in this case. While there was no evidence of
5 extensive preplanning before the offence, on the evidence there was an interval wherein the
6 defendant seemed to have apprehended that something was going to happen at Miss Daisy Lane.
7 He did not want his girlfriend and daughter there.

8 64. This court cannot consider what is, in essence, speculative provocation, as being an extenuating
9 circumstance. This was never advanced by this defendant at who during the course of his trial
10 put the Crown to strict proof of the offences. This is a defendant who was approached time and
11 again by the police to seek to elicit information from him with regard to his knowledge and/or
12 involvement in the murder. The fact of his silence was one of the factors considered by this court
13 as bolstering the Crown's evidence as per Section 148 of the Police Law. The defendant cannot
14 now without any seek to have this matter be considered an advantage as an extenuating
15 circumstance.

16 65. When I consider all the matters exceptional in nature which has amounted to aggravating
17 circumstances in this case, an increase in the sentence from the 30 years specified in the Law is
18 merited. I find that, in light of these, a minimum term of 30 years would be arbitrary and
19 disproportionate.

20 66. I find that the minimum term of 33 years' imprisonment for murder is appropriate to satisfy the
21 legislative requirements of retribution and deterrence and rehabilitation.

22 67. For the offence of possession of a firearm the sentence of this court is 10 years imprisonment.
23 This sentence will run concurrent to the minimum term for murder.

24 68. The 33 years' imprisonment will start from the date of the defendant's conviction. The defendant
25 was on remand awaiting trial from the 17th of June 2021. The defendant was also in custody for a
26 short period after his initial arrest in connection with this offence in November 2019, from the
27 13th -17th November 2019. Both these periods which amount to 541 days are to be taken into
28 account and deducted from the minimum term of 33 years.



1 69. This is the term to be used for the purposes of determining the earliest possible conditional
2 release date in relation to this defendant.

3 **Dated this 8th day of December 2022.**

4

5

6 **Justice Marlene I. Carter**

7 **Judge of the Grand Court (Ag.)**