



Neutral Citation Number: [2025] CICA (Crim) 4

**IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS  
FROM THE GRAND COURT CRIMINAL DIVISION**

**CRIMINAL APPEAL 9/2022**

**Ind# 0038/2021**

**SC# 1067/2021**

**BETWEEN**

**ROGER DEWARD BUSH**

**Appellant**

**AND**

**HIS MAJESTY THE KING**

**Respondent**

Before:

The Rt Hon Sir John Goldring, President

The Hon Sir Richard Field, Justice of Appeal

The Hon Sir Michael Birt, Justice of Appeal

Appearances:

Mr Oliver Blunt, KC instructed by Ms Halliday-Davis of Brady Law for the Appellant

Ms Sarah Lewis of the Office of Public Prosecutions for the Respondent

Date of Hearing: 01 May 2025

Judgment Delivered: 1 August 2025

**The President:**

**Introduction**

1. On 27 September 2022, following a judge-alone trial before Justice Carter (Acting), the Applicant was convicted of murder, contrary to section 181 of the Penal Code (2019 Revision),

count 1 of the indictment, and possession of an unlicensed firearm, contrary to section 15(1) and 15(5) of the Firearms Act (2008 Revision), count 2 of the indictment. He was sentenced to life imprisonment with a minimum term of 33 years' imprisonment on count 1, and 10-years' imprisonment concurrent on count 2. He now seeks leave to appeal against conviction.

2. Mr Oliver Blunt KC and Ms Lee Halliday-Davis represented the Applicant, Ms Sarah Lewis the Respondent. They had all appeared below, Ms Lewis having been led by Mr Andrew Radcliffe KC.

### **The prosecution case**

3. 89 Miss Daisy Lane in West Bay was the home among others, of the Applicant and his son Shaquille Bush. At some time before 17.27.29 on 12 November 2019 Shaquille Bush was repeatedly shot and killed at that address. It was not disputed that the culprit was guilty of murder. The issue was whether, as the prosecution alleged, it was the Applicant. Central to the prosecution case against the Applicant was the evidence of two young women, Nikkieta Ebanks (NE), the girlfriend of the Applicant and the mother of Bella, and her cousin, Candice Orrett-Ebanks (COE). The background to the murder was said to be sexual jealousy: the Applicant's belief that Shaquille Bush was Bella's father.

### **Shaquille Bush**

4. Shaquille Bush was born on 24 February 1995. He was the son of the Applicant by a previous relationship. He lived at Miss Daisy Lane with the Applicant and others. There was evidence that Shaquille Bush was a violent man who was familiar with guns. On 10 July 2017 there was an incident during which Shaquille Bush threatened NE with a shotgun. NE knew of incidents at Miss Daisy Lane when Shaquille Bush was involved in the exchange of gunfire. He was barred from there for a time.
5. NE heard rumours of a number of violent incidents between Shaquille Bush and a man called Joshua Ebanks, known as 'Patchie' or 'JE.' One of those incidents involved JE pulling a gun on Shaquille Bush, while Shaquille Bush tried to stab JE with a knife. The police had intelligence of tension between Shaquille Bush and JE and various incidents between them. Such incidents took place shortly before the murder. At the time of the murder, JE was not in custody. He was allegedly associated with the Birch Tree Hill Fraternity or gang, not Logwoods, the gang with

which Shaquille Bush was allegedly associated. We return to the topic of JE when considering the grounds of appeal.

6. NE described an up and down relationship between Shaquille and the Applicant. She said that after the July 2017 incident, she was not aware of any issues between them. On the day of the murder, their relationship appeared to be harmonious.

### **The Applicant**

7. The Applicant was a drug dealer. He had hydroponic equipment at Miss Daisy Lane to grow ganja. He was repeatedly unfaithful to NE. There was evidence he had been violent towards her.

### **The shooting**

8. Shaquille Bush was shot at multiple times. 15 Luger cartridges were recovered from the area outside Miss Daisy Lane. Their distribution suggested the gunman chased and fired at Shaquille Bush until he was brought to the ground. During the chase he lost both shoes. The fatal injuries were a shot to the left chest and one to the back of the head. The shot to the back of the head was at an angle which suggested that at the time Shaquille Bush was collapsing or had already collapsed. The pathologist spoke of it in terms of a *coup de grace*.
9. This was not the first time the firearm had been used to cause or attempt to cause death. It has been used on nine occasions between 26 December 2016 and 12 November 2019, in cases including murder, attempted murder and robbery. There was evidence that many of those responsible for its use were associated with the Birch Tree Hill Fraternity, (with which JE was associated). The prosecution suggested it was a gun for hire. We shall return to this topic when considering the grounds of appeal.

### **The witness evidence around the time of the murder**

10. Fitzroy Smith lived at Miss Daisy Lane. At about 16.50 he was outside when he heard Shaquille Bush say, “*all Jamaicans should leave the yard in 10 minutes*”. When Michael Bush asked why his tenants should leave, Shaquille Bush said that “*he don’t [sic] care about any tenants and that all Jamaicans should left from ya [sic]*.” Fitzroy Smith left with his wife. As they left Miss Daisy Lane, Fitzroy Smith saw Moises Bush (with his girlfriend) in his car in Miss Daisy Lane.

It was 17.18: see the CCTV/telephone schedule. As they walked away, Fitzroy Smith heard 'multiple loud explosions sounding like gunshots.' He put the time as 'around the period of 5PM,' although the arrival of Moises Bush at 17.18 suggests it may have been a little later. Fitzroy Smith did not say he saw the Applicant at Miss Daisy Lane that afternoon.

11. Yadela Cisnero lived at the back of Miss Daisy Lane. She returned home at about 17.00. She heard quarrelling and cursing from the Daisy Lane premises. Between 17.08 and 17.28 Ms Cisnero was on the telephone. She said that during the first 10-15 minutes she heard what sounded like gunshots from the Daisy Lane premises.
12. Teddy Robinson lived close to Miss Daisy Lane. He was in his kitchen. At about 17.20 he heard what he estimated were five explosions, with three more a few seconds later. Mr Robinson drove off. As he did so, two Jamaicans jumped into the back of his car.
13. At shortly after 17.30 the police arrived at Miss Daisy Lane. Shaquille Bush's dead body was lying there. He appeared to have some Ganja in his right hand. The Applicant was not there, although his Honda was still parked some 50 metres from the house.

#### **The CCTV and telephone evidence around the time of the murder**

14. At 17.01 NE and the Applicant spoke for 1 minute 46 seconds. The Applicant was at Miss Daisy Lane. NE, in her Kia, was on her way there. Immediately following the call, instead of going to Miss Daisy Lane, the Kia performed a 360 degree turn and drove in the opposite direction. At 17.27.29 Michael Bush telephoned the Department of Public Safety Communications and reported that his cousin Shaquille Bush had been shot. Some 27 seconds before (at 17.17), the Applicant had telephoned NE. They spoke for 34 seconds. They were speaking at the time Michael Bush was reporting the shooting. The cell site through which the Applicant's call went was Northwest Point, the same cell site as during their previous call. At 17.27.18 NE telephoned the Applicant. They did not speak. The Applicant's phone was still utilising Northwest Point cell site. At 17.29 NE again telephoned the Applicant. The duration of the call is recorded as 00.00.03. The schedule suggests (seemingly erroneously) that the Applicant's call went through the Papagallo cell site, the Applicant's through Northwest Point. At 17.30 the Applicant again called NE. They spoke for 18 seconds, the Applicant's call still going through West Point, NE's through Papagallo. At 17.32 the Applicant yet again called NE. His call again went through West Point, however by then NE's call went through a cell site called West Bay. NE was on the move. They spoke for 30 seconds. The last time the Applicant's phone was used

was at 17.37, when NE called the Applicant. By this time, both phones were using the Northwest cell site.

15. The last time Shaquille Bush's phone was used was at 16.49.
16. A total of 6 vehicles was seen to leave Miss Daisy Lane after 17.18. Only three of the vehicles could be traced and identified. The unidentified vehicles left at 17.21, 17.27 and 17.37. One of the vehicles which could be identified leaving was that of Moises Bush. It left at 17.27. We return to this topic below.

**Nickita Ebanks: some general observations**

17. NE began a relationship with the Applicant in 2005. She was 16. He was 30. Bella was born in October 2012 when they were living in England. They returned to the Cayman Islands in July 2017.
18. It was a turbulent relationship. As we have indicated, NE spoke of the Applicant being repeatedly unfaithful. She had on her phone photographs of two young women (Felicia and Angelica Brown) with whom the Applicant was said to have been unfaithful. She at first denied she had the photographs on her phone. She also denied having a photograph of JE on her phone. On 14 October 2019 the Applicant assaulted NE in the presence of Bella. It resulted in a restraining order being taken out against him. NE said that following this incident the unfounded rumours that Shaquille Bush was Bella's father began. After the October incident, the Applicant told her 'I must go and tell my man what he did and let him come and defend me.' The reference to 'my man,' suggested the prosecution, was to Shaquille Bush. The defence suggested the reference was to someone called Carlos Russell, known as Screechie. After the assault on 14 October, NE looked for a new boyfriend. She referred to the Applicant as a waste of space. There were WhatsApp messages which stated, 'I go bun him 2 death' and 'I hate him with perfect hatred.' It was an aspect of the defence case that NE's hatred of the Applicant led to her fabricating an account that he admitted to killing Shaquille Bush.
19. NE did not agree that the Applicant gave no credence to the rumours about Bella's paternity. She did agree that he never asked her directly if the rumours were true. NE rejected the defence suggestion that the evidence she gave about the rumours was part of a fictitious narrative 'where you and those supporting you are seeking to suggest that it is all because of rumour why Shaq

got shot.’ NE said, ‘I would hope he knew it was rubbish. That it is not the truth.’ She said she did not recall telling the police that the Applicant was responsible for these rumours.

#### **Candice Orrett-Ebanks: some general observations**

20. COE knew Shaquille Bush and regarded him as a friend. She knew the Applicant as ‘Deward (his middle name).’ They were not on speaking terms. She had not spoken to NE from the time she returned to Cayman from England in 2017. The relationship had broken down because COE had sent indecent images of NE. (There was also some evidence of NE having sent some indecent images of COE). When in early November 2019 NE called her, COE said it was ‘out of the blue.’ The Applicant also contacted her at that time. As we understand it, this was at the time NE and the Applicant were apart following the incident between them on 14 October 2019. The Applicant wanted COE to persuade NE to allow the Applicant to speak to her.
21. COE had convictions for the consumption and possession of ganga. She had pleaded guilty. She denied that she sold drugs on behalf of the Applicant.

#### **The day before the murder: 11 November 2019**

##### *NE’s evidence*

22. The Applicant and NE had become reconciled. On 11 November 2019 they were out together and saw Shaquille Bush at the Everglo Bar. NE agreed they talked, that the Applicant gave Shaquille Bush a ‘draw of weed.’ She said that after the encounter she and the Applicant went to a secluded beach in Bodden Town. The Applicant asked NE for her phone. He asked her for Shaquille Bush’s number and called it. He told her that she had to ask Shaquille Bush what he thinks about the rumours. When she did so Shaquille Bush swore and said he did not care about that and hung up. There was telephone evidence that NE’s phone called Shaquille Bush that night.
23. NE said that when they went home that evening, the Applicant was ‘sobbing uncontrollably on my chest.’ NE rejected defence suggestions to the effect that the events after they left the Everglo Bar did not happen; also, that her account of the Applicant sobbing uncontrollably on her chest was an invention.

#### **The day of the murder: 12 November 2019**

*NE's evidence*

24. NE and the Applicant spent the following day together. The Applicant was in his Honda. NE was in her Kia. NE said the Applicant was still upset. He asked her to look up DNA centres in Cayman. NE said she called Phoenix Health Services. The telephone evidence bore that out. NE said that when a Jamaican national answered, the Applicant told her not to tell the truth about taking a paternity test. He said a Jamaican national could take a bribe. NE refuted the suggestion that it was she, not the Applicant who was seeking out a DNA test in order to demonstrate to the Applicant that he was the father.

*The Applicant and NE go their separate ways*

25. There came a time during the late afternoon when the Applicant and NE separated. By 16.49 the Honda was on Hell Road returning to Miss Daisy Lane. It was suggested to NE that she knew the Applicant had drug business to do at Miss Daisy Lane. The Applicant went on to Miss Daisy Lane and parked his Honda. NE, having stopped on her way, finally at a store called Pop-A-Top was going to Miss Daisy Lane when the Applicant called. That appears to have been a call at 17.01 when they spoke for 1 minute 41 seconds. NE said the Applicant told her not to come down to Miss Daisy Lane but to go to her cousin, COE. He did not say why. She did not agree that she had not asked why because she knew he had drug business to transact. At 17.04 NE left a voicemail message on COE's phone. At 17.05 COE called her back and they spoke for 24 seconds. NE drove to COE's address in Mt Pleasant. She said she was not there long.

*Double OO Road*

26. NE left Mount Pleasant because the Applicant phoned her. 'He wanted to me go to Double O Road [OO]...because of how his tone of voice was I know he was angry or agitated so I left right away because I did not know what the issue was.' This would appear to be the call at 17.17. It lasted 34 seconds. According to NE the Applicant also said (judgment [91]):

*"When he summoned me, he said where he wanted me to collect him and 'where I am now' are you coming to get me, he something about beach, that if I wanted to go to carry the baby to the beach. This was all the same phone call when he was telling me to come and pick him up. [On] the call he was very aggressive."*

27. At 17.33 NE's Kia can be seen on CCTV turning into West Church Street from Mount Pleasant Road, going away from COE's home and heading in the general direction of Double O road. By 17.35 it is on Hell Road, not far from Double O road and going towards it.
28. NE said she drove into Double O road and turned so as to face Hell Road. It is clear from the map (exhibit JD/1A/11), that Miss Daisy Lane was not far away. At 17.37 NE's phone contacted the Applicant's. The duration of the call was recorded as zero. As we have said, both phones were now using the same cell site. As we have said, this was the last time the Applicant's phone was used. It has never been recovered.
29. NE went on to say (judgment [93]):
- “As I saw him approach OO Drive [sic] I drove down to meet him. I saw him coming from the bushes from across the road...he was wearing the same clothes he had on prior that day but the Bob Marley shirt was wrapped around his head...When I first saw him he was very frantic and aggressive...he was not calm. Far from calm. He said you want to carry the baby to the beach. Let's go to the fucking beach...He got in...He was very sweaty. This did not seem normal to me...”*
30. According to [333] of the judgment, there was evidence that Detective Sergeant These, one of the officers who arrived at Miss Daisy Lane following Michael Bush's call, saw what appeared to be a person crossing from the area close to Miss Daisy Lane going towards OO Road. The Kia left OO Road shortly after.

*Throwing clothing away*

31. The CCTV evidence enabled NE's and the Applicant's movements then to be followed. The Kia drove along Hell Road, past Miss Daisy Lane, on towards the beach area in West Bay. By 17.46 it was on Town Hall Road, heading in the direction of the Alfresco Restaurant.
32. NE said the Applicant told her to turn off the road to a dirt track, which she did. She stopped the Kia and the Applicant jumped out of the car, and ran to the Iron shore. As the judge put it, (judgment [95]) the Applicant:
- “...got out and ran to the iron shore and took off all of his clothing and threw it into the water. He threw it into the ocean. He did not explain why he was doing it. I could not speak to him. He ran all the way to the iron shore. I was in the car with the baby at that time...  
he did not explain he just said I must not ask him any questions. I asked him why did just do what he did for [sic]...I pressed him as to why. He said “don't*

*ask me any questions. ' He say "let's go to the beach, you say you want to go to the beach. let's go the beach baby."*

33. It was put to NE that the Applicant never got out of the car or stripped off his clothes. NE said he had; that he had put on a pair of her pink trousers. She also rejected the suggestion that they went there for the Applicant to collect a stash of drugs. On hearing police sirens, NE asked the Applicant what had happened. He did not reply. He said they were going to NE's mother's place in Northward.

34. At 17.59 the Kia left Boggy Sands Road and went towards Georgetown.

*The three phone calls*

*The Applicant runs off*

35. On their way NE said she received three phone calls about Shaquille Bush's shooting. She said she did not know whether the Applicant could hear what was said during the calls. NE said the first caller blamed JE for the shooting, the second said that Jamaicans had done it and the third said they heard that the Applicant (referred to as Deward), had shot Shaquille. She said she did not know who that caller was. NE said she felt the Applicant heard the third conversation. She described him grabbing the door handle of the car trying to open it. He told her to stop, which she did. He ran off across the road. This was at 18.18/19. NE said that when she was not able to find the Applicant, she drove to her mother's home on Carnegie Way in Northward and later met up with COE.

36. The schedule reveals three calls between 18.11 and 18.13. They all originated from 'Shanae.' The first was a WhatsApp chat. It consisted of 'How was your yesterday.' The second and third calls went to voicemail. As the Applicant pointed out, there were no calls consistent with NE's account. As we set out below, Mr Blunt submitted NE was lying about the three calls. This was, he submitted, a glaring loophole in her account which the judge failed adequately to confront.

37. NE said that when the Applicant left the car, he took his phone and wallet with him. The evidence was that she handed the wallet to Detective Constable DC Sutton on 14 November 2019, telling him the Applicant had left it in the car. Mr Blunt submitted that was another lie.

### **The evening of the day of the murder: 12 November 2019**

#### **NE's and COE's evidence**

*CICA (Crim) 19 of 2022 – Roger Deward Bush v His Majesty the King*

38. On the evening of 12 November 2019 NE and COE met up. COE was driving the car. Each gave evidence of what happened. We set out below a summary of the account each gave. In doing so, we have sought to describe our understanding of the different locations spoken of by NE and COE in a consistent manner.

### **Hurley's pharmacy**

#### *NE's evidence*

39. NE said that when she and COE were together in the car, the Applicant called. He told her to meet at the Royal Bank of Canada. In a second call, he said there was 'too much [sic] police on the road' and to meet at Hurley's pharmacy. When they arrived, NE said the Applicant was getting out of a silver Honda Accord. He had changed his clothes. He had 'like a silver chrome handgun.' It was tucked into his waist. NE said he got into the vehicle and lay down on the back seat.

#### *COE's evidence*

40. COE said the Applicant telephoned NE when they were parked up. After the call they drove to what, as we understand it, was the area by Hurley's pharmacy. A silver Honda pulled up. The Applicant got out. COE 'noticed he had a little bath rag in his hands and that he had something in his waist and a towel being held in front of it.' She said (judgment [209]):

*"I assumed it was a gun. I can't remember if I saw the gun in the car or before coming in the car. I had suspicions of what it was."*

### **Prospect Point**

#### *NE's evidence*

41. NE said the Applicant directed COE (who was driving) to go to Prospect Point. At Prospect Point he got out of the vehicle. He also instructed NE also to get out 'where he could see her.' He went into the water for a couple of minutes and returned to the car.

#### *COE's evidence*

42. COE said that the Applicant directed her to a road left of Grand Harbour. As we understand it, this was the area NE referred to Prospect Point. She said she stayed in the car. The Applicant and NE got out. The Applicant went straight in towards the seaside by the water. It was very dark. She could not see what the Applicant was doing.

### **Chrissie Tomlinson Hospital**

#### *NE's evidence*

43. NE said that the Applicant directed COE to stop at the car park of what was the Chrissie Tomlinson Hospital. COE got out. The Applicant asked NE what she had heard about Shaquille Bush's death. When she told him that she had heard it was Jamaicans, JE and the Applicant he 'was kind of hysterical and crying.'
44. When COE had returned to the car, NE said the Applicant directed her to drive to the address of COE's boyfriend ('Eric') in Mount Pleasant. She said that during the journey the Applicant was lying on the back seat, occasionally sitting up and looking.

#### *COE's evidence*

45. The Applicant directed COE to go to the parking lot of the Chrissie Tomlinson Hospital where they stopped. She did not want to hear what the Applicant had to say. She got out, fetched some drink and sat on a wall. When she got back into the car the Applicant directed her to her boyfriend's address. She said she noticed the Applicant had a handgun with him on the back seat. She described him as 'kind of all over the place. He was kind of lying down like leaning over in the back, kind of slouching.' She rejected the defence suggestion that the Applicant did not have a gun with him that night. She said she saw it on several occasions.

### **The events at Mount Pleasant**

#### *NE's evidence*

46. Once at Mount Pleasant, NE said the Applicant removed their phones. They went to a bedroom and talked (judgment [111]):

*"He basically said that he had to teach Shaquille a lesson. He was not calm at this stage. He was very aggressive. I started to cry and he asked me why I crying [sic] for my man for. I interpreted that as being a reference to*

*Shaquille- a reference to Shaq being my man. He said that when he reached down to MDL [Miss Daisy Lane] that Shaquille had licked him in his head with a piece of metal pipe...he did not say what it was he had to teach him or what lesson it was. He just said he had to teach Shaq a lesson and that Shaq was begging for his life and Mike Bush was begging for his life as well. He said that as he reached into MDL that Shaq approached him and licked him in his head with a piece of metal pipe. He said that he went to his house and Shaq followed him. He said that Shaq was at every door and he tried to exit from different doors and every door that he tried to exit Shaq was at that specific door. He said that Shaq had a gun on him and he had to do what he had to do...that Roger [the Applicant] had to do what he had to do. He said he was struck in the head with [the] metal pipe as soon as he reached MDL. He did not say about different times about being struck with anything else. He told me another time, some time after, that he was struck with a ratchet that it was a ratchet that he [SB] had, not a gun. He did not say anything about how it came to be that Shaq was begging for his life. He did not say what happened to Shaq. He said that he made Moises [Moises Bush] get rid of the thing. He did not describe to me how Shaq ended up dead only that he had to teach him a lesson. ...can you imagine baby that Mike Bush was begging for his life.”*

47. As we have said, Moises Bush was the driver of the Toyota Camry which drove into Miss Daisy Lane at 17.18. It left Miss Daisy Lane at 17.27. It was the prosecution case that it did so with the murder weapon. Unsurprisingly, the prosecution submitted this was powerful evidence supporting NE’s account.

48. NE said that after what she described as a short conversation, she believed the Applicant went out and spoke to COE.

*COE’s evidence*

49. The Applicant took their phones. Although the judgment (at [213]), states he did not say why, as Mr Blunt pointed out by reference to the transcript, he said it was to see which Jamaicans were being talked to: whether NE was seeing another man.

50. COE said she left the house to go to the store. When she returned, NE and the Applicant were in the living room. They eventually went to a back bedroom. They spoke to each other for a brief moment. The Applicant came out and spoke to her in the living room. She said (judgment [215-7]):

*“...[the Applicant] looked like, I don’t know if he was scared or true sadness, but I know he was crying. I just start [sic] to talk to him about God. ...He did not go into detail with me at first. The topic he was basically telling me, the first story, was he did not mean to do it. The topic was, you know, him trying to tell me that his life was in jeopardy because Shaquille was licking him over the head. We were talking about Shaquille. It was many stories-never the same story that night from him. [The] first story was that Shaquille was trying to shoot Bella and then he told me that Shaquille was trying to shoot him and then he said that he had a pocket knife, that Shaquille had a pocket knife. One minute he was trying to shoot him and the next minute Shaquille had a pocket knife. But I think the first thing I had asked him is you would want to make his way with Janet to speak to her because they’d shared a child he kept saying no he can’t do that he doesn’t want to do that and I said why and he said because Janet knows me [sic] ... He said first...that Shaquille hit him on the head with a piece of pipe then he said he did that as soon as he came out of the car and then the story switch to, well, Shaquille had a gun, and then the story switch to, well, no, he had a pocket knife and then the last story...was that Shaquille was threatening to kill Bella.”*

51. As Mr Blunt pointed out by reference to the transcript, the judge did not mention that COE told the police that the Applicant’s first account was that Jamaicans had done it. COE said that ‘he was saying a lot of things that didn’t make sense at the time.’ (see page 688 of the transcript)
  
52. As the judge put it (some punctuation added) ([218-220]):
 

*“COE stated she did not know what to make of it. She stated that the defendant told her that he had made his way inside the house to be able to finally get free from Shaquille. COE said Roger Bush continued:*

*“I went from door to door and he was at the front door and I go to the back and he at the back and I go back to the front and he’s at the front and I could not get away from him...  
 ...[he had to] teach him a lesson because he could not hear, he just could not listen...  
 He...make it seem like when he came out of his house that Shaquille started firing shots at him. He said he fired at Shaquille and I asked him then, well was it quick. He said as quick as could be. He said it was quick. It was fast. And then I said, do you think he suffered and he paused and stop and look at me and said, no, no, he did not. He said that Mikey, Mike Bush was begging for his life. Shaquille, he did not say Shaquille said anything. He said that Mike Bush was there but they left right before the incident happened.”*
  
53. COE rejected the suggestion the account she gave was fabricated. ‘She could not forget the important parts’ of what the Applicant told her. She ‘could always remember the truth.’ She

insisted that she was not recounting what NE had told her. She said she had told the police the Applicant had threatened Bella.

54. COE said that during the night the Applicant (judgment [221]):

*“...just kept on back and forth looking out of the windows, keeping check on me and making sure that NE [was] ...in the room and making sure Eric was there. He kept telling me that if anyone came in don't let them in.”*

55. She agreed that the Applicant was ‘paranoid’ about Jamaicans, that he was worried that he might be set up to be shot by them.

### **The day after the murder: 13 November 2019**

#### *NE's evidence*

56. The next morning NE said the Applicant threatened her that if she told anyone what he had said, ‘he would wipe out my whole family,’ that ‘he has people on the street and he has people in the [police force].’ The Applicant told COE to take NE home. Eric could not accompany them; if they had any ‘smart ideas he would take out Eric.’

57. NE said (judgment [114]):

*“In light of what he told me the night I was talking to him privately I did not go to the police. I thought about it. I decided not to because I was in fear, especially from what I just found out. And he had a gun on him as well. What I found out, I am referring to was that he had killed Shaq.”*

#### *COE's evidence*

58. COE said the Applicant used her phone. She heard his side of the conversation. She ‘guessed’ he was asking ‘if everything was clear at Logwoods; if Mike had dealt with the thing.’ She then drove the Applicant to Miss Daisy Lane and went home.

### **NE and the police**

#### *Sergeant Southern and Detective Sergeant These*

59. NE was spoken to by Sergeant Southern on 13 and 14 November 2019. Sergeant Southern’s notes of what was said were disclosed to the defence. Her account, which the police did not accept, did not implicate the Applicant. NE described it as partial. She disputed some of

Sergeant Southern's notes of what was said. She denied saying things which the officers could not have known unless she had told them.

60. On 16 November 2019 NE was arrested on suspicion of conspiracy to murder Shaquille Bush and taken to a detention centre. She was interviewed next day. Before the interview two prison officers came into her cell. When one had left, NE said the other, referred to as CL, told her (judgment [117]):

*“...the boss man say you must say nothing and hold it down that is the first thing he said. When she asked what he had said he “got more aggressive with me and said the boss man say you must say no comment to everything...I understand the boss man he was referring to [was]...[the Applicant].”*

61. Since the trial, CL has been convicted of corruption in respect of this matter.
62. NE made no comment when interviewed on 17 November 2019. She said she had intended to tell the police everything, but did not after CL spoke to her. She said she trusted no-one in the police force. In their questions the interviewing officers made it plain that they did not believe her account.
63. One of the interviewing officers was Detective Sergeant These. He denied the interview was hostile or that any pressure was put on NE, something the defence disputed.

#### **Events when the Applicant and NE were on bail**

64. Both the Applicant and NE were granted bail. NE said the Applicant repeated his threat to ‘take out me and my mom.’ On another occasion (9 December 2019) she said she saw the Applicant talk to CL. Afterwards the Applicant told her that CL wanted him to ‘take you out because he feel like you going to talk.’ She assured him she would not.
65. On 13 December 2019, the day before Shaquille Bush's funeral, NE described the Applicant waking up at about 3.00AM, grabbing her by the face and accusing her and ‘Screechie’ (Carlos Russell) of killing his son Shaquille.
66. NE said the Applicant forced her to go to the funeral. She said he was suspicious of COE and ‘wanted to take her out because she was acting funny.’

67. NE decided to leave Cayman. Without telling the Applicant she bought tickets to fly to England. On 16 December 2019, when she and Bella were at the airport, the Applicant tried to stop her. However, there were subsequent affectionate communications between them. NE never accused him of having killed his son.
68. On 9 January 2020 NE and Bella returned to her mother's in Cayman. The Applicant complained that her leaving had made him look like a murderer. She had to make him 'look good.' NE said she felt she had no other choice but to move into Miss Daisy Lane. She said that the Applicant did not mention Shaquille Bush. She finally left the Applicant on 28 May 2020.

*Seeing guns at Miss Daisy Lane*

69. NE said that when at Miss Daisy Lane she saw the Applicant and two other residents with 'a table full of handguns and machine guns. The Applicant told her she must say nothing. He threatened her mother, her cousin and family members.

**NE's further contact with the police**

*Inspector Oremule*

70. Inspector Oremule met NE on 16, 17 and 24 July 2020. He made notes which were exhibited. On 16 July, Inspector Oremule said that NE drove him to the dock at South Sound. She asked, 'what the organisation can do for her if she assists with the Shaq murder case.' NE denied saying this.
71. On 17 July 2020 COE was also present. Inspector Oremule said they presented him with a piece of paper with a list of requests. They included to be able to stay on the island in a gated community, financial assistance, immunity, anonymity and the need for a contract 'before statement.' NE denied giving Inspector Oremule a piece of paper with demands on it.
72. Inspector Oremule's notes recorded NE as saying that the Applicant never admitted to the shooting. There was nothing in them to suggest that NE told him about any meeting outside Hurley's pharmacy at which COE was present.
73. The notes recorded NE as saying, 'she said she sees guns, not on the day of the incident...but on the day she left him.' Mr Blunt submitted that was quite contrary to her claim in evidence that she saw the Applicant with a gun on 12 November 2019 after the murder.

74. NE described the guns in terms of a handgun and high powered rifles (not ‘a table full of handguns and machine guns).’

*NE’s witness statements*

75. On 11 September 2020 NE was interviewed as a significant witness. On 8 October 2020 her witness statement, based upon that interview, was prepared and signed. On 19 January 2021 she was interviewed again. On 11 May 2021, a further witness statement based upon that interview, was prepared and signed.

**COE and the police**

76. As we have said, COE was present on 17 July 2020 when she and NE saw Inspector Oremule.
77. On 17 September 2020 COE was interviewed as a significant witness. On 13 August 2021 her witness statement, based upon that interview, was prepared and signed.

**Examination of the Kia**

78. On 15 November 2020 NE’s Kia was examined for gunshot residue and blood spatters. The officer carrying out the examination noted the front passenger side of the vehicle appeared to have been wiped down either prior to the incident or before the police recovered it. A thorough examination, in particular focussing on the front passenger seat, disclosed neither gunshot residue nor blood, something Mr Blunt emphasised. There was no evidence the Applicant had wiped down the seat. There was evidence that the murder weapon had generated firearms residue.

**The justice protection programme**

79. NE and COE were placed into the justice protection programme. NE rejected the suggestion that the financial support provided under the programme for her and Bella was an incentive for fabricating her account about the Applicant. She said that what the programme provided was less than she had been earning.
80. COE opted for a lesser degree of protection. She had not sought any allowance.

### **The arrest of the Applicant**

81. The Applicant was first arrested on 13 November 2019. He appeared to be distressed. After caution, he said (judgment [252]):

*“For my own son. Look how unnu [sic] going antagonise me [sic].”*

82. There were three interviews. The Applicant made no comment to the detailed questions. He said he wished to uphold his rights.

83. The Applicant was arrested again on 17 June 2021.

84. No firearms were found at Miss Daisy Lane. There was accoutrement relating to the supply of ganga.

### **Intelligence received by the police**

85. In addition to general intelligence relating to the relationship between JE and Shaquille Bush, the police received reports that:

- (i) JE and three Jamaicans planned to do the shooting;
- (ii) Three Jamaicans came in on a boat;
- (iii) There was a dispute between JE and Shaquille Bush over drugs;
- (iv) Jamaicans alone were responsible;
- (v) JE was responsible;
- (vi) The Applicant was responsible;
- (vii) Other named members of the Bush family were responsible.

### **The defence case**

86. It was not submitted there was no case to answer. The Applicant did not give evidence. He adduced no evidence.

### **The judgment below**

87. At [354] and following, the judge said:

*“The main issues in this case involve the credibility of the witnesses who gave evidence of the defendant’s involvement and responsibility for the murder of the deceased. The prosecution put its case to the court in this way: that the*

*defendant had the motive, the means, and the opportunity to murder the deceased and the evidence proves beyond any doubt he did so. The Crown's case on each of these aspects is dependent on the reliability and credibility of the evidence of the witness NE. If this court does not believe her evidence on the material particulars going to the elements of the offence, the prosecution would not have proved it [sic] case.*

*355. Counsel for the defendant has suggested through his questions of NE that she was fabricating this evidence to get back at the defendant, that as she said in her messages with her friend on WhatsApp, she hated him, that he was a pussyhole woman beater; that as far as she was concerned he was a waste man and that she wanted to have relationships with other men, that she was going to breed for a next man. Counsel suggested she was suspicious of the defendant having relationships with other women and asked the court to note her actions in confronting Angelina [sic] Brown.*

*356. I have considered NE's motives for fabricating this testimony against the defendant. NE admitted in evidence that she was angry with the defendant for having abused her in front of her daughter. She felt he had been unfaithful to her. I observed the witness when she was confronted with these suggestions. She was not inconsistent in her evidence except as has been highlighted above. She gave her evidence in chief in a very straightforward manner. Her evidence held up under cross-examination. I find NE is a reliable and truthful witness. I accept her evidence."*

88. As we have said, Angelica Brown was someone with whom the Applicant had been unfaithful. NE had confronted at her place of work.

89. At [357]-[360] the judge dealt with her assessment of the credibility of COE's evidence. She said [357] and following:

*"357. I found COE to be a credible witness. I believe her evidence that the defendant did confess his involvement and responsibility for the death of the deceased. She was a forthright witness who admitted that she sometimes had issues with her memory.*

*358. COE's evidence was consistent with her earlier account. It was not suggested she had given another version of her evidence. It is unusual that the witness stated that she had never discussed what the defendant confessed to her with NE on the morning of 13<sup>th</sup> November 2019, nor the defendant's actions at Grand Harbour or the carpark at [Chrissie Tomlinson Hospital]... or indeed when they got back to her apartment at 166 Mount Pleasant, given the nature of the information that had been told to her and the fact she was well acquainted not only with the defendant but also the deceased.*

359. *I do not believe that much turns on this fact. The witness has not been accused of collusion. She has been accused of fabrication of this evidence and she has denied it. Her evidence is strikingly similar to that of NE. It was not suggested to her that she has anything to gain from fabricating this evidence against the defendant. Her account that she had no involvement with either the accused or NE before the defendant came to ask her to speak to NE on his behalf was not challenged. Her evidence that she had not spoken to NE for approximately two years before NE came to see her in October 2019 was not challenged. The evidence...was that COE had not sought the full package as a protected witness that was available to her. I find her evidence to be reliable.*

360. *I find her evidence consistent with the account given by NE of the defendant's actions on the night of the 12<sup>th</sup> November 2019 at Grand Harbour; at the [Chrissie Tomlinson Hospital]...and later at Mt Pleasant.”*

90. At [361]-[369] the judge dealt with what she described as the circumstantial evidence.

91. Finally, at [370]-[372] the judge dealt with the adverse inference she was entitled to draw from the Applicant's failure both to give an account when interviewed and to give evidence.

### **The grounds of appeal**

92. There are six grounds of appeal, which to some extent overlap. They are:

- i. The judge failed fully to consider all the contradictory evidence presented during the trial regarding the reliability and credibility of NE.
- ii. The judge failed fully to consider all of the evidence relating to COE in determining whether she was a reliable and credible witness.
- iii. The judge failed fully to consider the evidence both from the eyewitnesses and CCTV footage surrounding the events at Miss Daisy Lane at the time of the shooting with particular reference to the presence of unidentified Jamaicans and/or other persons of interest connected to three untraced vehicles and their occupants who left Miss Daisy Lane between 17.21 hrs and 17.37 hrs.
- iv. Insufficient attention was paid to the historical, DNA and ballistic evidence connecting the firearm in question, along with its usage, rather by the Birch Tree Fraternity and their associates prior to the shooting on 12 November 2019.
- v. The judge failed fully to consider the evidential background surrounding the relationship between Shaquille Bush and Joshua Ebanks (Patchie), which had been

characterised over the preceding 3 years by frequent clashes involving the use of firearms.

- vi. The far more plausible scenario of an execution by Joshua Ebanks and/or unidentified Jamaicans was effectively ignored.

### **The judge's consideration of the evidence regarding the credibility and reliability of NE**

#### *The relationship between NE and the Applicant*

93. Mr Blunt submitted that the fallout from the assault of 14 October 2019 as revealed by the WhatsApp messages (see paragraph 18 above) indicated NE's hatred of the Applicant and was inadequately dealt with by the judge.
94. We do not agree. What was said at [355] of the judgment (paragraph 87 above) sufficed. Moreover, as Ms Lewis submitted, there is an element of contradiction in relying upon NE's hatred of the Applicant as going to her credibility and the comment in Chapter 24(iv) of the Applicant's submissions to the effect that '12<sup>th</sup> November had all the hallmarks of a perfectly innocent and domestic expedition to Miss Daisy Lane.'

#### *The three phone calls*

95. At [352] the judge dealt with NE's account regarding the three calls: see paragraphs 35-6 above. The judge said:

*"...The defence asked the court to consider that there were not three calls from different persons, but the phone records suggests [sic] that the calls were from the same individual. I am not satisfied that the evidence of NE is clear that the defendant was in a position to hear that an accusation had been made against him in one of the calls of him being responsible for the shooting of the deceased."*
96. Mr Blunt submitted that it is clear NE lied about the calls and their content. He submitted that what the judge said about them was a woefully inadequate assessment of the import of this evidential clash. He also pointed out that he was not able to cross-examine NE on the calls as the call schedule was not available at the time she gave evidence.
97. We agree with Mr Blunt that the judge's comments did not confront the real issue, namely the relevance of this evidence to NE's credibility.

*The differing accounts of NE and the police*

98. We have summarised the evidence of Sergeant Southern and Sergeant These at paragraphs 59-63 above and that of Inspector Oremule at paragraphs 70-4 above.
99. At [172]-[173] the judge said:
- “172. Counsel for the defendant went through the record of interview of NE on the 17th November suggesting to her that the questions that were being asked of her by the interviewing officer Sgt Southern were based on the indications she had given him on 13th and 14th November.*
- 173. When confronted about her responses she stated, in relation to questions about the note of the officer:*
- “This is not what I told the police. Not everything here is correct.*
- ....*
- That is what I told Southern these notes in order for him to track back. I did not give the full account of what happened.*
- ....*
- The information on the disclosure form is the information I gave the pol [sic] on 13<sup>th</sup> and 14<sup>th</sup> November.*
- I gave them this information to assist with the murder of Shaq.*
- ....*
- Certain things on the disclosure form are not correct. It is what I said but not everything.”*
100. Mr Blunt submitted that the judge did not sufficiently reflect NE’s repeated protestations of ‘I can’t recall that’ and ‘the police made that up.’ He further submitted that when the judge came to focus on areas of inconsistency or implausibility regarding NE’s evidence, this credibility issue was not addressed at all.
101. While it would have been open to the judge to go into greater detail, what she said was in our view adequate. It seems to us inconceivable that she did not have had this conflict of evidence well in mind when considering whether she could rely on NE’s evidence.
102. At [326]-[329] the judge dealt with NE’s inconsistent accounts about guns. The judge said ([326] and following):
- “326...She was confronted with this inconsistency during cross-examination...She insisted that it was not as a result of her lying about what she had seen. She testified that the defendant had threatened her not to say anything about what she had seen, the guns.*

327. *The inconsistency is on a major issue. It is one of the planks of the prosecution case. However, this inconsistency does not cause me to doubt her account. Her evidence is consistent that she saw guns. I accept that, as she described, she saw the defendant with a gun at Grand Harbour on the evening following the murder. I accept she saw the defendant in the presence of guns at [Miss Daisy Lane]...*

328. *I accept the evidence of COE that the defendant had a gun with him when she saw him at Grand Harbour on the evening following the murder.*

329. *With regard to guns at Miss Daisy Lane...there is also NE's evidence...that the deceased had put a shotgun on her head on 10 July 2017...I bear in mind that the premises were raided in 2021...and no firearms found."*

103. Mr Blunt submitted that it was bizarre and inconsistent for the judge to conclude that in spite of her acceptance of Inspector Oremule's evidence she was satisfied that the Applicant had a gun with him at Grand Harbour (or Hurley's Pharmacy) and NE was truthful about seeing weaponry on 28 May 2020.

104. We do not agree. Both NE and COE spoke of the Applicant having a firearm with him that evening. COE said she saw the firearm over some period of time. The judge was entitled to accept their evidence. The fact that NE's recollection of the make-up of the weaponry she saw at Miss Daisy Lane may differ between the two accounts does not seem to us to suggest she necessarily lied. The essential credibility issue was whether she saw weapons at Miss Daisy Lane as she claimed, not the precise make-up of the weaponry.

105. At [183] and [184] the judge said:

*"183. NE testified that she met with DI Oremule in July 2020. However, she stated that this happened on only one occasion. She denied she met him in the parking lot of Windjammer complex on Walkers Road, that she drove to South Sound dock with him in the car and asked him what the organisation [police] can do for her if she assisted with Shaquille's murder case.*

*184. She did recall meeting him at Plantation Village with COE. She could not recall saying to him that she needed police protection or that she gave DI Oremule a piece of paper with a list of personal requests."*

106. At [340] -[343] the judge said:

*"340. Apart from the inconsistency relating to the guns...there were other areas of inconsistency in NE's testimony. Her evidence contradicted that*

*of DI Oremule about the number of times she met him and also as to what was discussed, what she sought to secure from the police if she gave evidence against the defendant. When confronted with this contradiction NE denied that she had met Oremule on an occasion before meeting with him at planation village. She denied she had handed him a list of demands.*

*341. I have considered her evidence on these matters...I prefer the evidence of DI Oremule.*

*342. As trier of fact, I must examine the testimony of various witnesses. I know that I am free to accept all of a witness' evidence or reject all of a witness' evidence. I may accept part of a witness' evidence and reject part of that same witness. I may accept the evidence of one witness called by one side, and reject the evidence of another witness called by the same side.*

*343. I reject this bit of NE's evidence. I prefer the evidence of Officer Oremule as to the time and content of meetings with this witness."*

107. Mr Blunt submitted that the judge's summary of the evidence at [184] understated the position. The reality, he submitted, was that NE had lied, something which the judge failed properly to confront.

108. In our view, when [184] and [340] are read together they adequately reflected the position. It is plain the judge had well in mind this evidential conflict. She resolved it in a way she was entitled to.

#### *The confession*

109. COE said that when she returned to Mount Pleasant NE told her that the Applicant tried to 'get busy' (i.e. have sex) with her. NE said she could not understand how he could be thinking of that after his son had just passed away. The judge did not mention this evidence. It went, submitted Mr Blunt, to the credibility of NE's evidence that the Applicant had confessed to her. Mr Blunt made two points. Had the Applicant confessed to NE, she would have told COE. It was inconceivable the Applicant would in such circumstances have tried to 'get busy' or that NE would tell COE about it.

110. Mr Blunt raised a further point about the confession. When the following morning NE and COE were together in the car, the complete absence of any discussion between them about what the Applicant had allegedly said the night before amounted to an absurd anomaly, submitted Mr Blunt. However, the judge's only reference to it was the comment in [358] that:

*“It is unusual that the witness stated that she had never discussed what the defendant confessed to her with NE on the morning of 13<sup>th</sup> November 2019...”* (see paragraph 89 above)

111. Mr Blunt submitted that the judge’s failure to mention and take into account these matters amounted to a serious error.
112. We do not agree. As Ms Lewis submitted, the fact that NE did not tell COE about the Applicant’s confession does not mean he did not confess. NE said she was told not to say anything. Neither is it necessarily the case that the Applicant did not try and ‘get busy’ or that NE did not tell COE about it. While, as the judge said, it would be ‘unusual’ for NE and COE not to have discussed what the Applicant had said, NE spoke of the severe threats which the Applicant had made. These were very much matters for the judge.

*NE’s failure to confront the Applicant*

113. Mr Blunt submitted that NE’s failure to confront the Applicant, even after he had suggested that she and ‘Screechie’ were responsible for Shaquille Bush’s death was inexplicable if the Applicant had confessed. The judge failed to consider this. She also, submitted Mr Blunt, failed to take into account the professions of love between NE and the Applicant after she left to go to England on 16 December 2019 in assessing NE’s credibility.
114. The ‘Screechie’ incident does not in our view mean what NE said about the confession was untrue. This was a man who, on NE’s account, was about to attend the funeral of the son he had murdered. It may be thought unsurprising if that prospect caused him some disturbance. Moreover, NE’s failure to confront the Applicant was not, it seems to us, surprising in all the circumstances. The relationship between the Applicant and NE was punctuated by violence and threats of violence. The Applicant, if NE was telling the truth, had murdered his son. It may be thought understandable she did not confront him. Finally, we do not think the professions of love would render it more likely that NE was lying about the confession.

*Susceptibility*

115. There was, Mr Blunt submitted, considerable evidence that the police put heavy pressure upon NE before she ultimately implicated the Applicant. Among other things, she was repeatedly told she was lying, that she could do better than the Applicant. Mr Blunt submitted that the judge’s summary of this evidence did not reflect that pressure. At [292] the judge had said:

*“...Officer These was...present during the interview of NE on 17 November 2019. He was questioned about the course of that interview. He denied he had made any suggestions to NE about why she was involved with the defendant. He denied the interview was hostile or that NE was being accused of covering up for the defendant during that interview.”*

116. That pressure continued, submitted Mr Blunt. Chief Inspector Wright (finally) admitted he had been tasked with obtaining access to NE via a man called Cain Thomas. The impression that NE had contacted Mr Wright in the late summer of 2020 without pressure was not accurate. The judge did not mention this part of Mr Wright’s evidence.

117. What, as we understand it, Mr Blunt’s submissions on this aspect came to was that as a result of the pressure the police placed on NE in November 2019, she some time later fabricated her detailed account implicating the Applicant. While we accept the judge’s comments at [292] could have been fuller, it would not be surprising if she thought such a scenario was unlikely.

*The DNA Clinic*

118. The evidence relating to this is set out at paragraph 24 above. The judge said [323]:

*“...It was suggested to...[NE] that she had made up the story the defendant [sic] having asked her to call the clinic to speak about getting a DNA test. However, the evidence of Joanne Delaney shows that NE did call the clinic on the date and time she stated in her evidence.”*

119. Mr Blunt submitted the judge was wrong to indicate this was independent evidence supporting NE’s account. For the issue was not the call itself, but at whose instigation it was made.

120. The position was in our view this. The uncontradicted evidence of NE was that the Applicant instigated this call. Even if, as was the defence suggestion, the call was made at the instigation of NE, the fact such a call was made was evidence that on the day of the murder Bella’s paternity was a live issue, as NE was saying. The judge was entitled to make the comments she did.

*The absence of a second firearm or ratchet*

121. At [335-6] the judge said:

*“335. The defendant sought to explain his actions [to NE] by stating to her that when he reached Miss Daisy Lane the deceased struck him on the head with a piece of metal pipe. He told NE that he went inside the house but at every exit he would find Shaquille waiting and Shaquille had a gun-*

*hence he did what he had to do. A few days later the defendant told NE that Shaquille had a ratchet.*

336. *It was suggested to NE that she had fabricated this account. She insisted that this was what the defendant told her...The Crown suggests that the account to NE shows that he was lying about the circumstances surrounding the crime, since there was no evidence of a second firearm at the scene...Also, no ratchet was found at the scene, there was no forensic evidence of same [sic] or that the deceased had such a weapon at the scene.”*

122. Mr Blunt submitted that the judge appeared to regard the absence of a second firearm or of a ratchet as independent evidence that the Applicant was lying and was therefore probative of guilt. This failed, submitted Mr Blunt, to appreciate that the lies were not admitted but were part of NE’s false narrative. We agree. However, in the scheme of things, this seems to us of peripheral significance.

*The alleged threats by CL*

123. At [344]-[349] the judge dealt with the events preceding NE’s no comment interview on 17 November 2019 and her allegations of having been threatened by CL (see paragraphs 60-2 above).

124. NE said the Applicant had told her to give CL his mother’s phone number as a means of contacting the Applicant. Subsequent investigation showed that CL called that number four times after the Applicant’s release in November 2019. Mr Blunt was critical of the judge’s reliance upon that evidence. He submitted, that the Applicant had no phone and no means of getting home and unsurprisingly gave his mother’s number as a means of contact.

125. As the judge observed (at [349]), NE could not have known that subsequent investigation would support her account. It may too be thought surprising that CL was contacting the Applicant at all. In our view the judge was entitled to approach the matter in the way she did. Moreover, as we have said, CL was subsequently convicted of corruption.

*Alleged further lies*

126. Mr Blunt submitted that at first NE lied about having the photographs of Joshua Ebanks, and Felicia and Angelica Brown on her phone (see paragraph 18 above). The judge, he submitted, should have taken those lies into account when assessing NE’s evidence. Mr Blunt also

submitted that NE plainly lied when she made the ‘absurd’ suggestion to the police that the Applicant had promulgated the rumours about Bella’s paternity. In our view the judge may well have regarded these matters as peripheral and hence did not mention them. In any event, their omission from the judgment could not conceivably affect the safety of the convictions.

### **Mr Blunt’s further submissions in respect of NE’s evidence**

127. Mr Blunt submitted that the thrust of NE’s evidence should have been weighed against the competing and more plausible scenario, namely a gang retribution. In short, on the day of the shooting, the relationship between the Applicant and his son was perfectly harmonious. There was no merit in the Bella paternity issue motive. As a drug dealer the Applicant had every reason to flee Miss Daisy Lane after shots were fired. There was nothing following examination of the Kia suggesting the Applicant was the murderer.

### **The judge’s consideration of the evidence regarding the credibility and reliability of COE**

#### *The confession*

128. COE’s account was, submitted Mr Blunt, inconsistent and confused. Her evidence of the alleged confession first surfaced at the meeting on 17 July 2020 with Inspector Oremule. The suggestion that Shaquille Bush had threatened Bella (paragraph 53 above) was an invention and had never previously been mentioned to the police. The judge failed to mention that according to COE the Applicant first blamed the Jamaicans; that the Applicant was paranoid about Jamaicans trying to kill him.
129. Mr Blunt submitted that in assessing COE’s credibility the judge failed to have regard to a series of concessions she had made. They included that her memory was ‘not so good,’ that she was due to have a brain scan, that she had smoked ganga with the Applicant on the night of 12 November 2019, that she could not remember her birthday and that she had to have her memory refreshed by NE. She also said she had was a psychic who had visions. Mr Blunt submitted that the only comment on the anomalies of COE’s behaviour was what was said in [358] of the judgment (paragraph 89 above).
130. Mr Blunt also relied on the fact COE had been arrested for possession of ganga.
131. Mr Blunt submitted that a further piece of evidence affecting her credibility was her account, for the first time in court, that the Applicant had told her someone had shouted out, ‘All

Jamaicans should leave the yard in 10 minutes,’ whereas the evidence of Fitzroy Smith was that Shaquille Bush had shouted that out (see paragraph 10 above).

132. At [359] (paragraph 89 above), the judge said that COE “*has not been accused of collusion. She has been accused of fabrication...*” Mr Blunt submitted this was incorrect. The defence case was that NE and COE colluded together to produce a fabricated account, hence any similarity in their accounts. He also submitted that the judge was wrong to speak of NE’s and COE’s accounts being consistent.
133. Finally, on this aspect, Mr Blunt made the point, which we have dealt with above (and did not accept), that the account advanced both by NE and COE that they did not discuss the respective confessions is both absurd and implausible.
134. That the judge was aware of COE’s problems with her memory is clear from her comment at [357] to the effect that “*She was a forthright witness who admitted that she sometimes had issues with her memory.*” The judge was not required to say more. We agree that the judge was wrong in what she said about collusion. However, she could not have failed to have well in mind that the suggestion was that NE and COE had fabricated their accounts. While there are some inconsistencies between NE’s and COE’s accounts, what they said about events at Hurley’s Pharmacy, Prospect Point and Chrissie Tomlinson Hospital was broadly consistent. The Applicant’s alleged comment to COE that someone said that “*all Jamaicans should leave the yard in 10 minutes*” seems to us to tend to support her credibility rather than the reverse. For there was clear evidence those words were said, irrespective by whom.
135. The judge saw and assessed COE. She was entitled to find her to be a forthright and reliable witness without any apparent reason to fabricate her evidence. As the judge observed, the evidence did not suggest that she and NE were close.

### **The firearm evidence**

136. As we have touched upon, there was produced a schedule which linked the firearm used in this murder with eight previous shootings. The schedule identified some suspects as members of the Birch Tree Hill Fraternity. No-one on the list was a member of the Logwoods Fraternity with which the Applicant was connected.
137. At [310] the judge said:

*“The defence...raised the history of the firearm. Forensic evidence of DNA recovered from a shell casing at the scene was matched to a gun that had been*

*used in various shootings on the island. The defence submitted that the incidents logged all seemed to be associated with persons in the Birch Tree Hill gang and not anyone from Logwoods, to which the [defendant] was allegedly associated. The defence asked the court to consider that [Joshua Ebanks] ...was allegedly part of the Birch Tree Hill gang and that he was not in custody at the time the deceased was shot.”*

138. As Mr Blunt rightly observed, DNA played no part in the analysis of the shell casing at the scene. He submitted the history of the firearm was ‘crucially important’ evidence. This was a Birch Tree Hill Fraternity firearm. Its user was highly likely to have been connected with that fraternity. There was no link at all with the Applicant. There was the important evidence of the enmity between Joshua Ebanks and Shaquille Bush, who was associated with the Birch Tree Hill Fraternity. Mr Blunt submitted the prosecution’s suggestion that the Applicant’s use of it could be explained by this being a gun for hire was totally speculative.
139. In her response, Ms Lewis provided more detail regarding the schedule. Three of those identified as culprits were believed to have an affiliation with the Birch Tree Hill Fraternity, four did not, although one of the four was linked in offending with JE.
140. We observe that most of what this schedule contains is based on police intelligence which may or may not be reliable. Taking it at its face value, the evidence suggests this weapon had a strong, but not necessarily exclusive connection to the Birch Tree Hill Fraternity. In our view the judge’s comments at [310] were in all the circumstances adequate.

#### **The past relationship between Shaquille Bush and Joshua ‘Patchie’ Ebanks (JE)**

141. As we have touched upon, there was considerable evidence of enmity between Shaquille Bush and Joshua Ebanks. It was set out in detail in the Applicant’s written submissions, which we shall not repeat. The judge summarised the evidence at [239]-[240] in the following way:

*“239. [DC Sillitoe]...confirmed that the police were in possession of...intelligence information about JE...[It] sought to link JE to various incidents between himself and...Shaquille Bush...[The officer] was unable to comment on the truth or otherwise of that information.*

*240. The officer went on to relate nine (9) instances on various dates between 25<sup>th</sup> August 2019 and the 13<sup>th</sup> November 2019...These were all instances in which the police had intelligence information regarding the nature of the relationship between JE and Shaquille Bush, the use or threatened use of firearms or possession of firearms on the part of each and friction between them over a woman/women. Intelligence reports received on 13/11/19 suggested that:*

*(i) JE and three (3) Jamaicans planned to do the shooting;*

*(ii) Suggested that 3 Jamaicans came in on a boat from Jamaica;  
and  
(iii) There was a dispute between JE and Shaquille Bush over a  
quantity of drugs a few days before.”*

142. At [309] the judge, when dealing with ‘the case for the defence,’ again referred to this evidence.
143. There was evidence that the police saw JE in prison. He said that “*his granny could provide an alibi for the time of the offence.*” Mr Blunt was critical of the police acceptance of this account. Ms Lewis pointed out that not only did JE have an apparent alibi, there was also no evidence that either JE or his vehicle were near Miss Daisy Lane on 12 November 2019.
144. Mr Blunt submitted the evidence of the animosity between JE and Shaquille Bush, involving as it did the use or threatened use of firearms, was highly important. Additionally, there was evidence that JE was associated with the Birch Hill Fraternity. The judge, submitted Mr Blunt, failed to take these matters sufficiently into account.
145. We do not agree. It is clear the judge had well in mind that this was an important element of the defence case. In the final analysis, however, there was no evidence that JE was responsible. The judge had to balance what was uncategorised police intelligence against the evidence of two witnesses and the other evidence in the case.

**The failure fully to consider the eye witness and CCTV footage surrounding events at Miss Daisy Lane**

*The Jamaicans, the untraced vehicles and the alternative scenario*

146. Mr Blunt submitted that the judge failed, or failed sufficiently, to consider the far more plausible scenario of an execution by JE and/or unidentified Jamaicans. The nature of the killing, suggested Mr Blunt, was of an execution by a gunman who had ambushed and pursued Shaquille Bush while firing at him, culminating in the ‘*coup de grace.*’ It had the hallmarks, he submitted, of a gangland execution. The evidence of the presence of Jamaicans was clear. Fitzroy Smith heard Shaquille Bush demand that “*all Jamaicans should leave the yard*”. Terry Robinson told the police that two Jamaicans had jumped into the back of this car (paragraph 12 above). COE spoke of the Applicant’s paranoia about Jamaicans being out to kill him. Three unidentified vehicles left Miss Daisy Lane.

147. At [312]-[316], in the section of the judgment dealing with the case for the defence, the judge said:

*“312. The defence asked the court to consider the evidence of Officer These of vehicles leaving around MDL close to the relevant time on the day of the murder, just after 5:18 pm. Further, the evidence of the witness Terry Robinson was that two Jamaicans jumped in his car as he left, that there were three vehicles which remain unidentified which left the vicinity of MDL at approximately 5:21 pm, 5:27 pm and 5:37 pm on the date in question.*

*313. The Court was asked to consider the lack of forensic evidence linking this defendant with the crime. Although the defendant was in NE’s car shortly after the incident no GSR [gunshot residue] was found in the car, in the passenger seat or anywhere else in the vehicle. That there was also no trace of blood found in that vehicle.*

*314. The defence asked the court to consider the defendant’s actions in light of his concerns about Jamaicans and security whether this could explain his actions of the evening of the 12<sup>th</sup>.*

*315. I have considered these matters raised by the defence. I am careful not to speculate about matters for which there is no evidence before the court. I must consider whether these matters highlighted by the defence raise reasonable doubt, whether individually or collectively they cause me to doubt the evidence presented by the prosecution.*

*316. Even if this evidence does not cause me to doubt the prosecution evidence, I must be careful to consider the prosecution case, for it is only on that evidence if I am sure that all the elements of the offence had been made out that I can convict the defendant. If I am not sure I must acquit.”*

148. While the judge did not in terms deal with the point Mr Blunt made regarding the nature of the killing, as the observations we have set out make clear, she had well in mind the alternative possible scenarios being raised by the defence. The Jamaican scenario plainly encompassed a gangland killing. It seems to us inconceivable that as part of her consideration she did not have in mind the sort of point Mr Blunt raised.

### **Mr Blunt’s final submissions**

149. The judge, submitted Mr Blunt, failed properly to discharge her duties in a clinical assessment of the witnesses and the overall evidence. Her findings in respect of NE and COE were flawed and unjustified. Their evidence should not have passed the reasonable doubt test. There were far more plausible explanations for this murder which should have been properly considered. The absence of any historical or forensic evidence to connect the Applicant with the murder weapon or its discharge was ignored.

## Discussion

150. In this appeal the Applicant is seeking to overturn the findings of fact made by the trial judge. The caution which an appellate court should exercise in overturning such findings have been emphasised in many cases, both in the Cayman Islands and in England and Wales. It suffices to refer to the recent words of Lord Hamblen in *R (Respondent) v Perry* [2025] UKSC 17 at [26], in a judgment with which the other members of the court agreed, when he said:

- “1. The trial judge’s finding on primary facts can rarely be disturbed if there is evidence to support it. This principle applies strongly to assessments of credibility, accuracy, powers of observation, memory and general reliability of the witnesses.*
- 2. The appellate court is in as good a position as the trial judge to draw inferences from documents and from facts which are clear but even here must give weight to his conclusions.*
- 3. The trial judge can be more readily reversed if he had misdirected himself in law or if he has misunderstood or misused the facts and may thereby have reached a wrong conclusion. For this purpose, his judgment may be analysed in a way which is not possible with a jury’s verdict.*
- 4. The appellate court should not resort to conjecture or to its own estimate of the probabilities of a balanced situation as a means of rejecting the trial judge’s conclusion.”*

151. In this instance, we have ultimately to ask ourselves whether in all the circumstances these verdicts should be set aside on the ground they are unsafe or unsatisfactory: see section 9 of the Court of Appeal Act (2023 Revision). In making that decision, it seems to us helpful to stand back and consider the evidence as a whole. When we do so, it seems to us the case against the Applicant was a convincing one.

152. By the time the Applicant telephoned NE at 17.17 and spoke to her for some 34 seconds, the evidence suggests Shaquille Bush had been shot and his body was lying in Miss Daisy Lane. The Applicant did not report that his son had been shot. He ran away and went on the run. That he was merely a drug dealer making off to evade the police lest his drug dealing be revealed seems to us in all the circumstances highly improbable.

153. Two witnesses, who were not on the evidence close, each said he admitted to killing his son. They also described conduct by the Applicant which was consistent with being responsible for the murder. While there were differences between what they had previously said in witness statements and interviews, there was cogent independent evidence which tended to suggest they were telling the truth. For subsequent CCTV evidence and cell site analysis proved to be entirely consistent with their accounts. As Ms Lewis put it in the case of NE, she would not have been privy to this independent evidence at the time of giving her statement, such that she would have the opportunity to weave a fictitious account around independent, incontrovertible evidence. Two examples we have already touched upon are worthy of mention.
154. NE said that the Applicant told her he ‘made Moises [Bush] get rid of the thing.’ When she recounted what the Applicant told her, NE was not to know that the CCTV evidence showed Moises Bush arriving at Miss Daisy Lane at 17.18 and leaving nine minutes later. The judge was entitled to conclude that Moises Bush was disposing of the firearm: that NE was telling the truth about what the Applicant told her. We note the firearm has never been located.
155. NE ascribed her attitude when first arrested to threats from the Applicant sent via CL. Again, subsequent investigation provided powerful evidence entirely consistent with what she said, as we have set out in paragraph 125 above. We note that NE gave evidence at the trial of CL when he was convicted of corruption.
156. As we have said, NE and COE were not close. There was on the face of it no reason for them to fabricate their accounts. Moreover, it is not easy to conceive of them fabricating, what, particularly in the case of NE, was a detailed and not straightforward, account.
157. While it is possible to construct scenarios and hypotheses partly based on police intelligence (which may or may not be accurate) or from the references to the evidence relating to Jamaicans or from the nature of the murder or from which it could be suggested JE or Jamaicans were to blame, the one person who on the face of it was in a position to provide an explanation chose not to do so. In the circumstances, the judge was entirely justified in concluding that the Applicant provided no explanation because there was none which would stand up to proper scrutiny.
158. Finally, while, as we have indicated some criticism may be made of aspects of the judgment, this is not a case in which the judge misunderstood or misused the facts so as to convict when she was not entitled to do so.

## **Conclusion**

159. In our view, it cannot be said these verdicts are unsafe or unsatisfactory. Accordingly, while we are prepared to grant leave to appeal, we dismiss this appeal against conviction.