

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 INDICTMENT NO: 0084/2010
5

6
7 THE QUEEN
8

9 V
10

11 LEONARD ANTONIO EBANKS
12
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14 **Appearances:**

DPP, Ms. Cheryll Richards Q.C. for the
Prosecution

17 Mr. Ben Tonner Q.C. instructed by Ms.
18 Amelia Fosuhene of Brady for the
19 Defendant
20

21 **Before:**

The Hon. Mr. Justice Charles Quin Q.C.

22 **Submissions heard:**

6th and 7th February 2018
23

24 **HEADNOTE**
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26 *Criminal Law —Pursuant to the Conditional Release Law 2014 – Murder -*
27 *s.14 – Aggravating and Extenuating circumstances –. Schedule 12 of the*
28 *Conditional Release Law Regulations - Minimum term*
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31 **CONDITIONAL RELEASE JUDGMENT**
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INTRODUCTION

1. On the 8th September 2010, at #177 Birch Tree Hill Road, West Bay, Grand Cayman, Tyrone Burrell was shot and murdered.
2. The Prisoner was charged with the murder of Tyrone Burrell. The Prisoner was arraigned and pleaded not guilty.
3. The trial took place between 5th and the 22nd September 2011. On the 30th September 2011, the Prisoner was found guilty of the murder of Tyrone Burrell and sentenced to life imprisonment.
4. The Prisoner appealed to the Cayman Islands Court of Appeal (CICA). The appeal was dismissed.

THE LAW

5. Section 182 of the *Penal Code 2017 Revision* provides that “*Any person convicted of murder shall be sentenced to imprisonment for life*”. However, with the introduction of the *Conditional Release Law 2014* (the Law), which came into effect on the 15th February 2016, it is now the law that, when sentencing to a term of imprisonment for life, the court shall specify the period of incarceration the prisoner shall serve before the prisoner becomes eligible to be considered for conditional release on licence.



1 10. Regulation 14 reads:

2 "14. For the purpose of determining the earliest possible conditional release
3 date in relation to a prisoner on a term of imprisonment for life, the
4 circumstances set out in Schedule 12 shall be considered."

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6 11. In the circumstances, I think it is necessary to set out the Introductory section of
7 Schedule 12 of the Regulations in full as follows:

8 "1. (1) Where a mandatory life sentence for murder is prescribed by any Law,
9 for the purposes of section 14 of the Law the aggravating and
10 extenuating circumstances are outlined in this schedule.

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

14 (3) For murder, the period shall be thirty years before the prisoner is
15 eligible for conditional release unless there are extenuating or
16 aggravating circumstances, exceptional in nature, in which case the
17 court may impose a shorter or longer period of incarceration
18 respectively;"
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20 12. That language mirrors Section 14(1) of the Law.

21 13. Now, the aggravating and extenuating circumstances are set out in the Schedule as
22 follows:

23 **Aggravating circumstances and extenuating circumstances**

24 "2. (1) Detailed consideration of aggravating or mitigating circumstances
25 may result in a minimum term of any length.

26 (2) Aggravating circumstances that may be relevant to the offence of
27 murder include -

- 28 (a) a significant degree of planning or premeditation;
29 (b) the fact that the victim was particularly vulnerable because
30 of age or disability;
31 (c) mental or physical suffering inflicted on the victim before
32 death,
33 (d) the abuse of a position of trust;
34 (e) the use of duress or threats against another person to
35 facilitate the commission of the offence;
36 (f) the fact that the victim was providing a public service or
37 performing a public duty;
38 (g) concealment, destruction or dismemberment of the body;
39 (h) previous convictions;



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- (i) *abduction and sexual or sadistic conduct; and*
- (j) *any other circumstances which may be considered relevant.*

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

- (a) *an intention to cause serious bodily harm rather than to kill;*
- (b) *lack of premeditation;*
- (c) *the fact that the offender suffered from any mental disorder or mental disability which (although not falling within section 185(1) of the Penal Code (2013 Revision)), lowered the offender’s degree of culpability;*
- (d) *the fact that the offender was provoked (for example, by prolonged stress);*
- (e) *the fact that the offender acted to any extent in self-defence or in fear of violence;*
- (f) *a belief by the offender that the murder was an act of mercy;*
- (g) *the age of the offender; and*
- (h) *any other circumstances which may be considered relevant”*



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SUMMARY OF THE FACTS

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- 14. In brief, Tyrone Burrell was shot in the back of the head at #177 Birch Tree Hill Road, West Bay, Grand Cayman, at approximately 7:30p p.m. on the 8th September 2010.
- 15. The Prisoner was seen approximately five seconds before the shot was fired in the yard, wearing black clothing and a black baseball cap and a black and white handkerchief around his hand.
- 16. He was seen immediately after the shooting having come through the bushes in close proximity to the shooting.
- 17. The Prisoner made a confession to the witness Arlene White that he had committed the shooting.
- 18. There was evidence that the motive for the shooting was the belief by the Prisoner that Tyrone Burrell was a spy passing information to the Logwoods gang.

1 19. The Prisoner also made threats to a witness, Ms Nora Ebanks, who had seen him
2 come through the bushes shortly after the murder.

3 20. The Prisoner was 39 years of age at the time of the offence. He was born on 27th
4 November 1970.

5 21. The Prisoner did not spend any time on remand as he was serving a sentence for
6 another offence.

7 **CROWN SUBMISSIONS**

8 22. The Crown submit that, pursuant to paragraph 2(2)(a) of Schedule 12, there was a
9 significant degree of planning or premeditation.

10 23. The Crown rely upon the fact that the Prisoner specifically dressed in black and,
11 further, covered his hand to prevent any contamination by gunshot residue. The
12 Prisoner also armed himself with an unlicensed illegal firearm. He rode to the
13 scene, dropped his bike, and shot Tyrone Burrell in the back of the head. The
14 Prisoner knew Tyrone Burrell was at the location, having seen him there earlier. He
15 had planned to kill Tyrone Burrell due to his belief that Tyrone Burrell was a spy.

16 24. The Prisoner left immediately after the murder through the bushes, which the
17 Crown submit, was the perfect route by which to leave the scene of the crime,
18 therefore involving a significant degree of planning and premeditation.

19 25. In relation to paragraph 2(2)(j) of Schedule 12 — "*any other circumstances which*
20 *may be considered relevant*": The Crown submit the fact that the Prisoner had
21 armed himself with a firearm and the fact that it was a gang-related murder is
22 another aggravating circumstance.



1 26. Again under para. 2(2)(j), the Crown say the intimidation of Ms. Ebanks was a
2 further aggravating circumstance.

3 27. The Crown submit that immediately after the shooting the Prisoner saw Ms. Ebanks
4 and said, "*You lucky you didn't get your brains blown out too*", and then he left.
5 This is immediately after the shooting.

6 28. Ms. Ebanks said she felt frightened and bad about what he had said. She took it as a
7 threat. She saw him again later that day and then the Prisoner said she should not
8 have got into it because it was nothing, and specifically, he said it does not concern
9 her son Andrew or her daughter Marcia. The Prisoner repeated that she was lucky
10 that she did not get her brains blown out too. He also said that she was trying very
11 hard to 'sink him'.

12 29. The Crown submit particularly that the Prisoner's later visit to Ms. Ebanks was a
13 deliberate attempt to intimidate and threaten a witness. The Crown submit that the
14 Prisoner was saying to Ms. Ebanks that she should not have spoken to the police
15 and naming her children was a direct attempt to intimidate her for having spoken
16 with the police.

17 30. It is therefore submitted by the DPP that the commission of this gang-related
18 murder, the use of a firearm, the significant amount of planning and premeditation,
19 and the intimidation of the witness are aggravating circumstances which are
20 exceptional in nature.

21 31. The Crown could identify no extenuating circumstances and also rely upon the
22 prisoner's previous convictions.
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DEFENCE SUBMISSIONS

PLANNING AND PREMEDITATION

32. In relation to planning and premeditation: Mr. Tonner QC submits that the fact that the Prisoner may have changed his clothes and that the shooting was not entirely spontaneous does not necessarily indicate significant planning and premeditation.

33. Mr. Tonner submits it is not known when the Prisoner formed the intent to shoot Tyrone Burrell, or how long elapsed between the Prisoner forming the intent to kill and pulling the trigger.

34. Mr. Tonner Q.C. points out that the Prisoner lived only a hundred yards away from the scene of the shooting, he had access to a gun and practically lived at number #177 Birch Tree Hill Road where the murder took place, which means, Mr. Tonner said, that the Prisoner could well have formed his intent to kill only minutes before without any real degree of forethought or planning. Mr. Tonner Q.C. submits that, on the evidence, the level of planning falls short of constituting "significant".

35. Mr. Tonner submits that there are cases, such as *R v Jeffers*¹ and *R v Ramoon and Douglas*², where a greater level of planning was involved.



¹ Indictment 60 & 61/2010
² Indictment 53/2015

1 **USE OF AN ILLEGAL FIREARM**

2 36. Turning to the use of an illegal firearm, Mr. Tonner submits that the use of the gun
3 is not unusual in cases of murder in the Cayman Islands. Mr. Tonner relies on
4 Henderson J's dicta in *R v Tareek Ricketts*³, and quotes the passage where
5 Henderson J said:

6 *"It could hardly be said that the use of an unlicensed firearm, in and of itself, is*
7 *unusual or uncommon."*

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9 37. Furthermore, Mr. Tonner submits, that the Legislative Assembly could have listed
10 it as an aggravating circumstance in Schedule 12.

11 **GANG RELATED**

12 38. I turn now to the submission of "gang related" and the defence submissions.

13 39. Mr. Tonner submits that the court did not find as a fact that this was a gang-related
14 murder.

15 40. The defence submits that the court must find, beyond all reasonable doubt, that it is
16 a gang-related murder before it can be used as an aggravating factor. Mr. Tonner
17 submits that the court cannot be sure that this is a gang-related murder.
18 Furthermore, even if it is a gang-related murder, the fact that many of the murders
19 and shootings are gang-related means that it is not sufficiently unusual so as to
20 make it an exceptional circumstance.



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³ Ind. 114/2012

1 **INTIMIDATION OF THE WITNESS**

2 41. Turning to the intimidation of the witness, Mr. Tonner quite properly submits that
3 this is a matter for the court.

4 **PREVIOUS CONVICTIONS**

5 42. Mr. Tonner highlights the fact that many of the offences were for crimes of minor
6 violence.

7 43. Furthermore, the Prisoner instructs leading counsel that the vast majority of his
8 previous convictions were as a result of his serious drug habit and addiction and
9 that they were not gang related.

10 **ANALYSIS AND CONCLUSION**

11 **PARA. 2(2)(A) OF SCHEDULE 12 — THE PREPLANNING AND PREMEDITATION**

12 44. The main Crown witness in this case was Arlene White, who was a work permit
13 holder and was the maid/cook at Travis Bodden's yard at #177 Birch Tree Hill Road
14 where the murder took place.

15 45. Ms. White was also resident at number #177 (although not present) when Damion
16 Ming was murdered in the same yard.

17 46. She said the Prisoner was always present at #177 Birch Tree Hill Road and he was
18 like "family".

19



1 47. Ms. White said, on the day in question, the Prisoner was there for most of the day.
2 She recalled that he was wearing short jeans pants and a white marina. She said that
3 he left at around four o'clock.

4 48. Ms. White recalled the victim, Tyrone Burrell, coming to the yard at approximately
5 4:50 p.m. He bought a burger from Ms. White, who cooked it for him, for \$4.50.
6 However, as it got close to dusk, she warned Tyrone Burrell to leave. She said dark
7 is coming down, he should leave the premises. So she warned him to get out.

8 49. At approximately 7 p.m. the Prisoner came back to the yard on his bicycle.
9 Normally, the Prisoner would speak to Ms. White, but, in this case, he did not; he
10 walked straight past. She saw that he was wearing black short pants, what she
11 described as a black full-sleeved shirt, black baseball cap, and a black and white
12 (but mostly black) handkerchief over his right hand.

13 50. As Ms. White said, the Prisoner would normally stop, but on this occasion he went
14 around the house and then to the back of the house and found Tyrone Burrell and
15 shot him in the back of the head. The evidence is that he would have been killed
16 instantly.

17 **CONCLUSION**

18 **PARA. 2(2)(A) OF SCHEDULE 12 — THE PREPLANNING AND PREMEDITATION**

19 51. I find that the Prisoner had come to number 177 Birch Tree Hill Road prepared to
20 shoot and to kill Tyrone Burrell. He had dressed in black with a black baseball cap
21 to avoid detection. He did not, as he usually did, even speak to Ms. White.



1 52. He armed himself with an unlicensed illegal firearm and he covered his hand with a
2 handkerchief to avoid any gunshot residue.

3 53. The Prisoner left 177 Birch Tree Hill Road through the bushes.

4 54. I agree with Mme. DPP: This murder required a significant degree of planning and
5 premeditation, and I reject the prisoner's submission that it fell short of
6 "significant".

7 **IS THE ACQUISITION OF THE ILLEGAL UNLICENSED FIREARM AN AGGRAVATING**
8 **CIRCUMSTANCE, EXCEPTIONAL IN NATURE?**

9 55. This issue falls under para. 2(2)(a) — that is, "*significant degree of planning or*
10 *premeditation*". It also falls under para. 2(2)(j) — "*any other circumstances which*
11 *may be considered relevant*".

12 56. As with *R v Ramoon and Douglas* and as with *R v Jeffers*, the Prisoner
13 deliberately acquired an unlicensed illegal firearm with the sole purpose of killing
14 his intended victim. So the Prisoner had already committed, and was committing, a
15 serious criminal offence under the Firearms Law of the Cayman Islands. He then
16 used the gun to shoot young Tyrone Burrell in the back of the head, which, like the
17 case of *Ramoon and Douglas*, was a public execution, and like the murder of
18 Damion Ming, (the *Jeffers* case) was a public execution.

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1 57. In my view, it was a public execution of the most evil nature and could be
2 accurately described as "chillingly clinical" in its planning and execution. To adopt
3 Lord Bingham's words in *R v Kelly (Edward)*⁴, it was far from "regular", it was far
4 from "routine" and it is certainly far from "normal".

5 58. In the Cayman Islands, the spontaneous killing in a domestic fight — where one
6 partner stabs the other with a kitchen knife, or a husband strangles his wife in a
7 drunken argument — attracts a minimum of 30 years' imprisonment, and yet the
8 period of intention to kill in that example would be very short and there were no
9 aggravating circumstances of an exceptional nature.

10 59. It is interesting to note that in the United Kingdom, under the Criminal Justice Act,
11 the kitchen knife stabbing or the drunken strangulation would attract a minimum
12 period of 15 years, whereas, a murder with firearm would attract a minimum period
13 of 30 years. In my view, this disparity reflects the more serious and more grave
14 regard the UK legislators have for the offence of murder with a firearm.

15 60. It is important to remember that the *Firearms Law* has been in place in the Cayman
16 Islands since 1964. The intention of the Legislative Assembly has been made clear
17 by the imposition of minimum sentences of seven years' imprisonment for a guilty
18 plea and 10 years' imprisonment after trial for simple possession of an unlicensed
19 illegal firearm.



⁴ [2000] 1 QB 198 (at 208)

1 61. The aim of the *Firearms Law* is to, if possible, eradicate the existence of illegal
2 firearms in the Cayman Islands. To put it another way: If unlicensed illegal firearms
3 cannot be eradicated, the aim of the legislation is to make the existence of these
4 firearms out of the ordinary and wholly exceptional.

5 62. In my opinion, the use of the unlicensed illegal firearm in a murder case is much
6 more serious and grave a crime than the spontaneous domestic knife stabbing or the
7 drunken strangulation. Generally, the use of an unlicensed illegal firearm involves
8 significant planning, premeditation and a much longer period of intent to kill.

9 63. Furthermore, we must not ignore the fact that the murderer who has acquired an
10 unlicensed illegal firearm is already committing a very serious crime under the laws
11 of the Cayman Islands.

12 64. Whether the use of an unlicensed illegal firearm is an aggravating circumstance,
13 exceptional in nature, or whether it may be deemed commonplace in nature, cannot
14 be based on numerical prevalence. One must look at the gravity of the offence from
15 a qualitative standpoint and not a quantitative standpoint.

16 65. For the above reasons, I find the prisoner's change of dress, his deliberate
17 acquisition of an unlicensed illegal firearm with the intent to kill Tyrone Burrell,
18 and then the subsequent and consequential killing of Tyrone Burrell in the back of
19 the head, in this case, are aggravating circumstances, exceptional in nature.

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GANGLAND MURDER

66. I come now to the question of "gangland murder" – and again, in this case, under the heading "*any other circumstances which may be considered relevant*".

67. The defence submit that the court cannot be sure that the murder was gang-motivated. The Defence submits further that there have been many murders and shootings which are gang-related and therefore this is not sufficiently unusual to make it truly exceptional.

68. The main Crown witness, Arlene White, was found to be an honest and reliable witness who was putting her job and her livelihood and, indeed, herself, at risk for having to give evidence in a public courtroom, and, indeed, having the courage to go to the police.

69. The Prisoner admitted that he "*killed the little boy*", he said he "*kill' the pussyhole*". Arlene White asked him why did he kill the boy, and the Prisoner replied:

"Tyrone Burrell shoot up Devon's yard. Tyrone Burrell was a spy. Tyrone Burrell moved from Logwoods to Birch Tree Hill Road, back and forth, carrying news."

70. The Prisoner told Arlene White that there was violence between Birch Tree Hill and Logwoods and Tyrone Burrell was a spy for the Logwoods gang. The Prisoner told Arlene White that the two gangs were "in war" and that Tyrone Burrell was a spy mixing with both sides.



1 71. I am satisfied beyond all reasonable doubt, on the evidence before the court, that
2 this was a gang-related murder. The Prisoner shot and killed Tyrone Burrell in a
3 public-style execution because the Prisoner viewed him as a spy carrying news
4 from the Birch Tree Hill Road back to Logwoods. Again to use Lord Bingham's
5 words in *Kelly*⁵, "*this is not "routine", this is not "regular", and this is not "normal"*
6 — and certainly not routine, regular and normal in the Cayman Islands. I find it to
7 be another aggravating circumstance of an exceptional nature.

8 **NORA EBANKS**

9 72. On the last issue under paragraph 2(2)(j): The witness Nora Ebanks and whether the
10 intimidation or threat to her is an aggravating circumstance of an exceptional
11 nature.

12 73. The witness Nora Ebanks had known the Prisoner all his life.

13 74. She was standing in an adjoining property very close to #177 Birch Tree Hill Road.
14 She said she heard the noise which was the shot.

15 75. About ten seconds after hearing the noise, she saw the Prisoner.

16 76. Ms. Ebanks said she was frightened when she saw him, but she said the Prisoner
17 looked frightened too.

18 77. The Prisoner said to her: "*You lucky you did not get your brains blown out too.*"
19 The compelling inference is that the Prisoner had blown out Tyrone Burrell's brains
20 when he shot him in the back of the head.

⁵ supra



1 78. Nora Ebanks said she was frightened and felt that the Prisoner was threatening her.
2 She then said that he left on foot.

3 79. However, later that day, Ms. Ebanks told the court that the Prisoner came back to
4 her. He came to her and said she should not have got into it because it does not
5 concern her son Andrew or her daughter Marcia. The Prisoner again said: "*You*
6 *lucky you didn't get your brains blown out, too.*" The Prisoner then left shortly
7 afterwards on his bicycle.

8 80. I am satisfied beyond all reasonable doubt, upon the evidence before me that the
9 Prisoner intended to intimidate Nora Ebanks, and to threaten her. His specific
10 references to her children's names were further examples of the prisoner's intention
11 to intimidate and threaten Nora Ebanks. He was already interfering with a potential
12 Crown witness who heard the shooting and saw the Prisoner shortly after he shot
13 Tyrone Burrell. I find this to be an aggravating circumstance of an exceptional
14 nature.

15 81. I agree with Madam DPP — there are no extenuating circumstances.

16 **PREVIOUS CONVICTIONS**

17 82. I turn now to Schedule 12 para.3(1) which reads:

18 *"In considering the seriousness of an offence committed by an offender who has*
19 *one or more previous convictions, the court must treat each previous conviction*
20 *as an aggravating circumstance if (in the case of that conviction) the court*
21 *considers that can reasonably be so treated having regard, in particular, to:*

22 (a) *the nature of the offence to which the conviction relates and its*
23 *relevance to the current offence; and*

24 (b) *the time that has elapsed since the conviction."*
25



1 83. The Prisoner has 51 previous convictions. It is accepted that some are not relevant.

2 84. However, in 1991, he was convicted of Robbery and Assault occasioning actual
3 bodily harm for which he received 4½ years' imprisonment.

4 85. In June 2004, he was again convicted of Robbery and received a sentence of 5
5 years' imprisonment.

6 86. In January 2011, he was convicted of a number of offences, including Assault
7 occasioning actual bodily harm and Carrying an offensive weapon. He was
8 convicted and sentenced to 6 months' imprisonment.

9 87. In March 2011, he was convicted of Carrying an offensive weapon again, for which
10 he was sentenced to 6 months' imprisonment.

11 88. These are all relevant and I must treat them as aggravating circumstances.



12 **CONCLUSION**

13 89. In conclusion, I find the use of an unlicensed illegal firearm; the gangland-related
14 murder by public execution - shooting the victim in the back of his head; the
15 significant amount of planning and premeditation; and the serious intimidation of a
16 witness, are all aggravating circumstances of an exceptional nature which merit an
17 increase of 4 years.

18 90. I find that the minimum term of 34 years' imprisonment is appropriate to satisfy the
19 legislative requirements of retribution and deterrence and rehabilitation.

20 91. The 34 years' imprisonment will start from the 30th of September 2011 - not from
21 today.

1 92. The period of time the Prisoner has spent in custody between 2010 and 2011 will be
2 deducted from the 34 years' imprisonment. At the time of delivering this Judgment
3 the total number of days to be deducted from the sentence was not yet agreed
4 between the Crown and Defence. The Crown suggested 107 (from the 4th October
5 2010 and 19th January 2011) and the Defendant suggested that the start date should
6 be earlier and therefore 119 days should be deducted.

7 93. My order is that the deduction of time in custody will not be less than 107 days and,
8 should, upon investigation by the Crown and Defence, the number of days to be
9 deducted be calculated to be higher, this Court will make that adjustment to the 119
10 days or whatever the verifiable calculation is.

11

12 **Dated this the 13th February 2018⁶**

13 



14 **Honourable Mr. Justice Charles Quin Q.C.**
15 **Judge of the Grand Court**

⁶ At the end of this Judgment, in response to a query from the Defendant, the Court read s.23(4) of the *Conditional Release Law* which states: "At the sentencing hearing referred to in this section, evidence of the prisoner's behaviour in prison after original sentencing is not admissible."