

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

3 INDICTMENT No. 77/2012
4

5 REGINA

6 v.

7 BRIAN EMMANUEL BORDEN
8

9 **Appearances:**

10 Mr. Andrew Radcliffe Q.C. and Ms. Elisabeth
11 Lees for the Crown

12 Mr. Guy Dilliway-Parry of Priestleys for the
13 Defendant
14

15 **Before:**

Justice Alexander Henderson Q.C.

16 **Hearing:**

17 6th February 2018
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22 *Criminal Law – Sentence – Mandatory life sentence – Minimum term –*
23 *Conditional Release Procedure – Aggravating Circumstances – Exceptional in*
24 *nature – Issues considered: Use of Firearm – Degree of Planning and*
25 *Premeditation – Previous Convictions – Gangland Background.*
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1 JUDGMENT

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3 1. The Defendant, Brian Borden, was convicted on August 6, 2014 of murder and

4 sentenced to imprisonment for life. At the time, our law did not provide for the setting

5 of a minimum term of imprisonment after which the offender might apply for

6 conditional release; it does so now in the *Conditional Release Law, 2014* (the “Law”)

7 and the *Conditional Release Regulations, 2016* (the “Regulations”), legislation that

8 applies to all prisoners regardless of when they were convicted or sentenced¹: I have

9 conducted this hearing to fix a minimum term for Mr. Borden.

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11 2. The guiding principles for setting a minimum term were discussed in some detail in my

12 recent judgment in *R. v. Ricketts*² and will be referred to here only in summary. The

13 Legislative Assembly has determined that the minimum term “shall” be 30 years

14 unless there are extenuating or aggravating circumstances that are exceptional in

15 nature³.

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17 3. It is important to bear in mind that the minimum term fixes the earliest date at which

18 an offender may apply for release but says nothing about whether he should be

19 released on that date, at a later date, or not at all.



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23 ¹ see s. 3(1) of the Law

24 ² (unreported), February 7, 2017

³ Law, s. 14(1)

FACTS

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4. On September 13, 2011 Robert Bush was murdered by two gunshot wounds to his head, one from a shotgun and one from a handgun. After a non-jury trial, I convicted Mr. Borden of the murder. Although it has always been clear that two people perpetrated the killing, no one else has been charged as yet.

5. The killing took place against a background of rivalry between two local gangs: the Birch Tree Hill Gang and the Logwoods Gang. Mr. Borden was the leader of the former; the victim was associated with the latter.

6. The catalyst for the killing was a young woman, Myra Ebanks, who had one foot in each camp. At one time, she lived in the Logwoods area and socialized with Logwoods Gang members. She developed what she described as an occasional but intimate relationship with Mr. Bush.

7. After Ms. Ebanks moved to the Birch Tree Hill area she began to socialize frequently with Birch Tree Hill Gang members. However, she also continued her relationship with Mr. Bush. He would drive into the heart of the Birch Tree Hill area with his car stereo playing loud enough to announce his presence to members of the rival gang. He did this repeatedly, usually around the same time in the evening. Clearly, Mr. Bush was unafraid of the birch Tree Hill Gang and wanted all concerned to know that.



1 8. On the night before the murder, Mr. Bush drove into a yard in the Birch Tree Hill area
2 where a number of gang members were present, ostensibly so that Ms. Ebanks could
3 pick up a cigarette. Mr. Bush got out of the car, talked briefly with a rival gang
4 member (Jordan Manderson), and then started to leave. He changed his mind, returned
5 to the yard, and asked Ms. Ebanks to get him some alcohol.

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7 9. Mr. Bush had been warned on several occasions prior to this evening that Birch Tree
8 Hill Gang members intended to kill him. His actions on the night before the murder
9 have been described, accurately, as a show of strength. They also led directly to his
10 death.

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12 10. The Birch Tree Hill Gang members deemed Mr. Bush's actions on the night before the
13 murder to be "very disrespectful". They concluded that Mr. Manderson had lost respect
14 by having a peaceful conversation with a rival gang member: Ms. Ebanks said he had
15 "backed down" "in front of all his friends".

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17 11. For some considerable time, Mr. Borden had been threatening to kill Mr. Bush. Prior to
18 the murder, Mr. Borden served a three-year term of imprisonment for causing grievous
19 bodily harm with intent. Tracy Watler, a former girlfriend, used to both visit him in
20 prison and talk with him on the telephone. Mr. Borden asked Ms. Watler on three or
21 four occasions to help him "set up" Mr. Bush. He also asked her to convey a message
22 to Mr. Bush: in evidence, she quoted Mr. Borden as directing her to tell Mr. Bush that
23 "when I get out I will kill him".

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1 12. By the month before the murder, Mr. Borden became “consistent” about asking for Ms.
2 Watler’s help. He asked Ms. Watler to advise him when Mr. Bush was to sleep at her
3 apartment, saying it would be easier for him to kill him that way. There was evidence
4 that, on one occasion, Mr. Borden spent a considerable period of time lurking outside
5 Ms. Watler’s apartment, hoping to encounter Mr. Bush. In my judgment I
6 characterized this behavior as the stalking of Mr. Bush by Mr. Borden.

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8 13. On the night of the murder, Mr. Bush drove into the Birch Tree Hill area to pick up
9 Ms. Ebanks. As he was doing so, Mr. Borden approached and discharged a shotgun
10 blast into Mr. Bush’s head at close range. At the time, Ms. Ebanks was sitting in Mr.
11 Bush’s car and was struck by some of the pellets. The second assailant fired a shot
12 from a handgun at Mr. Bush.

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14 *ISSUES*

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16 14. The Crown urges me to find that the use of a firearm, the significant degree of planning
17 or premeditation, Mr. Borden’s previous convictions, and the gangland background to
18 the killing are aggravating circumstances of an exceptional nature. The Defendant does
19 not rely upon any extenuating circumstances.



1 *USE OF FIREARM*

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3 15. In *R v Ricketts*⁴, for reasons given there, I decided that the use of a firearm to commit
4 murder in the Cayman Islands is not, in and of itself, exceptional in nature. I affirm that
5 position here. The use of a shotgun is not, by itself, an aggravating factor of an
6 exceptional nature.

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8 *PREVIOUS CONVICTIONS*

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10 16. Mr. Borden has two previous convictions for inflicting injuries with a knife and a
11 machete, respectively. In the first of these, the Magistrate imposed a suspended
12 sentence, a fact that suggests strongly that the offence was not very serious. In the
13 second, the Crown accepted a basis of plea that contained evidence of provocation by
14 the victim in relation to a drug transaction. I must treat these convictions as
15 aggravating circumstances if I consider it reasonable to do so having regard to the
16 nature of the offences and their “relevance to the current offence”⁵: I do not consider it
17 reasonable to do so. Neither offence bears any real resemblance to the murder.



⁴ *supra*,

⁵ *Regulations*, Schedule 12, s. 3(1)(a)



1 *PLANNING AND PREMEDITATION*

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3 17. The murder was not preceded by any unusual degree of planning for it

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5 18. There was, however, substantial evidence of premeditation. The stalking of the victim
6 by Mr. Borden, the repeated assertions over an extended period of time of an intent to
7 kill him, and the efforts made to convey death threats to him, are all exceptional in
8 nature. I consider the nature and extent of the premeditation to be a significant
9 aggravating circumstance.

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11 *GANGLAND BACKGROUND*

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13 19. Section 2(2)(j) of Schedule 12 to the *Regulations* permits me to consider “any other
14 circumstances which may be considered relevant” as aggravating circumstances that
15 justify an uplift in the minimum term.

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17 20. Mr. Bush’s regular and very public incursions into the Birch Tree Hill Gang’s territory
18 were seen by all concerned as challenging and disrespectful. Myra Ebanks lived within
19 the gang’s territory. Mr. Bush was flaunting his romantic relationship with her
20 although, as he well understood, she was regarded as the “property” of the rival gang.
21 When Mr. Bush drove into the yard with Ms. Ebanks on the night before the murder he
22 presented a challenge to the Birch Tree Hill Gang that could not, according to gang
23 protocol on questions of honour, be ignored.

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25 21. This was a murder committed by Mr. Borden to enhance his standing within the Birch
26 Tree Hill Gang. He was regarded as its leader. He no doubt felt that, to maintain his
27 position and the esteem of his fellow gang members, he had to act. And so he executed
28 the victim in order that others might see him as someone to be feared and obeyed.

1 22. I am satisfied that the gangland context to the murder is an aggravating circumstance
2 that I should take into account under s.2(2)(j) and that it is sufficiently unusual as to
3 make it exceptional in nature. Combined with the considerable degree of
4 premeditation, a substantial uplift is justified.

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ORDER

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8 23. For these reasons, I fix the minimum term at 34 years. The 723 days Mr. Borden spent
9 while on remand are to be taken into account

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13 Dated this the 9th day of February 2018

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15 *Henderson, J.*

16 Justice Alexander Henderson Q.C.

17 Judge of the Grand Court

