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*Judgment: approved by the Court for handing down (subject to editorial corrections)** | *Delivered:* **25/11/2019**

**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

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**THE QUEEN**

**-v-**

**JOHN PATRICK MAUGHAN**
**and OWEN JOHN MAUGHAN**

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**Before Stephens LJ, Treacy LJ and Keegan J**

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**Stephens LJ (delivering the judgment of the court)**

**Introduction**

[1] *John* Patrick Maughan and *Owen* John Maughan ("the appellants") appeal with the leave of Colton J, the single judge against the sentences imposed on them by HHJ Miller QC ("the judge") in a full and careful judgment delivered on 21 December 2017. Concurrent sentences were imposed so that the total effective sentence in respect of each of them was fourteen years imprisonment (seven years in custody and seven years on licence). The appeal raises a number of issues including the appropriate reduction to a sentence when an offender pleads guilty at arraignment but does not indicate his intention to plead guilty at the outset.

[2] On arraignment on 14 September 2017

(a) both appellants pleaded guilty to a series of offences which they had committed over a three day period between 22 July 2016 and 25 July 2016 ("the joint offences"). We set out the joint offences and the sentences imposed in relation to each of them as follows:

(i) three counts of aggravated burglary and stealing contrary to section 10(1) of the Theft Act (NI) 1969 for which concurrent determinate custodial sentences of 14 years imprisonment were imposed;

(ii) two counts of attempted burglary with intent to steal contrary to Article 3(1) of the Criminal Attempts and Conspiracy (NI) Order 1983 and section 9(1)(a) of the Theft Act (NI) 1969 for which concurrent determinate custodial sentences of 4 years imprisonment were imposed; and

(iii) one count of burglary with intent to steal contrary to section 9(1)(a) of the Theft Act (NI) 1969 for which concurrent determinate custodial sentences of 5 years imprisonment were imposed.

(b) The appellant *John* Maughan also pleaded guilty to a series of offences which he committed on 25 July 2016 ("the further offences committed by John Maughan"). We set out those further offences and the sentences imposed in relation to each of them as follows

(i) one count of dangerous driving contrary to Article 10(1) of the Road Traffic (NI) Order 1995 for which a concurrent determinate custodial sentence of 4 years imprisonment was imposed;

(ii) one count of attempted possession of a firearm in suspicious circumstances contrary to Article 3(1) of the Criminal Attempts and Conspiracy (NI) Order 1983 and Article 64(1) of the Firearms (NI) Order 2004 for which a concurrent determinate custodial sentence of 4 years imprisonment was imposed;

(iii) one count of resisting police contrary to section 66(1) of the Police (NI) Act 1998 for which a concurrent determinate custodial sentence of 1 year's imprisonment was imposed;

(iv) one count of possession of a class B drug contrary to section 5(2) of the Misuse of Drugs Act 1971 for which a concurrent determinate custodial sentence of 6 months imprisonment was imposed; and

(v) one count of failing to stop where an accident occurred causing injury contrary to Article 175 of the Road Traffic (NI) Order 1981 for which a concurrent determinate custodial sentence of 4 months imprisonment was imposed.

(c) The appellant *Owen* Maughan also pleaded guilty to three further offences which he committed ("the further offences committed by Owen Maughan"). The first two of these offences were committed approximately one year earlier on 13 July 2015. The third was committed on 25 July 2016. We set out those further offences and the sentences imposed in relation to each of them as follows

(i) one count of aggravated burglary and stealing contrary to section 10(1) of the Theft Act (NI) 1969 for which a concurrent

determinate custodial sentence of 14 years imprisonment was imposed;

(ii) one count of false imprisonment contrary to common law for which a concurrent determinate custodial sentence of 4 years imprisonment was imposed; and

(iii) one count of allowing himself to be carried contrary to Article 172 of the Road Traffic (NI) Order 1981 for which a concurrent determinate custodial sentence of 6 months imprisonment was imposed.

[3] It can be seen that the overall effective sentence imposed on both of the appellants was the same but that the number and type of offences for which they were being sentenced were not identical. Owen Maughan had committed the additional and significant offence of aggravated burglary and also the additional offence of false imprisonment. John Maughan had committed five further offences committed during the pursuit and eventual arrest of the appellants on 25 July 2016 including dangerous driving and a firearms offence. In imposing sentence the judge had to consider those differences and also as will become apparent differences in the personal circumstances of each of the appellants.

[4] Mr O'Donoghue QC and Mr McCreanor appeared for the appellant *John* Maughan, Mr O'Rourke QC and Mr Rafferty appeared for the appellant *Owen* Maughan and Mr Magee and Ms Pinkerton for the prosecution.

**Factual background to the offences committed by Owen Maughan on 13 July 2015**

[5] The offences committed by Owen Maughan on 13 July 2015 occurred in the Presbytery at St Peter's Cathedral, Belfast where Father Carlin (aged 53 years) resided. Father Dallat was not present at the time of these offences but had some belongings in the Presbytery.

[6] At about 9.30 pm on Monday 13 July 2015 Father Carlin was alone in the Presbytery when he heard the doorbell ring. He went to the door and could see two males at the door. He asked them what they wanted and they said that they would like prayers said as they had a sick child. They were holding what he believed to be £20. Both spoke with what he felt was a Southern Irish accent, like the accent often spoken by members of the travelling community. The males were persistent and so reluctantly he let them in. Male 1 was slim build; Male 2 was heavier and wearing gloves. Having entered the premises, male 2 suddenly used his knee in the small of Father Carlin's back pushing him forward. Male 1 then produced what appeared to be a handgun and pointed it at Father Carlin's foot. They said they had come for money. At this juncture they also took his Nokia mobile telephone.

[7] Over what Father Carlin believed to be 1½ hours, the two men set out about burgling, manhandling, threatening and then imprisoning Father Carlin. They began by pushing Father Carlin through the house to a room where there was a safe. They retrieved a box of keys which male 2 began going through to find the key to

open the safe, succeeding but then discovering that the safe did not contain any money. The men became frustrated and "manic." Male 1 told Father Carlin that he would shoot him in the foot if he did not get money. Male 2 had taken a white door knob in his fist. Father Carlin, frightened for his life, told them he would get them money. They went upstairs to a door which required a code to enter but which Father Carlin did not know. At this stage male 2 punched Father Carlin twice to the head. Male 2 smashed the door panel gaining entry. Father Carlin took them to the Sacristy Room where he opened a drawer and showed them the keys for the safe. Again there was more than one key and the males became frustrated. Male 2 eventually opened the safe and removed 2 plastic money bags containing notes and coins. It was Father Carlin's belief that this amounted to approximately £400.

[8] The men then said that they wanted Father Carlin's money and so he took them to his living area and gave them approximately £70 from his bedroom and his wallet which contained money including $10, 50 Euro and a small quantity of Peruvian Sols as well as a cheque and personal hospital notes. Whilst in the room they emptied out Father Carlin's suitcases. Male 2 later sprinkled water on the items in the suitcases and asked for bleach, in an effort to destroy forensic evidence, suggestive of their forensic awareness. En route to the bedroom the men went into another room where male 2 rummaged around for money taking 100 Euro of petty cash.

[9] The men went to other rooms in the property looking for money but failing until they went to what Father Carlin described as Father Kennedy's room where they went through his drawers taking a quantity of dollars and Euro. Throughout the whole ordeal, male 1 made threats to Father Carlin including that he would shoot him in the foot and pointed the gun at him. In his statement, Father Carlin noted that he thought the gun was a handgun, black in colour which looked plastic. It was slightly smaller than a police handgun.

[10] The two men then made Father Carlin enter a windowless bathroom and get down on his knees. They then locked him in the bathroom. He had no phone to contact anyone. Frightened for his life, he slept in the bathroom overnight.

[11] The Parish Sister attended the Cathedral at 8.30am on the morning of 14 July 2015. The side door was lying open. She went upstairs and could see broken glass. She noted that the safe in the Sacristy's office was open and the place was in "disarray." She immediately tried to contact Father Carlin but to no avail prompting her to return home and contact another Priest and raise the alarm.

[12] Police attended at approximately 9.45am. They noted that several of the rooms had been entered and disturbed. A glass pane on a door on the ground floor had been smashed. They found Father Carlin on the first floor of the property; he was very shaken. He informed them that he had been locked in the bathroom of the property overnight but had been able to manipulate the lock and make his way out when police arrived.

[13] From Father Dallat's quarters two watches had been stolen one of which was a silver Pulsar watch which was inscribed with a personal message and was therefore of sentimental value. Also taken was a jar full of coins of unknown value and three mobile telephone handsets.

[14] A forensic examination of the scene uncovered footwear impressions in dust on a step located on the interior side of an inner door next to an exit at the side of the building. Also discovered were two matching protective gloves discarded by the perpetrators on which was found Owen Maughan's DNA. Fibres from the gloves were found on tape lifts taken from the first floor window of the premises.

[15] At 8.10 am on 14 July 2015, Gardai attended the scene of a crash on the N4 at Doorty, Collooney, Co Sligo. A Peugeot 206 had crashed into a wall. A man who claimed to be the driver identified himself as John Purcell. He provided the number for his wife which was in fact a number for Owen Maughan's wife. The man was arrested and taken into custody. He again informed Gardai that his name was Purcell and became highly agitated and aggressive when it was suggested his name was in fact Maughan. Owen Maughan was searched and found to be in possession of £1,060, 15 Euro, a key to a Honda vehicle and Father Dallat's Pulsar watch. Gardai also located a Nokia mobile phone handset, £15 and a quantity of foreign currency some of which was Peruvian in the vehicle. A pair of boots was found in the boot of the vehicle which matched the gel lift taken at the scene. Owen Maughan's DNA was found in the left boot.

[16] Father Carlin informed police in the weeks after the incident that he felt angry and violated in his own home. At that time, he felt uncomfortable in both known and unknown surroundings. He felt that the incident had impacted upon his ability to fulfil his pastoral and professional duties to the full.

**The responses of the appellant Owen Maughan at interview after his arrest in respect of the incident on 13 July 2015**

[17] Owen Maughan did not co-operate in the interview process but pleaded guilty on arraignment.

**Factual background to the offences committed on 22 July 2016 and 24 July 2016**

[18] On Friday 22 July 2016 at approximately 4.45 pm in Lurgan the appellants purchased a Vauxhall Corsa for £300. They used this vehicle to travel to the locations where some of the subsequent offences were committed.

[19] *The first incident* consisted of attempted burglary with intent to steal which occurred at St Colmcille's Parochial House, Holywood, Co. Down at approximately 6.30 pm on Friday 22 July 2016. CCTV images showed the appellants pressing the doorbell of the Parochial House and trying the door handles, covering their hands with their sleeves as they did so. Both also made efforts to hide their faces from the cameras. The appellants left the premises without gaining entry.

[20] *The second incident* consisted of aggravated burglary and stealing which occurred at the Parochial House at St Michael's Church, Finaghy Road North, Belfast

at 7.30 pm on Friday 22 July 2016. Father Denis Ryan (aged 71 years) heard the doorbell and opened the door. Owen Maughan told Father Ryan that there were some people out the back looking for help. At this point John Maughan, jumped over a side railing and they both pushed Father Ryan into the building and then into the Parish Office. Owen Maughan then took what Father Ryan believed to be *a black handgun from his right hand pocket and began to threaten Father Ryan with it, asking for money and threatening to use the firearm on him*. Owen Maughan kept saying "Where is the money?" whilst pointing the gun at Father Ryan saying that he would use it. At *one stage Father Ryan saw Owen Maughan slide the top of the gun back making Father Ryan believe that it was a genuine firearm*. Furthermore on a number of occasions Owen Maughan pushed the gun against Father Ryan's back. John Maughan was carrying a screwdriver which he used to try to force open a filing cabinet. Owen Maughan asked for the whereabouts of the safe. They moved about the property including into Father Ryan's bedroom where John Maughan took £80 from Father Ryan's wallet and then to the living quarters of another priest who had resided there, taking a mobile telephone belonging to that priest. As they moved around the property, *Owen Maughan pushed the gun against Father Ryan's back*. They then took Father Ryan to the Chapel and Sacristy where John Maughan began trying keys to gain entry to the safe. The alarm to the property went off when they entered the Sacristy which appeared to agitate the appellant's. Owen Maughan acted as though to "cock" the gun, saying to Father Ryan "this is real." Owen Maughan told Father Ryan to turn off the alarm but he told them that he was unable to do so. Owen Maughan then told Father Ryan to stay where he was, saying he would be in trouble if he did not comply. The appellants then left the chapel.

[21] CCTV footage captured this incident and showed Father Ryan being ushered around the premises by the two appellants. Moreover, footwear impressions recovered from the scene were similar to the pattern configuration on footwear subsequently seized from Owen Maughan.

[22] The Corsa was seized by the police the following day. DNA from the steering wheel and front passenger door of the vehicle contained mixed profiles which had similarities with the profiles of both appellants. In addition there was CCTV images from a McDonalds drive through restaurant which showed John Maughan driving the vehicle (identified from distinctive tattoos on his arm). The police found in the vehicle a replica pistol, similar to that described during the *second incident*. It was a 6mm ball bearing calibre air pistol with magazine designed to resemble a CZ75 semi-automatic pistol. The pistol would not "cock" and therefore could not be test fired. However, it was designed to discharge 6mm plastic ball bearings with a kinetic energy output of less than 1 joule (0.22j). It is an imitation firearm. DNA from the weapon matched that of Owen Maughan. John Maughan could not be excluded as being a minor contributor to the sample.

[23] Father Ryan was extremely troubled by these events being unable to stay at the premises for a number of nights. He felt that he had lost confidence in dealing with strangers and in answering the front door following what he described as an intimidating incident.

[24] *The third incident* consisted of aggravated burglary and stealing which occurred at a house adjacent to the Parochial Hall at St Patrick's, Dungannon on Friday 22 July 2016 at approximately 9 pm. Cathal McCluskey (aged 74 years) and his wife Fidelma (aged 71 years) have lived in this house for over 35 years. Fidelma McCluskey suffers from angina.

[25] Mr McCluskey heard the doorbell ringing a couple of times. He went to the internal door at the front of the house and could see someone standing beyond it (the external door had been left open). As Mr McCluskey opened the door he saw a male, matching the description of Owen Maughan, with a hood up over his head. Owen Maughan took *a gun from his pocket and raised it to Mr McCluskey's head* and pushed him back into the hallway followed by a second male matching the description of John Maughan. Mrs McCluskey was in the living room and Mr McCluskey was pushed into that room. Owen Maughan shouted very aggressively *"We are the IRA give us your money or we will shoot you" appearing to "cock" the gun as he did so. He repeatedly threatened to shoot Mr McCluskey* unless they were given money. Mrs McCluskey told him the money was in the kitchen. Owen Maughan pushed her into the kitchen where she handed him £40 - £50 from her purse. The appellants then went upstairs with Owen Maughan making the McCluskeys go with them by pointing a gun at them as he did so. *The appellants began ransacking the rooms*. John Maughan removed a pair of socks from a drawer and placed them on his hands.

[26] At one point, Mrs McCluskey had the presence of mind to slip an envelope secreted in one of the drawers under her arm and feign chest pains in order to distract them from the item she had retrieved. Owen Maughan pushed Mrs McCluskey onto a chair and asked if she had an alarm for her angina. They asked for jewellery and Mrs McCluskey directed them to a box containing rings and a watch she had received as a present for Christmas. *The appellant's continued to move the McCluskeys from room to room at gunpoint* asking where the safe was. One even followed Mrs McCluskey to the toilet where she managed to secrete the envelope containing the money. The appellant's took an interest in medication in the kitchen cabinets asking if the McCluskey's had any Valium. They took £20 from Mr McCluskey's wallet and cash from Mrs McCluskey's purse. The appellants enquired as to whether certain medals and coins were gold. One of the appellants came downstairs with a suitcase and began placing some items into it. During the ordeal, one of the appellants said they needed money for drugs. Again, courageously, Mrs McCluskey managed to secrete money from a purse whilst the men were pre-occupied looking through drawers in the downstairs rooms.

[27] The appellant's also stole Mrs McCluskeys rings, a watch which was a gift, a further Rotary watch, a gold bracelet with gold links, two gold charm bracelets with gold links, a gold chain dotted with pearls given to Mrs McCluskey on her wedding day by her mother, two heavy brass vases, three landline telephones and internal door keys. The telephones and keys were taken to impede the alarm being raised. There was a sentimental value to the bulk of the items taken. Those items were not

subsequently recovered. The McCluskeys were able to raise the alarm using a telephone in the kitchen.

[28] Subsequently during an identification procedure Mrs McCluskey identified John Maughan. Mr and Mrs McCluskey were not able to definitively identify Owen Maughan.

[29] The CCTV footage from the incident one hour earlier at the Parochial House at St Michael's Church showed that the clothing worn by the appellants matched that worn by the males when they arrived at the McCluskey's home.

[30] Mr McCluskey noted that in the immediate aftermath, he and his wife were both shook up and had not slept well. He was concerned for the long term impact upon them. Mrs McCluskey described being in a state of shock and having been very frightened both during the ordeal and since.

[31] *The fourth incident* consisted of attempted burglary with intent to steal which occurred at the Parochial House, 91 Main Street, Castlewellan, at approximately 2.45 pm on Sunday 24 July 2016. Father Denis McKinlay who was in the Parochial House heard a noise which sounded like bangs at the front door. He went to the landing and could see a male attempting to break in through the front door by trying to jemmy the lock. Father McKinlay shouted at the man and ran down stairs. He opened the door to see two males. Owen Maughan, was next to the door whilst John Maughan was standing in the porch. Father McKinlay shouted at them to leave which they did. Owen Maughan shouted back as he left that he was looking for a marriage certificate. He was grabbed by John Maughan and they both made off. Father McKinlay noted that they were walking unsteadily as they departed. A footwear mark at the scene was found to be similar to footwear worn by John Maughan at the time of his arrest.

[32] *The fifth incident* consisted of burglary with intent to steal which occurred at approximately 4.50 pm on Sunday 24 July 2016 at a discount shop on the Main Street, Newcastle called "Around a Pound." The appellant's entered the shop. The manager of the shop noted that Owen Maughan (whom he later identified) was trying to distract staff at the till area, asking for someone to take payment for a bag of crisps and asking where the drinks were. The manager went upstairs to the staff-only area which led to the Store Office. There he observed John Maughan at the top of the stairs. When challenged, John Maughan claimed he had been using the toilet. The manager could see that he had a "pointed" object protruding from under a jacket that he was holding. John Maughan moved toward the manager prompting him to back away whilst stating that he was going to call the police. This caused John Maughan to become agitated and he moved further towards the manager. As they approached the bottom of the stairs, Owen Maughan appeared and asked the manager what his problem was before saying "You want to fucking ring the police." Staff managed to usher the men out of the store. It was subsequently discovered that efforts had been made by John Maughan to enter the manager's office with extensive damage being caused to the lock and the wood of the door. It was also found that other security doors had also been tampered with and damaged in a similar manner.

[33] *The sixth incident* consisted of aggravated burglary and stealing which occurred at Park Lane, Newcastle at approximately 9.55 pm on Sunday 24 July 2016. At approximately 9.55 pm the appellants forced their way into the home of Terence (aged 62 years), Barbara (aged 59 years) and Dorothy (aged 56) Duffin; the three are all siblings. Also present in the home was another of their sisters Una (aged 58 years). Terence Duffin had been out for the evening and had returned home at approximately 9.55 pm. He pulled his car, a Hyundai, onto the driveway in front of the house. As he approached the front door and opened it to allow the cat in, he was pushed with force from behind. He turned to see the Defendant, Owen Maughan (whom he subsequently identified), behind him. Owen Maughan was claiming there was someone chasing him. Barbara Duffin recalled hearing a commotion in the hallway and so she went to see what was going on. By now, Owen Maughan and John Maughan were in the hallway. Owen Maughan was shouting "He's trying to kill me." Terence Duffin could see that Owen Maughan was carrying a knife in his hand which he raised in front of his face and waved. Barbara Duffin could see that John Maughan was carrying a screwdriver. Barbara Duffin initially thought that John Maughan was trying to attack Owen Maughan however it soon became clear that this was simply a ruse. Owen Maughan and John Maughan then began working together telling the Duffins to get back to the house. Una Duffin, having come on the scene, attempted to run to a neighbour's home to raise the alarm however *John Maughan lifted a large carving knife from a knife block in the kitchen and chased after her*. *He shouted that he would kill her* if she did not return to the house. Una fell to the ground (spraining her wrist) and was made to return to the house by John Maughan. Barbara, Terence and Una Duffin were bundled into the sitting room at knifepoint where their disabled sister Dorothy was. Dorothy, who has mental health difficulties, was upset and "shaking terribly." When Terence raised concerns over Dorothy's welfare, *John Maughan said "we all have to die sometime."* John Maughan did most of the talking asking where the money was in the house. He was agitated and kept plunging the knife into the table top. Owen Maughan and John Maughan took an envelope containing £40 intended for Mass and £60 which Barbara Duffin identified in a drawer in the living room. John Maughan had pulled his sleeves over his hands when this was going on so as not to touch anything in the house. He then directed Owen Maughan upstairs as he continued to quiz the family on where they kept their money.

[34] John Maughan then began taking crystal picture frames containing photographs and gold rimmed plates asking if there were any more in the home. He noticed that Dorothy Duffin was wearing a locket, a watch and a little trinket on a chain around her neck which contained a lock of her father's hair. He was told the trinket and chain had sentimental value but nonetheless he took the chain off the trinket and began scrubbing it in the sink. Dorothy Duffin noted how it hurt her neck when he pulled it off. He also removed her watch. He asked if someone would make him a cup of tea, oscillating as to whether he would drink it when Barbara Duffin obliged. He remained aggressive, continuing to ask where the money was kept. He said the man upstairs would be angry if they did not reveal it. When told there was 250 Euro in a purse upstairs he sent Barbara Duffin upstairs but the money

had already been stolen. The two men then went through the Duffin's belongings searching for items to take and bagging up items in the hallway. They then barricaded the Duffins into a room using kitchen furniture, telling them not to raise the alarm for 20 minutes. They then took off in Terence Duffin's Hyundai vehicle along with the Duffin's valuables. The Duffins managed to make their way out of the room and call police.

[35] Subsequently the police recovered from the Hyundai a jewellery box, a gold patterned plate, 2 Waterford crystal photograph frames and a further crystal photo frame each containing sentimental photographs, 4 Waterford crystal ornaments, assorted women's jewellery including a locket, bracelet and rings belonging to Dorothy Duffin, Barbara Duffin's mobile phone, £40 cash in an envelope, £60 cash believed to have come from Barbara Duffin's purse and a ten-shilling note belonging to Dorothy Duffin. 410 Euro was also recovered, believed to belong to the Duffins. A screwdriver matching that used in the attack was also recovered from the vehicle. Terence Duffin's Hyundai vehicle was damaged to the front and rear.

[36] As a consequence of this incident Dorothy Duffin stated that she felt apprehensive and concerned that more people were going to come. She noted how she did not feel safe since the incident. Terence Duffin was very apprehensive about returning home and felt concerned for the welfare of his sister Dorothy.

**Factual background to the offences committed on 25 July 2016 involving the pursuit and arrest of the appellants**

[37] Police were aware that the Hyundai vehicle had been stolen from the Duffin's home. At approximately 11.30 pm on Sunday 25 July 2016 the vehicle was tracked to the Saintfield Road, Belfast and then identified by an armed response unit on the Ormeau Road, travelling at approximately 30 mph. John Maughan was driving the vehicle with Owen Maughan in the front passenger seat. The police indicated by the use of horns and lights that the Hyundai should stop but John Maughan continued driving along the Ormeau Road. The Hyundai then travelled through central Belfast at speeds of 50 to 60 mph pursued by the police. It was seen to travel through two sets of red lights without slowing as it travelled along Cromac and Victoria Streets, heading for the Dunbar Link where it came to a momentary stop. The pursuing police vehicle stopped close behind so as to avoid being rammed however John Maughan pulled forward before reversing at speed into the front of the police vehicle. The Hyundai then took off at speed again, on to York Street before travelling on to the M2 Motorway in the direction of Newtownabbey, again passing through red lights as it did so. It was travelling at speeds in excess of 100 mph as police gave chase. It exited on to the Shore Road then headed towards the Doagh Road. As it proceeded along Longwood Road the vehicle ignored a red light, proceeding onto Church Road and eventually towards Antrim Road. A stinger was deployed at Sandyknowes roundabout but failed to bring the vehicle to a halt as it travelled the wrong way around the roundabout. Oncoming vehicles were caused to swerve as the Hyundai moved across the lanes in excess of the speed limits to

prevent the pursuing police from passing. The police helicopter had by this time been deployed.

[38] The Hyundai then proceeded in the direction of Templepatrick, before heading back in the direction of Mallusk at the Templepatrick roundabout, again travelling at excessive speeds. The vehicle continued in a southerly direction (in the general direction of Belfast) along the Lylehill Road before turning right on to the Umgall Road heading in the general direction of Nutts Corner. Here, it eventually came to a standstill. It then reversed, ramming into a police vehicle before taking off to a farm yard on Umgall Road. The driver of the police vehicle suffered pain to his left elbow and lower back upon impact but was able to pursue the Hyundai to the farm yard; he was subsequently required to take a number of days off work to recover. His passenger also sustained injury to his left shoulder and neck leading to 2 weeks' absence from work.

[39] At the farm on Umgall Road, John Maughan attempted to perform a 3 point turn in an effort to escape. However armed tactical response officers had by now drawn their rifles and shouted to John Maughan to stop the vehicle. Nonetheless, John Maughan drove towards the officers in an aggressive and deliberate manner. One officer pointed her rifle at his chest illuminating a laser on his chest. John Maughan continued to drive at the officer causing her to move to the side or risk being crushed against a vehicle behind her. The officer felt at such risk that serious consideration was given to shooting. She managed to kick at the passenger door of the vehicle whilst another officer broke the driver's door window. Both driver and passenger put their hands up before John Maughan started driving off at speed once more heading towards and through a metal gate and into a field. The two males alighted from the vehicle and took off on foot across the field. They were eventually apprehended by police.

[40] Upon arrest John Maughan appeared to slip his handcuffs. He then made a concerted effort to draw the sidearm holstered on the hip of one of the police officers. However, with the aid of other officers he was restrained. When arrested and awaiting transport, John Maughan was heard to say "If I had got it I would have killed you all to get away…..I should have driven over you." He later said that he would not have shot at police but would have used the firearm to escape.

[41] We consider that the totality of the driving from the point of detection to the point of arrest was highly dangerous. This was a prolonged course of conduct with John Maughan deliberately disregarding the safety of other road users whilst being pursued by police. In addition he deliberately used his vehicle to collide with police vehicles in order to attempt to disable those vehicles, at significant risk to the occupants and to other road users. Furthermore, he used his vehicle as a weapon driving it straight at a police officer.

[42] Upon arrest, John Maughan was found to have a bag containing 1.26g of cannabis inserted in his anus.

**The responses of the appellants at interview after their arrest on 25 July 2016**

[43] On Monday 25 July 2019 both of the appellants refused to be interviewed by police.

[44] Owen Maughan, who had been deemed fit for interview by the medical officer, refused to leave his cell in response to which the police tried to bring a mobile recording device to his cell at approximately 7.30 pm. Also present were Owen Maughan's solicitor and his appropriate adult. However, this attempt to facilitate his interview was thwarted as he began screaming, preparing to spit at the police and preparing to damage the cell. There was a further attempt to interview Owen Maughan through the hatch in his cell at approximately 9 pm again with his solicitor and appropriate adult present. This attempt was equally unsuccessful as Owen Maughan started to shout to get away from the hatch. He then threatened to smash the window on the hatch. There was another unsuccessful attempt on Tuesday 26 July 2016 at 9 am again with Owen Maughan's solicitor and appropriate adult.

[45] John Maughan though cleared fit for interview refused to leave his cell unless provided with Methadone. In short he refused to be interviewed.

[46] At 5.30 pm on Monday 25 July 2016 a buccal DNA swab was taken from Owen Maughan but he did not sign the documentation which was signed by his solicitor and his appropriate adult.

[47] Both of the appellants refused to facilitate the VIPER identification process which as a consequence had to be carried out using captures of their images.

**Previous convictions**

[48] John Maughan has 36 previous convictions in Northern Ireland, 8 of which are for burglary and 1 for robbery. The robbery conviction on 15 May 2009, for which he received a sentence of 9 years imprisonment, related to his and Owen Maughan's assault on a Parochial House in Armagh when the housekeeper was threatened. Amongst his convictions are offences of possession of a firearm/imitation firearm with intent to cause fear of violence and threats to kill. He has 34 further convictions in the Republic of Ireland, 4 of which are for burglary.

[49] Owen Maughan has 7 previous convictions in Northern Ireland including robbery for which he received a custody probation Order of 8 years plus 18 months' probation. In the Republic of Ireland he has 32 previous convictions including for robbery (when aged 16) and attempted robbery (in 2015). He was unlawfully at large in respect of the latter when he committed the offences at St Peter's Cathedral on 13 July 2015. In addition one of the sentences imposed in Northern Ireland was a custody probation order which led to his release from custody in January 2012. By May 2012 he had breached the probation element of that order.

**Pre-sentence report in relation to John Maughan**

[50] The probation officer was unable to provide an assessment and pre-sentence report in relation to John Maughan as he refused to attend his arranged appointment. The court did however have a pre-sentence report dated 6 December 2017 in which it records that John Maughan's parents separated when he was 10 years old and describes his difficult upbringing in which the children were often left unattended while their parents engaged in excessive alcohol use. The children had to fend for themselves and John Maughan said if he was hungry he stole from shops. He became involved in criminal behaviour from 12 years of age. He states that he was sexually abused while in care in Dublin. He described a history of abusing alcohol and drugs from a young age. He said that excess alcohol led to depression after his brother's suicide in 2013 and he was admitted to a psychiatric unit.

[51] He was assessed as presenting as a high likelihood of reoffending with risk factors including his unstable and unstructured lifestyle; financial (given the acquisitive nature of offending); alcohol and drug misuse (including abuse of prescription medication); distorted reasoning and thinking skills; aggression; impulsiveness and risk-taking behaviour and associates. He was not assessed by the probation service as presenting a significant risk of serious harm. In considering pre-sentence reports in relation to a significant risk of serious harm it is important to bear in mind the observations of this court in *R v Loughlin (Michael) (DPP Reference No 5 2018)* [2019] NICA 10 in relation to the need for care in the assessment of dangerousness even where the probation assessment is that the offender is not assessed as posing a significant risk of serious harm. The concentration should be on the statutory test not on the test adopted by the probation service.

**Pre-sentence report in relation to Owen Maughan**

[52] Owen Maughan now 39 was born on 2 May 1979. He is from a traveller background, the second eldest in a family of ten children. He was raised mainly in the Dublin area. He did not have the benefit of a structured and disciplined home environment whilst growing up and there was a considerable lack of appropriate boundaries as an adolescent reflected in his usage of alcohol and drugs from his early teenage years. He states that he consumed alcohol from the age of fourteen and smoked cannabis at fifteen years. He then moved to other drug misuse, including cocaine and heroin in his teenage years. He has continued to misuse heroin and other drugs and his use of drugs and the desire for finance for more drugs has been a motivating factor in much of his offending history. He has had minimal formal education and would have mainly worked at scrap metal collection over the years. He and his wife have two children.

[53] In relation to the July 2016 offences Owen Maughan stated that at the time he was under the influence of drugs and was "not in the right state of mind" and "out of my head." In discussing the series of offences Owen Maughan insisted that he would not have committed them if it had not been for the influence of drugs. However he veered between expressing remorse to attributing his behaviour to

substance misuse. He stated that he wished to pursue treatment for his drug addictions on release but PBNI observed that his previous breach of supervision raised concerns in respect of compliance and possible engagement. He was not assessed as meeting the PBNI threshold as presenting a significant risk of serious harm to others (though again it is important to bear in mind the observations of this court in *R v Loughlin (Michael) (DPP Reference No 5 2018)*). He was assessed as presenting a high likelihood of reoffending.

[54] In relation to the offence in July 2015 Owen Maughan was unlawfully at large from custody in the Republic of Ireland.

**Dr Carol Weir's psychological reports on Owen Maughan**

[55] In her first report Dr Carol Weir, Consultant Clinical Psychologist, stated that she considered that Owen Maughan was probably of low IQ. He informed her that at the age of 5 in October 1984 he had been involved in a road traffic accident and suffered a serious head injury. He stated that he remained in hospital for one year in Dublin. She considered that he had moved in and out of alcohol abuse over the years and that he had abused cannabis, cocaine and heroin. He recounted that he had been placed on a Methadone substitution programme while in Mountjoy and it was Dr Weir's opinion that the lack of Methadone in the community prompted the offences in July 2016.

[56] In her second report Dr Weir stated that she had carried out psychometric testing the results of which showed that Owen Maughan is severely learning disabled. She stated that whilst there was a lack of effort on his part during the testing procedure she was satisfied, even allowing for that, that his cognitive functioning is in the range of learning disabled. He is illiterate. In her opinion a large factor in his cognitive weaknesses resulted from the very serious head injury when he was 5 years of age. No details of the areas of his brain that were damaged were available to Dr Weir but she could see extensive scars at the back of his head.

**The Judge's sentencing remarks**

[57] The judge set out the factual background to all the offences. He gave consideration as to whether either of the appellants met the test of dangerousness in Article 15 of the Criminal Justice (Northern Ireland) Order 2008 concluding that they did not. He was sceptical as to John Maughan's expression of remorse in the light of the repeated pattern of offending stating that "words are easy to say when facing an impending sentence but must be contrasted with the only minimal evidence of a genuine desire to change direction." He expressed a large measure of scepticism as to Owen Maughan's espoused desire to be reunited with his family given that on previous occasions when he was at liberty he chose to live in Fermanagh whilst they remained in Mullingar. He then gave consideration to the appropriate discount for the guilty pleas. He referred to *R v Pollock [2005] NICA 43* and stated that:-

> "The maximum reduction is only due to those who admit their guilt when first confronted with the allegation."

The judge considered that neither of the appellants had co-operated with police on arrest and given the fact that for certain of the offences they were either caught red-handed or the evidence against them was so overwhelming, he did not believe that either was entitled to full credit. However he stated that their pleas were at an early stage and they warranted a significant discount which he assessed at 25% in respect of each appellant though later in his sentencing remarks he stated that the discount was "*approximately*" 25%.

[58] The judge equated the appropriate sentencing range for aggravated burglary to be essentially no different from that for robbery for which range he relied on *R v McDade and Gault* [2017] NICA 37, *R v O'Boyle and Smyth* [2017] NICA 38 and *R v Cambridge* [2015] NICA 4. He considered that each of the aggravated burglaries would attract a double figure sentence. He took into account aggravating and mitigating features and considered totality concluding that had the appellants been convicted after a contested trial each might have expected a global sentence of not less than 18 years. He took that as his starting point from which he gave credit for the guilty pleas. A 25% reduction would have led to a sentence of 13 years and 6 months. Instead the judge deducted 4 years to take account of the "approximate" 25% reduction and imposed a total overall effective sentence of 14 years. The percentage reduction was approximately 22.5% rather than 25%.

**John Maughan's grounds of appeal**

[59] John Maughan submits that the sentence imposed is wrong in principle because:

(i) The starting point of 18 years was too high. The learned trial Judge stated each of the aggravated burglaries could have justified double figure sentences. It was submitted that this equated these offences to serious robberies of cash in transit/banks by professional criminals armed with guns who were prepared to use them. While it was accepted that the facts of these offences were very serious it was submitted that they did not quite reach that level of offending.

(ii) The learned trial Judge failed to have regard to the totality of the sentence passed. It was submitted that while the sentence was expressed in concurrent terms, the sentencing remarks stated that the final sentence was arrived at by the use of consecutive sentences. No issue was taken with this "per se" but nevertheless it was suggested that the learned trial Judge failed to fully account for totality despite stating that he had regard to that in arriving at the final sentence.

(iii) The discount of approximately 25% failed to properly reflect the credit the applicant ought to have received as a result of guilty pleas which were entered on arraignment. It was stated that the learned trial Judge withheld part of the credit because of a failure to admit guilt prior to arraignment. It was suggested that as this appellant was never interviewed that his first account of his involvement was at arraignment at which he accepted his guilt.

(iv) The learned trial Judge failed to apply the discount of 25% that was stated would apply to the calculation of the sentence and that this appellant was entitled to all of the 25% promised.

**Owen Maughan's grounds of appeal**

[60] Owen Maughan submits that the sentences imposed were manifestly excessive because:

(i) The learned trial Judge failed to make any or adequate allowance for the fact he had a full scale IQ of 44, indicating that he is "severely learning disabled".

(ii) The global starting point of 18 years' imprisonment on a contest was too high.

(iii) The 25% discount for his plea on arraignment was insufficient (in fact less than 25% was allowed). It is submitted that the decision of this court in *Attorney General's Reference (No. 1 of 2006)* [2006] NICA 4 should no longer be followed as a police interview is not a "stage in the proceedings" within Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996 ("the 1996 Order") so that taking into account a failure by a defendant to indicate his intention to plead guilty at interview does not conform to the terms of that Article. It is also submitted that the word "proceedings" in Article 33(1) of the 1996 Order should be interpreted as "court proceedings" and should not include "proceedings" such as pre-charge police interviews.

(iv) The learned trial Judge failed to allow any or adequate mitigation in light of his personal circumstances which included:

(a) genuine remorse as evidenced by his correspondence to the court and the oral testimony provided to the court by his wife and the prison chaplain;

(b) the circumstances in which he came to commit the offences, including his drug addiction and his need for immediate support on his Methadone treatment programme, as well as his inability to adequately address the bereavement of his brother which occurred while he was in custody.

**Aggravating and mitigating features**

[61] The effect on sentence of the presence of several aggravating or mitigating features is not to be calculated simply by an arithmetical tally of the number of such features. The degree must also be taken into account. In the present case, not only are numerous aggravating features present but a number are of substantial gravity.

[62] It was submitted on behalf of the appellants that a feature of the offences of aggravated burglary was that whilst serious violence was repeatedly threatened only modest violence was used. It is correct that the use of serious violence is worse than modest violence but modest violence can carry with it not only the victim's subjective perception of a risk of really serious violence but also the objective existence of that risk. The lack of serious violence in this case is to be taken into

account but that does not mean that the perception of such violence or the objective risk of such violence is to be left out of account. We consider that the facts in relation to the car chase and the arrest of the appellants provides very clear insight into what would have happened to the victims of the aggravated burglaries if they had not submitted but rather had challenged or tried to evade. During the course of the car chase John Maughan demonstrated that he was totally reckless as to the lives or bodily integrity of members of the public and of police officers. He drove straight at one of the police officers and would have crushed her if she had not moved out of the way. Also John Maughan stated that if he had control of the gun which he was trying to seize he would have shot all the police officers. That remark provides a very telling insight in relation to the very real objective risk of violence. We consider that all the victims of the aggravated burglaries were at objective risk of extreme violence from both of the appellants.

[63] An issue arises as to whether the use of a weapon is an aggravating feature in relation to the offence of aggravated burglary it being stated that their "use" is a constituent ingredient of the offence itself. However a person is guilty of aggravated burglary if he commits any burglary and at the time *has with him* any firearm or imitation firearm, any weapon of offence or any explosive. The offence is constituted by having the weapon "*with him*." The *use* of the weapon to threaten violence is an aggravating feature.

[64] We consider that the following aggravating features are present:

(a) As concurrent sentences are being imposed the gravity and number of the other offences have to be taken into account as aggravating features of the most serious offence. It is incorrect to concentrate solely on the offences of aggravated burglary to the extent of obscuring the substantial sentences warranted for instance in relation to dangerous driving and the firearms offence. These were serious offences putting the lives and bodily integrity of the victims at substantial risk. In relation to the number of offences there were six joint offences, five further offences committed by John Maughan and three further offences committed by Owen Maughan.

(b) The extensive and relevant criminal records of both of the appellants.

(c) Pre-meditation and planning which involved targeted attacks on elderly and isolated victims

(d) The invasion and ransacking of homes.

(e) The appellants worked as a team.

(f) The use of some degree of violence together with the objective risk of extreme violence from both of the appellants.

(g) Direct threats to the victims in a way that was extremely frightening putting the victims into significant fear, including threats to kill

together with reference to a paramilitary organisation in order to add further menace to the threats.

(h) The use of weapons including knifes, a screwdriver, an imitation firearm and a vehicle together with the attempt to obtain possession of and thereafter to use a real firearm.

(i) The appellants were under the influence of drugs

(j) The theft of property including items which caused a significant degree of emotional loss to the victims.

(k) Commission of offences whilst on licence.

(l) Failure to respond to previous sentences.

It is sufficient for present purposes to state that the features in (a) – (i) were all serious aggravating features.

[65] We consider that the following mitigating features are present

(a) The appellants pleaded guilty at arraignment.

(b) Imitation firearms rather than a real firearm was used in the offences of aggravated burglary and stealing.

(c) Serious violence was not inflicted.

(d) There have been expressions of remorse.

(e) Owen Maughan's cognitive abilities which is another feature to which we will return.

(f) The appellants' personal circumstances though these are of limited effect in the choice of sentence, see *Attorney General's Reference (No 7 of 2004) (Gary Edward Holmes)* [2004] NICA 42 at paragraph [15]; *Attorney General's Reference (No. 6 of 2004) (Conor Gerard Doyle)* [2004] NICA 33 at paragraph [37]; *R v Keith McConnan* [2017] NICA 40 at paragraph [49]; and *R v Hutton* (24 October 1997).

**Discount for the guilty pleas**

**(a) The competing interests and the issues for determination**

[66] A discount for a guilty plea is necessary to encourage pleas of guilty in order to obtain a range of public benefits while ensuring that offenders are realistically punished for their offences. The public benefits include relieving witnesses, vindicating victims, saving court time and indicating remorse. It can be seen that there are two competing interests between *encouraging those benefits* and *the imposition of realistic punishment*. Generally the discount should be larger the earlier the indication of an intention to plead guilty. The level of discount is left to the sentencing court's discretion subject to the guidance of this court. The guidance of this court is based on how in this jurisdiction the competing interests are to be met.

[67] An issue for determination is whether the attitude of the offender at interview should be taken into account in determining whether an offender is entitled to the full discount which is generally in or about one third from the sentence which would otherwise be imposed on a contested trial. As a matter of principle we consider that a person who faces up to his responsibilities at interview should receive a greater discount than a person who does not do so. The question remains as to whether that should be by way of a separate and additional discount to the full discount of generally in or about one third or whether it should continue to be included in that discount.

[68] Another issue for determination is whether the present guidance is consistent with the terms of Article 33(1) of the 1996 Order.

[69] Finally, there is the impact on the level of discount if the defendant is caught red handed or if there is no viable defence.

**(b) The present guidance in this jurisdiction as to the competing interests**

[70] The present guidance is that "the full discount for a plea is generally in or about one third where an offender faces up to his responsibilities at the first opportunity. In appropriate circumstances it can be higher or a non-custodial rather than a custodial sentence may become appropriate;" see *R v McKeown and Han Lin* [2013] NICA 28 at paragraph [28]. If an offender is not entitled to a full discount then the present practice for a plea at arraignment is generally a discount of in or about 25 per cent though again it can be higher. If an offender is caught red-handed or the evidence is overwhelming then the discount can be reduced. A plea at the door of the court is likely to obtain a significantly lower discount. However, in circumstances where there is a late plea in a rape case the benefits may lead to a greater discount than those available in other cases because the victim is saved from the particularly distressing emotional trauma of giving public evidence as to the circumstances of the offence, see paragraph [18] of *Attorney General's Reference (No 12 of 2003) (Sloan)* [2003] NICA 35. We consider that this is sufficient to enable those who represent accused persons to know, at least in general terms, the extent to which a sentence is likely to be reduced in the event of a plea of guilty, so that they can advise the accused accordingly, see *Du Plooy v HM Advocate No 1 Appeal* [2005] 1 J.C. 1 at paragraph [4].

[71] The present guidance from this court as to when the full discount is available is contained in *Attorney General's Reference (No. 1 of 2006)* [2006] NICA 4. At paragraph [19] Kerr LCJ giving the judgment of this court stated that:

> "To benefit from the maximum discount on the penalty appropriate to any specific charge a defendant *must have admitted his guilt* of that charge at the earliest opportunity. In this regard *the attitude of the offender during interview is relevant*. The greatest discount is reserved for those cases where a

> defendant admits his guilt at the outset" (emphasis added).

We consider that there are three important points to note from that paragraph.

[72] The first is that the wording of Article 33(1) of the 1996 Order is to the offender "indicating his intention to plead guilty" rather than to him admitting his guilt. In practice there may be little difference between admitting guilt and indicating an intention to plead guilty. However, we consider that there should be a revision to paragraph [19] read in conjunction with Article 33(1) of the 1996 Order so that the guidance becomes that

> "To benefit from the maximum discount on the penalty appropriate to any specific charge a defendant must have *indicated his intention to plead guilty* to that charge at the earliest opportunity. In this regard the attitude of the offender during interview is relevant. The greatest discount is reserved for those cases where a defendant *indicates his intention to plead guilty* at the outset" (emphasis added)."

We consider that such an indication can be given in different ways including by an admission to all the ingredients of the offence at interview.

[73] The second is that the attitude of the offender during interview is "*relevant*" rather than "*decisive*." We do not consider that the judge was correct to state that "the maximum reduction *is only due* to those who admit *their guilt* when first confronted with the allegations." The position is more nuanced and in any event this is general guidance not tramlines. Each case must be assessed by the trial judge on its own facts. There may be cases where even if the facts are known there is a need for legal advice as to whether an offence is constituted by them. In such cases if the offender admits all the relevant facts at interview, whilst still maintaining his innocence and then subsequently pleads guilty he could still be entitled to the maximum discount. Another example of a more nuanced approach is a case where at interview an offender genuinely has no recollection of events. Furthermore, there can be cases where a defendant genuinely does not know whether he is guilty or not and needs sight of the evidence in order to decide. The case of *R v Rushe* [2007] NICC 48 is an example of such a case where causation of death was at issue and as soon as a medical expert report commissioned by the defence was received the defendant was re-arraigned and pleaded guilty. He was entitled to full credit. There can be many reasons for giving full credit despite the defendant not indicating an intention to plead guilty at interview. However, those reasons would generally not include a defendant refusing to be interviewed and certainly would not include the type of refusal to be interviewed exhibited by these appellants.

[74] When considering the appropriate level of discount a distinction should be borne in mind between (i) the first reasonable opportunity for the defendant to indicate his guilt; and (ii) the first reasonable opportunity for his lawyers to assess

the strength of the case against him and to advise him on it. Ordinarily it is the first which is most relevant to assessing the amount of the discount. It is perfectly proper for a defendant to require advice from his lawyers on the strength of the evidence (just as he is perfectly entitled to insist on putting the prosecution to proof at trial). However, in the scenario set out at (ii) the defendant may not require sight of the evidence in order to know whether he is guilty or not; he may require it in order to assess the prospects of conviction or acquittal, which is entirely different. We consider that each case must be assessed by the trial judge on its own facts and factors such as these may be appropriate for consideration in a specific case.

[75] The third is that at arraignment a guilty plea is not *indicated* but is *entered* which means that a defendant "indicating his intention to plead guilty" must be at an anterior stage to arraignment which in this jurisdiction is at interview. There has been a consistent line of authority to that effect in numerous decisions of this court.

**(c) The position in England and Wales and the differences between practice there and in this jurisdiction**

[76] In order to address the question as to whether there should be a change from the present guidance in this jurisdiction we have given consideration to the position in England and Wales and as to whether there are any reasons for a difference in practice between the jurisdictions.

[77] The relevant sentencing guidelines in England and Wales are the 2004 definitive guideline entitled "Reduction in Sentence for a Guilty Plea, the 2007 definitive guideline also entitled "Reduction in Sentence for a Guilty Plea" and the 2017 guideline all of which were published by the Sentencing Guideline Council. The definitive guidelines of the Sentencing Council are not applicable in this jurisdiction unless expressly approved by this court see *R v Somers & Somers* [2015] NICA 17 at paragraph [20].

[78] The 2004 definitive guideline envisaged that an indication of a willingness to plead guilty could perhaps be given "whilst under interview." That was also a feature of the 2007 definitive guideline. The change in England and Wales came about in 2012 after the decision of the Court of Appeal in *R v David Caley & Ors* [2013] 2 Cr App R(S) 47. That change was then reflected in the 2017 guideline which provided under "B. Key Principles" that "the guilty plea should be considered by the court to be independent of the offender's personal mitigation. Factors such as admissions at interview, co-operation with the investigation and demonstrations of remorse should not be taken into account in determining the level of reduction. Rather, they should be considered separately and prior to any guilty plea reduction, as potential mitigating factors." The position in England and Wales since *R v David Caley & Ors* is that admissions at interview will bring additional mitigation.

[79] As we have indicated the change came about in England and Wales as the result of the decision in *R v David Caley & Ors* which considered the 2007 definitive guideline. Hughes LJ in delivering the judgment of the court gave extensive guidance in relation to the appropriate discount for a plea of guilty from a sentence

which would otherwise be imposed on a contested trial. Part of the guidance was that in England and Wales the police interview ought not to be regarded as the first reasonable opportunity to indicate a plea of guilty for the purposes of the SGC guidelines. Rather a defendant who frankly admits in police interview what he did will have additional mitigation. However, the facts of *Caley* graphically illustrates the differences between the procedure in criminal cases then in place in England and Wales and the procedure which is still in place in Northern Ireland. In *Caley's* case:

> "he was arrested shortly after the offence. The police interview followed the next day; he declined to answer questions. He appeared at the Magistrates' Court the following day. The offence was indictable only so he was sent to the Crown Court that day. By 7 November, a week after the offence, the first ("preliminary") hearing took place at the Crown Court. No indication of plea was given, although the court operated a system with a form asking the question what the plea was likely to be. The case was therefore adjourned for the service of Crown evidence which followed on 20 December. The plea and case management hearing ensued on 31 January and at that hearing Caley pleaded guilty."

This led to a reduction of 25% but not 33%. Hughes LJ stated that the judge was entitled to, indeed right, to adjust the post-trial sentence by a quarter rather than by a third. The higher reduction would have been available if *Caley* had indicated at the preliminary hearing his intention to plead guilty. The preliminary hearing was just one week after the offence. There are no preliminary hearings in the Crown Court in Northern Ireland. The time spent before the matter reaches the Magistrates' Court and the time spent in that court is far longer. The Magistrates' Court in Northern Ireland does not ask a defendant to indicate his plea in a matter which is going to the Crown Court. There is no prospect of a case being in the Crown Court within one week. The streamlining provisions introduced in England and Wales mean that the public benefits of a plea can be secured at an early stage even if the defendant does not make admissions at police interview. That is not the position in Northern Ireland as those streamlining provisions, which ought to be but have not been introduced mean that the public benefits (of relieving witnesses, vindicating victims, saving court time and indicating remorse) cannot be secured at an early and appropriate stage in this jurisdiction if the first reasonable opportunity is stated to be on arraignment. Rather for instance witnesses and victims would have to endure a long period before there was any indication from a defendant as to an intention to plead guilty. The criminal justice system must reflect the vital interests of amongst others victims and this would not be achieved by permitting a defendant to obtain full discount for a guilty plea despite delaying indicating his intention to plead guilty.

[80] We consider that there is a further important distinction between the process in England & Wales and within this jurisdiction which is the level of representation at police interview. In England and Wales representation at police interview is not limited to qualified solicitors as the Police Station Representatives Accreditation Scheme is open to persons without any legal qualifications who, under the supervision of a solicitor, complete the requisite assessment before acting as a probationary representative for 12 months. At the conclusion of that period, the representative is required to complete a further assessment before continuing as an accredited person. That has led to concerns in England and Wales as to the mixed quality of advice at interview. That is not the experience in this jurisdiction with the case of *R v Kenneway (David Anthony) and Cahoon (Lynsey)* [2012] NICC 24 at [23] and [46]–[47] being just one example. Indeed, it was not suggested on behalf of the appellants that there were any concerns in this jurisdiction as to the quality of advice at interview. The Police and Criminal Evidence (Northern Ireland) Order 1989 together with Code of Practice C states that when a person is brought to a police station under arrest or arrested at the station having gone there voluntarily, the custody officer must make sure the person is told clearly about a number of rights including their right to consult privately with a solicitor and that free independent legal advice is available. They are also reminded of this in posters in the custody suite.

[81] There is another important distinction between England and Wales and this jurisdiction which is that the length of the custodial sentences can be greater in England and Wales for instance in relation to murder so that the discount in England and Wales still facilitates appropriate punishment given a higher starting point.

[82] We consider that the guidance in relation to the first reasonable opportunity in England and Wales cannot be read across to Northern Ireland in view of the differences between the jurisdictions.

**(d) The proper construction of Article 33(1) of the 1996 Order**

[83] As we have indicated in view of the differences between England and Wales and Northern Ireland we do not consider that it is appropriate to change the guidance in this jurisdiction unless constrained to do so by the proper construction of Article 33(1) of the 1996 Order. The question remains as to whether the present guidance is consistent with the proper construction of Article 33(1) of the 1996 Order.

[84] The statutory provision in England and Wales is Section 144 of the Criminal Justice Act 2003 ("the 2003 Act") which is in different terms to Article 33(1) of the 1996 Order. Section 144(1) of the 2003 Act provides under the rubric "Reduction in sentences for guilty pleas" as follows:

> "(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence *in proceedings before that or another court*, a court must take into account—

> (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
>
> (b) the circumstances in which this indication was given" (emphasis added).

Article 33(1) of the 1996 Order provides:

> "(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence a court shall take into account—
>
> (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
>
> (b) the circumstances in which this indication was given."

A difference between the two provisions is that under Section 144(1) of the 2003 Act "a court *must* take into account" whereas under Article 33(1) of the 1996 Order "a court *shall* take into account." However, of greater significance are the words which we have emphasised in Section 144(1) of the 2003 Act which do not appear in Article 33(1) of the 1996 Order. It could be suggested that in England and Wales the proceedings are identified by the words "in proceedings before that or another court" as being "court proceedings" so as to enable an indication of an intention to plead guilty to be taken into account whether it was given in the magistrates' court or in the Crown Court. The contrast in Northern Ireland is that there is no reference to any "court" in Article 33(1) of the 1996 Order. The word "proceedings" is not limited to "court proceedings." There is no express or implied exclusion of anterior proceedings by way of interview or of the proceedings in the magistrates' court. Furthermore at arraignment a guilty plea is not *indicated* but is *entered* which means that a defendant "indicating his intention to plead guilty" must be at an anterior stage to arraignment which in this jurisdiction is at interview. The word "proceedings" must be construed consistently with the ability to indicate rather than to enter a plea of guilty.

[85] Furthermore, we are not persuaded that in England and Wales Section 144(1) of the 2003 Act limits proceedings to "court proceedings."

[86] First in *R v Caley & others* Hughes LJ after setting out Section 144(1) of the 2003 Act considered the question as to when was the first reasonable opportunity to indicate an intention to plead guilty. In doing so consideration was given to amongst other opportunities that which presented when the offender was under interview. In England that opportunity was considered not to be appropriate for amongst other reasons "the mixed quality of advice in interview, sometimes at short notice and inconvenient hours." That was one of the reasons as to why "the police interview ought not to be regarded as the first reasonable opportunity to indicate a plea of guilty for the purposes of the SGC Guideline." Hughes LJ did not state that it

would be unlawful to choose the police interview of the defendant as the first reasonable opportunity because that was not a part of the "proceedings" within Section 144(1) of the 2003 Act. Rather in that case a broad spectrum of possibilities beginning with the police interview of the defendant as a suspect was considered as legitimately being within Section 144(1) of the 2003 Act.

[87] Second the question as to when "proceedings" commence can also be informed by the autonomous definition for the purposes of Article 6 ECHR as to when an individual is subject to a criminal charge. The formulation was that a person become subject to a criminal charge "at the earliest time at which a person is officially alerted to the likelihood of criminal proceedings against him" see *Attorney General's Reference No 2 of 2001* [2003] UKHL 68. However, in *Ambrose v Harris* [2011] UKSC 2435 and at paragraph [62] Lord Hope stated that "the test is whether the situation of the individual was substantially affected." In addressing that test "a substantive approach, rather than a formal approach, should be adopted" so that one "should look behind the appearances and investigate the realities of the procedure in question." We consider that a person can be subject to a criminal charge before the formal initiation of "court proceedings."

[88] Third in this jurisdiction the Police and Criminal Evidence (Northern Ireland) Order 1989 together with Codes of Practice made under that Order regulate criminal proceedings before a formal charge is made. For instance Code C requires access to legal representation which is part and parcel of any subsequent court proceedings. There are similar provisions in England and Wales.

[89] Finally, in section 2 of Contempt of Court Act 1981 states that the strict liability rule "applies to a publication only if the *proceedings* in question are *active* within the meaning of this section at the time of the publication" (emphasis added). Schedule 1 provides that the "initial steps of criminal proceedings" arrest without warrant so that subject to certain limitations criminal proceedings are active at that stage.

[90] For those reasons we do not consider that section 144(1) of the 2003 Act limits proceedings to "court proceedings." As far as the position in this jurisdiction is concerned we consider that the correct construction of the word proceedings in Article 33(1) of the 1996 Order includes the police interview. That interview is an important step in the process and cannot sensibly be separated from the events after the charge. That they are all part and parcel of the same proceedings. The present guidance is consistent with Article 33(1) of the 1996 Order.

(e) **The impact on the discount of the defendant being caught red handed or having no viable defence**

[91] The second issue for determination is the impact on the discount of the offender being caught red-handed or having no viable defence.

[92] The present guidance from this court is contained in *R v Pollock* [2005] NICA 43. Kerr LCJ in delivering the judgment of the court stated that:

> "a strong case can still be made in this jurisdiction for distinguishing between those cases where the offender is *caught red-handed and those where a viable defence is available*. The incentive to plead guilty in the latter category of case should in our view continue to be enhanced in this jurisdiction. It follows that the discount in cases where the offender has been caught red-handed should not generally be as great as in those cases where a workable defence is possible" (emphasis added).

It can be seen from the words which we have emphasised that the distinction is between "where the offender is *caught red-handed*" and "where *a viable defence is available*." A defendant being caught red-handed and a defendant having no viable defence are similar but not exactly equivalent concepts. The first is emphatic so that literally the defendant is caught in the very act of the crime or has the evidence of his guilt still upon his person. The second is less clear cut involving an evaluative judgment that there is no viable defence. We caution that considerable care has to be exercised before determining that the evidence is so overwhelming that there is no viable defence.

[93] As we have indicated we consider that what amounts to a viable defence is an evaluative judgment for the trial judge with which this court will not interfere unless the judge was clearly wrong, see *R. v Rehman & Wood* [2006] 1 Cr. App. R. (S.) 77 at paragraph [14]. In this case the judge stated that for "*certain of the offences"* the appellants were either caught red-handed or that the evidence against them was overwhelming. The judge did not identify which of the offences this applied to nor did he analyse all of the offences in order to arrive at a separate conclusion in relation to each of them. However we consider that it is clear that the appellants were caught red-handed in relation to all of the offences committed on Sunday 25 July 2016. Furthermore it cannot be said that the judge was clearly wrong that there was no viable defence to most if not all of the other offences. *R v Pollock* establishes that there should be a distinction in the discount available if a viable defence is available. That was also the approach of this court in *R v James Lee Roy* [2002] NICA 30 and in *R v McKeown and Han Lin* [2013] NICA 28 at paragraph [28]. We consider that the judge was correct to take this factor into account in arriving at the appropriate discount for the guilty pleas.

[94] Mr O'Rourke submits that the decision in *R v Pollock* should no longer be followed and in doing so he relied on the reasoning of the Scottish High Court of Judiciary in *Gemmell and Others v HM Advocate* [2011] HCJAC 129 at paragraphs [34]-[37] and [48]. The issue as to what if any impact on the discount should be made for the defendant being caught red-handed was also considered by Hughes LJ in *R v Caley & others* at paragraphs [23] to [25]. The Court of Appeal did not state that this was not a relevant factor. We consider that it is and remains a factor in this jurisdiction.

[95] However, in *R v Caley & others* Hughes LJ stated that "judges ought to be wary of concluding that a case is "overwhelming" when all that is seen is evidence which is not contested." That observation was also made in *Gemmell* in which it was stated that "it is the common experience of practitioners that criminal trials regularly produce the unexpected. Moreover, it is undesirable in my view that in determining the sentence the court should become involved in an appraisal of the strength of the Crown case based mainly on the Crown narrative. Experience shows that Crown witnesses do not always live up to their precognitions and that on occasions even the strongest cases come to grief." We agree with those observations so that judges must exercise a considerable degree of caution before concluding in cases where the defendant is not literally caught red handed that the evidence was overwhelming.

**Discussion**

**(a) The starting point**

[96] The starting point selected by the learned trial judge was one of 18 years. He arrived at that starting point having stated that any one of the aggravated burglaries would have justified "a starting point well into double figures."

[97] On this appeal the submissions on behalf of the appellants concentrated on the appropriate starting point for the most significant offences which were the counts of aggravated burglary. However as concurrent sentences were imposed concentration on the most serious offences should not distract from consideration of the appropriate starting point taking into account not only the most serious offences but also the nature and number of all the other offences. On this appeal we heard no submissions that the concurrent sentences imposed for the other offences ranging from 6 months to 5 years custody were inappropriate.

[98] In so far as the starting point for aggravated burglary is concerned counsel on behalf of both appellants submitted and we agree for the purposes of this case that assistance can be obtained from sentences imposed in respect of household robberies. In relation to household robberies we were referred to cases such as *R v Samuel Joseph Ferguson,* an unreported decision of this court delivered by O'Donnell LJ on 21 April 1989 and *R v Cambridge* [2015] NICA 4. In *R v Ferguson* this court stated that

> "the starting point for sentencing in the case of robbery of householders where violence is *used* should be *10 years*. This will increase depending *on the degree of violence used*, *the age or ages of the occupiers*, *any previous history for offences of violence* and in the appropriate case a sentence of *15 years* would not be excessive" (emphasis added).

The starting point where violence is *used* is 10 years. The starting point is then increased by the aggravating features which we have emphasised which are not meant to be definitive but rather are examples of when an increase is appropriate. *R v James O'Driscoll* (1986) 8 Cr. App. R. (S.) 121 is an example of a case in which after a

trial and upon conviction for the offences of attempted burglary, a household robbery and causing grievous bodily harm with intent a sentence of 15 years was imposed.

[99] The starting point was endorsed by this court in *R v Cambridge.* In that case Gillen LJ said:

> "There is an unbroken line of authority to the effect that in Northern Ireland the starting point in cases of robbery of householders, where violence is used should be 10 years and in appropriate cases a sentence of 15 years is not excessive …"

[100] Relying on these authorities counsel on behalf of the appellant's submitted that the starting point for any one of the present offences of aggravated burglary would be between 6 - 8 years after trial. This submission was predicated on the level of violence used being well short of that evidenced in *R v Ferguson* and in *R v Cambridge*. It is submitted on behalf of the appellants that because of the level of violence used in this case the appropriate starting point after a trial should be adjusted downwards from 10 years.

[101] We agree that the level of violence used can lead to the calculation of sentences using a starting point of less than 10 years as is illustrated by the case of *R v Peter Funnell and Others* (1986) 8 CR. App. R. (S.) 143. In that case the degree of direct violence was comparatively slight. The victim was an 84 year old man Mr. Jack Giles. Two offenders burst into his house, where they found him. One of the offenders was carrying some kind of imitation weapon, perhaps in the nature of a starting-pistol. It accepted blank cartridges and therefore presumably could have been discharged or made a frightening noise, and that is no doubt why it was carried; but it could not have fired any projectile. Mr. Giles understandably thought that it was a real weapon. The two men took Mr. Giles into his living-room and questioned him about where his money was. He said, as was the fact, that he had very little money in the house. The two men then looked for it and found only £28. There was an issue, which the Court of Appeal could not resolve, about whether the two men gave back the money which they had found. They tied Mr. Giles up with a rope which they had brought with them, but they tied him quite loosely to a chair. Apart from that they committed no acts of violence, and, although very frightened and shaken, Mr. Giles did not suffer direct physical injury. It did not in fact take him very long to get free. The offenders confessed at the interview and pleaded guilty at the earliest opportunity. The judge imposed a sentence of 9 years imprisonment. This was reduced on appeal to one of 6 years. We consider that the Court of Appeal in that case must have taken a starting point of 9 years before allowing full discount for the plea to arrive at a sentence of 6 years. The case illustrates that even when the degree of direct violence is comparatively slight there is not a substantial downward adjustment from the starting point of 10 years.

[102] We agree that the level of violence used in this case is in sharp contrast to to the level in both *R v Ferguson* and *R v Cambridge*. In that respect we refer to the facts

in *R v Ferguson.* In that case an eight year sentence of imprisonment had been imposed on an offender who had participated with two others in a robbery. They had broken into the bungalow of an elderly couple wearing masks and gloves. One carried a pellet gun but there were no pellets in it. Another carried a crow bar. The elderly man was struck on the head with a crow bar. He and his wife were manhandled and pushed back into the bedroom where the intruders shouted, swore and threatened, demanding money. The elderly man was beaten on the back with a garden hoe and one of the offenders pointed the gun at them and shouted "Where is the money?" Meanwhile one of the offenders was searching the rooms for money. He ransacked the house pulling out drawers and throwing their contents out. The photographs taken afterwards by the police of the rooms show the extent of the disorder. While this was going on, the elderly man was sitting on the side of his bed, blood flowing down the side of his head from his injury, in a deeply disturbed state. He had suffered for some time past from severe chronic emphysema, a condition which required both steroid therapy and the use of a nebuliser or a Ventolin inhaler. With the shock and terror of the attack, he was having trouble breathing. When he sought to use his nebuliser mask one of the assailants kicked it away from him and when his wife tried to hold the mask to this face she was pulled away. She said he would die if he did not get using it and the reply of one of the three was "he'll be dead anyway for we will shoot him." No mercy was shown either to the elderly woman. Both of them sustained injuries. The elderly man had lacerations to his right ear and right forehead with surrounding bruising. There was bruising also on his chest and right forearm. His right ear was stitched. Shortly after admission to hospital he became very cyanosed and shocked and had a rigor. The elderly lady on admission to hospital was found to have multiple bruising of her head, forehead and behind her ears. Bruising and laceration of her chin requiring one stitch was also noticed as well as bruising of the left arm, both forearms and hands and right back. She was detained in hospital for five days.

[103] Whilst we agree that the level of violence used in this case was significantly less than in *R v Ferguson* it is clear that violence was used. The violence had a terrifying impact on the victims who were exposed to a real objective risk of very serious injuries. We consider that this is not a case of comparatively slight violence as in *R v Peter Funnell and Others* where a nine year starting point was used for a single offence.

[104] On the basis of the level of violence used we consider that the learned trial Judge was wrong to say that any one of the aggravated burglaries would have justified "a starting point well into double figures." However given the multiplicity of the offences committed by each of the appellants, given their very substantial criminal records for similar type offences and the numerous serious aggravating features we consider that whilst the starting point of 18 years after a contest was undoubtedly severe in the context of these cases it could not be described as wrong in principle or manifestly excessive.

**(b) The discount for the plea**

[105] The trial judge first indicated that he would give a discount of 25% subsequently stating that it would be approximately 25%. The sentencing remarks are to be read as a whole. We reject the submission that the judge was bound by the first indication.

[106] We do not consider that there is any requirement to change the existing guidance in this jurisdiction as to discount for a plea.

[107] We consider that the reason why John Maughan was not interviewed was that he decided not to be. In those circumstances he can hardly complain that he was deprived of an opportunity at interview to indicate his intention to plead guilty.

[108] The learned trial judge was entitled to take the view that John Maughan was caught red handed in relation to the further offences committed by him and that the evidence was overwhelming in relation to all of the other offences. That was an appropriate factor to be taken into account in determining the level of discount.

[109] In the event the learned trial judge gave a discount of 22.5%. We consider that this was an appropriate level of discount.

**(c) Owen Maughan's limited cognitive abilities**

[110] It is submitted that inadequate weight was given by the learned trial judge to the mitigating factor of Owen Maughan's limited cognitive abilities. The learned trial judge considered that Owen Maughan chose to become involved in these appalling offences. We agree with the learned trial judge's assessment and would add that whilst Owen Maughan's limited cognitive abilities are to be taken into account they are to be kept strictly in proportion given the choice that he made together with the lack of any evidence that there was any inhibition in his ability to make decisions or to comprehend the gravity of his actions. We consider that they should be considered as part of his personal circumstances so that they are of limited effect in the choice of sentence. In any event one of the further offences committed by Owen Maughan included a count of aggravated burglary and stealing so that the decision to impose the same sentence on the two offenders despite some differences in their personal circumstances is entirely understandable.

**(d) The imposition of concurrent sentences**

[111] The trial judge was entitled to impose concurrent sentences, see *Attorney-General's Reference (No. 1 of 1991)* [1991] NI 218. The learned trial judge also bore in mind totality. We consider that these were stiff sentences but we do not consider that they were manifestly excessive.

[112] We find no substance in the ground of appeal set out at [59] (ii).

**(e) Personal circumstances of Owen Maughan**

[113] It was submitted that the learned trial judge failed to allow any or adequate mitigation in the light of Owen Maughan's personal circumstances. The learned trial

judge was aware of those circumstances and we are content that he gave them sufficient weight in that personal circumstances are of limited effect in the choice of sentence.

**Conclusion**

[114] We dismiss both of the appeals.