

IN THE CROWN COURT SITTING IN NORTHERN IRELAND

THE QUEEN

-v-

**DAVID ANTHONY KENNEWAY and
LYNSEY CAHOON**

STEPHENS J

Introduction

[1] David Anthony Kenneway on 14 May 2012, at the start of your trial and just before the jury was sworn, you pleaded guilty on count 1 of the murder on 26 February 2011 of Paul Owens. You had been arraigned in relation to that count on 13 January 2012 and had pleaded not guilty though it is accepted by the prosecution that at your arraignment you did offer to plead guilty to manslaughter. On 14 May 2012 the matter was listed at your request but your representatives then applied to adjourn indicating that they had intended to apply to have you re-arraigned but that they had no instructions to do that now.

[2] In relation to the offence of murder and on 14 May 2012 I imposed a life sentence. It is now my responsibility, in relation to that offence and in accordance with Article 5 of the Life Sentence (Northern Ireland) Order 2001, to determine the length of the minimum term that you will be required to serve in prison before you will first become eligible to be released on licence by the Parole Commission. The minimum term is fixed by reference to retribution and deterrence. The risk that you pose is a matter for the Parole Commission it being for that Commission to consider whether, and if so when, you are to be released on licence based on their consideration of risk.

[3] When you are released on licence you will for the remainder of your life be liable to be recalled to prison if at any time you do not comply with the terms of that licence.

[4] A minimum term is not the same as a fixed term of imprisonment. A fixed term of imprisonment may, if a prisoner is of good behaviour, attract remission. You

will receive no remission for any part of the minimum term that I am now about to determine.

[5] Lynsey Cahoon at your arraignment on 10 February 2012 you pleaded guilty to all the counts on the indictment against you. The counts against you related to the offence of assisting an offender contrary to section 4(1) of the Criminal Law Act (Northern Ireland) 1967.

- a) In relation to count two you assisted David Kenneway by providing the police with a false description of the alleged offender when you knew or believed that he had committed murder.
- b) In relation to count three you assisted David Kenneway by attempting to destroy evidence by washing clothing when you knew or believed that he had committed murder.
- c) In relation to count four you assisted David Kenneway by attempting to destroy evidence by cleaning a knife when you knew or believed that he had committed murder.

You have received an advance indication of sentence from Mr Justice Weir, see *Attorney General's Reference (No.1 of 2005) Bernard Philip Mary Rooney, Denis Michael Dorrian, Gerard Martin Paul Irvine, Seamus Patrick Cunningham and Sean Martin Joseph Doran* [2005] NICA 44. In such circumstances ordinarily he would be the judge to impose sentence. However as I was the assigned judge dealing with the trial of your co accused it is now my responsibility to sentence you in respect of those offences. The indication given, by Mr Justice Weir is binding on me in carrying out the sentencing exercise as there has not been a material change in circumstances between the time of giving the indication and the time that sentence is to be passed.

Factual background

[6] The murder of Paul Owens occurred on the Bryansford Road, Newcastle, shortly after 1.00 am on Saturday 26 February 2011.

[7] The location of the murder was close to the Donard car park. There are two entrances to the Donard car park from the Bryansford Road. One is a main entrance ("the main entrance"). The other is along Bryansford Place which runs from the Bryansford Road into a corner of the Donard car park.

[8] In describing the area where the murder was committed it is also necessary to identify a number of premises.

- (a) The Coast Nightclub. The entrance to the Coast Nightclub is from the Donard car park.

- (b) A restaurant previously called the Artichoke Restaurant is just adjacent to the main entrance to the Donard car park at its junction with the Bryansford Road.
- (c) The Anchor Bar which is on the Bryansford Road opposite the junction between Bryansford Place and Bryansford Road.
- (d) The Baptist Church on the Bryansford Road which is on the same side as the Anchor Bar and further away from the Donard car park.
- (e) The Avoca Hotel, Central Promenade. Central Promenade is the main road through Newcastle so that if one is coming from Belfast the Avoca Hotel is on the right hand side and just before the junction between Central Promenade and Bryansford Road. It is therefore in close proximity to the Donard car park.
- (f) 87a Central Promenade is the flat in which both the defendants lived at the time and it is beside the Avoca Hotel.

Also on the Bryansford Road at the junction with Bryansford Place and on the same side of the Bryansford Road as the Donard car park there is a row of residential houses. In front of that row of houses there is a low wall separating the area in front of the houses from the public footpath. The fatal stabbing occurred on the public footpath immediately adjacent to this low wall.

[9] On Friday 25 February 2011 both you David Kenneway and you Lynsey Cahoon had been with Aine O'Sullivan and Ryan Hillyard in your flat at 87a Central Promenade, Newcastle. You both spent the evening drinking in the flat. You all remained there until after midnight.

[10] In the meantime Paul Owens, the deceased, had met one of his friends, Ryan Brown at about 4.00 pm on Friday 25 February 2011. After a short period of time they made their way to a local off-licence before proceeding to park benches located in the Donard car park where they met others and drank their carryout.

[11] Sometime after 10.00 pm this group including Paul Owens, made its way to the Coast Nightclub. Paul Owens remained in the club for some time but at approximately 11.45pm he was requested to leave the premises because of a previous incident. CCTV shows Paul Owens leaving Coast Nightclub at 11.47pm. Thereafter he was joined by another friend, Sean Ireland. They appear to have been outside the Coast Nightclub for about ½ hour before proceeding back up the town and then shortly after that returning back towards the car park. It would appear that in the car park they met up with Mark Knox and Nathan Turley in whose company they had been earlier that evening. This group then congregated at the main exit to the Donard car park on the Bryansford Road adjacent to the restaurant formerly known as the Artichoke.

[12] After Paul Owens and his friends had congregated at the main exit to the Donard car park and adjacent to the restaurant first you Lynsey Cahoon left your flat with Aine O'Sullivan at 12.50 am in the early hours of Saturday 26 February 2011. You went to the Coast Nightclub passing through the entrance to the Donard car park and also passing where Paul Owens and his 3 friends were standing. You were unable to gain admittance to Coast Nightclub. About 1 minute later you David Kenneway left the flat at 87a Central Promenade going in the same direction. You also passed Paul Owens before going into the Donard car park. You joined Lynsey Cahoon and then you and Lynsey Cahoon had an argument after which you ran back out of the Donard car park through the entrance and again passed the 4 youths including Paul Owens who were standing adjacent to the Artichoke Restaurant. As you passed them there was an exchange involving you and one of the group. That exchange did not involve Paul Owens. It appears that an insult was shouted at you. In any event you went back to your flat arriving there at just after 1.00 am.

[13] Ryan Hillyard had remained in the flat and was there when you David Kenneway arrived. It is the evidence of Ryan Hillyard that it was at this point that you armed yourself with a knife from the flat. You accept that you had taken a knife from the flat but you insist that you did so earlier that evening and not at this particular point. It is suggested that you armed yourself because of the threat which you perceived you were under but it is of course accepted on your behalf that you should not have done so. Reservations have been expressed on your behalf about the reliability of the evidence of Ryan Hillyard and those reservations have not been contradicted by the prosecution. The prosecution has not sought a hearing under the principles set out in *R v Newton* [1982] 77 Cr App R 13. I proceed to sentence you on the basis that you were already armed with a knife when you returned to the flat just after 1.00 am.

[14] You David Kenneway then left the flat returning to the Donard car park. In the meantime the group of 4 youths including Paul Owens had gone back into Donard car park and were outside the entrance to the Coast Nightclub. An argument commenced between you David Kenneway and one of the group, Mervyn Kelly. Both of you began to jostle at which point Paul Owens intervened and hit you knocking you to the ground. You were then subjected to a sustained assault which was of a violent nature. One witness describes the assault in the following terms:-

“There were a few punches thrown but none of them really landed. Male 2 managed to get male 4 down on the ground, when he was down on the ground male 3 kicked him first, then male 1 joined in and then male 2. All 3 of them were kicking him. I saw male 1 kick male 4 right square in the face. His head went straight back and hit the tarmac. All 3 continued to kick him. His top was pulled up, I could see that he had a white or light grey t-shirt on underneath and this was also pulled up. He was

kind of hunched over, almost lying on the ground face down, and they were tramping on his back, kicking at him. I could hear screaming or shouting but I am not sure where this commotion was coming from. I don't think it was from the fight. The fight lasted a minute at the most."

The knife which you carried fell to the ground during this assault upon you. There is no evidence that you used the knife in the course of that assault aggressively or with any intention to inflict injury on anyone.

[15] Mervyn Kelly, who had been part of the group with Paul Owens then helped you up and also helped you to leave the vicinity of the nightclub. Mervyn Kelly took you down through Bryansford Place and out onto the Bryansford Road. A taxi, driven by Mr Rooney, was parked outside the Anchor Bar. He saw you and Mervyn Kelly emerge onto the Bryansford Road. Mervyn Kelly then helped you into the front passenger seat of the taxi and asked Mr Rooney to "take this man down the road". Mr Rooney explained that he was waiting for a fare and you then got out of the taxi and went across the Bryansford Road and sat on the low wall in front of the houses.

[16] In the meantime the deceased, Paul Owens went out of the Donard car park using Bryansford Place. The taxi driver, Mr Rooney, states that he saw Paul Owens approach you, and Mervyn Kelly at the wall on the Bryansford Road. Mr Rooney, observed a confrontation between Paul Owens and Mervyn Kelly. Mervyn Kelly brought his arms up which were stretched out at chest height with the palms of his hands upright towards Paul Owens as if fending him off. At the same time Mervyn Kelly said to Paul Owens "get you away". Paul Owens stopped short of Mervyn Kelly's outstretched arms without any contact being made and said to Mervyn Kelly "he was well out of order, what happened in Donard Park". The taxi driver then heard Paul Owens say "get out of my road you faggot". This was directed at Mervyn Kelly. In the course of the altercation between Paul Owens and Mervyn Kelly you, David Kenneway, produced the knife and stabbed Paul Owens 3 times. One of the wounds that you inflicted was fatal. That was the wound to the left side of Paul Owens' chest. The track of the wound measured approximately 18cm. It partially transected the main airway transfixing the upper lobe of the right lung and ended in the space between the 4th and 5th ribs at the back of the chest. This caused considerable bleeding into the right chest cavity and the right lung collapsed. Blood entered the airway and it was inhaled deeply into the lungs.

[17] After the stabbing you David Kenneway took a route through the Baptist Church and gained access to the rear of your flat at number 87a Central Promenade. At the time that you arrived back in the flat Aine O'Sullivan and Ryan Hillyard were also in the flat. Some 15 minutes later you and Ryan Hillyard were seen on CCTV to leave the flat. You then disposed of certain items of clothing in various bins in the town.

[18] You Lynsey Cahoon were at or about the murder scene after David Kenneway left. It appears that you were hysterical at the time. You were also heavily under the influence of alcohol. You gave an account to the police that the person responsible for stabbing Paul Owens as being bald and wearing a brown jacket and that this man had run off into Donard Park. It is clear that you knew that this information was false and misleading. You then returned to the flat at 1.25 am. Between then and 5.00 am when the police entered the flat you, attempted to impede the apprehension and prosecution of David Kenneway by laundering a pair of black boxer shorts, a white Henleys jacket and a pair of Nike trainers. You also took the knife out of the bag in which David Kenneway had placed it, wiped it off and replaced it in the kitchen block. Your attempts to assist were not determined, organised or effective. Indeed your attempt to remove evidence was almost wholly ineffective as is apparent from the condition of the flat when the police arrived at 5.00 am. It has not been suggested by the prosecution that your actions damaged the interests of justice.

Personal circumstances of David Anthony Kenneway, responses at interview and remorse.

[19] You are 27 (date of birth 21 August 1984). You grew up in Dundalk. Your father had an alcohol problem and your mother accepts that you suffered physical and emotional abuse on a regular basis from your father throughout your childhood and adolescence. You completed your education at the age of 16 with no formal qualifications. As an adolescent you consumed alcohol regularly and became involved in illegal drug use. Your illegal drug use commenced at the age of 15 with cannabis. You progressed to use ecstasy, speed and cocaine. You committed burglary offences to fund your alcohol and drug misuse. You recognise that cannabis makes you feel paranoid. It is a feature that you are potentially more aggressive when drinking.

[20] In 2002 at the age of 18 you met and commenced a relationship with a 16 year old girl. You have 3 children as a result of that relationship. You commenced a relationship with Lynsey Cahoon in November 2010 and were living with her at the time this incident occurred.

[21] Following your arrest on 26 February 2011 you were interviewed by the police 7 times over a period of 2 days. During the first 6 interviews you replied "no comment" to all questions put to you. In the seventh interview you gave an account that roughly accords with the known facts. At the end of that interview you expressed remorse. Mary Doran, the Probation Officer who prepared your presentence report, concludes that you have demonstrated regret and remorse for your actions and that you have a realisation of the devastation for both the victim, the victim's family and your own family as a result of your actions. I also note the assessment of Dr Philip Pollock, Consultant Forensic Clinical Psychologist, that you demonstrated genuine victim focussed remorse for your actions with an

acknowledgement of the impact of your actions upon the victim, the victim's family and other parties. Furthermore Dr Pollock assessed you to exhibit genuine, appropriate and marked remorse for your conduct and its impact showing adequate victim empathy. Given the extensive nature of your criminal record and the previous offences involving violence I have reservations as to the long-term durability of your expressions of remorse. I accept however that within 2 days of this offence that you did express remorse and that you have maintained those expressions of remorse since then. I accept those expressions as genuine.

Personal circumstances of Lynsey Cahoon, responses at interview and remorse.

[22] You are 21 (date of birth 17 October 1990). You had a very difficult early life having been abandoned by your own mother. Your birth mother died when you were 4. Your adoptive parents provided a stable and contented upbringing. You have the benefit of a large extended family who have always been a source of support. When you were 15 your parents took the decision to emigrate to Spain but you did not want to leave your friends. You therefore remained in Northern Ireland and lived with an aunt. You left school at the age of 15 without qualifications. You subsequently gained an NVQ Level 2 qualification in Hairdressing. It was at this stage that you formed a relationship. You have a son by that relationship. On the breakdown of the relationship you went to live with your parents in Spain for a few months. You then returned to Newcastle and for 5 months prior to these offences were living in Newcastle with David Kenneway.

[23] Following your arrest on 26 February 2011 you were interviewed by the police on 9 occasions over a period of 2 days. At the very start of the first interview and at a stage when no disclosure of evidence had been made to you or to your solicitor you elected to give a full and candid account of everything about and everyone involved in, the events. The police acknowledged during that first interview that you had been "up front with them from the outset" (129). I am satisfied that you have cooperated from the outset and that your cooperation was a reflection of your expressed remorse. I also accept the assessment contained in the pre-sentence report that your involvement is to be seen in the context that you were heavily intoxicated, that you had witnessed a traumatic event and that you were in a highly agitated state. I also accept that your actions were motivated by a misplaced sense of loyalty, fear of potential repercussions and overwhelming panic.

[24] Following your arrest you spent 2 weeks in prison prior to your release on bail. You have complied with all of your bail conditions and have been living with your mother in Northern Ireland, she having returned from Spain. You continue to look after your son to whom you are committed. You are abstinent from alcohol. You have demonstrated good insight and victim empathy.

[25] You have brought your relationship with David Kenneway to an end. If you are at liberty to do so, you intend to emigrate to Spain and make a new start.

[26] In addition to the pre-sentence report I have considered the report dated 7 February 2012 from Dr Maria O’Kane, Consultant Psychiatrist. It is her opinion that you present as immature, impulsive under the influence of alcohol and easily led but without malice. She concludes that your motivation for assisting David Kenneway appears to have been driven by the desire to protect your relationship with your son, whom you believed would be removed from you by Social Services if you were found to be under the influence of alcohol or involved in this incident.

Risk of harm to the public and likelihood of re offending

[27] As I have indicated the risk that you, David Kenneway, pose is a matter for the Parole Commission. It plays no part in fixing the minimum term.

[28] In relation to the risk that you Lynsey Cahoon pose I have the benefit of a pre-sentence report dated 6 March 2012 from Joanne Cassidy, probation officer. She states that the probation board of Northern Ireland’s assessment is that the likelihood of you reoffending is in the low range. She also states that the assessment is based on your stable lifestyle, your victim awareness and the fact that you acknowledge your poor decision making and immaturity. You have also been assessed as not posing a significant risk of serious harm to others. I agree with those assessments.

The impact of Paul Owens’ death on his family

[29] I have been provided with comprehensive statements from members of the Owens’ family as to the impact that Paul Owens’ death has had on them. Sean Owens, Paul Owens’ father, has prepared a statement on behalf of himself, Paul’s mother and other family members. I also have statements from his sister Arlene Owens and from his half-brother. No judge could fail to be moved by their sensitive and eloquent statements. I am not going to add to their distress by placing their private thoughts and experiences in the wider public domain. They are of course free to do so if they wish. However I am satisfied that the consequences for them are of a marked and enduring character.

Legal principles relating to setting the appropriate minimum term

[30] In fixing the minimum term I seek to apply the material portions of the Life Sentences (Northern Ireland) Order 2001 including Articles 5(1) and 5(2). In *R v McCandless & Ors* [2004] NICA 1 and *Attorney General’s Reference No 6 of 2004 (Connor Gerard Doyle)* [2004] NICA 33 the Court of Appeal in Northern Ireland ruled that the *Practice Statement* issued by Lord Woolf CJ on 31 May 2002 should be taken into account when fixing the minimum term. The *Practice Statement* is reported at [2002] 3 All ER 412.

[31] I set out paragraphs 10-19 of the practice statement in order to indicate the approach that I have adopted in respect of you, David Kenneway.

“The normal starting point of 12 years

10. Cases falling within this starting point will normally involve the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. It will not have the characteristics referred to in paragraph 12. Exceptionally, the starting point may be reduced because of the sort of circumstances described in the next paragraph.

11. The normal starting point can be reduced because the murder is one where the offender’s culpability is significantly reduced, for example, because: (a) the case came close to the borderline between murder and manslaughter; or (b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or (c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or (d) the case involved an overreaction in self-defence; or (e) the offence was a mercy killing. These factors could justify a reduction to eight/nine years (equivalent to 16/18 years).

The higher starting point of 15/16 years

12. The higher starting point will apply to cases where the offender’s culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious, such as: (a) the killing was ‘professional’ or a contract killing; (b) the killing was politically motivated; (c) the killing was done for gain (in the course of a burglary, robbery etc.); (d) the killing was intended to defeat the ends of justice (as in the killing of a witness or potential witness); (e) the victim was providing a public service; (f) the victim was a child or was otherwise vulnerable; (g) the killing was racially aggravated; (h) the victim was deliberately targeted because of his or her religion or sexual orientation; (i) there was evidence of sadism, gratuitous violence or sexual maltreatment, humiliation or degradation of the victim before the killing; (j) extensive and/or multiple injuries were inflicted on the victim before death; (k) the offender committed multiple murders.

Variation of the starting point

13. Whichever starting point is selected in a particular case, it may be appropriate for the trial judge to vary the starting point upwards or downwards, to take account of aggravating or mitigating factors, which relate to either the offence or the offender, in the particular case.

14. Aggravating factors relating to the offence can include: (a) the fact that the killing was planned; (b) the use of a firearm; (c) arming with a weapon in advance; (d) concealment of the body, destruction of the crime scene and/or dismemberment of the body; (e) particularly in domestic violence cases, the fact that the murder was the culmination of cruel and violent behaviour by the offender over a period of time.

15. Aggravating factors relating to the offender will include the offender's previous record and failures to respond to previous sentences, to the extent that this is relevant to culpability rather than to risk.

16. Mitigating factors relating to the offence will include: (a) an intention to cause grievous bodily harm, rather than to kill; (b) spontaneity and lack of pre-meditation.

17. Mitigating factors relating to the offender may include: (a) the offender's age; (b) clear evidence of remorse or contrition; (c) a timely plea of guilty.

Very serious cases

18. A substantial upward adjustment may be appropriate in the most serious cases, for example, those involving a substantial number of murders, or if there are several factors identified as attracting the higher starting point present. In suitable cases, the result might even be a minimum term of 30 years (equivalent to 60 years) which would offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than setting a whole life minimum term, can state that there is no minimum period which could properly be set in that particular case.

19. Among the categories of case referred to in paragraph 12, some offences may be especially grave. These include

cases in which the victim was performing his duties as a prison officer at the time of the crime or the offence was a terrorist or sexual or sadistic murder or involved a young child. In such a case, a term of 20 years and upwards could be appropriate.”

Sentencing guidelines in relation to the offence of assisting an offender

[32] In passing sentence in respect of you Lynsey Cahoon I seek to apply the guidelines set out in *Attorney General's Reference (No 16 of 2009) (R v Yates)* [2010] 2 Cr. App. R.(S) 11 a decision of the Court of Appeal in England and Wales. The issues to be addressed are the nature and extent of the criminality of the principal, the nature and extent of the assistance provided and the extent to which the actions of the offender had damaged the interests of justice.

The starting point in relation to setting the appropriate minimum term in respect of David Kenneway

[33] Both the prosecution and the defence submit that the normal starting point of 12 years applies in your case, David Kenneway, see paragraph 10 of the *Practice Statement*. I have considered the Practice Statement and the fact that you stabbed your victim three times. One of those stab wounds was to Paul Owens' neck causing considerable blood loss and it would have been fatal in the absence of treatment. The question therefore arises as to whether this case requires the higher starting point in your case. The higher starting point is dealt with in paragraph 12 of the *Practice Statement*. It is stated that the higher starting point will apply to cases where the offender's culpability was exceptionally high or the victim was in a particularly vulnerable position. Such cases will be characterised by a feature which makes the crime especially serious. It then lists a number of such features and at paragraph 12(j) one of the features is defined as “extensive and/or multiple injuries were inflicted on the victim before death.” However the presence of one or two such features does not automatically lead to the conclusion that the higher starting point is appropriate, see paragraph [13] of judgement of Morgan LCJ in *R v James Oliver Meehan* [2012] NICA 4. The case of *R v Desmond Andrew Heaney* [2011] NICA 43 was a case in which this feature, in that case 5 stab wounds, did lead to the selection of the higher starting point. In the particular circumstances of this case given the spontaneity and immediacy of your response and what I consider to be your disorientation following the assault which had been inflicted on you in Donard Car Park my assessment of your culpability is such that I will deal with the feature that you inflicted three stab wounds on Paul Owens as a serious aggravating feature rather than one justifying the imposition of the higher starting point. Accordingly I agree that the appropriate starting point is the normal starting point of 12 years and I set it at that point.

Aggravating and mitigating features in relation to the offence of murder

[34] The *Practice Statement* continues at paragraph 13 to provide that it may be appropriate for the trial judge to vary the starting point upwards or downwards to take account of aggravating or mitigating features which relate to either the offence or the offender in the particular case.

Aggravating features in relation to the offence of murder

[35] You armed yourself with a knife in advance.

[36] You disposed of incriminating evidence.

[37] You inflicted more than one injury on Paul Owens in that you stabbed him with the knife on three occasions although only one of the injuries was fatal and moderate force was used in respect of that injury.

Mitigating factors in relation to the offence of murder

[38] You had been subjected to a vicious and sustained assault minutes before this incident occurred, the effects of that assault and its disorientation combined with your intoxication, the speed of events given the short period of time involved in the fatal altercation whilst you were sitting on the low wall and during which you reacted, the presence of some degree of verbal abuse and the spontaneous nature of the attack leads me to conclude that you intended to cause grievous bodily harm rather than to kill.

[39] The offence was not planned but rather it was committed spontaneously in circumstances where you had been attempting to leave the area without any intention of returning. You were not looking for Paul Owens but rather you were sitting on this low wall recovering from the assault which had been perpetrated upon you. You were not responsible for this subsequent fatal encounter. I consider that your violent actions are typical of reactive/hostile aggression during a conflict rather than being a planned or predatory attack.

Mitigating features in relation to the offender

[40] You pleaded guilty though not at the earliest stage. I have given a greater discount than I would ordinarily give for a plea of guilty at a late stage given the admissions that you eventually made during the course of your police interviews, your offer to plead guilty to manslaughter at arraignment and given that it is accepted by the prosecution that there were lines of defence available to exploit that may have caused the prosecution difficulty in establishing your guilt.

[41] You have shown remorse which I accept as genuine.

[42] I have set out and taken into account your personal circumstances but in doing so I bear in mind that in cases of this gravity your personal circumstances are of limited effect in the choice of sentence, see *Attorney General's Reference (No 7 of 2004) (Gary Edward Holmes)* 2004 NICA 42 and *Attorney General's Reference (No. 6 of 2004) (Conor Gerard Doyle)* [2004] NICA 33.

Aggravating features in relation to the offender

[43] You have 68 previous convictions. 33 are for burglary and 14 are for road traffic offences.

(a) On 19 May 2002, when you were 17 years of age, you committed the offence of possessing an offensive weapon in a public place. The weapon on that occasion was an iron bar. This offence occurred outside McDonalds Restaurant in Newry when you were highly intoxicated. You used an iron bar to damage the premises after some altercation relating to being refused food.

(b) On 22 August 2006 you again committed the offence of possessing an offensive weapon in a public place. That offence was committed at the same time as an offence of taking a motor vehicle without consent. The car was stolen from outside a house and when the car was stopped you were searched and found to be in possession of an 8 inch kitchen knife.

(c) On 18 May 2006 you committed the offence of robbery. This occurred when you and another offender attacked a newsagent as he opened his shop in Monaghan Street, Newry. Both you and the other offender had been at an all-night party and had used illegal drugs. You were carrying a kitchen knife at the time and the other offender had a hammer.

I consider that these offences involving offensive weapons are serious aggravating features of this offence.

Balance of aggravating and mitigating features in respect of the offence of murder

[44] My overall conclusion is that the aggravating features are greater than the mitigating features.

Conclusion in relation to David Anthony Kenneway

[45] I have determined in relation to the offence of murder on count one that the appropriate minimum term of imprisonment that you will be required to serve before the release provisions will apply to your case is one of 13 years. This will include the time spent by you on remand. What if any further period you will spend

in prison thereafter will be for the Parole Commission to determine. I direct that it is to receive a copy of these sentencing remarks.

Conclusion in relation to Lynsey Cahoon.

[46] There are a number of significant features in relation to you, Lynsey Cahoon namely:

- (a) Your genuine remorse expressed at the earliest opportunity.
- (b) Your plea of guilty entered at the earliest opportunity.
- (c) Your complete cooperation with the police.
- (d) Your personal circumstances.
- (e) The assessment that there is a low risk of reoffending and that you do not pose a risk of serious harm to others.
- (f) The panic which led you to attempt to assist David Kenneway and your intoxicated state.
- (g) The acceptance by the prosecution and the investigating police officers that your involvement was "purely a wholly misguided attempt to assist" David Kenneway.
- (h) Your age and immaturity.
- (i) The lack of any damage to the interests of justice.

[47] The offences which you committed were serious offences and they require the imposition of a prison sentence of 3 years, but given the wholly exceptional combination of features present in your case and in accordance with the advance indication of sentence I suspend that sentence for a period of 3 years. I emphasise that absent any one of those features the sentence would not have been suspended. I should explain that if during the period of 3 years you commit a further offence punishable with imprisonment then not only will you be sentenced for that further offence but you should anticipate that the suspension of this sentence will be removed so that it takes effect.