

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 13/4/2011

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

MARTIN RAYMOND JUDE MURRAY, LIAM PATRICK KEVIN MURRAY,
KEVIN MICHAEL CHARLES TOYE, WILLIAM McDONAGH
& KEVIN MURRAY

TREACY J

Introduction

[1] The Defendants were arraigned on 24 September 2010 and pleaded not guilty to all counts. This non-jury trial commenced before me on 29 November 2010 and concluded on Tuesday 2 March 2011. The first four defendants are jointly charged on the first count with the murder of Eamon Hughes on 13 September 2008; on the second and third counts with the attempted murders (on the same date) of Martina Donaghy and Emma Donaghy; and on the fourth count with affray; on the fifth count Kevin Murray alone is charged with the attempted murder of Kevin Hughes, also on 13 September 2008.

Appearances:

[2] Terry Mooney QC with Fiona O’Kane BL for the Prosecution
Brendan Kelly QC with Richard Greene BL for Martin Murray
Frank O’Donoghue QC with Tom McCreanor BL for Liam Murray
Terry McDonald QC with Liam McStay BL for Kevin Toye
Lawrence McCrudden QC with Neil Moore BL for William McDonagh
Arthur Harvey QC with Neil Fox BL for Kevin Murray.

Overview

[3] The murder charge relates to the fatal stabbing of Eamon Hughes on the Lisnahull Road, Dungannon shortly after 2.00am on Saturday 13 September 2008. The attempted murder charges on the **second** and **third** count relate to the alleged deliberate driving of a hijacked taxi at Martina Donaghy and Emma Donaghy whilst they were administering first aid to the dying Eamon Hughes on the Lisnahull Road. The **fourth** count of affray, in summary form, relates to the confrontation at Lisnahull Road on the same date. The **fifth** and final count which concerns only the fifth defendant arises out of the discharge of a crossbow bolt which struck and injured Kevin Hughes, the son of the deceased. This incident occurred shortly after the principal events on the Lisnahull Road in or about the carpark adjacent to the fifth defendant's home.

[4] Despite a considerable body of evidence from various witnesses the first defendant had always maintained that he had no knife, stabbed no-one and, indeed, that the evidence in relation to his possession of the knife had been "invented". However at an advanced stage of the trial in January 2011 the first defendant, through his defence Counsel, accepted that he did have the knife and that he did stab Eamon Hughes.

[5] The Prosecution case against the first defendant was that he was the principal in the alleged murder of Eamon Hughes; that he stabbed him with the intention at least of inflicting grievous bodily harm and was therefore guilty of murder. Notwithstanding that Martin Murray did not give any evidence or call any evidence on his own behalf the Prosecution accepted that whilst there was no direct evidence of self defence raised by Martin Murray himself that the issue had nonetheless been raised on the evidence and that therefore the burden was on the Prosecution to disprove it beyond reasonable doubt.

[6] As against the second, third and fourth defendants the Prosecution relies on the principle of joint enterprise contending that they were taking part in a joint attack with the purpose of causing serious injury, in which one of the participants, to their knowledge, Martin Murray, was armed with a knife.

[7] The Prosecution accepted that the requisite foresight to establish liability as a secondary party to the murder of Eamon Hughes could only be made out if it was affirmatively established beyond reasonable doubt that the relevant defendant(s) *knew* that Martin Murray had a knife and might use it to cause grievous bodily harm. If there was a reasonable possibility that the defendant(s) did not know they must be acquitted of this charge.

[8] The second, third and fourth defendants always denied knowledge of the knife and all gave evidence on oath that they had no knowledge of the knife at any relevant time.

Background

[9] On Friday 12 November 2008 the Hughes family held a party in the function room at The Irish National Forester's Club, Scotch Street, Dungannon to celebrate their youngest daughter, Siobhan's, 18th birthday. Attendance was by invitation only and the guests were the immediate, extended family and close friends. There was music at the party supplied by a local DJ and the food was provided by the family itself. The club premises are in an elongated building with the main entrance at the west on Scotch Street. Access to the function room is through the main/front bar past the toilets.

[10] The front bar was open that night and there were many patrons. Among them was a man named Dane Jackson, an associate of the Murray family and Kevin 'Bugsy' Murray, brother to the first defendant and cousin to the second defendant.

[11] Kevin Hughes, the victim's son, arrived at the club at approximately 10.00pm. He noted the presence of Kevin 'Bugsy' Murray seated in the front bar in the company of Dane Jackson. Both these persons were known to him. At one stage Kevin Hughes went to the men's lavatory. Jackson was there and words were passed between the two after Jackson called Hughes an abusive name. Jackson returned to the front bar and Hughes to the party in the function room.

[12] A short time later Jackson, accompanied by at least one other person, entered the function room. They were spotted by members of the Hughes family who asked that they be removed. A member of staff was seen to escort them from the room.

[13] The party ended at approximately 1.00am on the morning of 13 September and the remaining party goers, including members of the Hughes family, left the function room making their way to the front bar where they finished their drinks and played some of the gaming machines.

[14] When Kevin Hughes was leaving the premises there was a further confrontation between him and Dane Jackson during which blows were traded. They fought each other in the street for some few minutes before others intervened to separate them. Jackson and his companion were observed heading in the direction that would bring them to an area known locally as the 'Ponderosa'.

[15] The Hughes family invited some of their friends who had been at the party to return to their house at Lisnahull. They decided to walk and the route they took from the Forester's Club was along John Street, along the Newell Road and then turning into Lisnahull Road to give them access to the estate. That walk would have taken them approximately 15 minutes. It was during what would have been the final stage of that short walk that the calamitous events, resulting in the death of Eamon Hughes and the life changing injuries to Martina and Emma Donaghy, occurred.

The Journey to Lisnahull Road

[16] *Dariusz Macjchrzak*, a Polish citizen, worked for a taxi firm in Dungannon and on the night of the attack on Eamon Hughes he was driving a gold coloured Toyota Avensis car VRM X463CDY which was the property of his employer.

[17] That night he had taken Kevin Toye and William McDonagh (third and fourth defendants) to a nightclub in Cookstown having collected them from Windmill Drive in Dungannon. The arrangement was that he was to collect them at the club around 1.30am [on 13 September]. As arranged he picked them up noting that they were not drunk but that it was apparent they had consumed alcohol. He described them as a "bit tipsy". He said they were a little agitated and his impression was that their attitude was aggressive as if they were looking for some kind of fight or something. In cross-examination he acknowledged that their agitation could have been caused by something which happened in the nightclub and confirmed that no aggression or agitation was directed at him. He was initially instructed to return them to Windmill Drive but during the return journey they spoke on a mobile phone following which the taxi driver was directed to go to 5 Ranaghan Way in the White City area of Dungannon. After he had got these new instructions he confirmed they had calmed down and were acting normally. He dropped them off as directed at this address where there was a party in progress. This would have been sometime between 1.30/1.45.

[18] After he had dropped them off he got a call on the radio to go and collect someone from 24 Windmill Drive who asked to be taken to the same house at Ranaghan Way. This man, whom he had seen earlier when first picking up Toye and McDonagh, was carrying a box of beers. On the way back, at the roundabout at the Ballygawley Road/Newell Road, he saw a group of 10 or possibly more people who looked as if they were coming back from a party because they were carrying balloons. It is clear that this was the Hughes group returning from Siobhan's 18th birthday party. The group were heading in the Newell Road/Lisnahull direction.

[19] When the taxi arrived at 5 Ranaghan Way, men walked out of the house that the party was in and started getting into his taxi. [He wasn't sure if the man with the beers actually stayed in the taxi.] There were too many to take at one time so they wanted the taxi driver to come back to take more people which he refused to do. He was instructed to go to the Newell Road. Those who got into the taxi included Kevin Toye, William McDonagh, Martin Murray and Liam Murray. When asked to describe the atmosphere he said that the people who got into the car were "very *agitated*" as if they were looking for a fight. They were simply *aggressive*." He said he was "scared" and felt "threatened".

[20] He followed their instructions as to the route to be taken including being told to drive through a red light and not to slow down. He said it was not a pleasant

journey, that he was in fear and that he just wanted to take them to the place they wanted to go and finish his shift. He stated that he could figure out from their conversation that they were “going there to find somebody” probably “to fight with someone, like revenge or something like that.” After he had turned left onto Newell Road he drove past Lisnahull Road and was told to stop and to reverse and to go into Lisnahull Road which he did.

Initial Confrontation

[21] As he was driving along the Lisnahull Road he saw the party group he had seen earlier on the right hand side going up the road. By this stage, although it was hard to say, he thought this group were already “quite far” up the road “probably before the Lisnahull Gardens somewhere”. When he passed this group he was told to stop. He didn’t know who had told him to stop or how far past the group he was when told to stop. When he stopped all his passengers got out which he thought was “most likely five” – he being the sixth person in the taxi. At that stage his taxi was facing up the road away from the Newell Road.

[22] He then drove on further, reversed and turned back down the road because they had asked him to wait for them “as if they had intended to go somewhere else, I don’t know”. McDonagh told him “Just wait two minutes, stay here, don’t go away”. He also stated that he got the impression that it was their intention to go on somewhere else. His taxi, which had a “Home James Taxi” sign on top of the roof, probably drove to and reversed in Ballysaggart Park turned round and then headed back down in the direction from whence he had come and where he had let all his passengers out. He didn’t drive far because the people were already on the street and he couldn’t go further. His passengers were on the street “waiting for me to come”. The next thing he recollects happening was the party people “walking” in his direction although in cross-examination he said they were possibly running “and the ... passengers ... wanted to come back[to] get into the taxi ... so I could take them away from there etc. I also remember that William [McDonagh] wanted to pull me out of the car”.

[23] In cross-examination he had the contents of his first short statement made the next day put to him in which he stated [after he had driven down] that the group of four then faced a larger group that was on the road, that he was sure there was going to be a fight and that the group of four ran back to his car shouting “there is too many of them”. He described people out in the street who were wanting to fight each other and who were behaving aggressively towards each other. It was very loud, everybody was shouting. He said “I know only one thing that somebody was shouting, asking to get into the taxi to leave because there were too many of them there.” When asked if he was able to say if he could see any gestures that anyone was making he said he couldn’t remember any gestures but that what was happening just indicated that there was “*an affray, a brawl*”.

[24] I am satisfied that the first four defendants entered Lisnahull Road in the taxi with the purpose of confronting Kevin Hughes and other members of his group and that the first defendant was armed with a knife. Liam Murray had a WKD bottle. After his passengers had jumped out of the taxi and confronted the Hughes group there was a large swathe of reliable evidence from convincing and honest witnesses attesting to the aggressive brandishing of the knife by Martin Murray towards the Hughes group. This occurred in close proximity to Liam Murray, Kevin Toye and William McDonagh who were thus in a position where they *could* have observed Martin Murray with the knife and to have been aware of his aggression. The taxi driver did not claim to have seen the knife at any stage or to have heard it discussed on the journey to Lisnahull Road.

[25] In a scene of some terror, mayhem and pandemonium the aggressive confrontation that the first four defendants had initiated was repelled with these defendants fleeing, at least temporarily. It was after this initial confrontation and in the course of their flight that the circumstances surrounding the tragic death of Eamon Hughes were to unfold. One of the most compelling and reliable accounts of what was to transpire was furnished by the evidence of Colm Thomas. Before summarising his evidence I want to return briefly to the taxi driver's account of what he observed happening at the front of his taxi before it started to move off down the Lisnahull Road.

[26] At the front of his taxi he described a man [aged 50/60] who was carrying a piece of concrete or a kerb over his head. The taxi man tried to leave the place and shouted on the radio for the police to be sent because there was a fight going on. As the incident progressed it got "more and more aggressive ... more and more dangerous. Everything was happening just around the taxi". Although he wanted to drive away he couldn't because there were people in front of him and he didn't want to bump into them. He described that at some point McDonagh was on his side trying to pull him out of the car at a time while his engine was still on and that it was possible that he [the taxi driver] was trying to drive away [I interpose that although McDonagh had denied in police interviews trying to pull the taxi man out at this stage in his sworn testimony he belatedly accepted that he had and that he had lied to the police].

[27] He described McDonagh opening the door and trying to take the keys from the ignition and trying to drag him out of the car. At that stage he said that Toye was at the back, behind the taxi on the right hand side. He was unable to say where the others were. Whilst the taxi-man was shielding his keys from McDonagh someone attacked McDonagh. He saw the man with the concrete walking towards the car and throwing it towards McDonagh, as he thought, but it didn't strike anybody. The man who did this was walking past his car from the left to the right hand side. He then describes McDonagh being attacked from behind with a chain or belt and wanting to be on the other side of the drivers open door as if he wanted to be protected. McDonagh then made his way round the door and jumped onto the front car bonnet where he lay with his face on the windshield. He stated that McDonagh's

left hand was gripping the car. As the driver wanted to drive off he closed the door on McDonagh's hand. Whilst on the bonnet someone tried to hit him again with a chain or something but missed, hitting the windshield and cracking it. At this time the driver said that without looking at anything else he simply drove off because he was terrified and just wanted to leave the place. He then went, he thought, to the end of the Lisnahull Road.

[28] I am satisfied from the evidence in the case that the taxi came to a halt in or about the area of Corrainey Gardens. All the while McDonagh remained on the bonnet during that journey and he was shouting, telling the driver to stop as he had closed the door on his hand. On the way down the driver was aware that he had passengers in his taxi but he didn't know if it was all of his previous passengers or not as he simply wasn't paying attention to this. He thought they could have got in whenever he was moving his car with McDonagh on the bonnet "or perhaps a while ago before that as they were maybe trying to hide, to get shelter".

Death of Eamon Hughes

[29] As to what happened to Eamon Hughes the position is clear in light of Martin Murray's acknowledgment that he stabbed him and the account of Colm Thomas. I accept this witness' evidence as providing a reliable and truthful account of the circumstances surrounding the fatal stabbing.

[30] *Colm Thomas* had been at the party in the Forrester's and described the atmosphere as good. Outside he witnessed Dane Jackson having a fight with Kevin Hughes which lasted 1-2 minutes. He was walking back with Siobhan and his cousin and others and he describes stopping [at the bottom of the "tar path"] on the Lisnahull Road to have a cigarette with several people including Eamon and Kevin Hughes and Nathaniel Sherry. Kevin Hughes walked on up and then he could hear shouting and some of the people ran up the road. He heard "C'mon ta fuck you provie bastards". He saw a taxi stationary up at the ramp where the disused shop was in the middle of the road. The front wheel was on the ramp. He became aware of it after hearing shouting. He saw five men outside the car - Liam Murray was to the front passenger side, Kevin Kinnear at the boot, William McDonagh to the driver's side at the back, Kevin Toyne to the driver's side front door and Martin Murray to the front of the car. Martin Murray had a knife in his right hand. Liam had a blue WKD bottle and was holding it by the neck, "the skinny bit" upside down. He could see the colour and the label. There was shouting by both sides. He saw both Liam and Martin Murray gesturing with both hands. He saw Declan McKee throw a block at Martin Murray who swerved and the block hit the car bonnet. Martin Murray was making a "come on gesture" both before and after the block was thrown. He said everybody had their belts off. Kevin Hughes was to his right. He describes the car moving off with doors open and Martin Murray hanging out of the back driver's side rear door with one leg getting in hanging on with his left hand. He could still see the knife in his hand. He describes the car as moving very slowly almost stopped, Eamon running down and striking Martin Murray with

a belt with sufficient force that he [Martin Murray] “felt it”. He then observed Martin Murray stab Eamon Hughes in the chest with what I am satisfied was a deliberate as opposed to an accidental blow. Eamon fell face against the car and then he fell down on the ground. Colm Thomas ran down to where Eamon had fallen and rang for an ambulance. Patsy Vincent and Martina Donaghy were on their knees.

[32] Through his counsel Martin Murray accepted that it was at this point that Martin Murray stabbed Eamon Hughes. I will later return to Martin Murray’s claim that he was or may have been acting in self defence – a claim based on the evidence of this prosecution witness, Colm Thomas, that he was being forcibly attacked by belts at this stage, while he was attempting to flee and in the context of the physical force demonstrated by the Hughes group at the initial stages of the confrontation.

The Hi-jacking of the Taxi

[34] When the taxi stopped near the end of the Lisnahull Road McDonagh got down from the bonnet and unfastened the driver’s seatbelt and pulled the taxi driver out of the car. [I interpose again that McDonagh during police interviews repeatedly denied having hijacked the taxi and, indeed, attributed this role to his co-accused. In his evidence however he admitted that he had lied to the police.] When being pulled from the car McDonagh, according to the taxi driver, told him to “escape because if the other ones catch me they will kill me for sure”. Darius confirmed in cross examination [by Mr Kelly QC] that by the “other ones” he thought McDonagh meant the people who were on the Lisnahull Road and not the ones in the taxi – i.e. the other group. They were shouting for the keys. His engine was off at this stage. He said that when McDonagh was attempting to take him out of the car he switched it off. The ignition in the car was broken and he thought that only someone who had driven the car would be able to start it and that that was why he had left the key in the car.

[35] Although not charged with hijacking I am quite satisfied that the occupants of the taxi were self-evidently acting in concert to commandeer the taxi. The taxi stopped because McDonagh was on the bonnet with his hand trapped in the door. I am also satisfied that the purpose in hijacking was not, as the defendants claimed, to effect an escape from the area. This account of their motivation was plainly mendacious. If exiting the area as quickly as possible was their true intent they could simply have allowed the taxi driver, after all the passengers were on board, to have left by the quickest and most direct route – via the Newell Road. Instead they took control of the vehicle, restarted it, turned it round and headed back up the Lisnahull Road from the situation they were professing to want to flee from as quickly as possible. Indeed it is likely the successful physical repulse of the earlier attack may have fuelled their aggression. No doubt the initial aggression which brought them to Lisnahull was compounded by what, some of them, especially the Murrays, might have seen as a humiliating retreat. They had unfinished business and as we shall presently see it was executed with merciless ferocity.

Return of the Taxi and Collision with Martina and Emma Donaghy

[35] *Martina Donaghy* said she was in the foyer of the Forrester's Club and as she went to leave the door was closed and she was told there had been an altercation. She opened the door and went out and outside everything was fine and they all headed towards the Hughes family home. En route her brother Patsy, her daughter Emma and Siobhan were behind her. On the footpath on the right hand side of the Lisnahull Road she noticed a taxi in the middle of the road. It was stationary and facing down and didn't alarm her at that time. She then noticed her brother had his hands up and "saw a fella at the front of the car with a knife in his hands" and "knew by Patsy's reaction something wasn't right". He was standing with the knife in his hand and moving it in front of him making hand gestures, waving the knife in front of him. She describes the span of the blade as being the distance of between her thumb and forefinger. She said she screamed at her brother and he was saying "put the knife down, put the knife down". She ran up to the car when she saw her brother with his hands up. She then turned round to find her daughter and upon getting to her told Emma, who was shaken, not to move. There was a young man with Emma holding her saying calm down. She describes a lot of screaming and that the taxi was then moving down the hill and she couldn't see her brother. She didn't see any belts or breeze blocks as her focus was on Emma. She saw two boys running and Eamon Hughes and described two men trying to get into the taxi at the back passenger door on the driver's side. The car was not moving fast. The taxi drove past her and she looked up and saw Eamon fall to the ground [although she didn't herself witness the actual stabbing it is clear from the other evidence that this is what occurred at this stage]. Her instant reaction was to help him as she had some first aid. Eamon was lying face down with his feet facing up the Lisnahull Road. She called his name with no response and rolled him over putting him on the left hand side of the road and saw the wound to his chest. She knelt down and Eileen was there at Eamon's head and Emma was to her right putting her hand on top of Martina's to apply pressure to the wound. She said Eamon was lying in the left hand lane of the road and she was to the right of him.

[36] The she says "everything happened so quick. I just heard this screaming. I heard the revving of the engine. I was then hit by the car. I felt the impact of the car. I was too busy concentrating on Eamon to see anything." She knew her leg was broken and she felt a burning sensation on her right leg - she thought she was dying.

[37] *Emma Donaghy* was at the party. She had a few drinks and says she was tipsy. She too was kept in the Forrester's briefly before leaving. When they got out there was nothing to see. She says she walked back in the company of her friend Eimear and Peter Carey talking en route. She doesn't remember seeing anything on the Lisnahull Road other than "a bit of movement, fast movement". She did not see a taxi. Her mummy and Peter were telling her to stay put. She looked and saw Eamon Hughes fall onto his face and heard her mummy call his name and run over to him.

She said her mother told her to stay put as did Peter Carey and her mum went over and turned Eamon over as he had fallen face first onto the road. Peter was holding Emma back but she ran over to her mother who initially pushed her away. She had some knowledge of first aid from school and told her mother she wanted to help. She was at the lower part of Eamon's body and described her position as being on her hunkers and then her mummy pushing her back and she went back onto her knees. Her next memory was after the impact of the car and she was at the side of the road.

[38] As is apparent from the evidence of the taxi driver already set out above the taxi proceeded to near the bottom of the Lisnahull Road with most of the occupants already on board by that stage except for McDonagh who was still on the bonnet. The taxi was hijacked, turned around and driven back up the Lisnahull Road and into Martina Donaghy and Emma Donaghy who suffered horrendous injuries.

[39] When asked about the Hughes group whom he had earlier seen the *taxi driver* said it was as if they were trying to help somebody who was lying on the ground [the taxi man unaware at this stage that Martin Murray had already stabbed Eamon Hughes]. After the taxi man was taken out he walked towards the Newell Road, having got about 20 metres, when his attention was drawn back towards the car because they had succeeded in starting it. They were all in the car and it turned back and drove at *speed* up the Lisnahull Road "*towards*" the people who had been coming back from the party. These people were on the left side of the Lisnahull Road and were in the act of trying to help someone [Eamon Hughes] who was lying on the street. The car "*drove into*" the people who were rescuing the man lying on the street. The car was "*driving fast*" and *drove into* the group of people who were on the Lisnahull Road. He said the car drove over the legs of the person lying on the ground and also over the legs of another person, possibly a girl who was trying to rescue him. He said that he could remember "that two women were bent over him, maybe they were trying to help him, to resuscitate him, and the car *simply drove into them*. At the time the car was driving up the road there was nothing on the right hand side of the road. After the car collided it did not stop and proceeded further up the Lisnahull Road and out of the area.

[40] In addition to the taxi driver's account there was a significant number of eyewitnesses, closer to the relevant events, who gave evidence about the manner and speed with which the vehicle was driven.

[41] *Eileen Hughes* said she heard somebody shouting "Watch out they're coming again" and said "*I just heard the screeching of car tyres and just this light coming towards us ... a high speed car screeching off like as if you were taking off in a rally type thing*". She said all she saw was car lights and then there was a loud bang and when she looked round Martina was lying on the road. She got up at that stage and looked round and she saw Emma further on up the road. She then thinks she passed out.

[42] *Martina Donaghy* said “Everything happened so quick. I just heard this screaming. I heard the *revving* of the engine. I was then hit by the car. I felt the impact of the car. I was too busy concentrating on Eamon to see anything.”

[43] *Mary Tennyson* said Eamon, Martina and Emma were not over the white line, that they were still on the left hand side of the white line. She said she glanced in her right hand mirror and saw car lights coming and by the time she seen it coming it was almost over the ramp and as the passenger door passed the front of her car she saw the car *swerve* and then heard two bangs. She said Mr Hughes’ body moved over the road at least a foot or two and then Martina and Emma fell. *She said the car could have gone past without touching them if it hadn’t swerved.*

[44] *Kevin Hughes* said he saw the car stopping and then turning round and came back up towards them. He said the car went past him and then it *swerved* to the left and hit Martina and Emma and then drove on. He said the car missed his dad’s head by inches.

[45] *Patrick Bell* said he saw the taxi coming spinning out of Corrainey Park at speed and coming back up the Lisnahull Road again and as it did it came up that fast that it just ploughed into the three people on the road. He said it was hogging the middle of the road and that the people on the road were more to the left hand side of the road. *He said the car definitely and purposely swerved to the left.*

[46] *Peter Carey* described hearing the *screech* of tyres and then somebody shouting something along the lines of “they’re coming back, they’re coming back”. He then said the car drove flat out past him – by this time Martina and Emma were on the right hand side of Eamon and the car drove directly into the both of them missing Eamon’s head by about an inch. He said the car was going directly towards Eamon Hughes – the car was in the middle of the road but then it *veered* toward Eamon Hughes. He said the car was going flat out with full revs.

[47] *Darius Macjchszak* said he saw the car turning back and driving towards the people who were coming back from the party – they were on the left hand side of Lisnahull Road. He said they were trying to help someone on the street and he saw it drive into the people who were rescuing this man. He said the car was driving *very fast* and *simply drove into them.*

[48] *Colm Thomas* said he saw the taxi coming back up the road from Corrainey Park and it swerved into the left hand side of the road to hit them. He said the car came up over the ramp *as hard as it could go* and *just went over at an angle* and hit Martin and Emma. He made a 999 call for an ambulance and while talking to the ambulance operator he said:

“They’re coming back for it, they’re coming back for it, they’re coming back for it”

A bang is then heard

“Oh holy fuck auck no way Jesus Christ they’re only after hitting three people there Oh please you’ve got to help us here we need cops or something here. The hoods are only after driving over people and everything, three people. I think they are dead”.

[49] In his evidence *William McDonagh* said he pulled the taxi driver out of the car and told him to run, to get out of the estate that he wasn’t driving nowhere. Before he could get into the driver’s seat he said Kevin Toye jumped into it. He then said there was shouting in the car. Prior to the collision he said Chucky and BooBoos were shouting “*hit them, hit them*” and Kevin Toye [the driver] was *building up his courage*. After the collision he said the Murrays were shouting “*we got the bastards*” [BooBoos and Chucky being the nicknames of the first and second defendant respectively].

[50] He said that as soon as that happened he started arguing with them. He knew “something serious was done, not too sure what part of the road that was ... angry as if they had achieved something”. He agreed something could have been said in the car to give him the impression that Toye was building up his courage. He said he heard the words after the u-turn but he didn’t have time to do anything. He said “*BooBoos was psyched up to fuck ... and Chucky ... we hit them, we hit them*”.

[51] In interview he told police that it was the three of them shouting we hit them we hit them but now says it was Martin and Liam, then agreed “*If I says it, then it must have been*”. He remembered hearing the following comments from Liam and Martin “*them boys were all proud of theirselves like, we got the bastards, do you know what I mean, we hit them, we drove over them*”.

[52] *Liam Murray* denied in his evidence inciting or encouraging anyone to drive the car into anyone. Martin “BooBoos” Murray did not give evidence. *Kevin Toye* denied in his evidence that anyone had said or done anything to incite or encourage him to drive into anyone. He [Toye] remembered hearing a bang. He said he had no recollection of who else was in the car before it headed off down the road other than he was first in or of anyone else getting in or out. He said that he had no idea who the person was who pulled the taxi driver from the car and that he made the decision to get into the driver’s seat only after the driver was pulled out and no one had got in to drive the car. He said the other people in the taxi were those he had travelled to the scene with. He agreed the first time he talked about turning the car around was in his evidence in court that day. Challenged as to why – said he couldn’t remember where he had turned the car. *He said no one in the car tried to stop him or challenged him*.

[53] In relation to the journey thereafter he said there were probably words spoken but he couldn’t recall what was being said. He said the car was very near the Newell

Road when he turned around and the other country route was full of pot holes and not conducive to a vehicle driving at speed. He said no one had any intention to kill and he didn't swerve in to hit anybody. He could not explain the accident other than to repeat that he had not seen the girls. He had no recollection of seeing Mary Tennyson's taxi and thought he had driven at all times up the left hand lane. He had no explanation for how the accident happened but agreed that he drove the rest of the journey without further incident. He drove the car to the Ponderosa estate where it was abandoned and burnt. None of the defendants could assist the court as to who burnt the car.

Arrival of Ambulances and Certification of Death

[54] In the early hours of Saturday 13 September a series of calls to the NI Ambulance service was received at Ambulance control through the '999' emergency system. The reports were confused and paramedics in a number of ambulances were sent to the Lisnahull Road, Dungannon. The reports variously reported a shooting and casualties from a road traffic collision. The ambulance crews arrived within a short time of each other, but not at the same time. On arrival at Lisnahull Road, the ambulance crews were confronted with a chaotic scene. There was a crowd of people gathered around what appeared to be a number of people lying on the roadway. They identified a number of casualties. Initially, they observed three casualties. The first was a male. The crew found him lying on the ground on his back. He was unresponsive and did not appear to be breathing. The paramedic who attended to him could detect no heartbeat. When the male had been placed in the ambulance the crew continued to give him life support treatment, but there did not appear to be any response. When they examined the male he had, among other injuries, what appeared to be a stab wound in the centre of his chest. This male was taken to Craigavon Area Hospital. Unfortunately, he was found to be dead on arrival. He was identified as Eamon Hughes.

[55] Two further casualties were found on the roadway. They were Martina Donaghy and her daughter Emma. They were attended to separately, but both were found to have grave bodily injuries, mainly to the lower limbs, but in the case of Emma also an injury to her head and shoulder.

[56] While the ambulance crews were present a further casualty came forward and was taken to hospital. This was Kevin Hughes, who had a wound to his left arm. It was noted that he had a *crossbow bolt* in his left arm. This was later removed at hospital and eventually seized by the police.

Injuries sustained by Martina and Emma Donaghy

[57] *Martina Donaghy* suffered a closed fracture of the left femur, a closed fracture of the left tibia, a 5-6 inch laceration of the right groin and marked bruising to the

right thigh. She has required plastic surgery and has had repeated surgical procedures.

[58] *Emma Donaghy* had a laceration to the right side of her head. She suffered a fracture of the left humerus, fractures of both ankles and a fracture dislocation of the left knee. She has had repeated surgical procedures.

Martin Murray - First Count

[59] Having belatedly admitted during the trial that which he had always denied, namely the fatal stabbing of Eamon Hughes, this defendant relies on self defence.

[60] The Court has to decide whether in the defendant's position the use of force was reasonable having regard to the danger and pressure to which he or others were exposed and the time in which he had to decide his action: *Hegarty* [1986] NI 343.

[61] A person may use such force as is reasonable in the circumstances as he believes them to be in the defence of himself or any other person. This comprises two tests, the first subjective and the second objective:

- (i) A genuine belief in facts which if true would justify self-defence is a defence to a crime of personal violence because the belief negatives the intent to act unlawfully.

The Court must decide whether the defendant honestly believed that the circumstances were such as required him to use force to defend himself from an attack or a threatened attack. The defendant must be judged in accordance with his honest belief, even though that belief may be mistaken.

- (ii) An objective test is required in respect of the degree of force used. The degree of force used by an accused may not be regarded as reasonable if he uses excessive force or has over-reacted. Of course a person defending himself cannot weigh to a nicety the exact measure of his necessary defensive action.

[62] If the Court found that in a moment of unexpected anguish the defendant only did what he honestly and instinctively thought was necessary that would be potent evidence that only reasonable defensive action was taken. But it is not enough to show that the defendant believed the force used was reasonable. In judging whether the defendant had only used reasonable force, the Court has to take into account all the circumstances, including the situation as the defendant honestly believed it to be at the time, when he was defending himself. In this instance the defendant Martin Murray has given no evidence to the Court about his belief.

[63] In this case the first defendant was the only defendant who did not give evidence. I am drawing no adverse inference from his failure to give evidence. It is accepted by the prosecution that the defence of self-defence is raised on the evidence and that accordingly they must satisfy me beyond reasonable doubt that he was not so acting.

[64] In this case I am satisfied that the first defendant was the initial aggressor but the law makes it clear that that fact is not always and inevitably a bar to the defence arising. This issue has been considered in a number of cases and recently before the Court of Appeal in England.

[65] In *R v Daniel Keane* [2010] EWCA Crim 2514

“16. First, if self-defence was available to the defendant a single punch would no doubt be a proportionate or reasonable response to a threat or more by the complainant to deliver a single punch.

17. Second, it is certainly true that it is not the law that the fact that a defendant either started the fight or entered it willingly is *always and inevitably* a bar to self-defence arising. The law is as stated by Lord Hope, then the Lord Justice General, in the Scottish case of Burns 1995 SLT 1090 at 1093H. The Lord Justice General said this:

“ ... it is now clear that the propositions in Hume and Macdonald that the accused must not have started the trouble, or provoked the quarrel, are stated too broadly. It is not accurate to say that a person who kills someone in a quarrel which he himself started, by provoking it or entering into it willingly, cannot plead self defence if his victim then retaliates. The question whether the plea of self defence is available depends, in a case of that kind, on whether the retaliation is such that the accused is entitled then to defend himself. That depends upon whether the violence offered by the victim was so out of proportion to the accused's own actings as to give rise to the reasonable apprehension that he was in an immediate danger from which he had no other means of escape, and whether the violence which he then used was no more than was

necessary to preserve his own life or protect himself from serious injury."

The Lord Justice General was dealing with a homicide case in which the issue was risk to life or limb, but of course the principle applies equally to lesser levels of violence. The key point of that formulation of the law is the proposition that self-defence may arise in the case of an original aggressor but *only* where the violence offered by the victim *was so out of proportion to what the original aggressor did that in effect the roles were reversed*. That statement of the law has been approved in this court in at least two cases and it may be more. They are Balogun [1999] EWCA Crim. 2120 and Rashford [2005] EWCA Crim. 3377 , albeit that in neither case was the conviction unsafe despite the absence of such a direction.

18. As to its practical application, we would commend attention to the recent decision of this court in Harvey [2009] EWCA Crim. 469, which judgment we shall append to the present judgment. We venture to suggest that practitioners will gain a good deal of help from Moses LJ's treatment in Harvey of the proper approach to cases when self-defence arises. In that case the court considered a direction given by the judge inviting the jury to consider whether "the tables had been turned" . It seems to us that that kind of homely expression, like "the roles being reversed" , can quite well encapsulate the question which may arise if an original aggressor claims the ability to rely on self-defence. We would commend it as suitable for a great many cases, subject only to this reminder. Lord Hope's formulation of the rule makes it clear that it is not enough to bring self-defence into issue that a defendant who started the fight is at some point during the fight for the time being getting the worst of it, merely because the victim is defending himself reasonably. In that event there has been no disproportionate act by the victim of the kind that Lord Hope is contemplating. The victim has not been turned into the aggressor. The tables have not been turned in that particular sense. The roles have not been reversed.

19. Thirdly, however, in the present case the central proposition advanced on behalf of this defendant contains a fundamental flaw. It may well be true that if D provokes V to hit him, and succeeds so that V gives way to the invitation, V is acting unlawfully when he does so. It does not however follow that D thereby becomes entitled to rely on self-defence. There are many situations where two people are fighting and both are acting unlawfully, by which we mean other than in self-defence. It is true of every voluntary fight, challenge laid down and accepted. It is true of most fights in which one person deliberately incites and the other cheerfully responds with an unlawful use of force. We need to say as clearly as we may that it is not the law that if a defendant sets out to provoke another to punch him and succeeds, the defendant is then entitled to punch the other person. What that would do would be to legalise the common coin of the bully who confronts his victim with taunts which are deliberately designed to provide an excuse to hit him. The reason why it is not the law is that underlying the law of self-defence is the commonsense morality that what is not unlawful is force which is reasonably necessary. The force used by the bully in the situation postulated is not reasonably necessary. On the contrary, it has been engineered entirely unreasonably by the defendant. Exactly the same point emerges clearly from Lord Hope's formulation in *Burns*. In the situation postulated there has been no disproportionate reaction from the victim which removes from the defendant the quality of the aggressor and reverses the roles. Of course it might be different if the defendant set out to provoke a punch and the victim unexpectedly and disproportionately attacked him with a knife. That is not the case that we are considering."

Discussion

[66] The retaliation meted out by Eamon Hughes was not such that the accused was entitled to defend himself. Such violence as was offered by Eamon Hughes was not so out of proportion to the first defendant's own actings as to give rise to a reasonable apprehension that he was in immediate danger from which he had no other means of escape. In fact at the material time the first defendant was still armed having moments before aggressively brandished the weapon and threatened to use

it in circumstances where people were in fear for their own lives and the lives of others. Stabbing the deceased was plainly more than was necessary to protect himself from attack. The actions of the deceased were not so out of proportion to what this defendant did that it could be said the roles were reversed. There was no disproportionate act by Eamon Hughes, he had not been turned into an aggressor, the tables had not been turned and the roles had not been reversed. Frankly it was bordering on the perverse for this defendant to claim self defence. Accordingly I convict this defendant on count one.

Second, Third and Fourth Defendants - First Count: Secondary Parties

[67] As recorded at para 7 above there is no dispute between the parties as to the applicable legal principles governing legal liability as a secondary party on the murder charge.

[68] The Prosecution has not satisfied me to the criminal standard that they had the requisite knowledge of the knife at any relevant stage. The evidence admits of the reasonable possibility that they did not have the requisite knowledge and accordingly I must acquit these defendants on this count. My reasons, in summary, for so finding are:

- (i) There is no evidence until Martin Murray is on the Lisnahull Road that anyone else knew or must have known that he was armed with a knife of any description. In particular, there is no evidence of propensity before the Court on the part of Martin Murray; nor is there any actual evidence that at any time, either at the house party or in the taxi, that Martin Murray produced a knife or told the others that he had a knife.
- (ii) The knife itself was not of such a size that it had to be visible to the other occupants in the car. The blade has variously been described by witnesses as a small penknife and the pathology evidence supports this proposition. The knife was clearly capable of being concealed in a pocket and not known to the other occupants of the car.
- (iii) The defendants' consistent denials during lengthy interviews that they did have any knowledge of the knife.
- (iv) Their evidence on oath, tested in cross-examination, confirming their absence of any relevant knowledge of the knife.

[69] Whilst the defendants were on the Lisnahull Road in a position where they *could* have observed the knife I am not certain that they all observed or were

otherwise aware of it even at that stage. It is likely that they did but that is insufficient. I should add however that even if I had been persuaded that at that stage they first became aware of the knife I would have found it impossible, in light of the way the incident developed, to conclude that their participation thereafter was with the necessary intent since by that point some at least appeared to be focussed on fleeing.

Attempted Murder of Martina & Emma Donaghy

[70] Art 3(1) of the Criminal Attempts and Conspiracy (NI) Order 1983 provides that a person is guilty of attempting to commit an offence if with the requisite intent he “does an act which is more than merely preparatory to the commission of the offence.” On a charge of attempted murder the requisite intent is intention to kill. Accordingly the offence of attempted murder requires the coincidence of intent to kill with such acts as are more than merely preparatory to the actual offence: *Haddock, Moore, Wood and others* [2006] NICC 21 [2007] 2 BNIL 26 (Weatherup J).

[71] The evidence on oath in the present trial of a co-defendant is admissible for all purposes and can be used to support the case against the defendant: *Armstrong* [1991] 8 NIJB 44.

[72] Toye is charged as a principal in relation to the attempted murders of Martina and Emma Donaghy as he was the driver of the hijacked taxi which struck them. I am satisfied beyond reasonable doubt that the taxi was commandeered and driven by this defendant. This was not as claimed for the purpose of effecting an escape. If that had been, and remained, the purpose the car would have driven out onto the Newell Road. Toye turned the car round and drove back into the area from which he professed a desire to flee. There is overwhelming evidence, which I have set out above, that the vehicle was driven at speed up the Lisnahull Road and deliberately driven into the people on the road – people who were trying to help the dying Eamon Hughes and who were on their knees oblivious and with no means of escape. Toye himself could offer no explanation for the “accident” [see para 52].

[73] In relation to the attempted murder of the Donaghys, Mr McDonald QC rightly accepted that it would not be difficult to infer an intent to kill for a person who aims a vehicle at anyone at speed. I am satisfied beyond reasonable doubt that that he aimed the car at the people on the road and that he did so intending to kill.

[74] Martin Murray, Liam Murray and William McDonagh are charged as secondary parties to the attempted murder of Martina and Emma Donaghy. Toye denied that any of his co accused incited him to drive into his victims. McDonagh however told the police during interview and on oath that the Murrays, after the car had been hijacked, incited Toye to drive into his victims and, indeed, after they were struck were proud of what they had done. There can be little doubt if this evidence is accepted that such incitement would make them liable as secondary parties. McDonagh is an accomplice and he also told very significant lies during interview.

His evidence about what was said in the car is unsupported. Liam Murray also denied that he or Martin had incited Toye. McDonagh was not a wholly satisfactory witness. He appeared to accept in cross-examination that one of the Murrays, not necessarily both, had incited Toye. He evinced some uncertainty in definitively attributing the remarks of incitement. Without reliable evidence of incitement against particular accused I find it impossible to be satisfied to the high criminal standard that they are liable as secondary parties given that they were passengers in a car over which Toye had ostensible driving control. I am satisfied there was incitement and that the car was used as a weapon. I believe Toye was prevailed upon by one or possibly both Murrays to use the car to hit the victims but in the absence of being able to attribute with certainty the crucial remarks I must acquit. Without this there is insufficient evidence to support a conviction on counts two and three.

Law on Affray

[75] An affray is the unlawful fighting used by one or more persons against another or others in a public place, or unlawful display of force by one or more persons, in such manner that a bystander of reasonably firm character might be reasonably expected to be terrified. It is not necessary to call a witness to say that he was put in terror: **Archbold 42nd edition 1985 Ch.25-20**. Affray is a common law offence, whose elements are (i) unlawful fighting by one or more persons: or a display of force by one or more persons without actual violence; (ii) in such a manner that reasonable people might be frightened or intimidated (iii) calculated, that is reasonably expected, to terrify a person of reasonably firm character.

[76] If people are present it is not necessary to prove that they were terrified, only that such ordinary people would be terrified. It typically involves a group of people shouting, struggling, threatening, waving weapons, throwing objects, exchanging threatening blows etc.

[77] If a defendant is acting as part of the crowd the acts of others in the crowd are part and parcel of the same activity: **Hobson [1999] 7 BNIL 21, affirmed CA, NI, 25 October 1999**.

[78] On Count 4, the evidence is clear. Each of the accused was voluntarily present at a confrontation at Lisnahull Road and the fighting was such that, in that it involved the carrying of weapons together with threats and aggressive acts, it was such conduct directed at another that it would cause a person of reasonable firmness who was present at the scene to fear for his personal safety. Accordingly I find the defendants guilty of affray.

Attempted murder of Kevin Hughes

[79] Kevin Hughes said he was enraged by what he had witnessed. He said he chased Liam Murray a short distance and when he returned to his family he saw his

father lying on the roadway obviously seriously injured. He witnessed Martina and Emma Donaghy tending to his father and also witnessed the taxi return to the scene and drive at speed towards his father and those attending to him. He saw both Martina and Emma being struck by the car. He formed the opinion that his father was dead at the scene.

[80] Sometime after 2.30am on 13 September Kevin Hughes left the Lisnahull Road where his father lay dying and made his way along a path known locally as the Tar Path which marked off the southern boundary of No.1 Lisnahull Road and the fence at No.11 Lisnahull Gardens. Kevin Hughes armed himself with an iron bar. He made his way to the front of No.16 Lisnahull Gardens, Kevin Murray's home, entered the property and smashed the windows at the front of the house and damaged a slotted blind. He knew the house was occupied by Kevin Murray and his family and that Kevin Murray had not been associated with any of the events that led to the confrontation on the Lisnahull Road and that Kevin Murray had not been responsible for the death of his father.

[81] Mr Hughes was angry, armed and not open to reason. Sometime after leaving the front of No.16 Lisnahull Gardens he went to a car park to the rear of Nos.1-11, 14-24 and 2-12. There he smashed each window in a VW Golf owned by Kevin Murray using the same iron bar that he had used to smash the windows to the front of the house. The vehicle was parked a short distance from the rear of No.16 and readily accessible to the premises via a narrow alleyway. Kevin Murray had dressed and gone to the rear of his premises on hearing the attack on his vehicle. He there confronted Kevin Hughes and fired a bolt from a cross-bow which struck Kevin Hughes in the left arm. The bolt entered the rear of the forearm. It penetrated the skin and travelled a short distance from the elbow towards the hand. Mr Hughes made his way back to the Lisnahull Road where his injury was assessed as superficial by ambulance staff.

[82] In support of this charge the prosecution relied upon the evidence of Kevin Hughes, Daryl Loughran and Witness C. In his closing submissions Mr Harvey QC furnished the court with a comprehensive and penetrating analysis of the difficulties and inconsistencies with some of this evidence which would have made it difficult for the court to be satisfied to the criminal standard. However, I can deal with this matter relatively briefly in view of the clear conclusion I have reached arising from a discrete piece of evidence given by Kevin Hughes during a very effective cross-examination by Mr Harvey.

[83] In evidence, under cross-examination by Mr Harvey QC, Kevin Hughes accepted that had Kevin Murray's intention been to shoot him in the back or cause him serious harm he could not have missed given the distance they were apart and the target he presented.

[84] In light of the state of the evidence at the end of the case the prosecution have not established beyond reasonable doubt that this defendant *intended* to kill or to commit grievous bodily harm. Accordingly I must acquit this defendant on Count 5.

CONCLUSIONS:

[85] In summary my conclusions are as follows:

1. The first defendant is guilty of the murder of Eamon Hughes on the first count.
2. The second, third and fourth defendant I find not guilty of murder on the first count.
3. The third defendant is found guilty of the attempted murder of Martina and Emma Donaghy on the second and third counts respectively.
4. The first, second and fourth defendant I find not guilty on the second and third count.
5. The first 4 defendants I find guilty on the fourth count of affray.
5. The fifth defendant I find not guilty on the fifth count.