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

Delivered: **2/6/2011**

IN THE CROWN COURT IN NORTHERN IRELAND

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BELFAST CROWN COURT

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THE QUEEN

-v-

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

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SENTENCING JUDGMENT

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TREACY J

Introduction

[1] Following a lengthy trial this Court (sitting without a jury) found Martin Raymond Jude Murray guilty of the murder of Eamon Hughes and affray, Liam Murray guilty of affray, Kevin Toye guilty of two counts of attempted murder and one count of affray and William McDonagh guilty of affray. The background to these offences has already been set out in the Court's judgment ***R v Murray & Ors*** **[2011] NICC 18**.

[2] In short, Eamon Hughes was murdered on 13 September 2008, on a public street, in the early hours of the morning, in the presence of his wife, family and friends as they made their way home from his daughter Siobhan's 18th birthday party. A happy family occasion was transformed into a nightmare when the defendants instigated a violent confrontation on the Lisnahull Road in Dungannon during which Martin Murray stabbed Eamon Hughes once in the chest causing almost immediately fatal injuries. Whilst he lay dying on the road being tended to by Martina Donaghy and Emma Donaghy (mother and daughter respectively) Kevin Toye drove a vehicle at speed (with the other defendants on board) deliberately striking them with the intention of killing them. They survived but sustained catastrophic live-changing injuries.

[3] The Court has been furnished with victim impact statements from:

- Eileen Hughes;
- Siobhan Hughes;
- Kevin Hughes;
- Tracey Hughes;
- Martina Donaghy; and
- Emma Donaghy.

These deeply sad, eloquent accounts bear witness to the irreversible intense suffering, pain and anguish sustained by these victims and their families.

[4] I suggested to Counsel that the defendants should be furnished with these victim impact statements so that they could have some insight into the devastating consequences of what transpired that night and also to better understand the condign punishment that the Court must impose because of the gravity of the crimes of which they have been convicted.

[5] In your case Martin Murray you have been convicted of murder and, in accordance with the provisions of Art 5 of the Life Sentences (NI) Order 2001 ("the 2001 Order"), I must now determine the minimum term that you will be required to serve before you first become eligible to have your case referred to the Parole Commissioners for consideration by them as to whether and, if so, when you are to be released on licence. If you are in the future 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.

[6] The minimum term to which I will now sentence you is the actual term you must serve before becoming eligible to have your case referred to the parole commissioners. You will receive no remission for any part of your minimum term that I shall impose.

[7] I have been referred to the practice statement issued by Lord Woolf CJ on 31 May 2002 adopted in ***R v McCandless & Ors*** **[2004] NI 269**. The practice statement sets out the approach to be adopted in fixing the minimum term to be served by those convicted of murder. This practice directive provides detailed guidance for judges in sentencing persons guilty of murder and operates to ensure that people who are similarly culpable are comparably treated whoever sentences them and wherever they are sentenced. Paras10-19 of the practice direction are in the following terms:

> "***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 para 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 para 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."

[8] I agree with the Prosecution submission that there are **no** mitigating factors in the case of this defendant. There has been no evidence of remorse and the following aggravating factors are present:

(i) The attack on the Hughes party was pre-meditated;

(ii) The defendant armed himself with a knife and used the knife in the attack on Eamon Hughes after aggressively brandishing it towards the Hughes party;

(iii) He has a record of violent offending and has not responded to previous sentences to correct his behaviour;

(iv) The death of Eamon Hughes has had a devastating effect on his family including his widow, daughters, son and other relatives. The extreme effect which a murder has had upon the members of a family has been treated as a significantly aggravating feature in previous cases – see for example ***R v Michael Jason Smith*** **[2008] NICC 34** and the judgment of Weir J in ***R v McKee & Ors*** **[2009] NICC 43** at para10.

[9] I reject the submission of the Defence that this defendant should be sentenced on the basis of an intention to cause grievous bodily harm rather than an intention to kill. I do not accept that the intention of Martin Murray was an intention to cause GBH. This was a deliberate stabbing by someone who had armed himself with a knife, threatened to kill, did kill by deliberately inflicting a stab wound which quickly led to the death of Eamon Hughes and who has demonstrated absolutely no remorse for his actions. In short, there is **no** evidence before this Court which would justify it in concluding that his offence of murder was mitigated by an intention to cause GBH rather than to kill. The evidence points unmistakably away from such a conclusion.

[10] Having regard to the foregoing I have concluded that this is a higher starting point case and that the minimum period that this defendant must serve is one of **18 years.** For the affray of which he was also convicted the sentence is **10 years.**

[11] The offences of which the three remaining defendants have been convicted are both *serious* and *specified* offences within the meaning of Art12[1] of the Criminal

[1] *Meaning of "specified offence" etc.*
12.—(1) An offence is a "specified offence" for the purposes of this Chapter if it is a specified violent offence or a specified sexual offence.
(2) A specified offence is a "serious offence" for the purposes of this Chapter if it is an offence specified in Schedule 1.
(3) In this Chapter—

Justice (NI) Order 2008 ("the 2008 Order"). Accordingly if the dangerousness threshold is met the interlocking provisions of Art 13[2] and Art 14[3] of the 2008 Order

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"life sentence" means—
(a) a sentence of imprisonment for life; or
(b) a sentence of detention under Article 45(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9);
"specified violent offence" means an offence specified in Part 1 of Schedule 2;
"specified sexual offence" means an offence specified in Part 2 of that Schedule.
(4) References in this Chapter to conviction on indictment include references to a finding of guilt under Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9).
(5) The Secretary of State may by order amend Schedules 1 and 2.

[2] *Life sentence or indeterminate custodial sentence for serious offences*
13.—(1) This Article applies where—
(a)a person is convicted on indictment of a serious offence committed after the commencement of this Article; and
(b)the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences.
(2) If—
(a)the offence is one in respect of which the offender would apart from this Article be liable to a life sentence, an
(b)the court is of the opinion that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of such a sentence,
the court shall impose a life sentence.
(3) If, in a case not falling within paragraph (2), the court considers that an extended custodial sentence would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences, the court shall—
(a)impose an indeterminate custodial sentence; and
(b)specify a period of at least 2 years as the minimum period for the purposes of Article 18, being such period as the court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or of the combination of the offence and one or more offences associated with it.
(4) An indeterminate custodial sentence is—
(a)where the offender is aged 21 or over, a sentence of imprisonment for an indeterminate period,
(b)where the offender is under the age of 21, a sentence of detention for an indeterminate period at such place and under such conditions as the Secretary of State may direct,
subject (in either case) to the provisions of this Part as to the release of prisoners and duration of licences.
(5) A person detained pursuant to the directions of the Secretary of State under paragraph (4)(b) shall while so detained be in legal custody.
(6) An offence the sentence for which is imposed under this Article is not to be regarded as an offence the sentence for which is fixed by law.
(7) Remission shall not be granted under prison rules to the offender in respect of a sentence imposed under this Article.

[3] *Extended custodial sentence for certain violent or sexual offences*
14.—(1) This Article applies where—
(a)a person is convicted on indictment of a specified offence committed after the commencement of this Article; and
(b)the court is of the opinion—
(i)that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences; and

apply. This Order makes provision for new sentencing disposals respectively called Indeterminate Custodial Sentence ("ICS") and Extended Custodial Sentence ("ECS").

[12] Both of these sentences were specifically enacted for the protection of the public. Undoubtedly the ICS is more draconian being largely indistinguishable in its effect from a discretionary life sentence. An ICS or an ECS can only be imposed when, inter alia, the Court is of the opinion "**that there is a *significant risk* to members of the public of *serious harm* occasioned by the commission by the offender of further *specified offences***" [Art 13(1)(b) and Art 14(b)(i)]. [Since I am satisfied that a discretionary life sentence would not be justified in the case of any of the three defendants I need not concern myself with Art 13(2)].

(ii)where the specified offence is a serious offence, that the case is not one in which the court is required by Article 13 to impose a life sentence or an indeterminate custodial sentence.
(2) The court shall impose on the offender an extended custodial sentence.
(3) Where the offender is aged 21 or over, an extended custodial sentence is a sentence of imprisonment the term of which is equal to the aggregate of
(a)the appropriate custodial term; and
(b)a further period ("the extension period") for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.
(4) In paragraph (3)(a) "the appropriate custodial term" means a term (not exceeding the maximum term) which—
(a)is the term that would (apart from this Article) be imposed in compliance with Article 7 (length of custodial sentences); or
(b)where the term that would be so imposed is a term of less than 12 months, is a term of 12 months.
(5) Where the offender is under the age of 21, an extended custodial sentence is a sentence of detention at such place and under such conditions as the Secretary of State may direct for a term which is equal to the aggregate of—
(a)the appropriate custodial term; and
(b)a further period ("the extension period") for which the offender is to be subject to a licence and which is of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.
(6) In paragraph (5)(a) "the appropriate custodial term" means such term (not exceeding the maximum term) as the court considers appropriate, not being a term of less than 12 months.
(7) A person detained pursuant to the directions of the Secretary of State under paragraph (5) shall while so detained be in legal custody.
(8) The extension period under paragraph (3)(b) or (5)(b) shall not exceed—
(a)five years in the case of a specified violent offence; and
(b)eight years in the case of a specified sexual offence.
(9) The term of an extended custodial sentence in respect of an offence shall not exceed the maximum term.
(10) In this Article "maximum term" means the maximum term of imprisonment that is, apart from Article 13, permitted for the offence where the offender is aged 21 or over.
(11) A court which imposes an extended custodial sentence shall not make an order under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29) (suspended sentences) in relation to that sentence.
(12) Remission shall not be granted under prison rules to the offender in respect of a sentence imposed under this Article.

[13] The assessment of dangerous is provided for in Art 15[4]. Taking account of all of the matters referred to in Art 15(2)(a)-(c) - contained principally within the pre-sentence report, conviction details and the judgment on conviction - the Court is of the opinion in each case that there is a significant risk to members of the public of serious harm occasioned by the commission by these offenders of further specified offences. Where, as here, the dangerousness threshold has been met, following an Art 15 compliant assessment, the combined effect of Art 13(3) and Art 14(b)(ii) is that an ECS must be imposed unless the Court considers that an ECS would **not** be adequate for the purposes of protecting the public from such future serious harm in which case the Court is **required** to impose an ICS.

[14] Taking into account all of the information made available to the Court pursuant to its Art 15 compliant assessment, I have concluded that an extended custodial sentence would not be adequate, in the case of **Liam Murray** and **Kevin Toye**, for the purposes of protecting the public from such serious future harm and accordingly the Court is required to impose an ICS in each of their cases.

[15] **Liam Murray** was convicted of affray. As already pointed out this is a serious offence and a specified offence within the meaning of the 2008 Order and potentially may attract a life sentence, an ICS under Art 13 or an ECS under Art 14. Mr Frank O'Donoghue QC, who appeared for Liam Murray, frankly conceded that the threshold for dangerousness was met in his case but, relying on Art13(3), contended that the protection of the public could be adequately met in this case by the imposition of an ECS rather than an ICS. Regrettably the information which is available to the Court about the offence and this offender impels the Court to the conclusion that the greater level of protection which the public will enjoy by the imposition of an ICS is clearly required in the particular circumstances of this case. In this respect the Court has found extremely helpful the very detailed report presented to it by the Probation Officer, Moira Campbell.

[16] Liam Murray is a 24 year old male from Dungannon who, prior to his remand in custody, resided with his mother, her partner and his younger brother at 1 Windmill Court which is described as a socially deprived area of Dungannon which has experienced high levels of anti-social behaviour. He has no contact with his

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[4] *The assessment of dangerousness*
15.—(1) This Article applies where—
(a)a person has been convicted on indictment of a specified offence; an
(b)it falls to a court to assess under Article 13 or 14 whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further such offences.
(2) The court in making the assessment referred to in paragraph (1)(b)—
(a)shall take into account all such information as is available to it about the nature and circumstances of the offence;
(b)may take into account any information which is before it about any pattern of behaviour of which the offence forms part; and
(c)may take into account any information about the offender which is before it.

biological father. Educated at St Patrick's Primary School and St Patrick's College Dungannon he was permanently excluded from that school at the age of 14 for fighting and challenging behaviour. He has no relevant employment record. Within the prison regime he has "basic" prisoner status and is not currently involved in any constructive use of time. The Probation Officer also stated that it was difficult during interview to get any sense of victim awareness or victim empathy and that whilst he had expressed regret for his involvement in the matter for which he was convicted he expressed little in the way of remorse. He appears before the Court with eight previous convictions from six Court appearances. On 10 November 2006 he was convicted of the manslaughter of a Lithuanian National on 16 January 2005. According to the Prosecution Summary this offence related to an incident where the defendant and another male went to a house in the Dungannon area and the other male became involved in an altercation with the foreign national who was chased and then fatally stabbed by Liam Murray. He died a short time later from a stab wound to the heart. He was sentenced to a Custody Probation Order ("CPO") comprising six years' imprisonment and two years probation. He claimed to the Probation Officer to have limited recall in respect of the offence as he was "out of my head" through drugs and alcohol at the time. The Probation Officer's understanding was that the unfortunate victim was stabbed eight times. Liam Murray was released from the Young Offenders Centre on 2 **April 2008** which was not long before the events giving rise to his present conviction [13 **September 2008**]. After he had been released to serve the probation element of his CPO the records indicate that he did **not** engage as required with the probation element of the CPO. He **refused** to engage with addiction services, generic counselling and work to address his offending behaviour or employment services. Victim awareness work was commenced but he presented with no victim awareness or empathy. Breach proceedings had been initiated and a summons lodged with the Court was extant at the time of the events giving rise to his present conviction. On 26 September 2008 [less than 2 weeks after the murder of Eamon Hughes] he was sentenced to 12 months custody for breach of the CPO.

[17] Furthermore, on 8 May 2008, five weeks after his release from imprisonment for the manslaughter of the Lithuanian national he committed the offences of disorderly behaviour and assault on police in respect of which custodial penalties were ultimately imposed in November 2008.

[18] Concerns have also been raised about Liam Murray's conduct whilst he has been on remand. He has been involved in two adjudications for having a razor blade concealed in his jeans and for attempting to head-butt a Prison Officer. Indeed, on the morning of the pre-sentence report interview at Maghaberry Prison Liam Murray informed the Probation Officer that he was required to attend an adjudication at 11.00am for "self medicating" on diazepam medication.

[19] Unsurprisingly, it may be thought, Liam Murray was assessed by the Probation Officer as posing a high likelihood of reoffending in the next two years.

[20] So far as the future risk of serious harm within the meaning of the 2008 Order is concerned a multi-disciplinary risk management meeting including PBNI and PSNI representatives was convened in respect of Liam Murray on 11 May 2011. The following risk factors were identified:

- Previous conviction for manslaughter;
- Aggressive/volatile nature;
- Propensity to act impulsively;
- Propensity to involve himself in risk taking behaviour;
- Limited consequential thinking;
- Non-amelioration to treatment;
- Impact of drugs and alcohol on his behaviour;
- Lack of constructive use of time;
- Impact of his negative peer group on his behaviour;
- Behaviour within the prison resulting in adjudications;
- Lack of victim awareness;
- Poor decision making skills.

On the basis of this information the risk management meeting concluded that Liam Murray posed a risk of serious harm to others at this time.

[21] Given the above background following an Art15 compliant assessment I concur with the view of the Prosecution and the Defence that Liam Murray satisfies the dangerousness threshold. Equally, however, I am satisfied that an ECS would **not** be adequate for the protection of the public. His overall profile, antecedents, his refusal/unwillingness to engage in services designed to address, inter alia, his high risk of reoffending and the nature of these offences lead me to conclude that an ECS would not be adequate for the purpose of protecting the public from serious harm.

[22] **Kevin Toye** has been assessed as a high likelihood of reoffending due to a number of factors including those set out at pp 4-5 of the PBNI report [who like the previous author is to be commended for the detailed and helpful report]. Following a multi-disciplinary risk management meeting with PBNI and PSNI representatives it was concluded that he poses a risk of serious harm as defined by the 2008 Order. The report stated that he had amassed a significant list of previous convictions, demonstrated that he can act both impulsively and in a pre-meditated manner, engaged in anti-social activities and, at times, aggressive and violent behaviour and has historically minimised his previous offending behaviour displaying limited victim awareness. In addition the PBNI expressed themselves as "significantly" concerned in relation to:

- His escalation from his previous offences;
- The very serious nature of the current offences and long-lasting physical and physcological impact for his victims;
- His association with the co-defendants and the circumstances surrounding the current offences;

- His reckless behaviour including a willingness to offend against individuals in a vulnerable situation without regard for the potential consequences for his victims;
- His lack of culpability, explanation for his behaviour and insight into factors contributing to his offending.

Kevin Toye does not accept responsibility for his behaviour even now and continues to state that the collision was accidental. This flies in the face of the overwhelming evidence and the finding of the Court. Despite previous Court sanctions including previous community interventions Kevin Toye has continued to commit offences of a serious nature without regard for his victims. The present crimes represent a frightening escalation of criminality in which, as the court has found, he deliberately drove the hijacked taxi at two defenceless women tending to a dying man and did so with the intention of killing. I hope he has read the victim impact statements and has grasped the full horror of his fathomless criminality.

[23] Given the seriousness of the current offences, the content of the PSR, the likelihood of reoffending, the significant future risk of serious harm, the concerns of the PBNI in relation to the matters set out above and his escalating involvement in criminality despite previous community interventions, I have concluded that he meets the threshold of dangerousness and that an ECS would **not**, in the light of this background, be adequate for the purpose of protecting the public from serious harm. Accordingly, I am required in these circumstances to impose an ICS.

[24] In the cases of Liam Murray and Kevin Toye, by virtue of Art 13(3) of the 2008 Order, the Court is required to specify a period of at least two years as the minimum period for the purposes of Art 18 being such period as the Court considers appropriate to satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence. This period attracts no remission and represents the minimum period which must be served before becoming eligible for *consideration* for release. The process involved in fixing this period involves (1) identifying the appropriate determinate sentence following (as in this case) a contested trial taking into account any mitigating or aggravating features of the offence; (2) generally allowing a reduction of 50 percent (reflecting the fact that such a period does not attract remission).

[25] In the case of Liam Murray I have arrived at the minimum period bearing in mind that it is well recognised that the circumstances of affray are so infinitely variable that guidelines are difficult to set. However, in ***AG's Reference (No1) of 2006*** **[2006] NICA 4** at para25 the Court of Appeal stated:

> **"[25] Because of the infinitely varying circumstances in which affray may occur and the wide diversity of possible participation of those engaged in it, comprehensive rules as to the level of sentencing are impossible to devise. Certain**

general principles can be recognised, however. Active, central participation will normally attract more condign punishment than peripheral or passive support for the affray. The use of weapons will generally merit the imposition of greater penalties. The extent to which members of the public have been put in fear will also be a factor that will influence the level of sentence and a distinction should be drawn between an affray that has ignited spontaneously and one which has been planned – see *R v Anderson and others* (1985) 7 Cr App R (S) 210. Heavier sentences should in general be passed where, as in this case, the affray consists of a number of incidents rather than a single self contained episode."

[26] The following aggravating factors are present in this case:

(i) The defendant had a weapon namely a bottle;
(ii) He was an active central participant;
(iii) The affray was pre-meditated;
(iv) The potential for violence of an unpredictable kind must have been contemplated by this defendant notwithstanding that the Court was not satisfied to the criminal standard that he had the requisite knowledge of the knife at any relevant stage;
(v) The degree of terror to which the public was subjected was extreme;
(vi) The affray was not confined to a single incident but included the hi-jacking of a taxi which was then driven into two innocent and defenceless women;
(vii) The defendant has a serious record for violence and has not responded to previous sentences.

[27] I accept the Prosecution submission that there are no mitigating circumstances in respect of this defendant.

[28] In this jurisdiction affray carries a maximum sentence of life imprisonment. Given the infinitely varying circumstances in which affray may occur and the wide diversity of possible participation of those engaged in it, fact specific sentences in other cases, whilst relevant, are of little practical assistance. Context specific sentences in other cases should not artificially constrain the sentencer particularly in a contested case where, having heard and seen and evaluated all the witnesses, the Court is especially well placed to assess the culpability of those appearing before it. This case, in my view, for the reasons set out above, must attract an appropriate minimum period. The appropriate determinate sentence in this case following a contested trial would have been 10 years. Applying the methodology referred to at para 24 above this will be reduced by one half. The minimum period which must be

served by this defendant before he can be considered eligible for release is therefore one of **5 years.**

[29] **Kevin Toye** has been convicted of 2 counts of attempted murder and affray. Following a contested trial, taking into account the catastrophic physical and mental injuries he inflicted on two members of the same family and his criminal record the appropriate determinate sentence would have been 20 years. There has been no genuine remorse on his part merely a concern about his own predicament as is evidenced by, for example, his continued mendacious protestation that this was an accident. Applying the methodology referred to at para 24 above this will be reduced by one half. The minimum period which must be served by this defendant before he can be considered for release is therefore **10 years**.

[30] **William McDonagh,** like Liam Murray convicted of affray, also comes before the Court with a relevant record although it is somewhat shorter than his co-accused. Of particular significance is the fact that on 26 February 2009 he was convicted of possession of a prohibited weapon namely a taser gun which offence occurred on 5 September 2007 in respect of which he received a suspended prison sentence. The taser gun was found by the police in a vehicle owned by William McDonagh which had been stopped and searched. When arrested he admitted ownership of the taser gun but claimed he had bought it to go hunting with. On the same date at Ballymena Magistrates Court he was also convicted of possessing an offensive weapon (a hurley) in a public place on 14 March 2008 for which he received a two month sentence of imprisonment suspended for 18 months. He was bailed in respect of this latter charge, which involved a large number of people, on 20 March 2008. He breached in respect of this bail on 20 May 2008 and was readmitted to bail. Whilst on bail (for that offence) he committed the offence for which he appears before the Court today.

[31] Whilst on High Court bail for the instant offence (which at that time included murder and attempted murder of which he was subsequently acquitted) he was involved in an incident in Ballymena where he was observed by police to be carrying a machete with a 12" blade and a co-accused was observed carrying a long handled axe with which he struck the police car. William McDonagh threatened to kill the police officer stating "I'm going to kill you, you bastard so you will have to shoot me". He then used the machete to smash the rear window of the police car. Police were obliged to draw their firearms on this occasion. William McDonagh was later arrested for breach of High Court bail, possession of an offensive weapon, threats to kill and criminal damage. This case has been dealt with at the Crown Court. It is understood that William McDonagh pleaded guilty to affray and criminal damage and is currently awaiting sentence.

[32] As the prosecution rightly submitted the pattern of previous offending of this and indeed all of the defendants reveals persons who have a propensity to use violence against others with little or no provocation, without restraint and with the intention of alarming and injuring those who cross their path. I accept the

Prosecution submission that this pattern shows that they have not learnt from the past, have not responded to supervision and have shown little remorse for their actions.

[33] William McDonagh was convicted of affray. He has a record of violent public order offences. He was on bail for such an offence when the present offence was committed. Indeed, whilst on bail (then for murder, attempted murder and affray) he reoffended in the very serious manner set out above.

[34] Following enquiry from the relevant probation officer he confirmed that his conclusions as to risk were "finely balanced". I have before me somewhat more detail and emphasis regarding the nature and pattern of this defendants offending which I have set out above. In the light thereof and the probation officer's frank recognition of the finely balanced nature of the risk in his case I have formed the opinion that this defendant does pose the requisite significant risk of future serious harm. I have however, not without difficulty, concluded in his case, given his more limited record and the contents of the PSR, that an ECS would be adequate for the purpose of protecting the public. Accordingly I propose to impose an ECS. An ECS is composed of the appropriate custodial term and the extension period as defined by Art14(3). The meaning of the appropriate custodial term is defined by Art 14(4). I refer to my earlier general comments regarding affray. Given your more limited record the commensurate sentence would have been one of 8 years. I consider that this is the appropriate custodial term in your case. After you have served at least one half of that period the date of your release will be determined by the Parole Commissioners. I consider the extension period (i.e. the period for which the offender is to be subject to a licence and must be of such length as the Court considers necessary for the purpose of protecting members of the public from serious harm) should be the maximum of 5 years [see Art 18(a)]. This is for the reasons summarised in paras 30-33 above. After you are released from prison this is the period you will remain on license. I consider this period to be necessary to protect the public from serious harm.

In Summary

[35] The net effect of the foregoing sentences is as follows:

- Martin Raymond Jude Murray convicted of murder – life sentence with a minimum term of **18 years** imprisonment .[For the affray 10 years]
- Liam Patrick Kevin Murray convicted of affray – Indeterminate Custodial Sentence with a minimum term of **5 years**
- Kevin Michael Charles Toye convicted of 2 counts of attempted murder and affray – Indeterminate Custodial Sentence with a minimum term of **10 years.**
- William McDonagh – Extended Custodial Sentence with an appropriate custodial term of **8 years** and an extended period on licence of **5 years**.