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*(subject to editorial corrections)**

IN THE CROWN COURT OF NORTHERN IRELAND

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THE QUEEN

-v-

STEPHEN ALISTER, DERMOT PAUL ANDERSON AND DAVID CURRAN

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McLAUGHLIN J

Background

[1] The three accused appear before me for sentence in respect of charges arising out of a confrontation and fight which took place during the evening of 12 June 2009 and the early hours of the morning of the following day. In the course of this confrontation Darren Roberts received fatal injuries and Gareth Reid was stabbed and wounded. Only the defendant Alister faced charges in connection with the stabbing of Gareth Reid but all three were charged originally with the murder of Darren. Each of the accused also faced a charge of making an Affray contrary to common law. At the time of the incident Stephen Alister was connected to David Curran by reason of the fact that the latter was the boyfriend of Alister's sister. She lived at a house at 36 Millbrook Road, Lisburn.

[2] During the course of the evening of 12 June the defendants Anderson and Alister were drinking together in the Hibernians Club, Lisburn. Anderson was with his girlfriend Stacey Wickham, whose birthday it was that day and to whom he had just become engaged. Stephen Alister was with his girlfriend. The four were drinking together when around about 11.00 Dean Cameron arrived at the premises. He had been working as a chef earlier in the evening in Moira, had finished work about 10.00 o'clock, driven to Lisburn and entered the Hibernians Club to meet up with a friend, Mark Adgey. Before entering the premises Cameron had consumed a full bottle of Buckfast wine. Adgey had been drinking as well and when he entered the premises a bottle of Buckfast had fallen onto the ground and so he was shown

off the premises. By reason of that, he was not present when Cameron arrived. When Cameron entered the bar area of the club he became aware of the presence of Alister and Anderson. Both of these defendants were hostile to Cameron, as Anderson and he had a previous history of arguing and fighting. An episode took place in the club during which Cameron may have been headbutted, or during which a clash of foreheads took place. The precise details are largely irrelevant at this stage. Cameron expressed his concern for his own safety to bar staff who assisted him to leave the premises by a back doorway.

[3] Unfortunately once Cameron reached safety he then set about further drinking, gathered up some of his friends and clearly started agitating Anderson to join him at Wallace Park for a fight. Phone calls were made on Adgey's phone, which he swore he did not make, but the obvious conclusion that emerged from the evidence at the trial was that the calls had been made by Cameron. In fairness to Anderson he did not respond immediately and indeed after he finished drinking in the club he returned to the house of Stephen Alister's sister at 36 Millbrook Road. In the meantime Curran had been with Alister's sister and it is clear that she had become sufficiently intoxicated for her to leave the club early and go to bed; Curran was in bed with her when the others arrived home. A further phone call was then received by Anderson and/or Stacey Wickham inviting him again to fight.

[4] The challenge was taken up this time. Alister had a crutch which he broke down into three pieces and each of the defendants set off for Wallace Park, with at least Stacy Wickham in tow, to join battle. When they got to the park the two groups did not meet up, at least initially, and there is reason to believe that the group comprising the three defendants began to move back towards No. 36. Evidence suggested that Cameron's group then attacked them from the rear, having emerged from the park. A full scale fight took place on the roadway at Seymour Road and obviously spread out over the area. Eventually the three defendants were put to flight and retreated to the safety of No. 36. Again it did not rest there.

[5] Cameron and his group, which included the deceased, the brother of the deceased and, somewhere on the periphery, but not taking part in the fight, Gareth Reid. The house was then attacked and forensic evidence established the door of the house was kicked and thumped to the point, the defendants would allege, that it was almost kicked in. It was at this point that matters took a much more serious turn. It is quite clear that Alister armed himself with a knife at that point. One or more of the others may have had some kind of weapon or bladed instrument but that has not been proved. Indeed it has not been proved that Curran or Anderson knew that Alister was pre-armed with the knife, save that in the case of Curran he admits knowing of the knife only at the very last minute as they exited the front of the house to mount an attack on the opposing group.

[6] The three defendants moved in unison out of the house and onto the street to drive off the attackers. Alister immediately confronted Gareth Reid, who was standing nearby and taking no part in the attack on the house, and promptly stabbed him. Alister was not offered any provocation and Gareth Reid had no means of resistance. Fortunately he has recovered well, at least in a physical sense, from his injuries. It is from that incident that Alister alone was charged with the unlawful and malicious wounding of Gareth Reid with intent.

[7] Having committed that extremely serious offence Alister did not let it rest. He immediately launched into a pursuit and attack on the group, assisted by at least one other of the defendants. It was the prosecution case that the person who joined him almost shoulder to shoulder in the pursuit was Anderson. At the trial however that was not established and the prosecution eventually acknowledged that it could prove no more against Anderson than the offence of Affray. As a result of the pursuit Darren Roberts was caught, attacked with at least one knife and sustained five stab wounds one of which was extremely serious and proved fatal. Alister has pleaded guilty to being the person who inflicted the fatal wounds and the person who led the attack on Darren.

[8] By way of postscript, Stacey Wickham was observing a number of these events but ultimately sought to help Gareth Reid. She moved out of the street towards the nearby premises of Martin Phillips Carpets. After an ambulance arrived to take Gareth Reid to hospital she remained there and a car arrived which she said contained the three defendants. At the trial her evidence was that Anderson had a handle and part of the blade of a knife which he then threw away into the hedges adjacent to the premises of the carpet showroom. The matching absent portion of that blade was recovered from the street close to the scene where Darren Roberts received his fatal injuries. The problem with her evidence however was that she said in her initial police statement that it was Alister who had carried out that action with the knife. Her evidence was so unsatisfactory that it became impossible to know which version to accept and I have no doubt that her unsatisfactory behaviour and manner of presenting her evidence led to the jury being unable to reach a verdict on the manslaughter count against Anderson, a charge which was ultimately not proceeded with.

Stephen Alister

[9] You have pleaded guilty to the murder of Darren Roberts, wounding Gareth Reid with intent to cause grievous bodily harm and Affray. A mandatory sentence of life imprisonment must be imposed where a person is convicted of murder, whether convicted by the jury or after his own plea. By virtue of the provisions of the Life Sentences (Northern Ireland) Order 2001

(the 2001 Order) I am required to fix a minimum term which you must serve before the release provisions can be invoked or applied to you. It is necessary to fix the so called tariff sentence which you must serve as life does not in practice mean the whole of life: a person is ordinarily released after a period has elapsed which is regarded as appropriate to reflect the elements of retribution and deterrents, provided it is no longer necessary for the protection of the public to detain him. In carrying out this exercise the courts of Northern Ireland act in accordance with the Practice Statement and principles set out in the judgment of the Court of Appeal in R v. McCandless and others [2004] NICA 1.

[10] The Practice Statement sets out the approach to be adopted in respect of adult offenders in paragraphs 10 to 19 which are in the following terms:

> "*The normal starting point of 12 years*
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> 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.
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> 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).
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> *The higher starting point of 15/16 years*
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> 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.
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> *Very serious cases*
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> 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.
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> 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."

[11] I have considered the submissions made by counsel in the course of the plea made on your behalf. This was not a fight arising from a "quarrel or loss of temper between two people known to each other", it was a brawl which was carried on over an extended period of time and over a very considerable area geographically. The final assault by you was a clearly murderous episode and it can only result in the application of the higher starting point which I take in this case to be 15 years. I consider that there is a very high degree of culpability on your part having regard to the fact that you were in a position of safety in the house before you emerged and could easily have called the police if assistance of that kind was required. You pre-armed yourself with a knife and immediately upon leaving you attacked and wounded Gareth Reid who had offered you no resistance or provocation and the attack on the deceased followed soon after a chase along a part of the street. There was no immediately threatening confrontation between the two of you, you simply attacked the deceased, got him to the ground and when he was helpless stabbed him a number of times. There were multiple stab wounds inflicted in the chest, right upper arm, through the entire thickness of the left upper lip, the

right mid thigh and the left lower back. It cannot be demonstrated that you inflicted all of these injuries personally but you certainly inflicted most of them and are legally liable for any injuries caused by another person in the course of an attack which was clearly a joint enterprise. It is impossible to escape the conclusion that you intended nothing less than to kill the deceased given the sustained nature of the attack, the distribution of his injuries and the helplessness of his plight.

[12] In contrast there are no mitigating circumstances in respect of the offence. I am satisfied, for the reasons stated, that I should proceed on the basis that you intended to kill the deceased.

[13] I have had the advantage of reading the victim impact reports in this case. As is so often demonstrated, the appalling hurt, psychological distress, grief and bereavement inflicted on people by this kind of mindless violence is immeasurable. The deceased was the father of a child who will never grow up to know him, he has parents, siblings and a partner all of whom had suffered a devastating loss. It is important that the effects of this violence upon them should be given its proper place. I also want to pay tribute to the family of Darren Roberts who issued a most moving and graceful plea in the wake of their son's death for an end to violence of this kind.

Personal Circumstances

[14] I am satisfied that there are personal circumstances in your case which constitute aggravating features. You have a previous record with convictions for offences of violence which include arson endangering life, various assaults and criminal damage.

[15] I am struck in this case, however, by a number of mitigating circumstance which do apply in your case. I am satisfied that major considerations should be given to the fact that you entered a plea of guilty. In entering such a plea you have been very well advised indeed, particularly given the strength of the evidence against you. Although a conviction for murder was almost certain, it is in your favour that from an early stage you accepted your involvement in the killing of the deceased. Mr Lyttle QC on your behalf has explained from the bar that he was given authority by you to speak to prosecuting counsel to indicate on your behalf acceptance of responsibility and of the necessary intention to fulfil the elements of murder. There was a delay for some months thereafter, however, before you entered your plea of guilty. I am satisfied the reason was that your legal advisers considered it necessary to obtain an assessment and report from a consultant neurologist to assist them in deciding whether or not a plea of diminished responsibility might be available to you. Once that possibility was excluded, albeit that it was late in the day, you pleaded guilty to murder. I acknowledge that that is not an easy thing to do, particularly given the inevitable

consequences in terms of the sentence which you must serve, and that you were just then over 20 years old.

[16] I have considered the pre sentence report and points arising from it which are relied upon by counsel on your behalf, which include:-

1. Your expressions of remorse which were made at the interviews and repeated several times later. I accept that this is genuine and that the reality of what you have done has indeed struck home. I am also satisfied that this is not a case of self pity being dressed up to look like remorse for the purposes of this hearing. It is notable that Dr Bownes was called to the prison after you were remanded when you had attempted suicide. The probation officer accepts that you have a significant degree of victim empathy.

2. You have a very good work record in the past. You worked as a plasterer since leaving school and stopped only when you were made redundant not long before this offence was committed. It seems that you soon found alternative employment in a fast food outlet.

3. You are the youngest of five siblings, were abandoned by your mother as a young child and so were brought up by your father, and later by your stepmother also. This contributed in your early adult life to you adopting a chaotic lifestyle which involved alcohol and cannabis abuse; you ended up living in a Simon hostel and also developed an increasingly aggressive disposition.

4. You have a son, just as the deceased had, and this has apparently underlined further the loss you have caused. You may see and have contact with your son in future years but the deceased and his son have lost that for ever.

[17] Having taken the starting point as one of 15 years I propose to increase that to take account of the various aggravating factors which I have outlined. In doing that, however, I must be careful not to "double count" the multiple and extensive injuries you caused as this was taken into account already in determining the appropriate starting point. I propose then to reduce the resulting figure to allow for the strong mitigating factors which I have just identified. Having done that, I have decided that the appropriate tariff in your case is a term of 13 years. I wish to emphasise again, something I have done repeatedly in my time on the bench, that young people who engage in gross anti social behaviour of the kind exhibited here, who then become involved in

fights and have resort to weapons – especially knives – will receive very severe punishments from the courts. The principal considerations for the court must be of deterrence and retribution. Indeed when sentencing for murder they are the only considerations which bear on the initial approach of a judge. Reform is something that you will have to address in prison and at present the signs for you are good. It is only by doing so that you will have any hope of a release within a reasonable time after you have served the term of 13 years. If you do not quickly become compliant within the prison regime, and complete the various treatment programmes that you will be required to undergo, you may find yourself in prison for a very considerable period longer.

[18] You have also pleaded guilty to the offence of wounding with intent to cause grievous bodily harm. The circumstances in which Gareth Reid was wounded have already been outlined. It was in effect a completely unprovoked attack. The maximum sentence for this offence is one of life imprisonment. Hitherto that was a sentence that would have been imposed in very rare circumstances indeed. Since this offence was committed in 2009 it is subject to the provisions of the Criminal Justice (NI) Order 2008. Article 13(1) provides as follows:

> "**Life sentence or indeterminate custodial sentence for serious offences**
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> **13.**-(1) This Article applies where –
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> (a) a person is convicted on indictment of a serious offence committed after the commencement of this Article; and
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> (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."

[19] You have been convicted on indictment of a serious and specified offence committed after the commencement of this Article. I am of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by you of further specified offences. I base this upon the work that has been carried out by the probation and other services in determining the likelihood of you re-offending and of the extent to which you pose a risk of serious harm to the public. I refer to the pre-sentence report where the factors taken into account in assessing the likelihood of you re-offending are set out. I consider that each of the circumstances is important and central to the decision in such an issue. They comprised:

(1) Willingness to use weapons.

(2) The level of aggression displayed and the sustained nature of the violent behaviour.

(3) Peer associates.

(4) Prior offending history.

(5) Ongoing substance misuse and associated distorted thinking.

(6) Unstructured lifestyle.

(7) Lack of consequential thinking at the time of the offence.

I agree with the conclusion that you pose a high likelihood of re-offending based on those factors.

[20] In addition to that, a risk management meeting was conducted on 29 March 2011 which included input from the Probation Board and a forensic psychologist. You were assessed as posing a risk of serious harm to the public due to the pre-disposing factors including your willingness to use weapons to cause harm to others. The nature of the offence of murder and the stabbing of Garth Reid clearly demonstrated an escalation in the level of your offending.

[21] In the light of the provisions of paragraph 13(a) I must then ask the question: Is the offence one in respect of which the offender would apart from this article be liable to a life sentence? The answer to that is yes. I must then ask myself: Am I 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 offence of wounding with intent in the context of what you did to Gareth Reid would not per se justify the imposition of a life sentence. The seriousness of the offence goes without saying. What I must take into account is not just that offence but any other offence associated with it. I am satisfied that the offence of the murder of Darren Roberts is associated with your attack on Gareth Reid. They were part and parcel of a single course of action arising out of a single set of circumstances. Having regard to the association between those two offences, I am satisfied that it is such in combination as to require the imposition of a life sentence. Having reached this conclusion I shall therefore impose a life sentence in respect of the wounding. The tariff in respect of that must be significantly lower than for murder and I conclude that the proper approach is to impose a minimum term of six years which reflects the various mitigating factors which I have indicated earlier, including your early plea of guilty, and the degree of remorse which you have exhibited. The two

sentences shall run concurrently so that you will serve in total a minimum term in prison of thirteen years.

David Curran

[22] You have pleaded guilty to the manslaughter of Darren Roberts. This occurred on the fifth day of the trial and the prosecution accepted your plea of not guilty to murder but guilty of manslaughter. The plea was proffered on an agreed basis and a document in writing was given to me for present purposes entitled *Agreed Basis of Plea to Manslaughter*. As it is central to the sentencing process I shall set it out verbatim.

> "1. It is agreed between the Prosecution and Defence that the Accused was party, on 13th June 2009, to an affray at Millbrook Road, Lisburn, involving two groups, and that he knew that one of the participants in his group, Stephen Alister, had a knife. It is agreed that he contemplated that the knife might be used to cause some harm, but not grievous bodily harm or death.
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> 2. The Prosecution does not seek to gainsay the Accused's assertion that he only became aware of Stephen Alister's possession of the knife as Stephen Alister was running through the front door of 36, Millbrook Road, Lisburn, his sister's house, which was being attacked by the other group, of which the deceased was a member.
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> 3. The Prosecution does not dispute that Stephen Alister was brandishing the knife (or 'swinging and swiping the knife around' per witness statement of Jason Reid) and does not seek to gainsay the Accused's assertion that he believed that Stephen Allister intended to use the knife to frighten the other group away (but with the contemplation described at para 1, above).
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> 4. The Prosecution accepts that the period between Stephen Alister running from the front door of no. 36 and his stabbing, firstly Gareth Reid and then fatally stabbing Darren Roberts is measured in seconds and was certainly less than a minute.
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> 5. The Accused accepts that when he moved into Millbrook Road he was in possession of part of a

> crutch. The Prosecution accepts that the part of the crutch was not used to cause injury.
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> 6. The Prosecution does not seek to gainsay the Accused's assertion that he feared for his safety and the safety of the other occupants of the house. The Prosecution does not accept that going out of the house was a necessary and proportionate response.
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> 7. The Prosecution does not seek to gainsay the Accused's assertion that front door of 36, Millbrook Road in the course of the affray and that he was not, therefore, in the near vicinity of the place where either the attack on Gareth Reid or the fatal attack occurred."

[23] These two offences both involve the use of violence and are deemed to be both "specified" and "serious" offences under the 2008 Order. I must therefore assess whether you are a dangerous offender under Articles 13 or 14, ie. whether there is a significant risk to members of the public of serious harm occasioned by the commission by you of further such offences.

[24] I repeat again that I rely upon my own knowledge of the case acquired during the course of the lengthy trial of Anderson. For the record I wish to make it clear that the evidence which I heard put you in a more prominent role than that suggested in the Basis of Plea document, but I propose to act only on the facts agreed or admitted therein as to do otherwise would be unjust. I am aware that you did not take part in the trial, because of your plea, and therefore the evidence went unchallenged by you, whereas Anderson had a full opportunity to do so. I also rely upon the pre-sentence report, containing as it does a professional assessment of the issue of risk to the public. Having done so I am satisfied you do not meet the test of dangerousness within the meaning of the 2008 Order for the reasons given in the report. Under the heading *Risk of Serious Harm* the probation officer states:

> "The defendant has no previous convictions for violence. Despite the serious nature of the current offences the PBNI risk management meeting held on 11/05/2001, which included input from the PBNI forensic psychologist, concluded the defendant is not currently assessed as posing a risk of serious harm to the public as there is no pattern or pre-disposal to violent offending. The meeting also noted the presence of protective factors which include the

> defendant's level of insight, victim awareness, employment history and family support."

In her conclusion she stated:

> "Mr Curran is assessed as low likelihood of re-offending and is not currently assessed as posing a risk of serious harm to the public. The defendant accepts responsibility for his role in these offences and is aware he is facing a custodial sentence which will reflect the gravity and outcome of such. The court may therefore consider there is merit in PBNI supervision post-custody to assist with re-settlement issues."

Other relevant considerations

[25] I have taken account of your criminal record. This shows a history of minimal offending with your convictions having been recorded under the road traffic legislation. There is a more serious matter noted as having been dealt with by way of caution but it does not have any direct bearing on my present task.

[26] I also acknowledge that it would appear that you became involved indirectly in these matters. I am satisfied you had no personal animus towards the deceased and became involved at a later stage than the others.

[27] The fact that you have entered a plea of guilty is important even though this was done well after the start of the trial. It is the case however that you have not denied your presence and participation in these events and that the real issue was always the precise nature and extent of your participation coupled with the necessary knowledge and intent.

[28] The nature of the offence of manslaughter means, of necessity, that you did not intend any serious injury to the deceased although you did intend, or foresee, that some harm would come to him.

[29] The key factor for me therefore is the extent of your knowledge that Alister had a knife and what he might do with it. The answer is found in the Basis of Plea document wherein it is acknowledged that you were aware that Alister had a knife but only became so aware at the point where you were all leaving the house together. It is also accepted that you did not venture far beyond the front door of No. 36 and were not in the near vicinity of the place where the attack on Gareth Reid or the fatal attack on Darren took place. In those circumstances whilst you were aware of the possession of the knife by

Alister you had little opportunity to consider what you, and more especially he, fully intended.

Sentences

[30] The finding by me that you are not a dangerous offender enables these matters to be dealt with by way of a so-called "custodial sentence for a determinate period". You have been convicted of manslaughter as a secondary party based on the knowledge for a very short time that Alister had a knife, and might use it, not merely to scare off the group outside the house, but also to cause harm. The industry of counsel has failed to produce a sentencing example of such a case in this jurisdiction. There are obviously ample authorities involving the principle offender but not where the offender is convicted as a secondary party. Sentencing in manslaughter cases is already a notoriously difficult responsibility due to the almost infinite variety of circumstances in which the crime might be committed, and those difficulties are added to by virtue of the somewhat unusual circumstances pertaining here.

[31] I have concluded however that both manslaughter and affray, in the circumstances of this case, are so serious that only an immediate custodial sentence can be justified. I consider the commensurate sentence to reflect your culpability for manslaughter is one of six years imprisonment and of three years for Affray. You may be released on licence when you have served one half of these sentences, both of which shall run concurrently. I do not propose to make any recommendations to the Secretary of State for your treatment during the post-released period on licence. I prefer to leave that to be assessed in the light of contemporary circumstances.

David Anderson

[32] In your case Anderson the jury tried you in respect of a count of murder and reached a unanimous verdict of not guilty. They were unable to reach a verdict in respect of the alternative offence of manslaughter, essentially on the basis that they could not agree whether or not you intended any harm to the deceased. They did ultimately convict you of the common law offence of Affray. I then adjourned your case to be mentioned, which took place on 30 May 2011, at which stage the prosecution announced that it did not intend to seek a retrial on the charge of manslaughter. It therefore falls to me today to sentence you in respect of the offence of Affray only.

[33] You were at the centre of the row with Dean Camlin. It was because of the existence of "bad blood" between you that the row giving rise to these events commenced. In fairness to you equal fault lies with him for the initiation of the events that led to such a tragic conclusion on this evening. On the day immediately prior to the death of Darren it was the birthday of your

then girlfriend. You became engaged and spent a considerable part of the earlier part of that day together before you arrived at the Hibernians Club; this included time spent by both of you at a bar/restaurant where you had a meal together to celebrate the engagement.

[34] You arrived in Lisburn at a later stage of the evening, apparently bought a "carry out" of drink which you brought to the house of Stephen Alister's sister. You then spent the evening at the Hibs Club drinking before returning to the house at Millbrook Road. I have little doubt that you consumed a considerable amount to drink and it had a significant effect on your behaviour during the course of these events. Unfortunately when you were at the house a further phone call was made by Dean Camlin, using the witness Adgey's phone in which you were called upon again to go to Wallace Park to fight. At that point you took up the challenge and were responsible for getting the other two defendants involved. In fact you were also followed to the scene by your girlfriend/fiancée. Before going there Alister helped pre-arm each of you with a piece of crutch which he had disassembled. It is said on your behalf that before the fight started you had thrown away the piece of crutch. It is impossible at this stage to gainsay that and so for present purposes I shall accept it.

[35] The clash between your group and Camlin's occurred on the public roadway about Seymour Street. When you arrived at the park it looked, initially at least, that perhaps no fight would take place as your respective groups did not meet up. It was established that your group was returning to No 36 Millbrook when you were attacked from behind by the other group which included Camlin and the deceased. The fight that ensued took place in public and caused considerable alarm to anyone who happened to be about the street at the time, but it ought not to be exaggerated too greatly. It was more in the nature of a brawl than anything more serious. The effect of it was that your group was put to flight and ran to No 36. Tragically the group including the deceased and Camlin followed after you; the kicking and thumping at the door of No. 36 took place and then the break out from the house occurred of which you were part.

[36] It is the prosecution case that you were armed with a knife or, at least, that you knew Alister had one. This version was clearly rejected by the jury. At the trial the evidence tended to favour the proposition that you did not venture far from the front door of the house, that you almost immediately engaged in a one to one fight with the deceased's brother Stewart, you did not take part in chasing after the deceased and were not present at the immediate scene of the stabbing.

[37] Mr Turlough Montague QC, who appeared on your behalf with Mr Joel Lindsay, has emphasised a number of important points about your background. He has pointed out that you come from a very good family;

your father has worked as a gas fitter for 27 years with the same firm and your brother is now employed there also. Your mother is clearly a hard working woman who ran a fish and chip shop for a number of years working long antisocial hours in consequence, and your sister is an under graduate studying law. He has also stated that you now fully realise just how close you came to being convicted of a much more serious offence and that you have expressed remorse.

[38] There is a detailed pre sentence report prepared for my consideration. It confirms the points made by Mr Montague and records a familiar tale of under achievement at school, patchy employment record and a history of alcohol abuse in the form of binge drinking. The picture seems to have improved markedly since your arrest in that you have not consumed any alcohol since then, probably as a result of having been in custody for a considerable period and there being a prohibition against such in your bail conditions. A marked change in your behaviour for the better has been reported and the probation officer preparing the pre-sentence report seems to accept that you have learned hard lessons and demonstrated genuine remorse. The experience of custody appears to have been a positive one in the sense that it helped to emphasise to you just how serious and unacceptable your pattern of behaviour has been on this and previous occasions.

[39] This offence was committed after 1 April 2009 and thus you fall to be dealt with under the terms of the Criminal Justice (NI) Order 2008. The offence of Affray is a serious offence mentioned in Schedule 1 of the Order and is specified in Schedule 2. I therefore have to consider if there is a significant risk to members of the public of serious harm occasioned by you committing further violent offences specified in the 2008 Order. Having considered the pre sentence report, the materials put before me on your behalf, the facts as they emerged at the trial and my own observations of you during the course of an extended period of several weeks I do not consider that there is such a risk.

[40] In the circumstances I intend to impose a sentence of imprisonment for a determinate term under the provisions of Article 8 of the Order.

Sentencing for Affray

[41] Affray is an offence at common law matter under the law of Northern Ireland. The offence was put on a statutory basis in England and Wales in 1986 with a maximum sentence of three years; that approach was not replicated in this jurisdiction. The approach to sentencing was considered and explained in more detail in Attorney General's Reference No 1 of 2006 [2006 NICA 4] –

"**[22]** There are no local guideline cases on affray and the modern English authorities are of limited value as the statutory offence there is different and the maximum penalty is three years imprisonment whereas in this jurisdiction the maximum possible penalty is imprisonment for life. A guideline case predating the legislative change in Great Britain is *Keys and others* (1986) 8 CAR (S) 444 where the appellants were involved in a large scale disorder at the Broadwater Farm Estate, in which 200 police and fire crew were injured, vehicles were used as barricades and set on fire, and a variety of missiles, including petrol bombs, were thrown. One officer was killed. The appellants were sentenced to 5 and 7 years' imprisonment. In that case it was stated that for premeditated, organised affray ringleaders could expect to be sentenced to 7 years and upwards although it was acknowledged that since there is a very wide spectrum of types of affray, it was not easy to give firm sentencing guidelines. Lord Lane CJ stated: -

"The facts constituting affray and the possible degrees of participation are so variable and cover such a wide area of behaviour that it is very difficult to formulate any helpful sentencing framework."

[23] In this jurisdiction there is no reported decision that could be described as a guideline case for the offence of affray. In *R v Fullen and Archibald* (2003 – unreported) this court was invited to consider the effect of the amendment of the law in England and Wales brought about by the enactment of the Public Order Act 1986 which abolished the common law offences of riot, rout, unlawful assembly and affray. The 1986 Act introduced a statutory definition of affray and imposed a maximum term of imprisonment of 3 years upon conviction on indictment. The Act has not been extended to Northern Ireland and in this jurisdiction affray remains an offence at common law punishable by life imprisonment. McLaughlin J, delivering the judgment of the court, rejected the argument that sentences here should be based on the 1986 Act, saying: -

> "…we do not consider that courts here should regard themselves as limited by the provisions of the 1986 Act. For the present there remain sufficient differences between the public order problems in Northern Ireland and Great Britain to reserve to these courts a greater degree of flexibility in sentencing than is available under the 1986 Act."
>
> **[24]** The decision not to extend the 1986 Act to Northern Ireland must be regarded as deliberate. As a matter of principle, therefore, it would not be correct to adjust sentences for affray in this jurisdiction to reflect the change in the law that was brought about by that Act. We consider that the range of possible sentences for this offence in Northern Ireland extends well beyond the three year maximum that applies in England and Wales.
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> **[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."

[42] A striking feature of this case is that had the three of you remained in No 36 this case would never have had the tragic consequences that followed and the whole preceding circumstances would amount to little different from what has sadly become "par for the course" for a lamentable number of young men in current times. This was drunken and antisocial behaviour of a particularly objectionable kind. I have to take care, however, to separate you away from the worst aspects of the consequences that flowed once the three of you left the house in order to do justice to the jury's deliberations. Having

done so I am nevertheless satisfied that the offending was so serious that only a custodial sentence can be justified and the commensurate sentence that ought to be applied in this case is one of 3 years.

[43] I have determined that the licence period after your release during which you will be supervised by a probation officer in order to protect the public from the possible risk of harm, and to prevent the commission of further offences, shall be one of 21 months. I am obliged to deduct this licence period from the term of the sentence, therefore the custodial term which you must serve will be a period of 15 months. After that period you will be released to serve the licence period. I add my recommendation that the Secretary of State, by way of conditions to be imposed on your licensed conditions, should require you to abstain from the consumption of alcohol for the whole of that period.

[44] In imposing this sentence I have decided to allow a reduction in the custodial period to be served from the fifty percent maximum permitted as you are presently under supervision by the Probation Service as a result of earlier convictions for assault and possession of an offensive weapon. These convictions arose from a row with two young women and you picked up a weapon (a wheel brace) when the father of one of them intervened. These are serious matters and were so considered when you were sentenced. If you are to serve the "normal" custodial period, in this case 18 months, you would have to be returned to custody for a further three months only, as you are entitled to a credit of 15 months against your sentence, being the period you have served on remand. I see no added benefit in doing so as it will interrupt a hitherto successful supervision period on probation and I believe that to continue with it best guarantees your good behaviour and positive response to same. You can also continue the alcohol management programme you are undertaking at present.