

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

IN THE CROWN COURT IN NORTHERN IRELAND  
(Bill Number 11/2002)

NEWRY CROWN COURT

THE QUEEN

-v-

LINDSEY WHITE

**His Honour Judge McFarland**

[1] Lindsey White was found guilty of the murder of Marek Mateusz Muszynski during the night of the 6<sup>th</sup>/7<sup>th</sup> July 2009. The only sentence permissible under law for the crime of murder is life imprisonment, and I imposed that sentence on her on the 13<sup>th</sup> February 2012. It remains for me to determine the minimum term of imprisonment which White must serve before she can be considered for release by the Parole Commissioners. Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 prescribes that the minimum term must be the period the court considers appropriate –

“To satisfy the requirements of retribution and deterrence having regard to the seriousness of the offence, or the combination of the offence and one or more offences associated with it”.

I am also required by paragraph 25 of Schedule 1 to the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 to inform White that the Independent Barring Board will include her on the barred list relating to adults by virtue of her conviction.

- [2] Marek Muszynski was Polish by birth, and had arrived in Northern Ireland in 2007. He had no family living in Northern Ireland and settled in the Newry area but could find little work. He suffered from epilepsy and alcohol dependence. He had enjoyed a meal with a Polish friend earlier in the evening of the 6<sup>th</sup> July and had then gone with him to purchase alcohol. On their return from the off-licence they met three local people – White and two men called Cunningham and McAleavey. There was a confrontation instigated by White, and largely conducted orally by White in a raised voice. The Polish friend became separated from Mr. Muszynski, and was subjected to an assault by the man McAleavey. He made good an escape leaving Mr. Muszynski alone. When the friend returned a short time later with other friends, Mr. Muszynski could not be found.
- [3] The time at this stage, confirmed by a CCTV image was just before 11pm. Approximately two hours later Mr. Muszynski's body was discovered by a man, who had been walking along a narrow laneway, known locally as "The Line" and which runs between Clanrye Avenue and Upper Edward Street in Newry. The Line is a relatively short distance from the location of this earlier confrontation. His body was found in a state of partial undress, with his jeans lowered to his ankles, and with a boot and sock removed. He had suffered extensive head, neck and upper body injuries which had resulted in his death. There were extensive areas of abrasion on the scalp and face, with bruising and lacerations to the face, and a fractured nose. He had four fractured ribs. He had also suffered internal injuries with bleeding over the surface of the brain, diffuse injury to the substance of the brain, and bleeding to the air passages with inhalation of blood to the lungs. The examination by Professor Crane concluded that Mr. Muszynski had been subjected to numerous kicks and stamps whilst lying on the ground, and at some stage his body had been dragged along the rough path.
- [4] White remained in Newry for two days and then left for Belfast and an onward journey on a coach by ferry through Scotland to London. Police at this stage had become interested in White as a suspect and the Metropolitan Police arrested her as she arrived at Victoria Coach Station in London at 6 am on the 9<sup>th</sup> July 2009. A few hours later in Newry, Cunningham approached the police and indicated that he had punched the deceased. He was arrested and then interviewed by the police. During his initial interviews he indicated that he had been present at the scene, and had used force against Mr. Muszynski essentially in self-defence and in defence of White but he said that he had not killed him. Meanwhile White was returned to Northern Ireland and when she was interviewed, she admitted to being present at the time of the assault and that it had been perpetrated by Cunningham alone, and not in self-defence or in defence of her. When this version was put to Cunningham he confessed to his involvement in the assault, but said that White had also been involved.

- [5] Cunningham had already pleaded guilty to murder before the trial, and on 6<sup>th</sup> January 2012 he received a life sentence with a tariff of 11 years. White had pleaded not guilty to the charge against her, and after a trial at which Cunningham gave evidence for the prosecution, White was unanimously convicted by a jury of the murder on the 13<sup>th</sup> February 2012.
- [6] The jury heard evidence that after the confrontation with the Polish gentlemen and his friend had left the scene, Mr. Muszyski remained in the company of the three local people. They walked round to the Line. During the journey, White suggested to Cunningham that Mr. Muszynski would be attacked with the attack to be precipitated by a cough. Cunningham told McAreavey and in due course both men gave coughs and White punched Mr. Muszyski. Although the plan was conceived by White for largely unknown motives, and commenced by her single punch, it was Cunningham who was the main perpetrator, and he accepted that he aimed punches and then kicks and stamps to Mr. Muszyski's body and head. McAreavey wanting to have nothing to do with the assault immediately left the scene. It was a horrific attack on a drunk and largely defenceless man. White joined in, and at one stage stood on the victim's throat bearing her not inconsiderable full weight down on his neck. In the aftermath they both discussed a distortion of the scene, with Cunningham then taking off a shoe and pulling down the jeans, which Cunningham explained as an attempt to disguise the nature of the attack. Cunningham said that White went through the victim's pockets to take a sum of 70 pence, which was all that he possessed. Both then left the scene, and after buying more drink and a take-away meal they returned to White's flat.
- [7] I have already described the findings of Professor Crane. It was a brutal attack against a drunken defenceless man. One's feelings of revulsion have been exacerbated by the knowledge that Marek Muszyski lay there for about half an hour before he finally died with no medical assistance being requested, even on an anonymous basis by either Cunningham or White. Both seemed more concerned about buying more alcohol and then a takeaway meal.
- [8] This case has involved the use of shod feet and the kicking, stamping and standing on a victim who was lying on the ground. The nature of such an attack is very serious indeed. Using a shod foot in this manner will, in most circumstances, equate to using a weapon. In addition when a victim is lying on the ground he has little opportunity to defend himself or to escape. When kicks and stamps are aimed at the head or throat and upper body serious injury can be caused to vital organs, which can lead, as in this case, to death. It also goes without saying that to stand on someone's throat and to bear

down the full weight of your body will severely compromise their ability to breathe.

- [9] I have received a victim impact statement from the parents of Mr. Muszynski. It is impossible to convey to a full extent the depths of the grief, and the continuing sense of loss, that they have described in simple and moving terms without setting out in full their accounts, and I do not wish to inflict further distress upon them by repeating everything each has said. The report of his death was received in the early hours of the next morning, and had followed the funeral of a close family member. The death of their son has impacted on them in a manner that has been translated from their native Polish as “closing ourselves off”, a retreat from family, friends and society generally, as they struggle to cope with the enormity of their loss and the manner of their son’s death. At the sentencing of Cunningham I said -

“This personal grief will no doubt be shared by all right-minded members of the public in this country. There will be widespread public abhorrence when one considers the nature of Mr. Muszynski’s death - a visitor to this country, trying to better himself in a new country, dying, alone, by being kicked to death in an alley in Newry in the early hours of the morning.”

- [10] I have been provided with a report on White by an educational psychologist and a pre-sentence report from the Probation Board for Northern Ireland.

- [11] White has a level of intellectual functioning which falls within the low average range with significant poorly developed language and literacy skills. She has very low self-esteem and poor confidence. At the time of this incident there was a complete absence of personal, familial or social stability. It is unfortunate that the only current constant factor in her life seems to have been her mother, a woman who would appear to have been a completely inadequate parent offering little of value to White as she was growing up. White drifted backwards and forwards between Ireland and England, and when she returned as a 20 year old to Newry in February 2009 she seems to have drifted into a peer group who would spend their time aimlessly frequenting communal areas in the town and abusing alcohol and drugs. Although not forming part of the consideration of the tariff, she is assessed as posing a high likelihood of general re-offending and a significant risk of serious harm to the public.

- [12] In **R v McCandless [2004] NI 269** and more recently in **R -v- Morrin [2011] NICA 24**, the Court of Appeal directed courts in this jurisdiction to adopt the approach prescribed by Lord Woolf CJ in the **Practice Statement [2002] 3 All ER 412** when fixing the minimum term to be served by an offender convicted of murder. The Practice Statement provides for two starting points. It states -

*“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."

[13] I have already set out the aggravating factors in this case in my sentencing remarks for Cunningham, and they apply equally to White -

- First, the overall nature of the attack, having been carried out by two people on an intoxicated victim barely able to defend himself from the onslaught of kicks to the head and body as he lay on the ground;
- Secondly, after the attack, the degradation of the body by the pulling down of his jeans.

The prosecution have asked me to consider the question of racial hostility as an aggravating factor. I have looked carefully at all the evidence in relation to this, but am not satisfied, on balance, that this was a motivating factor in the case.

[14] The mitigating factors which I must also take into account are -

- First, White, a young woman of 21 years at the time, appears before the court with a modest criminal record of a conviction for theft and a caution for theft.
- Secondly, White was a woman of low intelligence and a disrupted education with no qualifications, and who had been given a very poor upbringing with no apparent moral or social guidance from her mother and the various men who adopted a parental role in her life.
- Thirdly, the attack was largely spontaneous in nature. It was White's idea and it is clear that initially there was no intention to cause really serious injury. It was only later that the intention changed to such an intention. White's role in both the escalation of the assault and in the assault itself was subsidiary to that of Cunningham's. The main perpetrator was Cunningham and he would have landed the vast majority of the blows and kicks. I also accept that at no time did White have an intention to kill.
- Fourthly she is pregnant (apparently conception being a few weeks before her trial). Pregnancy within the prison regime will be difficult for her and there remains uncertainty about whether she will be allowed to keep the child after it is born. Separation of White from the child will have adverse consequences for both.

[15] In my sentencing remarks for Cunningham, I stated - "The aggravating factors that I have mentioned and in particular the nature of the attack and the multiple injuries sustained by the victim, determine that the higher starting point is appropriate. This is in accordance with paragraph [12](j) of the Practice Direction. The additional aggravating factor involving the degradation of the body would increase the appropriate starting point to one of 16 years, before consideration of the mitigating factors."

[16] I consider that whilst White's culpability places her into this same higher starting point, I take into account her subsidiary role in the assault, particularly when one considers that the two principle factors placing the case into this starting point were carried out largely by Cunningham. She played her part in what was a joint enterprise but it would be unjust to punish her to the same extent as Cunningham.

[17] Cunningham's tariff was reduced from 16 years to 11 years taking into account his plea of guilty and his remorse as evidenced by his then expressed intention of co-operating with the prosecution and giving evidence and other mitigating factors. I expressed the reduction for the plea and co-operation as 30%, that is 4 years and 8 months. White having contested the charge is not entitled to such a reduction, particularly as she has shown little remorse and a limited amount of regret over the death of this unfortunate gentleman.

[18] Taking into account all the factors to which I have referred, I determine that the minimum term that White will serve is to be one of 14 years imprisonment, less any period spent on remand in custody. After she has served that period, it will be for the Parole Commissioners to determine when she is to be released, if at all, back into the community to serve out the remainder of her life sentence on licence.