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*(subject to editorial corrections)**

IN THE CROWN COURT FOR THE DIVISION OF ARDS

THE QUEEN

v

WESLEY VANCE AND STEPHANIE TODD

COLTON J

Introduction

[1] The factual background to this matter has been set out in the prosecution opening from Mr Liam McCollum QC. The events giving rise to the charges faced by the defendants arise from the tragic death of Kyle Neill (DOB 25 April 1991) on 12 April 2015. He had been friends with Wesley Vance for a number of years. At the time of his death he was unemployed and living in Bangor at the home of his twin brother, Irwin.

[2] At the time of Mr Neill's murder Stephanie Todd was the girlfriend of Wesley Vance. She first met Mr Neill on the evening of 11 April 2015 where he had been invited to attend a party at Vance's apartment at 1 Church Gate Studios in Comber. Mr Neill arrived at the apartment at approximately 7.00 pm.

[3] Church Gate Studios is a relatively new block of four apartments situated in the town centre. There is a car parking area for residents at the front of the building. The premises are two storey and Vance lived on the upper floor, in a two bedroomed flat. In the course of Mr McCollum's clear and well marshalled opening I was referred to photographs of the apartment and also a plan showing its layout.

[4] Four other friends of the defendants attended at the party. They stayed until 11.00 pm when they ordered a taxi. In the course of the party it appears that those present consumed alcohol.

[5] Ms Todd went to bed shortly after the others had left. According to Vance he carried on drinking with the deceased for a couple of hours after which he asked the deceased to leave. An argument then ensued between them and a fight took place during which Mr Neill was stabbed a number of times about the head, chest and back. This altercation occurred in the kitchen/living area of the apartment. I was referred to a series of photographs which showed the condition of the kitchen/living area when the police arrived at the scene. These photographs along with the plan to which I have referred above showed extensive bloodstaining throughout the apartment.

[6] In his interview Vance described the stabbings as "frenzied and repeated". When the fight was over he checked Kyle Neill for vital signs and could find no pulse. Thereafter he initiated the beginning of a partial clean-up of the flat by taking down curtains and mopping up some blood. He has since told police that he got a blanket and wrapped the deceased's body in it in order to roll him down the stairs of the apartment block. The stairs also had evidence of bloodstains when the police arrived to investigate the matter. He then went outside and reversed his Ford Fiesta vehicle to the door of the premises before bringing the deceased's body down to it. He then manoeuvred the body into the boot of the car. He also says that he removed a phone from the deceased's pocket.

[7] Vance then drove to the nearby Island Hill carpark, arriving there between 5.00 am and 5.30 am. In interview he made the case to the police that he went there to dispose of evidence (i.e. the phone) rather than to dispose of the body. He threw the phone into the water at that location although it transpired later that this phone in fact belonged to Ms Todd; it was found by police during a follow up search.

[8] Vance then returned to his apartment and woke Ms Todd. He told her what he had done. She claimed that she did not believe him until she saw the blood which was throughout the apartment. She went to look for her phone but could not find it. She was extremely upset and told Vance she wanted to see her mother, Josephine Benson, who lived in Belfast. Ms Todd has said that she wanted to get to Belfast as her mother would know what to do for the best. In the circumstances she said that she wanted to keep Vance with her.

[9] Before they left the apartment to go to Belfast Ms Todd has accepted that she drank beer, and that she brought more alcohol with her on the journey which she drank in the car.

[10] Ultimately she decided to drive in order to "take control" of the situation. The route which she took to Belfast appears to be from Comber along Hillsborough Road and Ballygowan Road, to Cregagh Road. Just before 7.00 am she made a stop at Sainsbury's Filling Station at Forestside. It appears this was to put air in a tyre. There were persons in the area of the garage and forecourt. CCTV footage reveals that Vance got out of the vehicle and went into the shop.

[11] Ms Todd then drove Vance from Forestside to her mother's house which is just off the Lisburn Road. They arrived at around 7.00 am on 12 April (a Sunday morning).

[12] Soon after their arrival Ms Benson asked the defendants what was wrong and Vance revealed to her that he had been in a fight and that there was a dead person in the boot of his car. Ms Benson enquired whether police had been called and, when she realised they had not been, she said that she would make the call. Although Vance was not aggressive, he did try to prevent Ms Benson leaving the room in order to make her call. When she did make her way upstairs to ring, he followed her and asked her if she had contacted the police. She denied that she had. He said words to the effect that he would get rid of the problem. He then told her that he had stabbed the other male. In any event he remained at Ms Benson's premises.

[13] During a second 999 call at around 7.33 am Ms Benson gave police details of the incident and of the two defendants.

[14] The police officers arrived at Ms Benson's home at 7.40 am. Ms Todd told them that she had driven there and handed over the keys to the car. Officers then opened the boot to find the deceased.

[15] Vance was then arrested on suspicion of murder and his reply to Constable Tohill was: "he attacked me and I stabbed him".

[16] Ms Todd was arrested by the same officer at 7.50 am. She replied after caution "that's okay I understand".

[17] Before being transported to the custody suite Ms Todd made the following unsolicited comment to Constable Tohill whilst under caution:

> "I only said I was driving to cover for him, but now he is on his own, he drove the car here."

She has now admitted the criminal offence of obstructing this officer to reflect the criminality involved in giving these conflicting accounts. She clarified the position by admitting as per her original statement to the police that she drove the vehicle, during her first interview which commenced about ten hours after her arrest.

[18] In subsequent conversation with police at Musgrave Custody Suite between 8.56 and 9.17 that morning she said, *inter alia*:

> "I said we should go to my mummy's because she would know what to do, knowing fine rightly what she was going to do but I couldn't find my phone. I asked him loads of times to look for my phone but he couldn't find it. I think he threw it away or

> something. Couldn't find my phone so right okay then we'll just have to get in the car so that was basically it."

[19] Ms Todd's reading was 70 micrograms of alcohol per 100 ml of breath, that being 35 in excess of the prescribed limit for driving.

[20] A series of searches and forensic examinations were conducted during which a number of weapons were recovered.

[21] A post mortem examination was conducted on 14 April by Dr Bentley, pathologist. The cause of death was multiple stab wounds. There were approximately 200 stab and incise wounds. Approximately 40 to 50 of these were to scalp and face, one piercing the skull and causing minor injury to the brain. There were also cuts to the neck; one of which completely transacted the carotid artery which would have been rapidly fatal per se due to heavy bleeding. There were 64 stab wounds to the front of the chest, some of which caused injury to the lungs. The subclavian vein in the shoulder was pierced. There were 52 stab wounds to the back of the trunk and neck, some injury to the lung and kidney. There were multiple cuts to the hands and arms suggestive of defence wounds.

Police interviews

[22] Vance was interviewed between 17.58 on 12 April and 19.25 on 13 April 2015. There were nine interviews overall. Early in the first interview he gave a detailed account of his actions. This was tested throughout the interviews by police and he remained consistent in his account.

[23] During the interviews Vance told police that there was an altercation after he had asked the deceased to go home. He maintained that the deceased grabbed the knife off the kitchen bench and came at him with it. He said that when they fell to the ground the knife fell to the floor and that he grabbed it and started to stab Kyle Neill. Vance said that thereafter Kyle Neill tried to arm himself with scissors but he grabbed these from him and used them to stab. He said that Kyle Neill had made further efforts to harm himself with knives but he always got there first. He admitted stabbing Kyle Neill repeatedly until he "got weak and died".

[24] He said that he tried to clean up before going to Island Hill and then roused Ms Todd. It was noted that he had injuries to his hand (which he could not explain) and bruising to his head (which he said was caused by Kyle Neill head-butting him). He said that he and Kyle had never fallen out before but reiterated his view that "I had to kill him or he would have killed me".

[25] He said that he knew if he went to Ms Benson's house that she would ring the police but he nevertheless freaked out when she did.

[26] He accepted that he had put certain items in the bin after the stabbing. The police found the scissors in the bin as the defendant volunteered their location in the interview.

[27] He said he remembered using one particular knife and the scissors. When it was pointed that there were other bloody knives in the apartment he said he must have used those too but he could not remember.

[28] Stephanie Todd was interviewed between 17.17 on 12 April and 22.38 on 14 April. There were 19 interviews in all. She spoke of the party which had passed off without significant incident and of going to bed. She said she slept through the night as she had been drunk and tired. She spoke of her actions upon being wakened by Vance and her efforts to find her phone. She spoke of drinking again before and during the car journey to Belfast. She spoke of driving to her mother's and said "I didn't know if I was in danger". She said that she thought Vance would co-operate better if they went there together. She said that Vance was in a daze on route to her mother's house when she recalled him saying "I can make this go away". She said that she responded with "no you can't". She also spoke of an incident at a North Down Bar when Vance was aggressive towards her in the past.

[29] Following the interviews the defendants were charged. Vance's reply to caution was "yes I did fear of my life". Todd was charged with assisting an offender and driving with excess alcohol to which she made no reply.

History of the criminal proceedings

[30] Wesley Vance was charged with Count 1 on the Bill of Indictment – the offence of the murder of Kyle Neill contrary to common law. He pleaded not guilty at arraignment on 26 February 2016. A date was fixed for trial. On 24 May 2016 after a jury was sworn but before he was put in charge of the jury (and before the case was opened) he applied to be re-arraigned and pleaded guilty.

[31] Stephanie Todd was charged with Count 2 (assisting an offender) and Count 3 (driving with excess alcohol). She too pleaded not guilty at arraignment on 26 February 2016. On 25 May 2016 (after a jury was sworn but before she was put in charge of the jury and before the case was opened), a fourth count was added to the indictment; that of "obstructing police". On that same date she pleaded to that fourth count and also applied to be re-arraigned in respect of Count 3 to which count she pleaded guilty. The prosecution applied to leave Count 2 on the books in the usual terms and this application was granted.

Determination of sentence – Wesley Vance

[32] After Mr Vance's plea on 24 May 2016 I passed the only sentence open to the court, namely one of life imprisonment.

[33] Mr Vance, it is important to understand that you will remain subject to the sentence for the rest of your life. The decision whether to release you from custody during the sentence will be taken by the Parole Commissioners who will consider whether it is safe to release you on licence. If you are released from custody the licence continues for the rest of your life and recall to prison is possible at any time.

[34] Under Article 5 of the Life Sentences (Northern Ireland) Order 2001 this court must fix the minimum term that you must serve before the parole commissioners will consider whether it is safe to release you on licence.

[35] It is important to understand that a minimum term is not the same as a determinate or fixed term of imprisonment. There is no remission available for any part of the minimum term unlike the 50% remission available for a determinate sentence. So for example a minimum term of 10 years is usually equivalent to a 20 year determinate sentence.

The Relevant Legal Principles

[36] Article 5(2) of the Life Sentences (Northern Ireland) Order 2001 provides that the minimum term:

> "… shall be such part 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."

[37] The legal principles that the court should apply in fixing the minimum term are well settled.

[38] In R v McCandless and others [2004] NICA 1 the Court of Appeal held that the *Practice Statement* issued by Lord Woolf CJ and reported at [2002] 3 All ER 412 should be applied by sentencers in this jurisdiction who are required to fix tariffs under the 2001 Order. The relevant parts of the *Practice Statement* for the purposes of this case are as follows:

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

11. The normal starting point can be reduced because the murder is one where the offender's culpability is significantly reduced, for example, because:

(a) the case came close to the borderline between murder and manslaughter; or

(b) the offender suffered from mental disorder, or from a mental disability which lowered the degree of his criminal responsibility for the killing, although not affording a defence of diminished responsibility; or

(c) the offender was provoked (in a non-technical sense), such as by prolonged and eventually unsupportable stress; or

(d) the case involved an over-reaction in self-defence; or

(e) the offence was a mercy killing.

These factors could justify a reduction to 8/9 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 a 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 orientations;

(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 points

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; or

(b) spontaneity and lack of premeditation.

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 involved in 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 should offer little or no hope of the offender's eventual release. In cases of exceptional gravity, the judge, rather than citing a whole life minimum term can state that there is no minimum period which could properly be set in that particular case."

The appropriate tariff

[39] In considering the appropriate tariff I am extremely grateful to the written and oral submissions I have received from counsel in this case. Mr McCollum QC appeared with Ms Laura Ivers on behalf of the prosecution who presented the case in a comprehensive and objective fashion. Mr John McCrudden QC who appeared with Mr Taylor Campbell BL presented the case on behalf of Mr Vance with both passion for his client and sensitivity to the next of kin of the victim.

[40] Also before discussing the appropriate tariff it is important that I highlight the Victim Impact Statements I have received in this case. I have received moving written statements from Mr Neill's "nanny" Deborah, his mother Andrea, his twin brother Irwin, his aunt Emily and friends Kelly, Jonathan and Daniel. Each of these statements in their own way demonstrate the profound personal grief of each of the

authors. They have brought home to me the impact the tragic and traumatic death of Mr Neill has had on his next of kin and friends. They remind the court of the impact this murder has had on Mr Neill's loved ones. In coming to a determination of the appropriate tariff I bear these statements fully in mind. In this context the Court of Appeal's comments in the case of *R v Cooksley* which dealt with the case of dangerous driving causing death in the following terms are appropriate:

> "Where death does result, often the effects of the offence will cause grave distress to the family of the deceased. The impact on the family is a matter which the courts can and should take into account. However, as was pointed out by Lord Taylor CJ in *R v Shepherd* [1994] 2 All ER 242 at 245:
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> > 'We wish to stress that human life cannot be restored, nor can its loss be measured by the length of a prison sentence. We recognise that no term of months or years imposed on the offender can reconcile the family of a deceased victim to their loss, nor will it cure their anguish.'"

[41] The prosecution and defence disagreed about the appropriate starting point. Clearly this is a case that involved the killing of an adult victim, arising from a quarrel or loss of temper between two people known to each other. Thus on the face of it the normal starting point of 12 years would apply. However, this is qualified by the caveat that such a case will not have the characteristics referred to in paragraph 12. Mr McCollum argues that the higher starting point is appropriate because the victim in this case was vulnerable by reason of his inebriation and also because the deceased suffered extensive and multiple injuries. In relation to the former point Mr McCrudden argues that the objective evidence does not suggest a severe degree of inebriation on the part of the deceased. In relation to the latter point he draws my attention to the fact that the Practice Statement refers to "the deceased suffering extensive and multiple injuries inflicted on the victim <u>before death</u>" – my underlining. In this case the defence had obtained a pathology report from Dr Declan Gilsenan. Having reviewed the post mortem report from Dr Bentley it was his opinion that the fatal injury to Mr Neill was a stab wound to the left side of the neck and "which was probably the first or nearly the first stab inflicted". Dr Bentley does not comment specifically on this conclusion although in his report he does accept that many of the wounds were inflicted after Mr Neill had sustained the fatal injury.

[42] Not only does Mr McCrudden argue that none of the characteristics in paragraph 12 are present but says that in fact the normal starting point of 12 years should be reduced by reason of the circumstances described in paragraph 11. He says that this is a case which came close to the borderline between murder and

manslaughter, that the offender was provoked and that the case involved an over-reaction in self-defence. According to paragraph 11 of the Practice Statement if these characteristics are present they could justify a reduction to a starting point of 8/9 years.

[43] When considering the circumstances of this murder we may never know the true facts of what happened. Mr Vance has been adamant from the outset that this fight was initiated by the deceased and that he genuinely feared for his life whilst stabbing the victim. There is some evidence that the deceased had been involved in an argument with others outside the party when he and another person had gone to provide more drink for the party. It is suggested that as a result of an argument he had had at that stage he wanted to return to confront the person involved. There is also some reference to Mr Vance having been annoyed with Mr Neill earlier in the evening after Mr Neill had been talking to Stephanie Todd while only wearing a towel, which seems to have been settled following a conversation between the two of them.

[44] At the time the other guests left the apartment there was no apparent ill-feeling between Mr Vance or Mr Neill and there was absolutely nothing that hinted at the violent fight which was to occur later on. Whatever be the position as to how this fight started there can be, nor is there any justification whatsoever for the extent of the violence inflicted on the deceased. As Mr Vance stated in his interview with the police the stabbing was "frenzied and repeated".

[45] In applying the Practice Statement I bear in mind that it is not a strait-jacket designed to create a rigid compartmentalised structure into which each case must be shoe horned. As the Court of Appeal said in *McCandless*:

> "… the sentencing framework is, as Weatherup J described it in paragraph 11 of his sentencing remarks in *R v McKeown* [2003] NICC 5, a multi-tier system. Not only is the *Practice Statement* intended to be only guidance, but the starting points are, as the term indicates, points at which the sentencer may start on his journey towards the goal of deciding upon a right and appropriate sentence for the instant case."

[46] In terms of the Crown's submission I do not think that this is a case in which the victim was vulnerable as understood by 12(f) of the Practice Statement. This is not a case where a helpless drunk was set upon in circumstances where he simply could not defend himself. The level of intoxication established in the post mortem falls well short of the type of intoxication referred to in for example the case of *Christopher McMillen* [2008] NILST or *Alan Peter Irvine and Elizabeth Irvine* [2015] NICC 2. I do not accept that this a case which comes close to the borderline between murder and manslaughter. For me the most compelling feature of this case is the extent and number of the wounds inflicted on the deceased. The frenzy that they

demonstrate in my view sweeps away any arguments about provocation or an over-reaction in self-defence in terms of setting a starting point. This is further demonstrated by the stark contrast between the injuries sustained by Mr Neill compared to those sustained by Mr Vance, namely some bruising to the head and hand. Indeed, it must surely have been these considerations that resulted in Mr Vance's plea of guilty. It matters little that many of these wounds may have been inflicted after Mr Vance's death. That conduct in my view is a factor pointing towards a higher starting point for the offence. The description of the fight from Mr Vance in his interviews does not suggest an early infliction of a fatal wound but in any event I do not consider that he should benefit from such an argument. The injuries inflicted on Mr Neill were multiple and extensive. The considerations to which I have referred lead me to the conclusion that an appropriate starting point in this case is one of 15 years.

[47] Having chosen a starting point I have to consider whether it is appropriate to vary it upwards or downwards taking account of aggravating or mitigating factors which relate to either the offence or the offender in this case.

[48] In relation to aggravating features the prosecution argue that I should take into account the fact that Mr Vance armed himself with a weapon and that there was an attempt to destroy the crime scene in terms of mopping up, taking down the curtains and of course the removal of the body.

[49] Mr McCrudden points out the aggravating factor described in the Practice Statement relates to "arming with a weapon in advance" (my underling). This was not a case where Mr Vance did arm himself with a weapon in advance. I do accept however that the attempt to destroy the crime scene and the removal of the body from the scene to the boot of his car as set out in the facts above is in play. It is correct that the attempt to destroy the crime scene was fairly futile and perfunctory and would not in my view have resulted in any significant disadvantage for the prosecution of the case. Indeed, it appears that Mr Vance gave up in this enterprise as is apparent from the state of the premises when visited by the police. I think there can be little doubt that Mr Vance did contemplate disposal of the body. Why else would he have placed it in the boot in the manner he did? The depositions refer to comments by him to the effect that "he could get rid of the problem" and "I can make this go away". Happily, he did not take any steps to dispose of the body and I am left with the impression that although he did contemplate the possibility of hiding the body he ultimately realised that he would have to face the consequences of his actions. Nonetheless, I consider his actions in this regard as an aggravating feature which would justify varying the starting point upwards to one of 16 years.

[50] I turn now to mitigating factors. In relation to the offence I accept Mr McCrudden's submission that this was a spontaneous offence committed with a lack of premeditation. This is expressly something which can be regarded as a mitigating factor in the Practice Statement. I also take into account that this was a

case involving a loss of control, albeit an extreme loss of control, as a further mitigating factor in relation to the offence.

[51] In relation to mitigating factors relating to the offender Mr Vance is clearly entitled to a reduction in the tariff for his timely plea of guilty. This is a most significant factor. The fact that Mr Vance has pleaded demonstrates an insight on his part into his conduct. It is an important recognition of his guilt. It has resulted in avoiding the necessity for what could have been a lengthy trial. Mr Neill's family have been spared the ordeal of a trial which would have involved a detailed examination of the harrowing evidence in this case.

[52] Mr McCrudden outlined the circumstances of the plea in this case. He points out firstly that from the outset the defendant has given an account of what happened and that he pleaded guilty on the basis of this account after having had the benefit of legal advice and expert advice which was only obtained in the mouth of the trial. This case was processed through the Ards Pilot Scheme and came quickly to trial. Indeed it would have been listed at an earlier stage were it not for the dispute concerning legal aid payments in criminal trials. This meant that counsel did not become involved in the case until March 2016 at which stage expert reports were directed. He set out the difficulties in obtaining a pathologist to provide a report but ultimately due to the exemplary efforts of Ms Conway, solicitor from Donnelly and Wall solicitors all necessary expert evidence was obtained in time for the trial. Mr McCrudden also reminded me that it was only on the day of the trial that he was able to have a proper and detailed consultation with the defendant to ensure that he was properly informed of his options and familiar with the contents of the expert evidence obtained on his behalf. In all of these circumstances I consider that the defendant is entitled to a substantial reduction for his plea. It is not a case where he pleaded at the earliest opportunity and so he is not entitled to the maximum reduction for a plea, but as I have indicated he certainly is entitled to a significant and substantial reduction.

[53] In this regard I note that the prosecution referred me to the Sentencing Guidelines Council published in England in relation to reduction in sentence for a guilty plea in a murder case. Of course these guidelines are not applicable in this jurisdiction. As Mr McCrudden pointed out through his junior counsel Mr Campbell there are significant differences in the way in which the courts in England and Wales approach the issue of discount for pleas. In particular time only begins to run when the accused is before a court. In any event I have had regard to the principles set out in the guidelines and I have weighed carefully the overall length of the minimum term taking into account all of the mitigating factors in this case.

[54] I have received a pre-sentence report in relation to Mr Vance which sets out his personal circumstances. His date of birth is 10 June 1988 so he is now aged 28. Notwithstanding the separation of his parents when he was 10 years old he has come from a very supportive family and has maintained contact with both his

parents. He has been in regular employment since leaving school commencing work in a printing company before obtaining a NVQ Level 3 qualification in machine printing at Belfast Technology College which resulted in an improved position at work. Unfortunately, he was made redundant after four years working in a private company but he continued to find work. At the time of this offence he was working as a care assistant in a care home that provided accommodation for adults with learning difficulties. He has no previous convictions. At the sentencing hearing I was presented with a total of nine character references from family friends and employers. I was particularly struck by the reference from a lady who knew Mr Vance through his work as a carer for her disabled brother. The way in which he cared for him is a startling contrast to the way he behaved when he committed this offence. It makes his behaviour all the more perplexing. This caring manner is something that was confirmed in the other references. I was struck by a reference from Mr McIlwaine who lost his youngest son in a notorious stabbing incident in the year 2000. Equally a reference from a registered general nurse pays testament to his exemplary work in a nursing home for learning disability residents. So notwithstanding the fact that he will spend many years in prison it is clear that he is someone who but for this offence made a very positive contribution to society. I also note the learning and skills report from his tutor in Maghaberry Prison where he is reported as demonstrating an excellent attitude to the extent that he achieved a City and Guilds Introductory Award in Employability Skills Level 1 in May 2016. All of this augers well for his future rehabilitation. Of course personal circumstances will have little weight by way of mitigation in such a serious offence.

[55] Taking account of all the mitigating factors I have identified, particularly your plea of guilty and the fact that the attack was spontaneous and without pre-meditation I reduce the starting point after taking into account aggravating factors from 16 years to a minimum term of 12 years which, as I have earlier said, you will serve in full without any remission. Having due regard to all that has been said on your behalf I have concluded that this is the appropriate tariff. This will include the time spent by you in custody on remand.

The appropriate sentence for Stephanie Todd

[56] Given the notoriety of this case I wish to make it clear at the outset that the evidence suggests that Ms Todd had no part, responsibility or role in the murder of Kyle Neill. This of course is evident from the criminal charge brought against her. The conviction for obstructing the police relates solely to the fact that at one stage she indicated that Mr Vance had been driving the car. This was after her initial admission that she had been driving the car. As indicated in the facts this was something which she immediately put right during the course of her first interview. Whilst obviously it was extremely foolish and disingenuous of her to make this comment, particularly having regard to the seriousness of the matter, it did not impede the police investigation and it is clear that she co-operated fully with the police in their investigation apart from this one isolated comment. Indeed, I would go further and say that by reason of her conduct she ensured that both Mr Vance

and the body of the deceased were brought to the attention of the police. An impression may well have been formed that the body of Mr Neill had been abandoned in the Lisburn Road area in the boot of the car to be discovered by a third party or the police. As is clear from the facts opened in this case Ms Todd drove both Mr Vance and the body of the deceased to her mother's house with the express intention that the police would be informed of the matter. I have received a pre-sentence report in relation to Stephanie Todd. The report confirms that she does not have any previous convictions. She has a four year old daughter for whom she cares and she has been actively involved with Social Services since her arrest. The father of her child passed away in tragic circumstances and she has clearly struggled to cope with the grief experienced from that death. She had been in a relationship with Mr Vance for approximately three months prior to the murder.

[57] She has been engaging with mental health services for the past 12 months and it is clear that she is suffering from stress arising from the incident and the associated criminal proceedings. I note that Ms Pearson a social worker involved with Ms Todd confirms that she has generally engaged positively with Social Services. Overall the report presents an optimistic outlook and I note she has been offered a place in university to study psychology which she hopes to commence this September. The Probation Service have assessed her as a person whose risk of re-offending is in the low range and she is not assessed as someone who presents as a significant risk of serious harm to others.

[58] I also note that she pleaded guilty to this offence at the first available opportunity. I do not consider that the offence of obstructing the police passes the custody threshold in this case and I propose to impose a conditional discharge for one year in respect of this offence. I do so having regard to the circumstances of the actual offence to which Ms Todd has pleaded guilty which is at the very lowest end of the spectrum for this type of offence. I also have regard to her character. In these circumstances I consider that it is inexpedient to inflict punishment. Ms Todd you must understand that if you commit any other offence during this 12 month period you will be liable to be sentenced for the original offence as well as the new offence. So on count 4 I impose a conditional discharge for a 12 month period.

[59] The defendant has also pleaded guilty to the offence of driving with excess alcohol contrary to Article 16(1)(a) of the Road Traffic (Northern Ireland) Order 1995. In such circumstances it is normal for a mandatory disqualification from driving to be imposed.

[60] However under Article 35(1) it is provided as follows:

> "Where a person is convicted of an offence involving obligatory disqualification, the court must order him to be disqualified for such period not less than twelve months as the court thinks fit unless the court for special reasons thinks fit to order him to be

> disqualified for a shorter period or not to order him to be disqualified."

In his persuasive written and oral submissions Mr Irvine QC makes the case for special reasons in this case sufficient to justify a decision not to impose any period of disqualification.

[61] He referred me to the definition of a special reason in the case of *Whittal v Kirby* [1946] 2 All ER 552 as being special to the facts of the offence and not the offender. In doing so the Divisional Court adopted the definition in *Crossan* [1939] NI 106 namely:

> "A special reason within the exception is one which is special to the facts of a particular case that is, special to the facts which constituted the offence. It is in other words mitigating or extenuating circumstances which do not amount in law to a defence to the charge, yet directly connected with the commission of the offence and one which the court ought properly to take into consideration when imposing punishment. A circumstance particular to the offender as distinguished from the offence is not a 'special reason' within the exception."

[62] The onus of establishing that there are "special reasons" lies with the defendant on the balance of probabilities.

[63] In principle I accept that driving in an emergency is recognised as being capable of amounting to "special reasons".

[64] It is difficult to imagine a more exceptional set of circumstances than that with which Ms Todd was confronted in this case. I imagine that they are truly unique. She was confronted in the early hours of the morning with Mr Vance informing her that he had just killed the deceased as a result of a stabbing incident. Her immediate reaction was to ask for her mobile phone to contact the police and report the incident. There appears to have been an effort by both accused to find her phone but as we now know it had been discarded when Mr Vance drove to Island Hill. She had an understandable fear for her own personal safety given what she was confronted with on the morning in question. She was not in her home environment and feared any attempt to contact Mr Vance's neighbours not least because he may well have stopped her.

[65] In these circumstances she decided that the only feasible course was to drive Mr Vance who had already placed the body of Mr Neill in the boot of his car to her mother's house in order that the police could be contacted and Mr Vance (and the body of Mr Neill) be delivered up to them. In my view she is to be commended for

taking this course of action. It is clear that when she went to bed that evening she did not have any intention to drive a car but only did so when confronted with the unique exceptional and distressing series of circumstances already described.

[66] The prosecution point out that this discretion should only be exercised in "clear and compelling cases" – *Vaughan v Dunn* [1984] RTR 376. In the course of Mr McCollum's submissions he referred a number of cases to me and perhaps the most helpful is the case in *DPP v Ubn* [2003] EWHC 619 which indicate that the courts should be satisfied that the defendant had no intention to drive the vehicle at the time when she drank alcohol. The following considerations apply:

- The degree in character of the emergency.
- The extent to which alternative means of transport were available.
- Other means dealing with the emergency.
- What would a reasonable person faced with these circumstances have done?

[67] In my view all of these considerations apply in favour of Ms Todd in this case. Unsurprisingly none of the cases to which I have been referred come remotely close to the actual factual circumstances confronted by Ms Todd in this case.

[68] There remain two matters which concern me about Ms Todd's conduct. Firstly, it appears that she consumed alcohol after she was wakened by Mr Vance. Thus it is argued whatever be the position about when she went to bed the night before having consumed a significant amount of alcohol she should not have consumed further alcohol when she was awakened. Mr Irvine suggests that this was her instinctive reaction when confronted with the awful circumstances of Mr Neill's death. He suggested to some extent that she took this to provide her with the courage necessary to deal with the situation. On balance I am inclined not to hold this against her as she may well not have formed the actual intention to drive at this point. However, I note that she admits to drinking more alcohol as she drove. Whatever sympathy one might have for Ms Todd it seems to me in the context of the offence of driving whilst under the influence of excess alcohol this could not be justified even under special circumstances. At this stage she had taken the decision to drive. By drinking more alcohol she was clearly increasing the danger and risk that this offence is designed to prevent. From the evidence available it is not clear to what extent any alcohol she drunk in the car contributed to her alcohol levels. Certainly there is no evidence or suggestion of erratic driving on her part. Clearly she would have been over the limit even without drinking further whilst she was driving. In this regard I bear in mind the reference in the Court of Appeal decision in *Fleming v Mayne* [2000] NIJB 21 to the effect "that courts should rarely, if ever, exercise the discretion in favour of a defendant where his alcohol level exceeds 100 mg in 100 ml of blood (the equivalent figure in breath being 43 mg of alcohol in 100 ml of breath)". In this case Ms Todd's level was 70 mgs.

[69] At the end of the day the test to be applied is objective, and the question which the court should ask itself is whether a sober, reasonable and responsible

friend of the defendant present at the time would have advised her in the circumstances to drive or not to drive. In my view having considered the matter the advice would have been to drive. However I also am of the view that the advice would have been not to consume further alcohol when driving.

[70] Therefore, I do find that there are special circumstances in this case but that I cannot impose no disqualification because of the fact that Ms Todd did consume alcohol whilst she was driving the vehicle. I propose to mark that misconduct by imposing a reduced disqualification of three months.

[71] In view of Ms Todd's personal circumstances I do not propose to impose a financial penalty. On the third count I therefore impose on Ms Todd an absolute discharge together with a disqualification from driving for a 3 month period.