SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Hynes*, 2014 NSSC 119

Date: 20140404
Docket: SYD No. CRS:422892
Registry: Sydney

Between:

Her Majesty the Queen

v.

John Wayne Hynes

Judge:	The Honourable Justice Frank Edwards
Heard:	March 21 & 24, 2014, in Sydney, Nova Scotia
Oral Decision	March 24, 2014
Written Decision:	April 4, 2014
Counsel:	Kathy Pentz, for the Crown Diane McGrath, for the Crown Wayne Bacchus, for the Offender

By the Court, Orally:

[1] **Introduction:** Mr. Hynes (Hynes) is charged with one count of accessory after the fact to murder contrary to Section 240 of the Criminal Code. Hynes pleaded guilty on January 13, 2014. I adjourned the matter to March 21, 2014 for sentencing.

[2] At the sentencing hearing I heard extensive police evidence regarding their contacts with Hynes between 2006 and his arrest on January 14, 2013. Hynes had told police in the fall of 2006, just months after the victim went missing, that he had information about her disappearance. He had also given police the name of the principal, Thomas Barrett (Barrett). At sentencing, Hynes put forward his 2006 cooperation as a mitigating factor. I was able to better assess the merit of that cooperation in light of his subsequent six year refusal to cooperate. I delivered an oral decision on March 24, 2014. The parties submitted the following Agreed Statement of Facts:

1. On July 13th, 2006 Lynn Singleton contacted the Cape Breton Regional Police to report her daughter, Brett Elizabeth MacKinnon, age 20 years, missing. Singleton advised police that she had received a telephone call from MacKinnon's boyfriend, Travis Tower, who had been living with MacKinnon in Glace Bay, Nova Scotia. Tower advised Singleton that MacKinnon left a couple of weeks ago and had not returned.

2. Singleton attended the residence a few days later and retrieved MacKinnon's belongings. MacKinnon's CIBC bank card was located with her belongings. Singleton made inquiries with the bank and found that there were still funds in MacKinnon's bank account. There had been no activity on the account since the first week of June 2006.
3. Upon receiving Singleton's report, the Cape Breton Regional Police commenced a missing person investigation. Numerous inquiries were made with airlines, banks, social services agencies and police services across Canada in an attempt to locate Brett MacKinnon.
4. On November 21st, 2008 Brett MacKinnon's skeletal remains were discovered by persons setting rabbit snares in a wooded area close to the old Glace Bay dump.
5. Information obtained in the course of the investigation led police to John Wayne Hynes. On January 14th, 2013, Hynes was arrested and advised of his Charter rights. Hynes indicated to the arresting officers he did not wish to speak to a lawyer but wanted to speak to investigators. Two voluntary statements were provided by Hynes, one on January 14th, 2013 and the second on January 1st, 2013.
6. During the statement taken on January 14th, 2013, the accused admitted he had been at Tom Barrett's house doing crack with Barrett, MacKinnon and another girl. The accused stated that he left to get some baking soda for Barrett to cook some more crack.
7. Hynes came back with the baking soda but was not able to get in the house so he left it on the step. In the next few days Barrett tried to get Hynes to come back but Hynes avoided him. Approximately a week or two later Hynes did return to Barrett's. During that visit Barrett was adamant that Hynes not go upstairs. A couple of days later Hynes was back at Barrett's and Barrett accused him of looking in the bedroom claiming he had rigged the room so he could tell if anyone had opened the door. He accused Hynes of telling someone what he saw. Hynes denied this to Barrett throughout.
8. Not long after, Barrett had Hynes help him move a rolled up carpet from the upstairs bedroom. Hynes indicated to investigators he could tell there was a body inside and assumed it was Brett MacKinnon. He and Barrett placed the carpet in the trunk of Barrett's Corsica and left with Hynes driving. En route they pulled over and Barrett got behind the wheel, claiming that Hynes was all over the road.
9. The two headed towards Queen Elizabeth Park but then changed direction and proceeded to an area of the Cameron Bowl. There they removed the carpet containing MacKinnon from the trunk and carried her along a path into a wooden area. They walked in about 30 feet and Barrett said that

> was far enough. Barrett said that no one would find it and if they did, it wouldn't be for a long time. Hynes left Barrett with MacKinnon's body wrapped in the carpet and returned to the car. Barrett arrived back at the car about 5 minutes later. The two then left the area.
>
> 10. Hynes indicated that through prior association with Barrett, he had witnessed Barrett's volatile and violent nature. Barrett's behavior was known to him to be erratic and threatening. According to Hynes all these factors were present and playing on his mind throughout the incident. As well, Hynes knew Barrett to be the owner of several firearms, one of which was present in the vehicle when Hynes assisted Barrett with the disposal of MacKinnon's body.
> 11. In the fall of 2006, Hynes was picked up by police on an unrelated matter. During that contact Hynes told police he had information regarding MacKinnon and advised them that Tom Barrett was responsible for her death. However, at the time, a witness had come forward claiming to have seen MacKinnon in Ontario. That information and its source appeared credible and accordingly the police were not treating the case as a homicide at the time Hynes initially divulged his information.

[3] **I Whether Hynes Assisted Barrett Because of Fear:** I will begin by examining the sequence of events as depicted in the Agreed Statement of Facts and the submitted excerpts from Hynes' statement. There is very little precision in the agreed statement of facts because it is largely based upon what Hynes had admitted in his statement. As Counsel stated, the only evidence implicating Hynes comes from Hynes himself.

[4] The last time Hynes would have seen Brett MacKinnon (BM) alive would have been the day he and Barrett were doing crack with Brett MacKinnon and another girl. Hynes leaves to get some baking soda to cook more crack. Hynes

returns but cannot get in Barrett's house. Hynes leaves the baking soda on the step and leaves.

[5] In the next few days Barrett tries to get Hynes to return but Hynes avoids him. There is no reason on the record for the avoidance.

1. "A week or two later," Hynes returns. Barrett warns Hynes not to go upstairs.

2. "A couple of days later," Hynes returns to Barrett's – Barrett accused Hynes of looking in the bedroom and telling what he saw. At p. 257 of his statement Hynes says…"that's the day he put the gun on me." On pages 219, 272 and 274, Hynes also suggests that that was also the day Barrett threw a knife at him.

3. "Not long after" (Crown says "days later"), Hynes again returns to Barrett's house and helps him move Brett MacKinnon's body. Therefore, Hynes voluntarily goes back to Barrett's residence on three separate occasions **after** the initial session with the victim present.

[6] When I examine that sequence, it is difficult for me to unreservedly accept that Hynes' primary motivation was fear of Barrett. It is difficult not to suspect that Hynes knew of Brett MacKinnon's fate, or strongly suspected what had occurred, when he returned to Barrett's residence and was warned not to go upstairs. Yet Hynes returned to Barrett's house on two more occasions.

[7] Was Hynes scared not to return or did Hynes return because Barrett was a friend? I cannot make a conclusive determination either way. But I do note what Hynes says about Barrett, his friend, on p. 220 of his statement:

> "He was my friend like up til that point he was my friend now it's just like my buddy, like I considered him my friend, I thought he was my friend, I thought he would do anything in the world for me."

[8] I do not doubt that when Hynes returned to Barrett's house on the final occasion, he had limited options. Barrett had a firearm in the vehicle and Hynes was aware of Barrett's volatile and violent nature. Although Hynes admits that Barrett did not "threaten me before we moved it," I accept that Barrett's actions during Hynes' previous visit were still foremost in Hynes' mind – but that does not explain why it took Hynes another 6½ years to admit his involvement. I now turn to that question.

[9] **II Why did Hynes take 6 ½ years to confess?**

1. **Contacts with Police regarding Brett MacKinnon: November/December 2006** – Hynes met with **then** Cst. Kevin **Dowe** (now S/Sgt) who had been on patrol, picked Hynes up and bought him coffee and cigarettes. Hynes told Dowe he had information about Brett MacKinnon and that Barrett was involved in her

disappearance. Dowe, an experienced drug officer, said Hynes appeared to be coming down off a high and was a known addict then living on the street. Dowe said Hynes' conversation was "all over the board." Dowe advised S/Sgt. Ken O'Neill, then in charge of the missing person investigation regarding Brett MacKinnon. Dowe gave Hynes O'Neill's cell number. Hynes never contacted O'Neill.

O'Neill testified that in 2006 police had apparently credible information that Brett MacKinnon might be in Ontario – in fact O'Neill travelled to Ontario and investigated that information. Police also had information that Brett MacKinnon might be in Prince Edward Island.

Sgt (now Inspector) Mike Kennedy (Kennedy) took over from O'Neill in 2008 prior to the discovery of Brett MacKinnon's body on November 28, 2008.

[10] **First Recontact:** Early in 2009 Kennedy travelled to the Burnside Correctional Facility where Hynes was incarcerated. Hynes would not cooperate – he was afraid of being pegged as a rat.

[11] **Second Recontact:** The next day Kennedy met with Hynes again – Hynes was looking for money but again refused to cooperate.

[12] **Third Recontact:** Kennedy testified that a Sgt. Marinelli had contact with Hynes (after Kennedy's visits to Burnside) but apparently Hynes gave no further information. I am unclear about whether this is the same contact I next reference on October 28, 2010.

[13] **Third or Fourth Recontact:** October 28, 2010. Cst. William Turner, (with another officer, possibly Marinelli) attempted to meet with Hynes at a probation office in Halifax. When Hynes saw police, he refused to speak with them.

[14] **Fourth or Fifth Recontact:** In 2011 or 2012 – S/Sgt. Dowe travelled to Halifax to meet with Hynes. When asked for information Hynes said he "would have to think about that."

[15] **Fifth or Sixth Recontact:** Hynes arrested in Halifax on January 14, 2013 when he provided statement admitting his role in hiding Brett MacKinnon's body.

[16] **Overview of Hynes' Failure to Cooperate for 6 ½ Years Following Brett MacKinnon's Disappearance:** It is true that Hynes made some attempt to cooperate in November or December, 2006, roughly six months after Brett

MacKinnon was reported missing. At the time Hynes was a known drug addict, apparently coming down after a high – Dowe described Hynes' conversation with him as being "all over the board." I note also that this meeting was initiated by the police and not by Hynes.

[17] It would be easy to suggest in hindsight, that the police should have gone back to Hynes before Brett MacKinnon's remains were found in November, 2008. Easy but unfair to police. There is no reason to believe Hynes would have been any more forthcoming than he was when police did begin re-contacting him in January 2009. Police were making determined efforts to follow up on incoming information. S/Sgt. O'Neill even travelled to Ontario where he thoroughly investigated information suggesting Brett MacKinnon could be living there. As Inspector Kennedy testified, "99% of the time, leads from the drug culture refuse to talk to police."

[18] After Brett MacKinnon's remains were found, police attempted to get Hynes to cooperate on at least 4 or 5 occasions before he finally did so. It is understandable that Hynes would not want to talk with police while he was incarcerated. But, if he had indicated the slightest willingness to cooperate, police could have explored getting him to another venue.

[19] Hynes had another opportunity to cooperate on October 28, 2010. This time he was not in custody but had just finished meeting with his probation officer. Hynes still refused to cooperate. Nor was Hynes in custody in 2011 or 2012 when S/Sgt. Dowe met him in Halifax.

[20] Defence Counsel has posited a number of reasons why Hynes had refused to cooperate with police. Between 2006 and 2012, Barrett was not in custody. Barrett was therefore in a position to harm Hynes and/or his family. The PSR states that Hynes has a 3 year old daughter. That was put forward as further justification for Hynes' silence from 2011 onward. Barrett was in custody in 2012 on an unrelated matter.

[21] I do not discount that Hynes had reason to be fearful of Barrett – police evidence confirms that Barrett was known to be violent. The fact remains that Hynes voluntarily chose to hang out with Barrett and considered Barrett his friend.

[22] The one faint gesture of intended cooperation came in November/December 2006 while Hynes was coming down off drugs. On four or five subsequent occasions between January, 2009 and January, 2013, police contacted Hynes and solicited his cooperation. He refused to cooperate. On those occasions, there is no evidence he was under the influence of drugs. On those occasions, he could have

indicated a willingness to cooperate if he was assured of protection for himself and his family. Hynes gave no such indication.

[23] It was only after Hynes was arrested in January, 2013, and subjected to police interrogation, that Hynes chose to confess his involvement in Brett MacKinnon's disappearance six and one half years before.

[24] In that context, I see no need to applaud Hynes' belated willingness to cooperate with police. Despite Hynes' stated fear of Barrett, I suspect that his refusal to talk to police had more to do with an ingrained adherence to a criminal subculture and/or a misguided loyalty to a friend.

[25] **III The PSR:** A 34 year old with little education and an extensive criminal record. Much of the record is comprised of theft related offences, and breaches of probation. Other than an October 2002 conviction for uttering threats, Hynes' record is for non-violent offences. The Crown noted that Hynes has 86 convictions. Excluding the time on remand for this offence, he has spent just short of five of the last 18 years in custody.

[26] Hynes acknowledges a problem with non-prescription drugs for which he is now involved in methodone treatment. He is in a common-law relationship with an individual who is also involved in methodone treatment. They have a three year

old daughter. Significantly, Hynes accepts responsibility for his actions and has expressed remorse for what has happened.

[27] **IV The Victim Impact Statement**: I listened carefully as Ms. Blanchard, the victim's aunt read the Victim Impact Statement. One cannot imagine the anguish the family suffered between July 2006 and November 2008 when they had no knowledge of Brett MacKinnon's whereabouts. The grieving process obviously continues to this day and, unfortunately will extend into the foreseeable future. I am sure that everyone who heard the Victim Impact Statement was profoundly touched by its contents.

[28] **Applicable Legislation and Caselaw**: I have reviewed the cases submitted to me by Counsel. I have also reviewed the applicable C.C.C. sections – especially 240 – liable to life imprisonment, **s. 718** – regarding the fundamental purpose of sentencing.

[29] In **R**. v. **Tutin** (2004) NWTSC 20, the Supreme Court of the Northwest Territories found the range of sentence for accessory after the fact to be between two to seven years. At paragraph 41 the court commented as follows:

> Having reviewed the cases which counsel provided and which were very helpful, I find that the range of sentence for this type of offence is two to seven years. Where any particular case falls within that range will depend on its own specific facts and the circumstances of the offender himself. Not surprisingly, none of the cases provided are on all fours with this one.

[30] In **R**. v. **Dow** (2003 NSSC) 82, the accused received a five year sentence for accessory after the fact. The facts of that offence were that the deceased was shot and killed and that the offender subsequently came into possession of the murder weapon which he hid and which was eventually removed and never recovered. In relation to the range of sentence for this type of offence, the Court stated as follows at paragraph 3:

> The objective seriousness of this crime is established by Parliament which has imposed a maximum sentence of imprisonment for life. However, this is one of those offences which can be committed in a wide variety of factual circumstances in which the degree of moral blameworthiness and responsibility may vary significantly. Hence, the range of sentence for this offence is very wide. Indeed, Crown counsel have provided the court with a series of 14 cases which illustrate that the overall range of sentence for a case like the one at bar is generally between three and ten years.

[31] A lower range of 18 months to five years was cited in **R**. v. **Steadman** (2008) BCJ 2284 by the British Columbia Supreme Court. At paragraph 51 of the decision the court held as follows:

> From these cases, a number of principles emerge. First, it is not uncommon for offenders to assist in hiding a murder because of threats made against them or their families which do not rise to the level of duress. Such threats were present in ***Lowe*** , ***Turpin*** and ***Ropchan***, and significantly mitigated the offender's moral

> culpability. A not uncommon aggravating feature is when the accessory is present for or knew in advance that a murder was going to be committed. That was the case in ***Wisdom***, ***Murdoch*** and ***Campbell***. Further, where the accessory's assistance extends to actually disposing of the deceased's body, that too has been held to be an aggravating circumstance. That was so in three of the cases I have just noted. Next, as in any case, a guilty plea is significant. These cases disclose that a range of sentence for an offender whose involvement is significant and who is not subject to threats of serious harm is between 18 months at the low end and five years at the upper end.

[32] There is a considerable range of sentence in relation to the offence of accessory after the fact. As noted by Justice Gruchy in **R**. v. **Campbell,** supra, at paragraph 29:

> It is difficult to discern in the reported cases an appropriate range of sentences for cases of accessory after the fact to murder ranging from conditional sentences to lengthy periods of incarceration…..
>
> It does appear however, that a conviction of this particular crime generally attracts a sentence of incarceration.

[33] Cases where the participation of the accused was in disposing of the body.

Wisdom (1992) CarswellONt 1757 Ontario Court of Justice General Division	Hired killer to retrieve his money from deceased Disposed of body Masterminded clean-up of crime scene	5 years
Beam (1994) O.J. 1359 Ontario Court of Justice – General Division	Helped clean up murder scene and move body to another part of the premises	15 Months
Tutin (2004) NWTSC 20 Northwest Territories Supreme Court	Helped dispose of and destroy body and other evidence and misled police Threatened by principals	3 ½ years

Steadman (2008) BCJ 2284 British Columbia Supreme Court	Help dispose of and dismember body , helped dispose of evidence	4 years
Gwyn (2009) ABPC Alberta Provincial Court	Helped dispose of body, came up with idea of burning body and was present when body burned	6 years

[34] ***R. v. Wisdom*** (1992) CarswellONt 1757 (Ont Court of Justice)**: (sentence 5 years)** The Crown concedes that the participation of Wisdom in the offence was much greater than that of Hynes. Wisdom was described as the mastermind of the clean-up operation and was in fact the party who sent the principal to the deceased to recover monies allegedly owing. Hynes' role was limited to driving the principal and disposing of MacKinnon's body.

[35] Wisdom did not cooperate with authorities and although the court acknowledged this was not an aggravating factor it was noted that it did not entitle him to leniency that might otherwise be shown. While Hynes did cooperate with the authorities in providing a statement it is apparent from the comments made at the time of entering plea that Hynes is not likely to cooperate at trial. Nevertheless, unlike Wisdom, he did identify the principal and must be given consideration for that assistance. Further there were some initial disclosures to the police in 2006

which mitigate in the offenders favour. The violent disposition of Barrett was also a factor influencing Hynes which was not present in the Wisdom case.

[36] ***R. v. Beam*** (1994) O.J. 1359 (Ontario Court of Justice) **(sentence 15 months):** The decision in Beam provides a limited review of the factors in the case and offers no analysis of the principles to be applied. At paragraph 15 the court comments the sentence should be in the low penitentiary range, and then proceeds to sentence in a provincial institution. It is difficult to discern from the decision what led the court to impose the sentence it did. Beam had encouraged the principal to clean up the murder scene and assisted in moving the body to another part of the apartment.

[37] ***R. v. Tutin*** (2004) NWTSC 20 (sentence 3 and a half years): The Tutin case contains mitigating elements similar to that of Hynes – the accused confessed to police, waived preliminary and indicated early on his desire to plead guilty. It was accepted by the court that Tutin was threatened by the principals and while such threats did not reach the level of providing the defence of duress the court did accept that it was fear of the principals that motivated Tutin to assist.

[38] A more aggravating factor noted in Tutin's case was that his assistance to the principal continued for several days. Mitigating in Hynes' favour is the limited disclosure made in 2006.

[39] ***R. v. Steadman*** (2008) BCJ 2284 (BCSC) (sentence – 4 years): There are factors in Steadman that are more aggravating than Hynes. Steadman assisted the principal in cutting off the head and hands of the victim and also disposed of evidence, including the murder weapon. This mutilation is certainly egregious. Further the offender in Steadman was convicted after trial of both accessory after the fact and obstructing a peace officer in the course of his duty.

[40] As a mitigating factor in Steadman the court accepted that in helping the principal, the accused gave some thought to the best interests of the 2 year old son of the principal and the victim in a misguided belief that it was in the son's best interest that his mother stay out of jail. While Hynes did not act out of concern for another, he was no doubt influenced by Barrett's reputation for violence.

[41] ***R. v. Gwyn*** (2009) Carswell Alta 2286 (ABPC) (sentence 6 years): The court further found that the length of time over which the events occurred in *Gwyn* were an aggravating factor. Hynes participation was on a single night over a short period of time. Aggravating for Gwyn was the fact that he came up with the idea

of burning the body and although it was the principal who actually set the body on fire, the court found that Gwyn's presence was tacit approval of the disrespect shown to the body.

[42] The court also noted that Gwyn would not identify the principal which, while not aggravating, was classified as "absence of mitigating factor." Hynes has identified the principal. This is a mitigating factor that operates in Hynes' factor.

[43] In addition to cases where the participation of the offender included disposing of the body, I have also considered the following Nova Scotia cases.

[44] ***R. v. Gowan*** (2011) NSSC 259 (sentence - 3 years): In Gowan, the offender assisted the principal in creating an alibi for a homicide. The principal was the offender's brother and the offender was aware that there was going to be an altercation between his brother and the victim. In sentencing the accused, the court noted a specific mitigating factor was the guilty plea at an early stage. The sentence imposed was three years in a Federal institution.

[45] **R. v. Campbell** *(*2001) NSJ 410 (NSSC) (sentence 3 years): In Campbell, the accused was sentenced to three years for her role in assisting the principal in cleaning up the victim's blood and other evidence of the murder. At paragraph 33 and 34 of the Decision, the Court comments on her participation:

> Wanda Lynn Campbell is an offender with a checkered past. She has not admitted any guilt in the offence charged and has expressed no remorse and no need for rehabilitation whatsoever. The lack of remorse, of course, is not an aggravating factor, but should be considered as a lack of mitigation.
>
> Ms. Campbell's participation in the accessorship was considerable. She very clearly took a supporting role in endeavouring to allow Billy Marriott to escape detection. Perhaps equally heinous to participation after the fact, although not in itself criminal, was her knowledge before the fact of the plan to commit the murder. Her actions were not taken on the spur of the moment. Her actions were not taken at a time when her ability to realize the seriousness to her actions was clouded in any way. There is no evidence that she had been subjected to pressures by Billy Marriott or his friend, Larry Pace. Her conduct simply cannot be tolerated.

[46] While the participation of Hynes was more aggravating than that of Campbell, there are several mitigating factors in Hynes' favour that were not present in the *Campbell* case. Hynes pled guilty and has spared the expense, uncertainty, and trauma of a trial. Additionally, he has articulated remorse and did provide a statement to the police. There was a degree of coercion present in the Hynes case which was not evident in the *Campbell* case.

[47] In **R. v. Ropchan**, 1986 CarsellYukon 54, 1 Y.R. 225, Accused pleading guilty to being accessory after the fact to murder. He witnessed a brutal murder and drove the murderer to Edmonton; he helped the murderer to get rid of evidence and was not forthcoming with police. Accused fearing for his life. Accused having no criminal record and suffering considerable personal distress and remorse. He spent 22 days in pre-trial custody. Despite mitigating circumstances,

offence being serious one analogues to perjury as being affront to administration of justice. Accused sentenced to **3 months' imprisonment** – Out of step with other cases and prior to leading case of **Wisdom,** supra.

[48] In **R. v. Lowe**, 1998 CarsellBC 2575, Accused was forced into helping neighbor weld shut barrel containing deceased – Neighbour threatened to kill accused and his family. Accused was initially charged with murder but court accepted his guilty plea to charge of being accessory after the fact to murder. Accused was a 54 year old retired soldier with no criminal record. Accused was a respected and well-liked member of the community. Accused spent 61 days in pre-trial custody before pleading guilty. Accused was sentenced to **one year of imprisonment to be served in community.**

[49] **VI An Appropriate Sentence**: Applying the relevant factors and considerations set out in the caselaw (**Wisdom**):

1. **Nature, Extent and Duration of Hynes' involvement and assistance:** Hynes' actual participation as an accessory was of short duration. However, as I have outlined above, his failure to come forward for 6 ½ years contributed to the murder going undetected.

2. **Age and Experience of Hynes:** He would have been 26 years old in 2006. He was an adult with a lengthy criminal record. He was also a drug addict.

3. **Nature, Extent and Duration of the Relationship between Hines and Barrett**; they had been good friends but Hynes was aware of Barrett's volatile and violent nature.

4. **Presence or Absence of Any Coercion of or Threat to Hynes:** As noted, while there was no contemporaneous direct threat, Hynes had no choice but to help Barrett on the night they moved Brett MacKinnon's body.

5. **Antecedents, Present Status and Realistic Prospects of Hynes:** 34 year old, extensive criminal record, Grade XI education, no employment record, history of drug addiction which is currently being addressed through methodone treatment. He now has a three old daughter, hopefully fatherhood will cause him to be a more productive member of society in the future.

6. **Other Factors:** The early entry of a plea of guilty is a significant mitigating factor.

[50] **Aggravating And Mitigating Factors**: The following **aggravating** factors are noted in the case against Hynes:

1. Criminal Record
2. Disrespect shown to the body – although not as egregious as that shown in Steadman and Gwyn, the method of disposal of the body was an affront to the deceased
3. Hynes willingly put himself in a situation where he had little choice but to help Barrett

[51] The following **mitigating** factors are noted in the case against Hynes:

1. Guilty plea
2. Remorse
3. Assistance in identifying the principal
4. Limited time involvement
5. Influence of Barrett's propensity to violence
6. Disclosure to police in 2006, while noteworthy, substantially negatived by Hynes' refusal to respond to subsequent police solicitations for assistance.

- Crown Position: 3 Years
- Defence Position: 2 years less one day, less 1:5 days for each day on remand and three year's probation. Further, Defence seeks a conditional sentence to allow Hynes to serve his sentence in the community.

[52] **Disposition:** Even if I were inclined to sentence Hynes to less than two years' incarceration, I would not grant a conditional sentence (Code 742.1) for three reasons:

a) I note that if I sentence him to more than two years, credit for time served reduces his remaining incarceration below two years,

he would not be eligible for a conditional sentence **R. v. Fice**, [2005] 1 S.C.R. 742 (S.C.C.);

b) Hynes is not a good candidate for a conditional sentence. His record is lengthy and, even more concerning, is his addiction problem. He would be returning to a common law partner who has her own addiction issues and who, in June 2013, was convicted of two drug related offences. Hynes' circumstances are a stark contrast to that in **Lowe**, supra, where the accessory had no criminal record and had been a well respected member of the community.

c) Thirdly, I believe the public would be justifiably outraged if I were to impose a conditional sentence in the particular circumstances of this case. Despite the fear factor related to Barrett, Hynes let this matter drag on for 6 ½ years before police were able to get him to cooperate.

[53] This crime represents a substantial interference with the due administration of justice. Our Courts must resolutely denounce any interference with the proper investigation of a crime. Offenders need to know that the most likely outcome for them is a lengthy jail sentence.

[54] **Sentence:** I therefore accept the Crown's recommendation and sentence Mr. Hynes to three years in custody. There will be no probation order, as the sentence imposed is greater than two years. Had I imposed a sentence of less than two years after taking pre-trial custody into account, then probation would be available. [**R. v. Mathieu** (2008) 231 C.C.C. (3) 1 (S.C.C.)]. The governing sentence is that which is imposed and that is three years.

[55] **Credit for Time Served:** Pursuant to Section 719 (3.1) of the Code, Hynes will receive one and one half days credit for each day spent in custody; He has spent 434 days in jail as of today. He will therefore get credit for 651 days.

[56] I accept Defence Counsel's submission that less than a 1.5 day credit would, in the present circumstances, be unfair. Hynes was not "gaming the system" by not contesting his remand. He indicated his intention to plead guilty early on and accelerated the process by waiving his preliminary inquiry. Had he been serving his sentence rather than doing so called "dead time" on remand, he would have been earning remission. There is no reason not to give him appropriate credit. (See **R**. v. **Carvery** [2012] N.S.J. No. 527 esp. paras. 57 & 58).

[57] I also order the Firearms Prohibition Order and DNA Order requested by the Crown (and not objected to by the Defence).

Edwards, J.

Sydney, Nova Scotia