

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

Delivered: 27/6/2008

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

MARK ROBERT BURCOMBE

**HART J**

[1] Mark Robert Burcombe is a 27 year old man who is be sentenced for his plea of guilty to a single count of conspiracy to cause grievous bodily harm to Andrew Robb with intent to do him grievous bodily harm on 19 February 2000, contrary to Art. 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 and s. 18 of the Offences Against the Person Act 1861.

[2] The defendant was jointly charged with Steven Leslie Brown (also known as Steven Leslie Revels, and to whom I shall refer as Revels as that is the name by which Burcombe refers to him in his statement) with two counts of murder, one of Andrew Robb and one of David McIlwaine. Burcombe pleaded not guilty to the two counts of murder, but on 16 May 2008 the prosecution applied to add a third count of conspiracy to cause grievous bodily harm with intent in relation to Robb, and Burcombe pleaded guilty to that charge. The counts of murder were ordered to lie on the file, not to be proceeded with without leave of the Crown Court or the Court of Appeal.

[3] Burcombe has made a statement to the police dated 30 April 2008 stating his willingness to give evidence against Revels about Revels' part in the murders of Andrew Robb and David McIlwaine. In order to explain the nature of the crime to which the defendant has pleaded guilty it is necessary to describe in some detail what Burcombe has admitted in that statement. I should record that Mr Kerr QC for the prosecution stated that he had been expressly instructed not to ask the court to exclude the media from the

sentencing hearing under s. 75 of the Serious Organised Crime and Police Act 2005.

[4] In that statement Burcombe describes how he had been drinking with some friends on 18 February 2000, and was in a bar where he met Revels. By approximately 1.25 am on 19 February Burcombe described himself as being drunk, and he alleges that Revels invited him to come to his house for a drink, to which he agreed. On the way they were joined by Noel Dillon and they went to Revels' house where they drank and chatted.

[5] They were then joined by Robb and McIlwaine. Burcombe described how Dillon asked Robb what he thought of the murder of Richard Jamison, and Robb's dismissive reply appears to have caused a good deal of ill-feeling and tension. Burcombe said that he and McIlwaine went outside and continued to drink whilst Burcombe had a smoke. They then went back inside, and Revels said to Burcombe that he, Revels, was going "to punch the fucking head off that cunt Robb", to which Burcombe replied "Go for it, I'm saying fuck all".

[6] Burcombe said nothing about this threat to Robb as he believed that it was not his place and that Robb could handle himself. However no fight took place at that time. A few minutes later Revels said to Burcombe "You're up for going", and Burcombe agreed, thinking that they were going to go to a party at which drink and drugs would be available.

[7] He describes how Revels and Dillon left and returned some 30-40 minutes later, by which time it was about 3.30 am, and said that they were going for a run in the car. All five then went to Revels' car and Revels said to Burcombe that they were going to the top of Tandragee to get drink.

[8] The car stopped in Tandragee and Dillon left for a few minutes. Revels said to the others that when Dillon got the drink sorted they were going to go to a house where they could get more drink and some drugs. Dillon returned and produced a vodka bottle.

[9] There was still no tension or friction in the car, but Burcombe described how it was still in the back of his mind "that Revels may have fought with Andrew Robb at some stage".

[10] They drove into the country for a few minutes before the car stopped, reversed, and parked in a grassy area resembling a farmer's gate. At this point either Revels or Dillon ordered everyone out of the car, and Burcombe said "I thought at that point there was going to be a bit of a digging match". Because of the isolated location where the car stopped Burcombe said that he "suspected that this was where Stephen Revels was going to attack and commit the assault on Andrew Robb."

[11] Burcombe then suggested to McIlwaine that they walk to see where the house was that they were going to, and as they walked along Burcombe said "I assumed the assault was going to take place". He said that Robb "had been the one mouthing off", that is speaking disparagingly of the murder of Richard Jamison, and he "didn't really care if Stephen Revels had a fight with him [Robb] it didn't involve me and they could do what they wanted". He said he told McIlwaine that the others were going to give Robb "a beating for slabbering about Richard Jamison".

[12] Revels returned to the scene with Dillon but without Robb, and, without warning punched McIlwaine in the chest or stomach. Burcombe said that at that point he then thought that they were going to give McIlwaine a beating as well. He then described in detail the murder of McIlwaine, a murder in which he describes Dillon as playing the leading part but with Revels also playing a full part.

[13] Revels, Dillon and Burcombe then drove off, and after driving for some time the car stopped. He described how Revels took the knife from Dillon and said to Burcombe "If you open your mouth about this I will cut your fucking throat".

[14] Revels then got out of the car and appears to have disposed of the knife. When he returned to the car they went back to a house where Dillon left the room, and although Burcombe heard the sound of running water he did not see Dillon again that night. Revels also left the house for a while and when he returned had changed his clothes and cleaned himself up. He then drove Burcombe back to Sinton Park, and on the way said that he had done the stomachs and Dillon the throats.

[15] The next morning Burcombe learnt that two bodies had been found in the Tandragee area. He contacted Revels and met him and Dillon, and stated that Revels told him to say that he had been drinking with them at Revels' house the previous night, and that he, Burcombe, could give them an alibi. He says that Revels threatened him that if he opened his mouth about what had happened he would cut his throat or someone's in his family.

[16] He described how he left Northern Ireland for a period, then returned and contacted the police but lied to them about his knowledge of these events because of Revels' threats to him. Between 2001 and 2003 he lived in England and claims that this preyed on his mind. After approaching a number of people in Portadown for guidance about going to the police, he contacted the police in November 2005.

[17] He admits that in 2005 he kept back from the police that he knew that Robb was going to be assaulted. As the trial approached he contacted the

police through his solicitor indicating that he wanted to give a truthful account.

[18] It is apparent from this necessarily brief account of the much longer statement made by Burcombe that he maintains that he was unaware that Revels and Dillon intended to kill Andrew Robb and David McIlwaine. He maintains that he believed that they intended to assault Andrew Robb and he had no idea that their intent was to murder Robb and McIlwaine, rather, as he told McIlwaine, he believed that the others were going to give Robb “a beating for slabbering about Richard Jamison”. Mr Kerr QC on behalf of the prosecution stated that following Burcombe’s contact with the police the police thoroughly checked his account and are satisfied of the truth of his statement.

[19] As a result, in accordance with the provisions of the Serious Organised Crime and Police Act 2005, a formal agreement has been reached between the prosecution and the defendant that Burcombe will give evidence for the prosecution against Revels. Section 73(2) of the Act provides that in such circumstances “In determining what sentence to pass on the defendant the court may take into account the extent and nature of the assistance given or offered”. Section 73(3) provides:

“If the court passes a sentence which is less than it would have passed but for the assistance given or offered, it must state in open court –

- (a) that it has passed a lesser sentence than it would otherwise have passed, and
- (b) what the greater sentence would have been.”

[20] I have been provided with statements made by Paul McIlwaine, the father of David McIlwaine; Ann Robb, the mother of Andrew Robb; Jenna Robb his sister; and Robert Thornbury, the uncle of Andrew Robb. It is clear from these statements that not only has the murder of these two young men, aptly described by Mr Magee on behalf of Burcombe as “utterly barbaric”, caused each of them immeasurable distress and sorrow, but they do not accept that Burcombe has told the truth about the nature of his involvement in the events of that night. Mr McIlwaine expresses his view in this way.

“He wishes you to believe that he stood and watched and played no part. I think his statements are largely false and [he] has constantly tried to minimise his role. As to how this has impacted on me and my family I can only describe it as a living nightmare and a life sentence. We have lost our son, our home and

our business and our lives are consumed now by seeking justice which Mark Burcombe has spent a great many years purposely denying us.”

Mr McIlwaine makes it clear that he believes that Mark Burcombe “is still lying but what he is saying is compelling”.

[21] Mrs Robb’s view is equally emphatic. She says:

“I feel that I have to mention my disagreement with the Public Prosecution Service dropping the charge against Burcombe from Murder to Conspiracy to Commit Grievous Bodily Harm. I cannot understand this and I hope that the courts provide justice for my loving and much missed son, Andrew.”

[22] I have no doubt that the feelings of the families of both victims as to the genuineness of Burcombe’s account of the events of that night are deeply and sincerely held, but the court’s duty is to sentence Burcombe only upon the basis of the evidence placed before it. The sentence which I must impose must reflect the gravity of the assault which the evidence suggests that Burcombe thought Revels and Dillon would inflict, and not the charges of murder to which Burcombe has pleaded not guilty. The prosecution accept that the statement that he has given is truthful, and on the basis of that statement what Burcombe anticipated would happen was that Revels and Dillon would give Andrew Robb a beating, but there is nothing in the statement to suggest that Burcombe realised before the events commenced which resulted in the murder of Andrew Robb and David McIlwaine that either Revels or Dillon was equipped with any form of weapon.

[23] Therefore, whatever form the beating Burcombe anticipated might take, there is no evidence to suggest that he realised that more serious injuries would be inflicted on Andrew Robb than could be inflicted without a weapon. Nevertheless, as many cases have demonstrated, even without a weapon it is possible to inflict very serious injuries by kicks or blows with hands or feet. Burcombe has pleaded guilty to conspiracy to cause grievous bodily harm with intent, contrary to s. 18 of the Offences Against the Person Act 1861, the most serious form of non-fatal assault known to the criminal law.

[24] At the time Burcombe was 19. He was fined £100 for common assault on a child or young person at Craigavon Juvenile Court on 10 September 1997, and on 25 March 1999 at Banbridge Magistrates’ Court was fined £200 and sentenced to two months imprisonment suspended for two years for disorderly behaviour. He was therefore under a suspended sentence at the time of the murders. On 10 December 1999 he was fined £60 for indecent

behaviour. Since these events, on 10 January 2003 he was fined and disqualified for various offences involving taking a motor vehicle without the owner's consent and related road traffic offences. His record prior to February 2000 was therefore a modest one and I do not regard it as amounting to an aggravating factor in his case.

[25] Burcombe is entitled to credit for his plea of guilty, but whilst he pleaded guilty to the conspiracy charge at the first opportunity, he did not admit the true extent of his knowledge of what was going to happen to Andrew Robb when first questioned by the police, and the maximum credit is reserved for those who admit their guilt at the outset, that is at interview, see Attorney General's Reference (No 1 of 2006) [2006] NIJB at p. 428. It was not until the trial was imminent that Burcombe gave a true account to the police, and the reduction in sentence must be less than it would otherwise be to reflect that.

[26] Section 73(2) of the Serious Organised Crime and Police Act requires the court "to have regard to both the extent and nature of the assistance given or offered" by the defendant. This establishes in statutory form that, however unpalatable it may be, the law recognises that evidence from criminals is sometimes essential to the conviction of others involved in serious crimes, and that the willingness of criminals to give evidence that may lead to the conviction of others, usually of very serious crimes, has to be recognised by some reduction in their sentence. The sentencing principles for circumstances such as these were considered by the Court of Appeal in England and Wales in R v P; R v Blackburn [2008] Crim. L.R. 147. The court emphasised the following principles which are relevant in this particular case.

(1) A discount for a guilty plea is separate from, and additional to, any reduction to sentence allowed under Section 73. The discount for the defendant's assistance should be calculated first, and the notional sentence so achieved further discounted for the guilty plea.

(2) The totality principle is, however, fundamental and a mathematical approach is liable to produce an inappropriate answer.

(3) The principles governing the appropriate level of discount as set out in the previous case law are still applicable; only in the most exceptional case will the appropriate level of reduction exceed three quarters of the total sentence which would otherwise have been passed, and the normal level should continue to be a reduction of between one half and two thirds of that sentence.

[27] Mr Kerr suggested that the range of sentence for a serious assault of the type to which the defendant has pleaded guilty, before any allowance was made for the plea of guilty, would normally fall somewhere in the range of

four to seven years, and Mr Magee did not dissent from that. The difficulty the court faces in assessing the appropriate sentence is that tragically the attack on Mr Robb was of a wholly different nature to that the evidence accepted by the prosecution suggests Burcombe contemplated. This makes it very difficult for the court to assess what the injuries would otherwise have been had Robb, as Burcombe anticipated, “been given a digging”.

[28] As is clear from the authorities considered in cases such as R v Smylie, [2007] NICC 50, where a knife is used to inflict serious injuries the normal range of sentence on a plea of guilty is between three and eight years imprisonment. I consider that in the present case had there been a serious assault on Andrew Robb, but not one involving a weapon, it would have been unlikely to have resulted in permanent injuries. In such circumstances upon conviction after a plea of not guilty the penalty for the present charge is unlikely to have exceeded six years. I am satisfied that the assistance which the defendant has undertaken to give, and which I have summarised in this judgment, is of considerable assistance to the prosecution, but it is not the only evidence as it is in addition to the evidence to be given by Witness F. I am obliged by statute to consider whether a custody probation order would be appropriate, but I do not consider that one would be appropriate in this case.

[29] I therefore propose to reduce by half to three years the sentence of six years which I consider the defendant would otherwise have received had he been convicted on this charge after a plea of not guilty, and that reduction is to reflect the assistance he proposes to give to the prosecution. To reflect his plea of guilty I further reduce the notional period of three years to two years and four months imprisonment. The suspended sentence of two months imprisonment will be put into effect to run consecutively, making a total of two years and six months imprisonment.