

IN THE CROWN COURT IN NORTHERN IRELAND

DOWNPATRICK CROWN COURT
(SITTING AT BELFAST)

THE QUEEN

-v-

WILLIAM PETER BARRON
RICHARD DAVID KIRK
CHRISTOPHER THOMAS ACTON
MATTHEW JAMES WOOD
WILLIAM WOOD

HART J

[1] The defendants have pleaded guilty to various offences which occurred in Kilbroney House in the Cregagh estate in the outskirts of Belfast in the early hours of 1 January 2008. All five have pleaded guilty to aggravated burglary by entering 5B Kilbroney House as trespassers and having with them at the time of the entry a weapon of offence, namely a knife. Barron, Kirk, Matthew Wood and William Wood each pleaded guilty to aggravated burglary of 5B Kilbroney House on the basis that they entered 5B “with intent to inflict grievous bodily harm on Ronnie Harbinson therein”, whilst Acton pleaded guilty to the same count of aggravated burglary but with the particulars of offence amended to delete this phrase. To state the matter simply, Barron, Kirk, Matthew Wood and William Wood have pleaded guilty on the basis that they entered 5B intending to inflict grievous bodily harm on Mr Harbinson, whereas Acton has pleaded guilty to aggravated burglary on the basis that he did not intend to inflict grievous bodily harm on Mr Harbinson but did intend to cause criminal damage to the contents of the flat.

[2] Barron, Kirk, Matthew Wood and William Wood were also indicted on a second count, namely the attempted murder of Ronnie Harbinson on the same occasion. They pleaded not guilty, but guilty to causing grievous bodily harm with intent to cause grievous bodily harm, contrary to s. 18 of the

Offences Against the Person Act, 1861 and this plea was accepted by the prosecution. Barron also pleaded guilty to possession of cannabis resin on the same occasion.

[3] In the early hours of New Year's Day, Tuesday 1 January 2008 a number of young people were present in Flat 5B, Kilbroney House, one of the tower blocks of flats on the Cregagh estate on the outskirts of Belfast. The occupier of the flat was Lisa Harbinson. Also present were her brother Ronnie Harbinson who was staying there at the time; her boyfriend Raymond Heffernon; Ryan Nicholl, their next door neighbour who lived in 5C, and a friend William Deans.

[4] It appears that Deans shouted some vulgar remarks from one of the windows of 5B at a number of people, including some girls, who were outside at ground level. From the evidence given by Mr Harbinson at the trial before the defendants asked to be re-arraigned and pleaded guilty it appears that these remarks were not of a particularly offensive nature, but were undoubtedly foolish and liable to cause offence. Offence was taken by a group of young people standing near some shops nearby and a few minutes later a group of youths, the five defendants and another young man called Clarke, were seen on CCTV to emerge onto the landing at 5B and knock on the door. The CCTV shown on exhibit PN3 records that the group appears outside 5B at 2.19 am. It shows the young men clustering around the door, and the evidence of the occupants of the flat was that the door was knocked very vigorously.

[5] Lisa Harbinson went to open the door, and the evidence of her brother was that the group forced their way into the flat, although it is clear from the CCTV that Clarke, obviously realising that what was about to happen was unwise, drew back and hung around in the corridor for a few moments before departing by a staircase and disappearing from view. It is also clear from the CCTV that Kirk and Barron were the first to enter 5B, closely followed by Acton and the Wood brothers. Acton stands out particularly because he is 6 feet 3 inches tall and notably taller than the others. The door closed behind the group and what then occurred has to be gleaned from the statements of the occupants of the flat. A number of the witnesses say that knives were produced by at least some of the intruders, and Ronnie Harbinson described in his evidence how he immediately retreated into the bathroom with Heffernon, and they tried to keep the door closed as the intruders banged on the door. Not only did the intruders kick the door, but a number of knife blades appeared through the door. Such was the violence of the attack on the bathroom door, which was of a somewhat flimsy type, that it was battered from its hinges. Ronnie Harbinson described how he thought that he should make a run for it.

[6] I should state at this stage that in the photographs of the wreckage of the door a garden fork is to be seen. However, Mr Sefton, who appears for the prosecution with Mr Richard Weir QC, accepted in his opening to the jury that the fork played no part in the events of that night and therefore its forks were not the metal items which Mr Harbinson saw come through the door before he attempted to flee from the flat.

[7] At this point in the sequence of events the door of the flat opened and the CCTV revealed a number of individuals, one of whom is clearly Acton, engaged in what appears to be a struggle to prevent Mr Harbinson leaving the flat. He then burst out of the flat past one of the intruders and fled downstairs to the ground floor. From the timing device on the CCTV it can be seen that the entire incursion into the flat lasted about 40 seconds. The incursion gives rise to the first count of aggravated burglary.

[8] As Mr Harbinson fled down the stairs pursued by all of the others the CCTV reveals that Acton abandoned his pursuit after going down one floor and then travelled by the lift to the ground floor. The others pursued Mr Harbinson down the stairs. He reached the ground floor and was heading for one of the fire exits when he slipped, apparently on urine deposited there by Matthew Wood who had urinated in this area before following the others upstairs. What occurred at the foot of the stairs gives rise to the second count against Kirk, Barron, Matthew Wood and William Wood.

[9] Kirk is seen on CCTV to catch up with Mr Harbinson as he slips to the floor, and is clearly seen kicking Mr Harbinson and then jumping up and down on his back and head several times, steadying himself as he does so on a metal pole which forms part of the staircase. Matthew Wood then kicks Mr Harbinson as he lies prostrate and face down on the floor. Barron then joins in the attack stabbing Mr Harbinson twice in the lower back, again as Mr Harbinson lies prostrate and face down on the ground. William Wood, who stood by as Barron stabbed Mr Harbinson, then grabbed Barron's arm to prevent him stabbing Mr Harbinson a third time. This was a sustained, cowardly and savage attack on a man lying helpless and unable to defend himself. As will be seen from the description of his injuries I will give later this attack has had a considerable effect upon him in both physical and psychiatric terms, and that is an aggravating feature of the case so far as those who attacked him are concerned.

[10] Mr Harbinson's last recollection before coming round in an ambulance on the way to the Royal Victoria Hospital was trying to reach the fire exit. When he was examined at the Accident and Emergency Department of the Royal Victoria Hospital he was found to have a number of injuries.

- (i) A significant laceration close to his right eyebrow.
- (ii) A dislocated right shoulder.

- (iii) Two stab wounds to the lower back each about 5 cms or 2 inches deep.
- (iv) Fractures of two ribs, although it is unclear whether he sustained fractures to ribs on both sides as the references to the injured ribs are somewhat ambiguous.

[11] I have been provided with up-to-date medical information about the extent of his physical injuries from his GP Dr McCleery. He reports that Mr Harbinson's right shoulder had dislocated on no fewer than 12 occasions by the time he saw an orthopaedic surgeon on 27 May 2008, and he is presently awaiting an operation to avoid further dislocations. Mr Harbinson is on continuous daily analgesics for pain in his shoulder following the assault. If the date for the earlier dislocation given by Dr McCleery is correct, Mr Harbinson had an episode where his right shoulder dislocated before this attack. Be that as it may, he has suffered considerable problems and pain with his shoulder since, and as a result of, this attack

[12] I have also been provided with a psychiatric report on Mr Harbinson in the form of an undated report by Dr Loughrey, consultant psychiatrist, which was prepared after an examination on 6 February 2009. Dr Loughrey records that Mr Harbinson is on painkillers, tranquillisers and anti-depressants and refers to a number of psychiatric problems that pre-dated these events. He comments

“...I would be reasonably certain that this man was not over these difficulties before the assault on the 31.12.2007.

The principal psychological effect of the assault on the 31.12.2007 has been that it is one more stress in the cascade of stresses that have impacted upon this man in the last few years. He is now on an array of medication, including Codeine-containing pain-killers, and he is on benefits. I think it is likely that his mental health problems have been significantly worsened by the assault in question, but I think it is likely that the bulk of these difficulties will have resolved within a year or thereabouts of the assault in question.”

[13] Before turning to deal with the individual circumstances of each accused it will appear from the description of events that I have given that this was a disgraceful and violent incursion into this flat without any real provocation being offered. Whilst the remarks of Mr Deans were unfortunate, foolish and unnecessary; and I emphasised to him at the conclusion of the trial that he bears a not inconsiderable proportion of moral responsibility for sparking off these events; nonetheless his remarks fell far short of anything

that could be regarded as amounting to provocation, even in a non-technical sense.

[14] I have referred to the CCTV and when this had been obtained and analysed by the police the accused were arrested and interviewed, and I will deal with each individual defendant's actions and responses separately, but before doing so there are a number of other general observations I wish to make. In R v Daniel McArdle [2008] NICA 29 the Court of Appeal determined that where grievous bodily harm has been inflicted deliberately and the attacker intended that his victim should sustain grievous injury, the appropriate sentence for offences under s. 18 should be between 7 and 15 years imprisonment following conviction after trial. In that case the court also held that the appellant was entitled to have his previous good record and the fact that he was young taken into account in his favour.

[15] In addition each of the defendants was guilty of a violent incursion into the home of Lisa Harbinson and her brother. This type of conduct requires a substantial custodial sentence in its own right, as can be seen from the decision of the Court of Appeal in R v Moore and Others (1991) Northern Ireland Sentencing Guideline cases, vol. 2, p. 5.2.1. Moore was considered by the Court of Appeal in R v Murray and Armstrong [2003] NICA 24 at [10] and [11], where sentences of four years and three years were reduced to three years and two years respectively where the aggravated burglary involved a severe beating inflicted on the victim as he lay in bed. The circumstances of that case bear some resemblance to those of the present case, although Mr Harbinson was beaten and stabbed downstairs. However, that is not a material distinction.

[16] The principal mitigating factor on behalf of each defendant is that they pleaded guilty, and they are entitled to credit for that. However, their pleas were entered at a very late stage, although it was submitted that it was only at the trial that the prosecution indicated that a plea to s.18 would be accepted in place of the attempted murder charge. That was confirmed by Mr Weir, but in any event none of the defendants entered an early plea to the aggravated burglary count, and the CCTV which each saw during interview meant that they had no defence whatever to that count. Acton, who was not charged with attempted murder, did not enter his plea to the aggravated burglary count until Mr Harbinson had given evidence and been cross-examined for some time. Whilst Acton pleaded on a different basis to the others there was nothing to prevent him pleading on that basis earlier. I also take into account in their favour that all except Kirk have clear, or effectively, clear records. However, I do not propose to treat Kirk's record as an aggravating factor in his case.

[17] From the descriptions of the various accounts given by the accused and the earlier description of the CCTV, it is apparent that although a number of

the accused made various limited admissions, they repeatedly and persistently sought to minimise their involvement in this episode until confronted with the CCTV. The roles played by each of them can be broadly divided into three parts. Kirk and Barron took the initiative in bursting into the flat and were involved in the most serious of the attacks upon Mr Harbinson, Kirk repeatedly stamping on his back and head, and Barron stabbing him when he lay prostrate and helpless on the ground.

[18] The second part consists of the Wood brothers who went into the flat and played a determined part in kicking the bathroom door, and the only thing that can be said in favour of William Wood is that although he was present when others attacked Mr Harbinson, he at least displayed some humanity by preventing Barron from stabbing Mr Harbinson a third time.

[19] Finally there is Acton. Like the others, he persistently attempted to minimise his role in this episode, whereas on the CCTV he clearly plays just as determined a part as the others in entering the flat. In his case his plea to the first count of aggravated burglary was offered and accepted by the prosecution upon the basis that, although he entered as a trespasser in the company of the others, he did so with the intention that criminal damage would be inflicted upon the property in the flat. Whilst he was aware that others in his group had a knife he did not know how many had knives and believed that there was only one knife. He accepts that he contemplated that the knife would be used to threaten the occupants of the flat, but did not contemplate that the occupants would suffer grievous bodily harm. He was inside the hallway and expressly accepted that he was present when the bathroom door was damaged with a knife or knives.

[20] Therefore, whilst his involvement in these events was somewhat less than that of the Wood brothers, there is not a very great distinction to be drawn between those three defendants on the basis of their involvement in the incursion into the flat.

Barron

[21] William Barron was born on 28 September 1989 and was therefore 18 at the time of these events, he is now 19. He was questioned on a number of occasions on the 28 February 2008. He accepted that he had been drinking, having consumed some eight beers and a third or less of a one litre bottle of homemade Absinthe, as well as having smoked some cannabis. His co-defendants came round to his flat at 11B Kilbroney House, and in his first interview he admitted that when he got to the bottom of the stairs "there was a few lads kicking the shit out of some wee man". He went on to admit that he had punched Mr Harbinson twice in the middle of the back, and said that he just came upon him lying at the foot of the stairs and decided to lay into him. However, in the second interview he admitted that he had stabbed Mr

Harbinson twice in the lower back with a Swiss army type penknife with a blade 2-3 inches long. He then changed this account, saying that he had used a black knife. He said that he had become involved because he had gone downstairs with his mates and had jumped on Mr Harbinson for no reason. He denied chasing him downstairs and repeated that he had not been in the flat.

[22] During the third interview he was shown some of the CCTV contained in exhibits PM2 and PM5. He then admitted that they all went upstairs together after there had been some shouting and bottles thrown from the windows. He said that he was carrying the black-handled knife because he used it for fishing, accepted that he threatened his way into the flat with the knife, and was the last to leave. The CCTV shows that Barron arrived at the foot of the stairs after Kirk had jumped on Mr Harbinson and Barron then stabbed Mr Harbinson as he lay defenceless on the ground. He also accepted that he had cannabis in his jacket when he was arrested.

[23] It is clear from the CCTV and from his admissions that Barron, with Kirk, was one of the two prime movers in these events. He was one of the first two to enter the flat, he was carrying a knife and then he stabbed Mr Harbinson twice as he lay on the ground, and if it had not been for the actions of William Wood catching his arm he may well have stabbed him again.

[24] Barron had one Magistrates' Court appearance prior to this for offences of no insurance and carrying an unauthorised passenger on a motorcycle. I propose to treat him as having essentially a clear record and to give him the appropriate credit for that. A pre-sentence report has been prepared upon him. The report describes how he has been drinking heavily and abusing Temazepam for some time, and smoking cannabis since he was 15. It assesses him as a serious risk to the public because "...he presents as emotionally immature, lacking in victim awareness and insight into his behaviour". He is described as having lacked purpose and direction in his lifestyle since the age of 15, and I accept that he would benefit from probation supervision upon his release in order to prevent re-offending. Provided that he consents, I will therefore impose a custody probation order, the probation element of which will be subject to the following requirements as specified in the pre-sentence report.

- (1) That he shall reside in accommodation as approved by PBNI.
- (2) That he shall actively participate in an Anger Management programme during the probation period.
- (3) That he shall attend for drug/alcohol counselling as directed by his supervising officer.

[25] On count one I sentence him to three years' detention, and on count two to seven years' detention to be followed by one year's probation subject

to the above conditions. The sentence would otherwise have been eight year's detention. On count three I sentence him to one month's detention. The sentences will be concurrent.

Kirk

[26] Kirk, who was born on 18 September 1989, was 18 at the time and is now 19. In his first interview he described how he had had about eight beers altogether and was "pretty drunk". He admitted that he had been present when Harbinson had been assaulted, saying that he had kicked him a number of times and that he joined in because of the effect of drink. He said that he learnt afterwards from the person who did the stabbing that Mr Harbinson had been stabbed but at the time Kirk would not give his name. He was emphatic that he did not enter the flat and claimed that he was not present when Mr Harbinson was stabbed. In his second interview he accepted that he might have stamped upon Mr Harbinson maybe half a dozen times, stamping on his back and that he could have hit his head.

[27] In the third interview he was told that the CCTV exhibit PM3 was going to be produced and immediately accepted that he was in the flat, contrary to what he had earlier denied, and that he had gone up to the flat with Acton and William Wood. He accepted that he followed Barron into the flat.

[28] Kirk has a number of motoring convictions, including driving with excess alcohol on his breath, dangerous driving and two convictions for driving whilst disqualified, as well as a number of related charges such as no insurance and driving under age. He has been an irresponsible young man and his behaviour on this night shows that he can also be a violent one.

[29] A pre-sentence report has been prepared on Kirk. After leaving school he lived a rather aimless and unstructured life, and from the age of 15 despite his mother's efforts he was using cannabis on a daily basis and drinking heavily two to three days a week. Despite this unpromising background he appears to have developed in maturity over the last year, and whilst in custody has behaved well and is keen to improve his education. He has impressed the author of the pre-sentence report with his understanding of his culpability and need to take responsibility for his actions, and is believed to have the capacity and understanding to make the necessary changes in his life and to engage more positively with probation on release. This is particularly significant given his inconsistent engagement with probation in 2007. I accept that he has shown the capacity to engage with, and benefit from, probation upon his release. Provided that he consents, I will therefore impose a custody probation order. On count one I impose a sentence of three years' detention, and on count two a sentence of seven years' detention, to be followed by one

year's probation. The sentence would have otherwise been one of eight years' detention. The sentences will be concurrent.

Matthew Wood

[30] Matthew Wood was born on 6 February 1990, and was 17 years and 10 months of age at the time and is now 19. In his first interview he admitted urinating at the bottom of the stairs and then going upstairs and joining the others thinking that they were going to a party. He maintained that everyone except himself entered the flat and that when Mr Harbinson ran out he followed the others downstairs. By the time he arrived he said that Kirk was assaulting Mr Harbinson on the ground. Wood said "I hit the wee fellow one boot to the lower back and Richard carried on." He accepted that this happened before Harbinson was stabbed by Barron, and at the end of the interview when asked to say what he thought of it said he thought it was disgraceful. He essentially repeated the same position in the second interview, but in the third when he was shown the CCTV exhibit PM3 he accepted that he did step through the front door, but maintained that he was not involved in anything in the flat. He then accepted that it was he who closed the door of 5B and accepted that he might have kicked the other door, presumably meaning the bathroom door. When again questioned about how he kicked Mr Harbinson he accepted that whilst Kirk was standing on Mr Harbinson's head he kicked him twice. In his fourth interview he again maintained that he only went into the hallway of the flat.

[31] He has no previous convictions and a pre-sentence report has been prepared on him. He has been misusing cannabis and alcohol for a considerable period, but whilst on remand he has tried to use his time constructively. He has expressed deep regret for his actions, although he deserves to be treated more severely than either his brother William or Acton because he accepts that he kicked Mr Harbinson twice as he lay prostrate on the ground. He has a supportive and responsible family and the report suggests that if a custody probation order is imposed that it be made subject to a condition that he attends alcohol and drug counselling treatment as directed by his supervising officer.

[32] I have been provided with references from a number of individuals referring to Matthew and William Wood, and one specifically for Matthew Wood from a former employer. These references provide some ground for saying that despite his misusing drugs and alcohol in the past, he has the potential to lead a law-abiding and productive life, and he has a supportive family background. I am satisfied that the prospect of his avoiding offending in the future will be enhanced by his undergoing a period of probation supervision upon his release.

[33] On count one I sentence him to two years' detention, and on count two, provided he consents, to two years' detention to be followed by one year's probation subject to the condition "That he attend and participate in alcohol and drug counselling treatment as directed by his Supervising officer". The sentence would otherwise have been three years' detention. The sentences will be concurrent.

William Wood

[34] William Wood was born on 1 February 1989 and was almost 19 at the time and is now 20, and so was the eldest of the accused. He is the brother of Matthew Wood. In his first interview he admitted that the front door of the flat had been forced open, and that a man hid in the bathroom. He admitted that he went into the kitchen and into the living room before Mr Harbinson ran downstairs. He went on to say that by the time he got downstairs Mr Harbinson had already been beaten and stabbed. He also accepted that he had been with Kirk in the living room, although he denied seeing a knife at any time. In his second interview he accepted that he might have kicked the bathroom door, but maintained that he did not go up to the flat intending to harm the occupants.

[35] In his third interview he also was shown the CCTV exhibit PM3. He denied having a knife at any time but admitted that he kicked the bathroom door once, and that he saw Mr Harbinson being stabbed. He accepted that he had been standing watching as Mr Harbinson was assaulted, although he emphasised that he had grabbed Barron by the arm to prevent him stabbing Mr Harbinson a third time.

[36] A pre-sentence report has been prepared upon William Wood. This states that he had been in employment before he was remanded in custody and spent most of his money on alcohol and drugs at the weekend. He had been drinking since he was 16 and thereafter used cocaine, cannabis, speed and ecstasy, although he claims that he regarded his use as experimental. It is clear that he has made good use of his time in custody.

[37] I have also been provided with references in respect of William Wood. He also has a supportive family background. He worked for Mr Sandford for four years and was on an apprenticeship, and Mr Sandford will re-employ him upon his release.

[38] I consider that he would benefit from probation supervision upon his release and I will therefore impose a custody probation order in his case, provided he consents. On count one I sentence him to eighteen months' detention to be followed by one year's probation subject to the condition that "He undertake an Alcohol and Drug management programme as directed by his Supervising Officer". On Count two I sentence him to one year's detention

followed by one year's probation subject to the same condition as on count one. The sentence on count one would otherwise have been one of two and a half years' detention, and on count two it would otherwise have been two years' detention. The sentences will be concurrent.

Acton

[39] Christopher Acton, who was born on 7 November 1989, was then 18 and is now 19. Because he was much the tallest of this group he stands out on the CCTV. In his first interview he immediately admitted going up to the fifth floor because of what he termed the "slabbering" from 5B; that there were five in the group; that the male occupant of the flat answered the door whereupon his "two mates just booted the door in". He described how Harbinson fled from the flat and was chased downstairs by three of the group; that he followed him down and came upon Mr Harbinson lying by the door. He maintained that only Barron and Kirk had entered the flat and that he just heard noises as he was standing outside.

[40] In his second interview he again emphatically maintained that he did not go into the flat, although he readily accepted the descriptions and identification of the others in the group that were put to him. His position was summed up in his statement that "I was not in that flat. I did not step one foot over the door".

[41] In the third interview he was shown the CCTV exhibit PM2 which showed him entering the door of the flat, and his response was that he went "about two steps in the flat, [and] stayed there for ages". He denied that the struggle of a number of people in the vicinity of the door which can be seen on the CCTV involved him fighting with anyone.

[42] As stated at the beginning of this judgment Acton pleaded guilty to count one on a somewhat different basis to the other defendants in that he denied having a knife or any knowledge of a knife. Nevertheless he played a full part in the incursion into the flat, and was present when the bathroom door was broken down. He made no effort to leave or to disassociate himself from the actions of his companions.

[43] I have been provided with a pre-sentence report upon him. This states that he did not expect the confrontation to become physical, but his failure to disassociate himself from the actions of the others renders this assertion implausible. The report also says that he appears to accept responsibility for his behaviour, something I am sceptical about given the lateness of his plea. Nevertheless, he has persuaded the author of the report that he has learned from this experience, and a job is open to him with a local taxi firm, although the defendant apparently wishes to return to college and obtain plumbing qualifications.

[44] The incursion into this flat was a very serious matter and my initial view was that Acton should receive an immediate custodial sentence. However, with some hesitation I have decided to impose a combination order consisting of the maximum 100 hours community service to be followed by twelve months probation, thereby requiring him to make a contribution to the community for what he did, and ensuring that he is helped to avoid offending in the future.