

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

Delivered: 20/06/2003

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

PETER MURRAY and CHRISTOPHER ARMSTRONG

Before: Carswell LCJ and Girvan J

CARSWELL LCJ

[1] This is an application for leave to appeal against sentences imposed by His Honour Judge Rodgers on 24 January 2003 at Belfast Crown Court. On charges of aggravated burglary the judge made a custody probation order in respect of each: in Murray's case the custody element was two and a half years, followed by eighteen months' probation supervision, and in Armstrong's case the custody element was eighteen months, followed by eighteen months' probation. On a further charge of assault occasioning actual bodily harm they were each sentenced to eighteen months' imprisonment, concurrent with the other sentences.

[2] On 21 October 2001 shortly after 2 am the applicants, together with another man, went to the front door of a house at 32 Agra Street, Belfast, occupied by AB, the former girlfriend of Peter Murray. When AB answered the door Murray pushed her back against the wall and ran upstairs, followed by the other two men. They forced their way into the bedroom where Philip Calvert, AB's current boyfriend, was in bed. He made strenuous efforts to bar the door, but was unable to keep them out. There they gave Calvert a severe beating all over his body, which went on for some minutes. At least one weapon, a brush shaft, was used in the attack and Calvert averred that he was struck with another solid object, which he thought was a can of beer which had been beside the bed.

[3] Murray stated in police interview that he had been drinking that evening with the other two men and had become quite drunk. He formed the intention of going to AB's house to inform Calvert that she planned to pass off as Calvert's a baby, as yet unborn, of which Murray was the father. He claimed that he asked the other two to accompany him in case Calvert became violent, which he had done previously. He said that when he reached the house he was impelled to attack Calvert by anger at what he had done to him, by which he appears to have meant the previous attack and his liaison with AB. He admitted that he was the main attacker, but alleged that the stick was wielded by the third man (against whom the prosecution case was withdrawn). In his interview with the probation officer, however, he admitted that he himself had used the stick to strike Calvert.

[4] Armstrong stated in interview that Murray was going to the house to sort out with AB and Calvert what they were going to do about the baby, that Murray said that he had been attacked before by Calvert and asked the other two to go with him in case anything of the sort happened again. He denied having any stick or other weapon, and alleged that he followed Murray upstairs, ran into the room, kicked Calvert a few times and ran out again. He claimed that he would not have become involved if he had been sober. AB says positively in her statement, however, that it was Armstrong who had the stick in his hand when he entered the house.

[5] A piece of wood was found in the bedroom in which Calvert was attacked. The evidence given to the court by Detective Constable Kenny was that it was a small diameter brush shaft, which was wet and covered with green mould, an indication that it had been lying outside. Its condition fitted that of a weapon which had been picked up outside at the last minute rather than brought with the premeditated purpose of using it for an assault. The witness also accepted that the attack was not paramilitary in character and appeared to be a domestic dispute.

[6] There was no medical evidence about the extent of Calvert's injuries, but on his own evidence they extended to all parts of his body, and he describes cuts, bruises and swelling in a number of places. The photographs taken on 21 October 2001 show a number of red, angry-looking welts on his arms, legs and body, which give some indication of the severity of the attack.

[7] Murray pleaded guilty to the assault charge on arraignment, but entered a plea of guilty to aggravated burglary only on the morning of trial. He is now aged 25 years and has a record of convictions for offences of dishonesty between 1997 and 1999. He had an addiction to gambling, which he funded by thefts during that period, though he claimed to have benefited from community service and to have overcome his gambling addiction. He was in regular employment prior to the present offences. The probation officer

stated in her pre-sentence report that the current assessment of the risk of his re-offending was low. She concluded:

“Mr Murray is an individual who has demonstrated that he has ability and intelligence but who has also lapsed into offending to resolve personal problems, both currently and in the past. He has the personal motivation to overcome difficulties and there is room for optimism about his capacity to learn from this serious mistake and avoid any repetition.”

She regarded him as suitable for a period of probation if committed to custody. The work would focus on the risk predictors of alcohol use and management of anger.

[7] Armstrong is now aged 23 years and has no criminal record. He comes from a good and settled background and had a good education and a steady job. He admitted to drinking too much fairly regularly before the offences were committed and claimed that he was quite heavily intoxicated at the time. The probation officer stated in her pre-sentence report that there were no signs that he was characteristically aggressive or violent. He accepted that he knew that it was the wrong thing to do and expressed what the probation officer regarded as genuine remorse. She considered that he presented a low risk of re-offending. She concluded:

“Mr Armstrong presents as being of low risk of re-offending. He appears to have accepted the need to curtail his drinking and does not present any other issues which would suggest the need for an imposition of probation supervision in this case. However, should the Court feel that a custody probation order is an appropriate sentence supervision would focus on monitoring the defendant’s return to the community, supporting his determination to manage his drinking and the company which he keeps, as well as promoting Mr Armstrong’s return to employment.”

[8] In his sentencing remarks the judge set out the background of each applicant and the mitigating features in respect of each. He went on:

“However, courts have always taken a very strong line of cases with aggravated burglary and have always imposed substantive sentences in respect of those offences. That is because the privacy of

the home is invaded and the victim, while he is at home and in bed, suffers violence. In this case the unfortunate Mr Calvert was attacked in his own bedroom, in fact in his own bed. I regret to say despite the mitigating features it is so serious that only a custodial sentence is appropriate.”

He determined that on the aggravated burglary count prison sentences of four years and three years were appropriate for Murray and Armstrong respectively, the lighter sentence for the latter reflecting his earlier guilty plea, his clear record and the fact that he was not the ringleader. He imposed the same concurrent sentence of eighteen months on each in respect of the assault charge. He then considered custody probation orders and divided up the total notional terms as we have indicated.

[9] Counsel for the applicants emphasised that this case differed materially from those where the perpetrators broke into houses in order to steal and attacked the occupants in the course of the incident, accepting that in such cases the level of sentencing will ordinarily be at least as high as in the present case. This, they urged, was a domestic dispute, fuelled by alcohol and with no question of gain involved. It was not established that the applicants’ intention comprised anything other than a confrontation with AB. As against, that, it does appear to us that thoughts of some physical violence were in their minds when they armed themselves with the stick, and any idea of discussion with AB had evaporated by the time she opened the door, for the applicants simply rushed past her upstairs to find and attack Calvert.

[10] Counsel rightly did not attempt to cite examples of previous decisions by way of numerical comparisons, but they did rely on the decision of this court in *R v Moore and others* (1991) *JSB Sentencing Guideline Cases*, vol 2, page 5.2.1, which they submitted showed the proper approach to cases of this kind. That appeal concerned a premeditated revenge attack by a group of people on a man who lived with his wife and children in a caravan. He was assaulted with metal rods and sustained injuries comparable with those inflicted on Mr Calvert. The court considered that an assault arising from ill-feeling between two families was of a different nature from the violence used when criminals break into homes and attack the occupants. It therefore reduced the sentences of five years imposed on the two main attackers to two years.

[11] We consider that for the type of offence of which *R v Moore* and the present case are examples it is not necessary to impose sentences of a length appropriate to punish and deter burglars who break into houses for gain and attack the occupants. The severity of the beating, the degree of premeditation and the use of the weapon are features which required the court to impose custodial sentences, but in the circumstances of the case and given the prospect that neither applicant will re-offend we think that the sentences

should have been lower than equivalent sentences of four and three years' imprisonment. In our opinion the appropriate length would be three years and two years respectively, with a reduction of the sentence for assault in Armstrong's case to twelve months to reflect his secondary role. We agree with the judge's decision to make a custody probation order, though we shall vary the length of the probation supervision in Armstrong's case.

[12] We therefore give leave to appeal and allow the appeals, varying the sentences as follows:

Murray - Count 1, aggravated burglary: substitute a custody probation order consisting of two years' custody and eighteen months' probation. Count 2, assault occasioning actual bodily harm, confirmed at eighteen months concurrent.

Armstrong - Count 1, substitute a custody probation order consisting of twelve months' custody and twelve months' probation. Count 2, reduce to twelve months concurrent.