

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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THE QUEEN

v

SAMUEL JOSEPH FERGUSON  
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O'DONNELL LJ

This is an appeal against concurrent sentences of 8 years and 7 years imposed by Kelly LJ at Belfast Crown Court on 2 counts of robbery.

The sentence of 7 years was imposed on Count 4 in respect of a robbery on 28 September 1987 in which 2 masked men held up a petrol filling station at Coleraine and stole approximately £130 in cash and a cheque. The appellant was not one of the masked men, but he had played an active role in the robbery in reconnoitring the filling station. He remained in the get away car while the robbery was carried out. The appellant pleaded guilty to this count and in sentencing the appellant to 7 years' imprisonment Kelly LJ said:

"I consider that Ferguson played an equal part in its commission as the others. Ferguson has a lengthy and persistent record of convictions for burglary and theft going back to 1980."

The sentence imposed is by no means excessive, nor does it err in principle. Accordingly, we affirm the sentence in respect of Count 4 of the Bill of Indictment.

The circumstances surrounding the robbery in County 1 of the Indictment call for more detailed consideration. That count charged robbery involving the use of a firearm or imitation firearm. The appellant pleaded guilty to robbery but not guilty to robbery involving the use of a firearm or imitation firearm. Kelly LJ found him guilty on the count as charged.

The appellant with 2 others broke into the bungalow of a Mr and Mrs Connolly at 41 Laurel Hill Road, Coleraine. The Connollys were an elderly couple who lived alone. The facts are set out by Kelly LJ in his judgment:

"All 3 men, masked and gloved, approached the bungalow in the early hours of the 30th. Wall carried a gun which fired pellets but there were no pellets in it. The third man carried a crowbar which was used to force open the side window. They entered the bungalow but in a short time were confronted by Mr Connolly who had been wakened by his wife. Mr Connolly was struck on the head with the crowbar. He and his wife were manhandled and pushed back into the bedroom where the intruders shouted, swore and threatened, demanding money. Mr Connolly was beaten on the back with a garden hoe and Wall pointed the gun at them and shouted 'Where is the money?' Meanwhile Ferguson was searching the rooms for money. He ransacked the house pulling out drawers and throwing their contents out. The photographs taken afterwards by the police of the rooms show the extent of the disorder. While this was going on, Mr Connolly was sitting on the side of his bed, blood flowing down the side of his head from his injury, in a deeply disturbed state. He had suffered for some time past from severe chronic emphysema -a condition which required both steroid therapy and the use of a nebuliser or a ventolin inhaler. With the shock and terror of the attack, he was having trouble breathing. When he sought to use his nebuliser mask one of the assailants kicked it away from him and when his wife tried to hold the mask to his face she was pulled away. She said he would die if he did not get using it and the reply of one of the 3 was 'He'll be dead anyway for we'll shoot him'."

No mercy was shown either to Mrs Connolly. Here is some of what Wall admits to in his statement.

"I grabbed the old woman by her arm and by the hair on the back of her head and I took her into the wee sitting room beside the hall. I put her on the sofa and I hit her on the back of her head with the back of my hand. I kept telling her that she better get out her money before I hit her again."

When Mrs Connolly tried to pull the garden hoe from the man who was using it on her husband, he struck her on the head with it. She thinks she must have passed out then for she next recalls lying on the floor in the hall with her legs tied and her hands tied behind her back. This is no exaggeration on her part, for Wall in his statement confirms it as follows:-

'That's when I came across the old woman lying in the hall. She had her hands tied behind her back. I bent down to pick her up but I couldn't do it. I thought at first that she was dying but then I seen her eyes blinking so I thought she was still half conscious.'

Eventually the 3 robbers left. They had found some money, about £260.00. They took with them also a gold chain, a gold ring and war medals. They left the house in complete disarray with blood splattered around the rooms, and the contents of the drawers stewn everywhere. And they left Mr Connolly in a helpless state, his face covered in blood and with laboured breathing. Mrs Connolly who had shown

considerable nerve and courage throughout the terror of this night, managed to free herself, get to her husband, put the nebuliser mask on him and then go to a neighbour's house for help.

When the police came the couple were taken to hospital. Mr Connolly had lacerations to his right ear and right forehead with surrounding bruising. There was bruising also on his chest and right forearm. His right ear was stitched. Shortly after his admission he became very cyanosed and shocked and had a rigor. Following resuscitation his recuperation was gradual and he was discharged on 5 October 1987. He died some time later, but it is not said by the Crown that the ordeal he suffered on the night contributed to his death.

Mrs Connolly, on admission, was found to have multiple bruising of her head, forehead and behind her ears. Bruising and laceration of her chin requiring one stitch was also noticed as well as bruising of the left arm, of both forearms and hands and right back. She was discharged after 5 days.

The learned Lord Justice in the course of a most cogent and helpful judgment reviewed all the authorities both here and in England on the appropriate sentences in cases of robberies in general and robberies of elderly householders in particular. He said:

"It follows that because the public and the legislature consider robbery to be a grave crime that the courts should impose punishment based on denunciation and deterrence rather than non-custodial individualised treatment of the offenders, even where there is a chance of influencing future behaviour."

We consider this to be the correct approach to be adopted by courts which are called upon to sentence in charges of robberies. In the case of robbery of elderly persons living alone it is hardly necessary to say that the approach suggested by the learned Lord Justice is the only possible one. At one time in this community elderly people living alone could leave their doors unlatched in the secure knowledge that no one but a neighbour would venture across the door. Sadly this is no longer the case. The elderly, the lonely, the infirm appear to have become the targets of violent and cruel criminals who seem intent not merely on theft but on causing fear and injury to the householders. The effect of such robberies on the victims can readily be imagined. It is unlikely that they will ever again have a night completely free from apprehension. Such robberies also have a destabilising effect on other people in similar circumstances living in the same community. The impression of the members of the court that such crimes are on the increase is borne out by figures supplied by the office of the Director of Public Prosecutions.

It would appear therefore that the courts must review the sentencing policy in regard to such offences. It must be brought home to offenders who violate the privacy and security of old people in their homes and expose them to violence that

immediate and heavy sentences of imprisonment will follow their detection and conviction.

We would endorse the sentiments of Lord Lane L C J in R v O'Driscoll [1986] 8 CAR(S)121. In that case in England the appellant and an accomplice had entered the home of an elderly man and assaulted him. They held a lighted gas poker to his face, tied him up with wire and gagged him. He had been sentenced to 15 years imprisonment and appealed. In dismissing the appeal Lord Lane said at p.122:

"... in the experience of this Court there is an increasing tendency for burglars to select as victims elderly or old people living on their own. It is plain why. First of all, they are not likely to offer very much resistance and the chances are they have not got inconsiderable sums of money concealed about the house.

Consequently, it seems to us that in cases such as this nowadays, where thugs, because that is all they are, select as their victims old folk and attack them in their own homes and then torture them, that is what happened here, in order to try to make them hand over their valuables in this savage fashion, then this sort of sentence whatever might have happened in the past, will be the sort of sentence that they can expect. One hopes that, insofar as lies in the power of this court, may have some effect in protecting these old folk from this sort of savage, sadistic, cruel and greedy attacks."

In this court in December 1988 the Lord Chief Justice in dismissing an appeal from a sentence of 12 years' imprisonment for armed robbery in which a couple were robbed at gunpoint and tied up and in which the husband had said he thought he might be shot, said:

"It is the duty of the courts to seek to protect people who live in isolated places and I make it clear to those who commit such offences that if they are caught and convicted they will receive heavy punishment."

In his judgment Kelly LJ stated with reference to the robbery of householders:

"... the starting point in England is 10 years. The Court of Appeal in Northern Ireland has not, so far as I am aware, laid down any guidelines for that second category of robbery, but in my view, subject to correction by the Court of Appeal the normal bracket for this kind of robbery, might well range from 6 to 12 years."

We consider, with respect, that because of the gravity of this type of crime and its increase in this jurisdiction and the need to ensure that people can live in safety in their own homes, the suggested starting point of 6 years is too low and that the starting point for sentencing in the case of robbery of householders where violence is used should be 10 years. This will increase depending on the degree of violence

used, the age or ages of the occupiers, any previous history for offences of violence and in the appropriate case a sentence of 15 years would not be excessive.

It follows that applying the scale which this court has now laid down the appellant would have received a sentence on Count 1 considerably in excess of 8 years and the appeal is accordingly dismissed.