R v Moore and others
COURT OF APPEAL (CRIMINAL DIVISION)

HUTTON LCJ10 MAY 1991

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These are appeals against sentence brought with the leave of a single judge. The appellants are Noel Percy Moore, William Cochrane, Hugh Cochrane, Robert McQuitty and Sarah Moore. They appeared before His Honour Judge Hart QC at Ballymena Crown Court in March of this year. When they were first arraigned they pleaded not guilty to the counts in the indictment but 4 days later they changed their pleas and pleaded guilty and they are entitled therefore to credit for those pleas of guilty and to a reduction in the sentences which would otherwise be passed, notwithstanding, that their pleas of guilty were late in the day. The counts which they faced on the indictment were as follows.

The first count charged aggravated burglary, contrary to section 10 of the Theft Act (Northern Ireland) 1969, against Noel Percy Moore, Hugh Cochrane and William Cochrane and the particulars of the offence were:

"Noel Percy Moore, Hugh Cochrane and William Cochrane, on the 5th day of August 1990, in the County Court Division of Antrim, entered as trespassers a building, namely a caravan situate at the Caravan Site, Brown's Bay, Islandmagee, County Antrim, and inflicted grievous bodily harm upon Thomas William Herron therein and at the time of the said offence had with them weapons of offence namely iron bars and a baseball bat."

The second count was against the accused, Robert McQuitty, and it charged him with aiding and abetting aggravated burglary, and the particulars of that offence were:

"Noel Percy Moore, Hugh Cochrane and William Cochrane on the 5th day of August 1990, in the County Court Division of Antrim, entered as trespassers a building, namely a caravan situate at the caravan site at Brown's Bay, Islandmagee, County Antrim and inflicted grievous bodily harm upon Thomas William Herron therein and at the time of the said offence had with them weapons of offence, namely iron bars and a baseball bat and that Robert McQuitty did aid, abet, counsel and procure the commission of the said offence."

The third count was against the accused, Sarah Moore, and it charged her with burglary, contrary to section 9(i)(a) of the Theft Act (Northern Ireland) 1969, and the particulars of the offence were:

"Sarah Moore on the 5th day of August 1990, in the County Court Division of Antrim, entered as a trespasser a building, namely a caravan situate at the Caravan

Site, Brown's Bay, Islandmagee, County Antrim, with intent to inflict grievous bodily harm upon Thomas William Herron therein.

The fourth count was against Sarah Moore, Noel Percy Moore, Hugh Cochrane and William Cochrane and it charged assault occasioning actual bodily harm contrary to common law and section 47 of the Offences Against the Person Act 1861, and the particulars of the offence were:
"Sarah Moore, Noel Percy Moore, Hugh Cochrane and William Cochrane, on the 5th day of August 1990 in the County Court Division of Antrim assaulted Lucinda Herron, thereby occasioning her actual bodily harm.

At approximately 7.00 am on the 5 August 1990 Noel Percy Moore and his wife, Sarah Moore, drove in a party of 6, 4 men and 2 women, following an evening's drinking, from Rathcoole to Brown's Bay, Islandmagee where an attack was made on the caravan of Mr and Mrs Herron. It was alleged that the accused, Noel Percy Moore had received a beating at the hands of Mr Herron about a week prior to the incidents which were the subject of the indictment and in the course of her interview with Woman Dectective Constable Wilson the accused, Sarah Moore, said –

"My husband got a beating from this fellow Herron last week and somebody else got a beating from him the week before. We had decided this morning to go and get them because of what he had done to my husband. It was decided in our house this morning."

There was no clear evidence before the Crown Court, and there is no clear evidence before this Court, as to whether the accused, Moore, had received a beating from Herron but it appears to be accepted that that may well have happened.

What happened after the group of accused arrived at the caravan site at Brown's Bay was this. Mr and Mrs Herron were asleep in their caravan together with their 6 children and they awakened to find in the caravan Noel Percy Moore, Hugh Cochrane and William Cochrane and those 3 men began to attack Mr Herron. They had with them hollow metal poles, which were apparently poles that were used in a swing-ball apparatus, they were not solid metal bars. The learned trial Judge emphasised that they were hollow metal bars although they could, no doubt, cause unpleasant injuries. Reference is made in the indictment to a baseball bat, but it is accepted by the Crown that no such bat was found and it appears that no such implement was used in the attack. However these 3 male accused broke into this caravan and began belabouring Mr Herron with these hollow metal poles. They also punched him and generally attacked him and in the course of this attack they also attacked Mrs Herron, who was lying in bed beside her husband and trying to shield him. At some stage the appellant, Sarah Moore, came into the caravan and she seized Mrs Herron by the hair and tried to pull her out of the bed and away from her husband. It appears that this attack went on for a considerable time and in the course of it the accused, William Cochrane, threw a pot through a window of the caravan and in so doing he seriously cut his arm and that seems to have brought about the termination of the attack. The attackers then went off and William Cochrane

ultimately received medical attention. During this attack the accused, McQuitty, waited outside.

After the attack Mr and Mrs Herron were examined later that morning by Dr Darragh and he found that Mr Herron had a number of weals on the right side of his thorax, a bruise on his right anterior chest and weals on his upper right arm and thigh. The doctor concluded that these injuries were consistent with being beaten a number of times by bars or baseball bats. He found that Mrs Herron had a large swelling to the right lower arm with reddening and linear abrasions and the doctor said that this injury was consistent with being hit with a rough bar or stick. It is relevant to observe that neither Mr Herron nor Mrs Herron sustained any fractures; they required no sutures and they did not require treatment.

As we have stated, the accused, McQuitty, remained outside the Herron's caravan while the attack was going on. He is a taxi driver and he was a friend of the co-accused. He had come into their company in the early hours of the morning when they invited him, on his return from work, to join them for a drink. At about 6.00 am he started to drive them down to Brown's Bay and in his interview with the police he maintained that he did not really know why he was going to the caravan site until he arrived there and, as we have stated, he remained on the fringe of the events at the caravan, although, of course, he pleaded guilty before the Crown Court.

The sentences which were imposed by the learned trial Judge were as follows: on Count 1, which is a charge of aggravated burglary, he imposed a sentence of 5 years' imprisonment on Noel Percy Moore and on the fourth count, which charged the assault of occasioning actual bodily harm, he imposed a sentence of 3 years and those sentences were to be served concurrently. Therefore he imposed a total sentence on Noel Percy Moore of 5 years. On Hugh Cochrane he imposed similar sentences, 5 years' imprisonment on the first count and 3 years' imprisonment on the fourth count; those sentences to be served concurrently. Hugh Cochrane had previously received a sentence on 6th February of 1991 at Belfast Crown Court of 18 months imprisonment in respect of the offence of arson, and the learned trial Judge directed that the total sentence of 5 years which he imposed should be consecutive to that sentence of 18 months.

He imposed a sentence on William Cochrane of 4 years' imprisonment on the first count and 3 years' imprisonment on the fourth count; the sentences to be concurrent.

On Robert McQuitty he imposed a sentence of 12 months' imprisonment on the second count.

On the accused, Sarah Moore, on the third count, charging her with burglary, he imposed a sentence of 12 months' imprisonment and on the fourth count he imposed a sentence of 12 months' imprisonment; those sentences to be concurrent.

As regards the records of the various appellants, Noel Percy Moore is now aged 34 and he lives with his wife, the co-accused Sarah Moore, and their 3 children. His

only previous court appearance was in 1976 when he was convicted of taking and driving away a vehicle, careless driving, having no insurance and no driving licence and disorderly behaviour. Those offences resulted in 3 months' imprisonment, disqualification and a fine.

Hugh Cochrane is now aged 24 years. He has been before the courts on 15 previous occasions between 1985 and 1991. His previous convictions include burglary, theft, indecent behaviour, taking a motor vehicle, breach of a community service order, criminal damage, common assault and a variety of road-traffic offences. As we have already stated, he was also convicted of the offence of arson in February 1991 at Belfast Crown Court and received 18 months' imprisonment.

William Cochrane is aged 33 years. He has 5 previous appearances in court between 1974 and 1987 and these include burglary, assault on the police, theft, disorderly behaviour and handling.

Robert McQuitty is aged 26. As stated he was employed as a taxi driver and he has had 2 previous court appearances – in March 1984 and May 1985 – for criminal damage and disorderly behaviour on the first occasion and breach of a traffic sign on the second occasion.

The appellant, Sarah Moore, is aged 34. She has had 2 previous appearances before the courts, receiving a conditional discharge in April 1983 for obstructing the police and disorderly behaviour and she was fined £50 in May 1987 following a further incident of disorderly behaviour.

In his judgment at page 6 the learned trial Judge said this:

"Aggravated burglary is a very serious offence carrying as it does a maximum sentence of life imprisonment. It is in effect a burglary committed with a firearm, with explosive or, as in this case, with weapons of offence. As such it is one of the most serious of cases, at least generally indistinguishable from bad cases of robbery with violence to householders.

In both categories the courts in Northern Ireland take a very serious view of such cases as may be seen from the comments of Lord Lane, Chief Justice, in the case of R v O'Driscoll [1986] 8 CAR sentencing at p 121, comments which were approved by Lord Justice O'Donnell in delivering the judgment of the Court of Appeal in Northern Ireland in the case of R v Samuel Joseph Ferguson. That these principles apply to cases of aggravated burglary is clear from the decision in R v Funnell & Ors [1986] 8 CAR sentencing at p 143.

As R v Ferguson makes clear in the very worst cases of robbery, which would generally involve serious violence inflicted on elderly people in the course of thefts of money or valuables from their homes, sentences should start at 10 years' imprisonment.

Below cases of aggravated burglary in terms of gravity would generally be found cases of burglary with intent to rape, which carries a maximum sentence of 14 years' imprisonment. Sentences in such cases would generally be significantly less than in the case of robbery or aggravated burglary of elderly people, although the decisions of the Court of Appeal in England in cases of burglary with intent to commit rape may be lower than would be the case in this jurisdiction where a higher starting point is considered appropriate in cases of rape and in cases of burglary with intent to commit rape. They can properly be viewed in the context of the sentences appropriate in the case of rape itself.

The only reported decision of which I am aware which involved the commission of aggravated burglary in order to inflict vengeance by way of revenge, which is basically the circumstances which apply in the present case, is the decision of the Court of Appeal in England in R v Gardner [1985] CLR at p 161.

In that case the sentence of 2 years' imprisonment in which 6 months was suspended was varied on appeal to one of 2 years' imprisonment with 12 months of that suspended, an option which is not available in Northern Ireland.

That appears to be a case at the very bottom of the scale of aggravated burglary on any view and I am satisfied that the present case is much more serious although it does not involve the very serious aggravating factor that the victims were elderly or infirm, nor were any sums of money or property stolen.

I consider that in the present case the following aggravating factors are present: (1) this was premeditated and planned and certainly initiated by Moore even if the others initially thought that Moore would fight Herron man to man. Nevertheless they were clearly going, intending to lend assistance in some form or other by their presence.

Secondly, for all concerned there was plenty of time to reconsider and withdraw from their plan as they drove from Newtownabbey to Brown's Bay in Islandmagee.

Thirdly, this attack involved a violent intrusion into a family home, for this is what this holiday caravan was at the time of the attack that was carried out.

Fourthly, this attack was carried out when there were known to be young children in the caravan. I have no reason to suppose that any of these children or Mr and Mrs Herron will suffer any permanent physical or psychological injury as a result of this experience. Nevertheless it must have been a terrifying experience for the children in particular and I consider that this is the most serious aggravating feature of this case."

The submissions advanced on behalf of the appellants were, in essence, that the learned trial Judge had adopted an erroneous approach and that he should have regarded this case as being one where there was an attack by one family on another arising out of hostility between the two families, rather than an offence analagous to

robbery with violence where robbers break into the homes of people, who may be elderly and who may be living in isolated places, and seek to steal their money and their valuables.

This court considers that the essence of these offences was that because of ill-feeling which had developed between the Herron family and the Moore family, the Moore family and their relatives carried out a serious attack on Mr and Mrs Herron, and that attack contained the aggravating features to which the learned trial Judge referred.

It seems, although, as we have observed, there is no definite proof of this, that some days before these offences Mr Herron and Mr Moore had been involved in a fight. The attackers in the caravan used hollow metal rods to inflict grievous bodily harm on Mr Herron and actual bodily harm on his wife. These were serious assaults. They were carried out in the context of a family quarrel in which there may have been faults on both sides, and although that does not excuse in any way what occurred, we think that this context should not be left out of account. As we have already observed, these attacks were aggravated because they were carried out when the Herron's caravan was broken into. As the learned Judge said "this was the Herron's home" and one of the particularly serious aspects of it was that the Herrons' 6 children were present and saw their parents attacked and must have been very greatly upset and disturbed by that sight.

However, we consider that the sentences imposed upon these appellants were wrong in principle and were too severe. We think that guidance as to the appropriate range of sentence is to be obtained from the English case of R v Gardner [1985] CLR 161 where the case is reported as follows:

"The accused pleaded guilty to aggravated burglary. A friend of the appellant had been attacked and kicked by a group of youths. The appellant equipped himself with a hammer handle to which he attached 15 inches of dog chain and went to the hostel where one of the youths whom he believed to have attacked his friend was living. When he encountered the youth the appellant invited him to come outside. When the youth refused the appellant struck him with the hammer handle, he then pursued him to a bathroom and broke open the door to get at him. The youth required treatment for a wound to the head but was not detained in hospital. Previous convictions none. Sentence 2 years' imprisonment with 6 months suspended. Special consideration: it was argued that although a sentence of imprisonment was inevitable, in view of the appellant's good character and the isolated nature of the offence, a greater portion of the sentence could be suspended. Decision: the sentence would be varied by an order increasing the part of the sentence which would be suspended from 6 months to 12 months".

Therefore, in that case, a case of aggravated burglary where a hostel was broken into and the victim was attacked with a hammer handle to which was attached 15 inches of dog chain, the accused was sentenced to 2 years' imprisonment, but 12 months of that sentence was suspended so that he went into custody for 12 months. In addition

to that case Mr Orr has referred us to a decision of His Honour Judge Russell QC, sitting at the Crown Court in Craigavon, where a group of relatives attacked a man in a house, who they believed had defrauded another of their relatives. It appears that the nature of the attack was somewhat similar to the case before us today and Mr Orr has informed us that in that case Judge Russell imposed a sentence of 2 years' imprisonment on the main attackers and lesser and suspended sentences on those who take a lesser part. Generally, references to unreported cases in other Crown Courts, where counsel understandably are not always aware of the full facts or of the full nature of the case, are not often of assistance to this court, but we consider that the case to which Mr Orr has referred and in which he was personally engaged, is of some assistance to us as indicating that the same approach was taken by a very experienced Crown Court Judge in this jurisdiction to a somewhat similar type of case, as was taken by the Court of Appeal in England in the case of R v Gardner.

In the present case the learned trial Judge took the view that aggravated burglary is one of the most serious cases, generally indistinguishable from bad cases of robbery with violence to householders. He then referred to the judgment of this court in R v Ferguson where this court dealt with robbers breaking into the home of old people and using violence against them. The learned Judge also referred to the offence of burglary with intent to commit rape. We consider that the learned trial Judge erred in principle in considering this case as being comparable to robbery with violence of householders and that this error led him to impose sentences which were too heavy, even although we recognise that he imposed a sentence on the main offenders much less than the sentence of 10 years referred to in R v Ferguson. We consider that the assault in this case arising from ill-feeling between the two families was not comparable to the violence used by robbers when they break into homes and use violence (and often very severe violence) to force the householders, often elderly people, to hand over their money and their valuables. Therefore we consider that these appeals should be allowed and we propose to vary the sentences as follows:-

On the first count against Noel Percy Moore, Hugh Cochrane and William Cochrane we quash the sentences imposed and in their place we impose a sentence of 2 years' imprisonment on Noel Percy Moore, a sentence of 2 years' imprisonment on Hugh Cochrane and a sentence of 18 months' imprisonment on William Cochrane.

On the fourth count, which charges assault, we quash the sentences and impose in their place on Noel Percy Moore a sentence of 18 months' imprisonment; on Hugh Cochrane a sentence of 18 months' imprisonment and on William Cochrane a sentence of 12 months' imprisonment. These sentences will be concurrent with the sentences on the first count.

The sentence of 18 months' imprisonment imposed at Belfast Crown Court on Hugh Cochrane on 6th February 1991 for arson presents a problem. The learned trial Judge made the sentences he imposed consecutive to that sentence of 18 months. It appears that Hugh Cochrane is an alcoholic and committed the offence of arson when he was sleeping rough. It seems that he accidentally set fire to a blanket which was around

him and, as the fire spread, he ran away without taking any steps at all to put the fire out or to tell anyone about it.

We consider that if Hugh Cochrane had been dealt with for that offence at the same court which dealt with these charges against him of aggravated burglary and assault, the total of the sentences for both groups of offences would have been adjusted by the trial Judge in a way which gave a fair result in relation to the overall situation and the sentences would not have been imposed as completely independent consecutive ones so that he served the full terms for both sets of offences.

Sitting in this court today we have no power to interfere with the sentence of 18 months' imprisonment for arson, which we have no reason to doubt was anything but a proper sentence for that particular offence, viewed in isolation and independently. But we consider in the particular circumstances of this case that it is not appropriate that the sentences for these offences committed at the caravan site should be consecutive to the sentence of 18 months' imposed for the arson. We recognise that it is not entirely appropriate either that they should be concurrent, but we have to choose between the sentences being consecutive or concurrent and in all the circumstances of the case we think that justice requires that the sentences should be made concurrent and we so direct, although we recognise that that is not an entirely satisfactory solution and that if, as we have said, the two sets of cases had been dealt with together at the one court, that a more satisfactory outcome might have been arrived at.

As regards the sentences imposed on Sarah Moore, we consider, having regard to her family circumstances and to the unfortunate ill-health of her parents, particularly of her father, and to the other matters that have been placed before us, that the sentences imposed upon her should be suspended and we also take account of the fact that although she played a deplorable part in these attacks, her part was not as serious as that of her husband and her two brothers. We have given careful thought to whether she should be put on probation and we are grateful for the helpful probation report that has been placed before us. We are glad that Mrs Moore has had the benefit of a number of meetings with the very experienced probation officer, but having considered the matter in the course of the adjournment, we think it is unlikely that this type of offence will be committed by her again. She has had a very serious warning as to what happens if she gets involved in this type of offence and we think, looking at the matter, both in her own interests and in the interests of the public, that the threat of a suspended sentence over her will be effective to keep her out of trouble in the future and that is what we propose to do in relation to her. We also will vary the sentences imposed upon her and on the third count we will vary the sentence and impose a sentence of 6 months' imprisonment, suspended for 2 years. On the fourth count we will vary the sentence imposed upon her and impose a sentence again of 6 months' imprisonment suspended for 2 years.

Those two sentences are concurrent.

In relation to the appellant, Robert McQuitty, we take the view that he played a relatively minor part in these offences. We think it may well be that he was not fully aware of what was happening until he set off to drive his friends to the caravan site and when he got there he did not take part in the attack in the caravan, and therefore we think it is right, having regard to his relatively minor record, his age and to his general circumstances that the sentence imposed upon him should also be suspended. We also vary the sentence imposed upon him and impose a sentence on the second count of 4 months' imprisonment but that is suspended for 2 years.

(The Lord Chief Justice then explained the nature of the suspended sentences to the accused Sarah Moore and to the accused Robert McQuitty).

Judgment accordingly