

Judicial Communications Office

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COURT OF APPEAL REDUCES SENTENCES IMPOSED ON BROTHERS FOR COMMON ASSAULT

Summary of Judgment

The Court of Appeal today set out its reasons for reducing the sentences imposed on two brothers for the common assault of a woman in Magherafelt in 2008.

Mark Francis Kennedy was initially charged with the attempted robbery and common assault of Jelena Rosadskova. Stephen Kennedy was charged with common assault of Mrs Rosadskova. The Court heard that Mrs Rosadskova was returning from work to her home in Magherafelt shortly after 6.00 pm on 11 November 2008. She was approached by two men, one of who was Mark Kennedy. A situation developed which resulted in Mark Kennedy phoning his brother Stephen who arrived with a fourth man. Stephen Kennedy assaulted Mrs Rosadskova by brushing the peak of his cap against her forehead. Mark Kennedy assaulted her by pushing her. Mrs Rosadskova was extremely frightened by the incident. It was agreed by the prosecution and defence that there were no racial aspects to the assaults.

Mark and Stephen Kennedy pleaded not guilty to the charges. The trial commenced on 7 December 2009. During the course of Mrs Rosadskova's cross examination, the prosecution indicated that it would not pursue the attempted robbery charge in the event that both brothers pleaded guilty to the common assault counts. They did so and were sentenced on 28 January 2010. Mark Kennedy was sentenced to 9 months detention. Stephen Kennedy was sentenced to 9 months imprisonment and the court ordered that 2 suspended sentences each of 4 months imprisonment should run consecutively to that sentence.

Mark and Stephen Kennedy appealed their sentences on the grounds that they were manifestly excessive. They accepted that the maximum sentence on trial in the Crown Court for the offence of common assault is 2 years imprisonment or detention. They submitted, however, that if the prosecution had not pursued the attempted robbery charge these cases would have been dealt with at the Magistrates' Court where the maximum sentence for the offence of common assault is one of 12 months imprisonment or detention.

The Court of Appeal stated that in a case such as this the general principle should apply that an accused person should not be especially heavily sentenced because of exercising his or her right to go to the Crown Court. The applicants in this case had not, however, elected to go to the Crown Court but were dealt with there because of a charge no longer pursued by the prosecution. The Court of Appeal said that it is therefore relevant to examine the sentence to see whether it is out of all proportion to what the magistrate might have imposed.

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Delivering the judgment of the Court, the Lord Chief Justice said that the level of physical violence used by Mark and Stephen Kennedy was modest. He added that this has to be balanced, however, by the fact that Mrs Rosadskova was faced by a number of young men who had been drinking and it was agreed that the circumstances were such that she was extremely frightened. The Lord Chief Justice noted that both Mark and Stephen Kennedy have criminal records, and that Stephen Kennedy has a recent record of violent offences.

The Court of Appeal considered that both Mark and Stephen Kennedy were entitled to some credit for their pleas but not to the same extent as if those pleas had been entered at an earlier stage in the proceedings. It reduced the sentence imposed on Mark Kennedy to one of 4 months detention. The Court also reduced the sentence imposed on Stephen Kennedy to one of 5 months imprisonment but added that the implementation of the suspended sentences should remain.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

ENDS

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