

# **Regina v Darren Joseph Murphy**

Court of Appeal Criminal Division

**[2019] EWCA Crim 438**

Before: Sir Brian Leveson President of the Queen's Bench Division Mr Justice Soole  
Sir Brian Keith

Thursday, 7 February 2019

## **Representation**

Mr A Morris appeared on behalf of Darren Murphy.  
Mr S Ray appeared on behalf of the Crown.

## **Judgment**

Sir Brian Keith:

1 On 24 September last year at Chester Crown Court, the appellant, Darren Murphy, was sentenced by Judge Dutton to three years' imprisonment for an offence of blackmail. He had pleaded guilty to the charge. He now appeals against his sentence with the leave of the single judge. We intend no discourtesy to the appellant if we refer to him by his surname from now on for convenience.

2 The man who Murphy blackmailed was an electrician, John Ibbotson. His business was called Ultimate Electronics. He did not advertise. His customers got to hear about him through word of mouth. One day last July, he went to a house in Crewe with David Freeman, who was managing the house on behalf of the landlord. He went there to check the electrical installations. They discovered that the locks had been changed since a previous visit. After forcing their way in, Mr Freeman discovered what he described as a "cannabis grow" upstairs. The police were called, but Mr Ibbotson and Mr Freeman were put on hold for so long that they decided to go to the police station instead. Once there, they reported what had been found. They returned to the house with a police officer. The cannabis grow was removed. Mr Ibbotson restored the electrical supply, and new locks were put on the property.

3 That would have been the end of the matter but for a call which Mr Ibbotson received one evening on his mobile about four weeks later from a withheld number. The caller was Murphy, though Mr Ibbotson was not to know that at the time, and Murphy was someone who he had neither met nor heard of. The caller asked, "Is that John from Ultimate Electronics?", and after Mr Ibbotson had

confirmed that it was, the caller said, "I want my fucking gear back." Mr Ibbotson had no idea at that stage what the caller was referring to, so he asked the caller to slow down and tell him what it was all about. This time the caller said, "I want my fucking gear. I know you've taken it." Mr Ibbotson thought that the caller was referring to some materials or tools which had gone missing on a job, and so he asked the caller, "What job? What gear?", and the caller replied along these lines: "Don't act dumb. I've seen you take it. Didn't you see us in the black Range Rover on Wistaston Road? I know where you fucking live", and he then gave an address which was not Mr Ibbotson's, and continued: "I want my grow gear back or my money in 24 hours. Otherwise I'm going to come and chop you and your wife up. You'd better get my gear within 24 fucking hours."

4 Mr Ibbotson recalled the black Range Rover which the caller had referred to. He had seen it parked nearby when he and Mr Freeman had gone to the house. There had been a man inside, and Mr Ibbotson saw that man again visiting the help desk at the police station while he and Mr Freeman were there waiting to be seen. He saw the car again being driven past the house when they had returned there with the police. The driver had slowed down, and Mr Ibbotson had put it down at the time to the driver just being nosey.

5 Mr Ibbotson was frightened by this conversation. The caller had known his name and the name of his business, and that he was married. The caller had got his address wrong, but he had got his mobile number, and for Mr Ibbotson it was all too close for comfort. He called his brother-in-law who had the business's van to see if he was all right, as well as Mr Freeman, who told Mr Ibbotson that he had not had a similar call. Mr Ibbotson suggested to his wife that she go and stay with her sister, but she wanted to stay with him, and so they locked their home, went upstairs to the bedroom, armed themselves just in case, and put a chair up against the handle of the door to the bedroom. Unsurprisingly, neither of them slept that night, and the following day they reported the call to the police. Murphy was arrested the day after that.

6 The incident has had a real impact on Mr Ibbotson and his wife ever since. Their lives have been significantly affected. Mr Ibbotson took time off work and had the security at his home updated. He panics when his phone rings, and two months later he was still talking of "...living with constant fear in the back of our minds." The judge described all this as amounting to "serious psychological harm". We do not engage with the debate over whether that was entirely appropriate, but the very significant impact which Murphy's conduct has had on them is undeniable.

7 Murphy is 37 years old. He has many previous convictions, mostly for public order offences, none of real gravity, though he went to prison for seven months in 2006 for two offences of assault. He has two previous convictions for possessing cannabis, and a couple of months before committing the present offence he was given a community order for two years for producing cannabis. So he was in

breach of that order at the time of this offence. However, he faced no charges relating to the cannabis grow discovered by Mr Ibbotson and Mr Freeman.

8 The mitigation advanced to the judge by Mr Morris on Murphy's behalf, in addition, of course, to his plea of guilty, was that the blackmail consisted of a single phone call, there was no face to face confrontation with Mr Ibbotson, he did not know where Mr Ibbotson lived and so could not carry out his threats (though, of course, Mr Ibbotson was not to know that), and the fact that he was the main carer for his father who was wheelchair bound following a stroke. Mr Morris also told the judge that Murphy had not been involved in setting up the cannabis farm. He had simply provided some of the equipment for it. Mr Morris does not say that Murphy did not know what the equipment was for, but he did say that Murphy had not been paid in full for the equipment. He claimed that the person to whom he had provided the equipment had told him that he would not be paid until the equipment had been returned. That was who had told him about Mr Ibbotson, and who had given him Mr Ibbotson's mobile number. Mr Morris also told the judge that Murphy had not been in the black Range Rover. Other-wise, he would have known that the police had the equipment. It follows that Murphy believed that Mr Ibbotson had it, which explains why he targeted Mr Ibbotson. The judge took four years' imprisonment as his starting point, which he reduced to three years' imprisonment to reflect Murphy's plea of guilty at the plea and trial preparation hearing.

9 There were originally a number of grounds of appeal, but they have all been withdrawn bar one, and that is that the judge's starting point of four years' imprisonment was simply too long. There is no sentencing guideline for the offence of blackmail, almost certainly because cases of blackmail are necessarily very fact specific, though the offence has been described as ugly, vicious and nasty. The authorities cited by Mr Ray for the prosecution show that the typical case of blackmail falls somewhere between robbery and simple theft in terms of seriousness. Relevant factors include the nature of the demand, the victim's ability to meet that demand, the nature of the threat to the victim should the demand not be met, the anguish and fear which the victim would usually experience, and the extent to which that anguish and fear was intended.

10 Attempts have occasionally been made to cross-check sentences in blackmail cases with the sentences passed for different offences of apparently similar gravity. For example, in *R v Ferguson and Newby [2017] EWCA Crim 356*, the court looked at the sentencing guidelines for aggravated burglary by way of such a cross-check, and concluded that the sentence for the offence of blackmail which it was considering was not out of line with those guidelines. Mr Morris says the judge was referred to this case, but it does not appear in prosecuting counsel's opening, nor did the judge refer to it, and since the facts of the case are so different to the present one, we put it to one side.

11 A sentencing guideline with greater relevance to the present case is the

guideline on the offence of making threats to kill included in the Definitive Guideline on Intimidatory Offences issued by the Sentencing Council. After all, Murphy threatened to chop Mr Ibbotson and his wife up if his demand was not met. But the guideline is not a particularly persuasive analogy, first because the maximum sentence for the offence of making threats to kill is ten years' imprisonment, whereas the maximum sentence for blackmail is fourteen years' imprisonment; and secondly because blackmail involves much more than simply making threats. The gravamen of the offence is the making of an unwarranted demand accompanied by a threat of some kind. We think that it would be unwise for sentencing judges to place too much weight on this guideline when considering the offence of blackmail, even where the threat consists of a threat to kill.

12 All in all, this was a particularly nasty case. We have not overlooked that the demand and the accompanying threats were made in a single phone call, that they were not made face to face, and that not long afterwards Mr Ibbotson would have known that a man who had in effect confessed his guilt had been caught and was in custody. But Mr Ibbotson was not to know whether the man had been acting alone or whether he had been part of a wider group of people who might wish to take reprisals on Mr Ibbotson for the part he played in the man's arrest, and the effect of it all on Mr Ibbotson and his wife was very considerable. Moreover, it was not just the fact that the threat was a threat to kill which makes this case serious. The demand here was a demand which amounted to a demand to suppress crime, since Murphy's case was that he had not known about the involvement of the police, and therefore had not realised that the police had known about the cannabis either.

13 In all the circumstances of the case, we do not think that the judge's starting point of four years' imprisonment was too long. The appeal must be dismissed.