

# Regina v Kris Murden

Court of Appeal Criminal Division

**[2019] EWCA Crim 1154**

Before: Lady Justice Rafferty DBE Mrs Justice McGowan DBE Recorder of Cardiff (Her Honour Judge Rees )

Tuesday, 14 May 2019

## Representation

Mr P Eguae appeared on behalf of the Appellant.

## Judgment

Mrs Justice McGowan:

1. On 27 April 2017, in the Crown Court sitting at Wood Green, the appellant pleaded guilty to an offence of assault occasioning actual bodily harm. On 12 May 2017 he was sentenced. The learned judge imposed an extended sentence, a total of 5 years, comprising a custodial element of 3 years and an extended period of licence of 2 years. Ancillary orders relating to the forfeiture and destruction of the chain (the dog lead used in this assault) and the victim surcharge order were also made. No complaint is made about that part of the sentence.

2. Mr Murden appeals against his sentence by leave of the single judge, who also granted him an extension of time, exceptionally, on the facts of this case, of 619 days and a representation order for counsel.

3. The assault occurred on 23 March 2017. It was about 4.15 in the afternoon. The complainant, who was a 58-year-old woman, was walking towards her car along St Mary's Road in North London. She noticed the appellant, whom she did not know, he was close by her with his dog. She stopped and attempted to pet the dog. The appellant became extremely aggressive shouting: "Don't touch my fucking dog" and an argument began between the two.

4. The appellant took the dog chain which he had been holding and repeatedly struck the complainant in the face. He used a considerable degree of force.

5. It appears, having seen the recording of the incident and the statements provided to the court, that there were about eight blows to the complainant's face using the dog chain.

6. A member of the public intervened and came to the complainant's assistance. She moved away and sought some form of security with others in a park nearby.

7. Police were called and arrived. They saw the appellant nearby. He was arrested. The dog lead was

recovered. In due course he was interviewed and made no comment.

8. When the complainant was examined, she was found to have a number of lacerations in the area above her right eye and a 2 centimetre cut to the bridge of her nose.

9. It was clear from the victim personal statement provided to the court that whilst her physical injuries were not the most serious, she had been greatly troubled by what had happened and had been affected in the long term by the incident.

10. The appellant had a number of previous convictions, included amongst which were offences of violence, the carrying and the use of offensive weapons and a firearm offence. These required the judge to consider the imposition of an extended sentence.

11. In passing sentence the judge had regard to the pre-sentence report and to a psychiatric report which had been prepared on an earlier occasion. The pre-sentence report concluded that this was an offence which clearly crossed the custody threshold, that the author of the report formed the view that only immediate custody could effectively manage the risk which, in the author's view, this appellant presented of carrying out an attack or assault on a member of the public in the future.

12. The psychiatric report showed that this appellant had a history of severe anxiety and depression. On occasions he suffered from paranoid delusions. He demonstrated antisocial traits and had symptoms of post-traumatic stress disorder. He did not have a severe enduring mental illness, nor did he suffer from an illness of a nature or degree as defined under the Mental Health Act 1983 and there was no recommendation to the court for any particular disposal of a medical or psychiatric nature but it was observed that he had not, until that point, been receiving the proper treatment by way of counselling or antidepressant and anti-panic drugs for the conditions from which he undoubtedly suffered.

13. In passing sentence, the learned judge remarked that this was a shocking, unprovoked, brutal and sustained attack. The complainant had done nothing to bring about the assault - she had merely attempted to pet the appellant's dog. He had reacted in a way that was completely uncalled for and unwarranted. She had suffered cuts to her face and in particular a 2-centimetre cut to the bridge of her nose. The judge made particular reference to the psychological effect upon the complainant and described how her life had been changed dramatically and that the actions of the appellant had had a very profound effect upon her.

14. The learned judge observed that the appellant expressed no remorse but we note, to the appellant's credit, that he indicated and indeed entered a guilty plea at the first opportunity. The judge had regard to the sentencing guidelines, in particular the Definitive Guideline of the Sentencing Council in relation to Assault.

15. The parties had agreed that this fell into category 1 for a number of reasons but particularly the greater harm as a result of the sustained nature of the assault and the higher culpability demonstrated by the use of the dog chain as a weapon.

16. The starting point within that categorisation was 18 months within a range of 1 year to 3 years'

imprisonment. The judge expressed the view that this fell at the top end of that range and accordingly proposed to sentence on that basis. However, in passing sentence the learned judge took the view that the offence fell outside that range, he took the starting point for sentence of four-and-a-half years before giving credit for the plea of guilty. The learned judge considered the defendant's record and took the view that he was somebody who presented a continuing risk and therefore an extended sentence was merited. No complaint is made today about the imposition of the extended sentence. Mr Equae, on the appellant's behalf, makes the observation that some confusion between the category range and the statutory range of sentencing must have entered into the sentencing process for the learned judge to reach the starting point of four-and-a-half years in the way that he did.

17. In the view of this court there is merit in the submission made. The offence clearly fell into category 1. This was a sustained attack. It was committed using a weapon. The additional features which the learned judge considered, namely that it was committed in broad daylight and in public must be approached with a degree of caution. They might equally well have applied had this offence occurred at night and in an isolated location. Nonetheless, the use of the weapon and the nature of the assault itself rightly placed it in category 1 and at the top end of the range in category 1, therefore taking the appropriate sentence for this assault before credit for a guilty plea to 3 years.

18. Full credit was deserved. Taking 3 years at the top of the range as the starting point and giving full credit, the appropriate sentence for this offence, without more, was one of 2 years. However, the learned judge was entirely right to impose an extended sentence given the nature of this offence in combination with the fact that at least one of the appellant's previous convictions was a schedule 15B offence, under the Criminal Justice Act 2003. Accordingly, we impose an extended period of 2 years in addition to the 2 years custodial element of the sentence, making a total term of 4 years, 2 years' custody plus the extended period of 2 years on licence.

19. To that extent this appeal is allowed and that term is substituted for the original sentence.