SUPREME COURT OF QUEENSLAND

CITATION:	*R v Bowe; R v Taylor* [2004] QCA 414
PARTIES:	**R** v **BOWE, Dion Brett** (applicant) **R** v **TAYLOR, Jeffrey John** (applicant)
FILE NOS:	CA No 271 of 2004 CA No 272 of 2004 DC No 267 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Cairns
DELIVERED EX TEMPORE ON:	3 November 2004
DELIVERED AT:	Brisbane
HEARING DATE:	3 November 2004
JUDGES:	Davies and McPherson JJA and Fryberg J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Each application for leave to appeal against sentence dismissed**
CATCHWORDS:	CRIMINAL LAW - JURISDICTION, PRACTICE AND PROCEDURE - JUDGMENT AND PUNISHMENT - SENTENCE - FACTORS TO BE TAKEN INTO ACCOUNT - CIRCUMSTANCES OF OFFENCE - where the applicants were both convicted of burglary with circumstances of aggravation, assault occasioning bodily harm whilst armed and in company, wilful damage and other offences - where each applicant was effectively sentenced to two and a half years imprisonment - where the offences involved entering the home of the complainant uninvited, verbal and physical abuse to the complainant and damage to his property - whether the sentences imposed were manifestly excessive in the circumstances

R v Brelsford [1995] QCA 594; CA No 301 of 1995, 14 September 1995, cited
R v Frazer [1997] QCA 306; CA No 252 of 1997, 5 August 1997, cited
R v Hardman [2001] QCA 15; CA No 312 of 2000, 6 February 2001, cited
R v Houghton and Genrich [1998] QCA 137; CA No 424 of 1997, CA No 425 of 1997, 26 February 1998, cited
R v Williamson [1996] QCA 548; CA No 392 of 1996, 1 November 1996, cited

COUNSEL: Each applicant appeared on his own behalf
T A Fuller for respondent

SOLICITORS: Each applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for respondent

DAVIES JA: The applicants were each convicted after a trial in the District Court on 15 July 2004 of the offences of burglary with circumstances of aggravation, assault occasioning bodily harm whilst armed and in company and wilful damage. Bowe was also convicted of the additional offences of assault and wilful damage. Each was sentenced on the same day to two and a half years imprisonment in respect of the offences of burglary and assault occasioning bodily harm whilst armed and in company, and to twelve months imprisonment for the offence of wilful damage. Bowe was also sentenced to 12 months imprisonment for each of the additional offences of assault and wilful damage. All sentences were ordered to be served concurrently.

Stephen Yelds had been involved for three years in an intimate relationship with Patricia Carroll who had formerly been in a similar relationship with Bowe. Bowe was the father of Ms Carroll's daughter. During his relationship with Ms Carroll,

Mr Yelds had met Mr Bowe a number of times. He had not met Taylor before the night of the offences, which was 25 October 2003.

Mr Yelds and Ms Carroll had separated about six weeks before this date, but Mr Yelds was hopeful that they would reconcile. In the meantime he allowed her, for some time, to retain possession and use of a motor vehicle which he had purchased and registered in her name.

On 25 May 2003 he decided to restrict Ms Carroll's use of the motor vehicle by placing a steering wheel lock on it and retaining the key. This meant, he said, that she had to obtain his permission before using the car. He did this, he said, in an attempt to ensure that she maintained contact with him.

At about 7.40 pm on Sunday 25 October 2003 Mr Yelds was at home watching television with a woman who shared his accommodation when Taylor and Bowe entered his home, uninvited, through the open back door. Taylor was armed with a bicycle lock and cable and Bowe was armed with a piece of varnished timber. Taylor asked Mr Yelds if he was Yelds, and when the latter replied "no" Taylor said "bullshit" and struck him on the left side of the head with the bicycle lock and cable. Mr Yelds put his hands up to defend himself and was struck a second time on the hand.

Mr Yelds, whilst still seated, kicked at Taylor at which time, Bowe entered the room abused him and struck him a number of blows about the head with a piece of timber. Bowe called him a "dog" and repeatedly told him to stay away from Bowe's daughter. By this time, Mr Yelds was bleeding from a wound to his scalp. Taylor then went into the kitchen and noises were heard consistent with him kicking or hitting the walls. He returned with a carving knife, offered it to Mr Yelds and invited him to take his chances with it against him. Yelds did not accept the invitation.

Bowe then directed Mr Yelds to go out into the carport and followed Mr Yelds out picking up the knife as he did so. Bowe then demanded the key of the steering lock. Yelds handed it to him and Bowe continued to abuse him. Yelds was then directed to lie on the floor, which he did, and Bowe then proceeded to use the piece of timber to damage another car which Yelds had been repairing. A headlight, indicator, and the bonnet were all damaged. Once again he struck Mr Yelds with the piece of timber, this time on the thigh and repeated his demand that Yelds stay away from his daughter. Bowe then joined Taylor in Yelds' apartment and Yelds could hear them damaging further items in the house. Yelds then fled and sought medical attention. The doctor noted lacerations to his scalp, one of which required suturing, multiple bruising to the scalp and bruising of the left thumb.

When interviewed by police Bowe denied any involvement in the offence, claiming to have been home all evening. However,

when he gave evidence at his trial, which he did, he admitted going to the house to recover the key to the steering lock. But he said he was invited in by Mr Yelds and that when he asked for the key Mr Yelds became aggressive and took a swing at him. He said they then became engaged in a fight and exchanged punches. He denied being armed or damaging property. In all of this he was plainly disbelieved by the jury.

Taylor also gave evidence. He admitted entering Yelds home with Bowe but he denied being armed, assaulting Yelds or causing any damage to property. He was also plainly disbelieved. Taylor admitted that he and Bowe had consumed a large amount of alcohol prior to these incidents.

This is yet another example of what appears to be an increasing number of cases of serious unprovoked assaults on persons in their homes by armed invaders. This was a cowardly, unprovoked assault, with weapons on a defenceless unarmed man sitting quietly in his own home.

As has been said on many previous occasions, the importance of protecting such people and consequently of deterrence in such cases cannot be overemphasised.

Both applicants have prior criminal histories. In Bowe's case the only relevant previous offence was one of entering a dwelling house with intent in 1991. He was also in breach of a domestic violence order in 2000. Taylor has a more serious

history mostly of property related offences over a substantial period but there is one offence of robbery with associated acts of violence for which he was imprisoned for nine months in 1993.

It may be said in favour of both applicants that though they appear to have drug addictions they have made attempts in recent times to overcome their addictions. Moreover each is in a settled relationship and employed. The learned sentencing judge recognized these attempts at rehabilitation by reducing the head sentence which might otherwise have been imposed.

In imposing an effective sentence of two and a half years on each of the applicants the learned sentencing judge did not distinguish between them either because of their criminality, or their prior history. I think that was a reasonable approach and neither applicant suggests otherwise. Each, however, contends that, having regard to his work and family history, he should have received a lighter sentence than he did.

Reference to comparative sentences for cases involving invasion of the sanctity of a person's home by two or more armed persons who then assault the unarmed occupant causing bodily harm, in my opinion, show that the sentence imposed here was, by no means, manifestly excessive. A limited number of examples of such cases was provided by the respondent. They are *R v Houghton and Genrich* [1998] QCA 137, R *v*

Brelsford [1995] QCA 594, *R v Williamson* [1996] QCA 548, *R v Frazer* [1997] QCA 306 and *R v Hardman* [2001] QCA 15. These and other cases in my opinion, show that a sentence of this length imposed after a trial was appropriate for offences of the kind which I have described.

I would therefore dismiss each of the applications.

MCPHERSON JA: I agree.

FRYBERG J: I agree.

DAVIES JA: The applications are dismissed.
