

237.6 Alcohol *Less than twice over the limit*

R v Samuel 2015 EWCA 487 D pleaded to drink-related causing death by careless driving. D spent the evening celebrating V's 22th birthday. V was D's cousin and friend. V had set up his own successful business and was due to be married. At about 5 am, they tried to book a taxi but were told it would take 50 minutes. V asked D to drive them to his home in V's car and V gave D the keys. On the way, D managed to negotiate a series of bends and then failed to identify a bend or miscalculated a bend due to intoxication. The car hit a tree and V died. Neither were wearing seat belts. D received a head wound requiring 20 stitches. D walked away from the scene. D lied about his involvement to a paramedic who saw him over half a mile away. D made no comment to the police. A backtracked blood test had an alcohol reading of 159 ml. The legal limit is 80 ml. D was 21 with no convictions and [an irrelevant] caution. He had a partner and character references. The defence said D could not read or write and the references said he tried to please others. The Judge considered there was momentary inattention with no aggravating factors when setting the starting point. When setting the sentence he found the following aggravating factors, a) did not ensure V was wearing a seat belt, b) the distance travelled before the collision, c) D fleeing the scene and d) D denying he was the driver, although this might have been attributable to intoxication. With these the Judge started at the top of the range, namely 7 years. The Judge reduced this to 6 years with the mitigation, and 4 years with the plea. He accepted D had remorse. Held. The impact statements make heartrending reading. There was no evidence of excessive speed. Because of the alcohol reading, we place this offence at the very top of the range. In truth it was on the cusp between the two categories. There were considerable aggravating factors. However with the mitigation we start at 5 years, so with plea, **3 years 4 months**.

238.11 Failing to see other road users

R v Dhuck 2014 EWCA Crim 2865 D pleaded to causing death by careless driving. On his way to work, D stopped at a junction with a main road. He initially intended to turn right but because of the traffic, moved into the left-hand lane to go straight on. He waited for four seconds and then moved to cross the junction. For part of the four seconds, D's view was obscured by traffic. D failed to see a motor cyclist, V, who hit D's car. V, who was driving at an appropriate speed, died at the scene. D remained at the scene and co-operated with the police. D was aged 45 with no convictions. He had an unblemished driving record. The Judge put the case at the upper end of Category 2. The pre-sentence report noted D's remorse and deep regret. Held. It was more serious than momentary inattention. The case was at the top of Category 3 or the bottom of Category 2. The appropriate sentence was a high-level **community order**. As D had served six weeks, we substitute 3 months.