

286.39 Firearms, With Basic principles

R v Lovell 2018 EWCA Crim 19, 1 Cr App R (S) 48 (p 364) D was convicted of murder. D, S and another went to V's house but he wasn't there. Threats to V were made. Later the three chased V through a park. S had a gun and D had what looked like a piece of piping. S shot V in the back, killing him. The prosecution relied on actions of the three during the day and joint enterprise. D said in his trial he knew S had a gun. The defence argued that the 30-year starting point only applied to the person who fired the gun. Held. We disagree. The starting point covers those in a joint enterprise.

286.53 Multiple murders Cases

Att-Gen's Ref 2017 Re Barley 2017 EWCA Crim 2313 D pleaded (full credit) to two murders and an attempted murder. Five years earlier, D had pleaded to a section 20 assault on his former partner and was sentenced to 44 months. On his release, then aged 23, V found D sleeping rough outside a supermarket. She took him home and with great kindness provided him with money, meals and at times accommodation. She and her husband, W, found him employment twice and both times he frittered away the chances given to him. Each evening they gave him a meal. When he was arrested for theft and assault on a PC they helped him again. Just under a year from when V first met D, D made a death threat to V. About a week later, from about 12.44 am, D moved around V and W's garden trying not to be seen. He changed his jacket and put socks on his feet to make himself hard to be seen. D wore a balaclava or a hat. He took a hammer from a shed and tried to enter the house. This failed and he hid and stayed awake until he saw W taking his dog for a walk. D went into the house and took one or more knives from the kitchen and went upstairs where he stabbed V 17 times. Some of the wounds penetrated 10-15 cm. He stabbed V's 13-year-old son, S, multiple times. At about 8.00 am, when W returned, D confronted him and slashed and stabbed him saying, "Die, you bastard." D escaped in a vehicle he took from the driveway. He drove dangerously, crashed the vehicle and was arrested. Police attended the house and found V dead and S and W alive. W suffered enormous pain and was in 'critical care' in hospital for a week. S died. D showed no remorse and told the police he was pleased two were dead and upset W was alive. D threatened to do the same to the police. The only explanation for the killings was that D had a history of blaming others for his misfortunes. The victims' family was overcome with grief. As a child D had suffered sexual and physical abuse. He had a disrupted childhood and childhood trauma which had led to an emotional unstable personality disorder. D had been prescribed anti-psychotic, mood-stabilising and anti-depressant medication. On 14 occasions he had been convicted of 21 offences involving both dishonesty and violence. The prosecution relied on: a) the three attacks, b) the invasion of the family home, c) the profound breach of trust, d) the brutal and savage nature of the stabbings, e) the victims' terror, f) S's age, and g) the effect on V and W's family and the local community. The Judge found an intent to kill. Held. The planning and premeditation was 'very strong'. The Judge was entitled to take into account D's comparative youth, not to give a whole life order. The only significant mitigating features were the personality disorder, which to a limited extent lessened D's culpability, and the fact that he admitted responsibilities for the deaths from the start. Given the weight of the many and grave aggravating features, we start at 40 years not 35, making with plea a **35-year** minimum term not 30.

Att-Gen's Ref 2018 Re Johnson 2018 EWCA Crim 834 D pleaded to murder of V3. In May 1981, D killed his wife, V1. They had argued and fought and D struck V1 with an ashtray and a vase. The fight moved to the balcony and he pushed her off the balcony to her death.¹ D was acquitted of murder and convicted of manslaughter on the basis of provocation. He received 3 years. On his release he began a relationship with V2 and they had a child. In 1992, they argued and fought and D strangled her with a

¹ The judgment says he pushed V1 to her death. A news report makes clear that V1 was pushed off the balcony.

belt. He then made two suicide attempts. D was found to have a severe depressive illness and in 1993, he pleaded to manslaughter on the basis of diminished responsibility. A Hospital Order was made with a Restriction Order. In the mid-1990s, when on temporary leave, he met V3. In 1997, D was conditionally discharged from hospital. In breach of the conditions, he failed to tell the authorities about his relationship with V3. When asked about relationships, D lied. In 2016, V3 found another partner and D begged her to come back. There were warning signs that D was relapsing into depression. He made an appointment to see a doctor but the doctor was unwell and the visit was cancelled. V3 went to D's house to help him fill in a form. An argument developed. The Judge considered it was highly likely D was angry about V3's failure to return to him and jealous of V3's new partner. D struck her six blows to the head with a claw hammer. He then strangled her with a dressing gown cord. D left the house, called no one and threw himself in front of a train. One arm had to be amputated at the wrist, the other was amputated below the shoulder. V3's family was devastated by the murder. D was now aged 64. He suffered from diabetes and glaucoma. D pleaded to manslaughter based on diminished responsibility, which was not accepted. This was supported by the defence doctor. The prosecution doctor disagreed. D then said from the dock he would plead to murder in a large part to spare the family the ordeal of a trial. After seeing his counsel, he pleaded. The Judge found the following: a) it was a sustained, vicious and utterly brutal attack, b), this was the third time D had killed a partner, c) the repeated concealing of the relationship was an extremely serious aggravating factor, d) there was an intent to kill, and e) the mitigation was: i) his serious ill-health and disability, which would make reoffending 'unthinkable', ii) the absence of premeditation, and iii) his mental health. He noted that D had chosen not to defend the murder although there had been medical support for it. He decided he would give more than the 5% discount for the late plea. Held. D caused V3 terrible pain and suffering in her last moments. For the two earlier killings the ingredients of murder had been made out. Mental health issues were not involved in the first killing. The breach of D's discharge conditions was a gravely aggravating factor. It was reasonable for the Judge not to make a whole life order. The combination of the first manslaughter conviction and the circumstances of V3's killing made the case one of 'particularly high seriousness'. The starting point was 30 years. The Judge's three factors a) to c) increased that figure to 35 years. We give greater weight to the personal mitigation than the Judge. We too give more than the 5% reduction for the plea and arrive at **30 years** not 26.