

**302.3 Contempt of Court Practice Direction and judicial guidance**

*R v Yaxley-Lennon* 2018 EWCA Crim 1856 D was found guilty of contempt of court on two separate occasions. Held. For one, we uphold the suspended term. For the other, we quash the finding and send the case back to the Crown Court to be heard by a different judge. The approach to sentence in cases of this sort is as follows. We apply *R v Montgomery* 1995 16 Cr App R (S) 274. The particular facts of that case concerned the refusal of a witness to give evidence but the factors material to punishment can readily be adapted and applied to cases involving breach of reporting restrictions. They would usually include:

- a) the effect or potential consequences of the breach upon the trial or trials and upon those participating in them,
- b) the scale of the breach, with particular reference to the numbers of people to whom the report was made, over what period and the medium or media through which it was made,
- c) the gravity of the offences being tried in the trial or trials to which the reporting restrictions applied;
- d) the contemnor's level of culpability and his or her reasons for acting in breach of the reporting restrictions;
- e) whether or not the contempt was aggravated by subsequent defiance or lack of remorse;
- f) the scale of sentences in similar cases, albeit each case must turn on its own facts;
- g) the antecedents, personal circumstances and characteristics of the contemnor;
- h) whether or not a special deterrent was needed in the particular circumstances of the case.

Additionally, cases involving a breach of a section 4(2) postponement order will often give rise to the following potential consequences:

- a) Trials may have to be abandoned irretrievably;
- b) Juries may have to be discharged and retrials ordered with all the consequent delays and expense;
- c) Witnesses, some of them perhaps vulnerable, may have to face the ordeal of giving evidence for a second time;
- d) The trial Judge's decision upon how to manage the trial in response to the contempt may form the subject matter of an appeal which, whether or not successful, will generate additional anxiety, delay and expense.

More generally consider culpability and harm as identified in the *Overarching Principles: Seriousness Guideline 2004*.

Note: Judges may apply those parts that are relevant to other types of contempt of court and some perverting the course of justice cases. Ed.

**302.6 Perverting the course of justice etc. Judicial guidance**

*R v Walker* 2018 EWCA Crim 1018 D pleaded to perverting. Held. There will normally be two main factors to determine the sentence: a) the nature and seriousness of the main offence for which liability was sought to be evaded, and b) the nature and culpability of the defendant's actions.

For more detail, see **302.30**.

**302.10 Evidence, Interfering with Cases**

See also: *Att-Gen's Ref 2017 Re Coslett 2017 EWCA Crim 2376* (D convicted of two counts of perverting. She tried to help her son, S, who with others punched and kicked V, a defenceless drunk, to death. V died of brain damage. D washed S's clothes and lied to the police about whether he had a mobile. He also lied by saying that S had only the footwear he was arrested with when D had disposed of the footwear worn during the murder. Others also lied to police hoping to help those accused. S was convicted of murder and two pervertings. D was aged 64 and in poor health. She had 16 previous convictions including 18 months for helping another son escape custody and threatening behaviour. Held. We place the offence at the top of the 2-3 year range in *Att-Gen's Ref No 109 of 2010 2010 EWCA Crim 23821* and with the mitigation reduce that to 2 years immediate not 18 months suspended.)

### **302.15 Incriminate innocent people, Trying to Rape claims Cases**

*Att-Gen's Ref 2018 Re Costin 2018 EWCA Crim 1381* D pleaded to seven counts of perverting the course of justice. During a three-month period, D made seven false allegations against four men, namely four rapes, two sexual assaults and one assault. D provided details of the offences saying in one how one victim had pushed her onto the carpet in her home and vaginally raped her. She accused another man of forcing his way into her house and 'thumping' her in the face. Police found a kitchen knife in the garden and D said that the man had brought it with him. The allegations were all thoroughly investigated and some of the men were arrested multiple times and medically examined. Strong alibis and the use of CCTV footage proved all the allegations to be false. CCTV footage also showed D dropping the kitchen knife in her garden right before she called the police to make the assault allegation. Over a number of interviews, D eventually admitted to fabricating the allegations. She said that she reported one of the men because she wanted to get back at him because he owed her money. She also admitted to dropping the knife in her garden because she felt like it. D said that she suffered from autism, stress and post-traumatic stress disorder as a result of being raped at the age of 10. Three of the victims made impact statements about the devastating effect the false allegations had upon them, particularly for one of the victims who had learning disabilities. A community mental health nurse said that D had been diagnosed with autism, pathological avoidance demand syndrome and emotional unstable personality disorder. A psychiatric report detailed the significant progress that D had made over the last few years. It noted that previously D had telephoned the emergency services or visited A & E or her doctor on almost a daily basis, but now that conduct had significantly reduced. D had 16 previous convictions on seven occasions, mostly relating to offences contrary to Protection from Harassment Act 1997. D had had restraining orders, fines, conditional discharges and community orders, which she had frequently breached. In October 2016, she breached a Restraining Order by persistently ringing emergency services unnecessarily. D was on bail for the present offences when she committed an offence that led to a conviction for harassment in April 2017. In a letter to the Judge, D said she would kill herself if sent to prison. The Judge concluded that prison would be inappropriate because of the risk of self-harm or suicide. He also considered that she had done well recently. After sentence the prosecution relisted the case to show that three months before her plea she made a false rape allegation and in the same month as her sentence she had made a false allegation of sexual assault. Also, D's behaviour had become so bad that she was the only person to be banned from her mental health unit. Held. The Judge placed too much emphasis on the offender's problems and insufficient emphasis on the impact of her offences on the victims and for the criminal justice system as a whole. We start at 6½-7 years. We acknowledge the extent of D's difficulties and the considerable care and support that professionals have offered her over the years. With her mitigation and the plea, **4 years**, not a community order.

### **302.28 Police officers as defendants**

*Att-Gen's Ref 2017 Re Phelps 2017 EWCA Crim 2403* D was convicted of perverting the course of justice. He was a Detective Constable with 15 years' police service. T was arrested for burglary at his home, where four class A wraps, £230 in cash and drugs paraphernalia were found. W was present. T's mobile had messages consistent with drug supply. T was arrested and interviewed by D and another. T

---

<sup>1</sup> The judgment refers to a different case, but the context makes it clear that the Judge meant this case.

made no comment. D then became the investigating officer. T was released on bail. W's DNA was found on one of the wraps. D spoke to T about him giving a witness statement. D went to T's home to speak to T. Their conversation was secretly recorded by T's father. D said the mobile contents were like a 'fucking dream' although in fact D had never read them. D sought to persuade T to be re-interviewed and admit being in possession of the wraps and explain the cash (from gambling) and account for W's DNA on the wrap (he must have touched it when it fell to the floor). D said if T did that he would guarantee a police caution for T and W would not be arrested. T said he'd like to speak to his solicitor. D then followed it up with an e-mail to T's solicitors. There was no response so he sent another one. D was arrested and said he had a large work load and wanted to reduce his stress. When told about the recording he made no comment in interview. The jury was directed that to convict they had to be sure that D deliberately intended to coach T to give a misleading account. T and W were charged with possessing class A drugs with intent to supply and both received 5 years. D was aged 42 and of good character. He had references from inside and outside the police force. D was dismissed from the police and became unable to support his ex-wife and their children. In 2013, his father died. In 2014, his mother had a chronic illness and he was her sole carer. D was diagnosed with depression. The Judge found no corrupt motive and considered D was trying to save time. He gave 28 days but as D had 14 days for the tag time no period was served. Held. Perverting the course of justice by police officers is particularly serious. A measure of deterrence was required. There was an element of persistence. D's intention was not only the [inappropriate] caution but that the cash and the incriminating evidence on the phone would be handed back. We start at 15 months and with the mitigation reduce that to **11 months**.

### **302.30 Prosecution/conviction, To avoid Cases**

See also: *R v Walker* 2018 EWCA Crim 1018 (D pleaded to perverting. He was in a car when the driver while speeding hit a pedestrian causing extremely serious injuries. The two drove away and D bought lighter fuel which the two used to set fire to the car. D had 44 previous convictions on 18 occasions. They included kidnapping (IPP with a 2-year custodial term). The driver received 6½ years for the serious injury matter and 18 months consecutive for the perverting. The Judge started at **45 months** for D, making with plea 2½ years. Held. That was not excessive.)