

319.20 Firearm, With etc.

R v Jeffrey and Carroll 2018 EWCA Crim 2135 D and C pleaded to two robberies and two possessions of an imitation firearm. On a Sunday afternoon, D and C robbed the staff at two Post Offices within shops. These were in two villages in west Cornwall. D and C wore balaclavas throughout both robberies. In the first robbery, one of the men stood guard at the door and the other, holding an imitation firearm, ordered V, a member of staff, to open the till. Despite shaking, V managed to do so and D said, "Help me, I'm not going to hurt you." He took the cash drawer with £600 in it and emptied it into an orange bag. He also took miniature bottles of alcohol worth around £25. The two men sped off in a car. There was a £1,300 trading loss as well. The second robbery was similar to the first but there was a female customer present with her 10-year-old daughter. £550 was taken from the tills. The getaway car was found burnt out nearby along with the orange bag used in the robberies and some clothing, both of which had C's blood on them. The car was registered to D. V said that she had never been so scared and that she could not get the image of the man who had robbed her out of her head. She could not sleep, was anxious all the time and had been signed off work for seven weeks. D, now aged 40, had 22 previous convictions for 81 offences including possessing an imitation firearm and offences against the person. D had a long history of drug dependency. C was now aged 32 and had 35 previous convictions including in 2009 an assault with intent to rob. The Judge recognised that both D and C had not committed any offences in the preceding four years. He also noted the sharp escalation in the severity of offending compared to their previous convictions. The Judge found that other aggravating features were significant planning, acquisition of an imitation firearm, the presence of a child at the second robbery and the attempts to dispose of incriminating evidence. The Judge said the first offence was Category 1A, due in part to the psychological harm to V, with a starting point of 8 years. He said the second robbery was Category 2A with a 5-year starting point. With aggravating factors, he moved to 10 years for the first robbery and 6 years for the second, making 16 years before plea in all. Held. These were clearly serious offences, but it is debatable if the psychological harm to V was serious and thus whether the first robbery was Category 1A. We move to 7 years for the first robbery and after totality move to 5 years for the second, making 12 years. With plea, **8 years** not 10 years 8 months.

319.21 Firearms, With Shops (including betting shops)

R v Gilbert 2018 EWCA Crim 1197 D pleaded to robbery. He went into a betting shop wearing a hooded top and screamed, "This is a fucking robbery." He ordered a customer to remain but one managed to escape. D pointed an imitation gun at a member of staff, S, and demanded their 'fucking money'. The staff would not have known the firearm was an imitation. S complied and D demanded the money from the safe and threatened to shoot S. S said there was not much money in the safe and D left. There were two people seen outside. The male one was encouraging D and the female one drove the other two away. D's basis of plea stated that he travelled to the robbery alone. He was handed the firearm just before the robbery. The idea was not his. D was now aged 24 with 42 previous convictions. In 2012, D had received 16 months' YOI for two affrays. In 2016, he received 6 weeks for handling, criminal damage and threatening behaviour. D was assessed with having a complex post-traumatic stress disorder with a long history of drug abuse. As a Category 2b robbery the range was 7-14 years. Held. The fact that the robbery was executed in a somewhat amateurish and unsuccessful way did not take it out of the more serious category of robbery. However, within that category there is a wide range of scenarios. Before plea, the offence merited 7½ years not 10. With plea, 9 years' extended sentence (**5 years** not 6 years 8 months' custody 4 years' extended licence).

319.35a Street etc. robbery Motorbike attacks Judicial guidance

R v Ali and El-Guarbouzi 2017 EWCA Crim 1594 D pleaded to conspiracy to rob and E was convicted of the same offence. There were nine incidents. Four were successful. D was aged 19 and E was aged

20. On four occasions the victim was either knocked down or dragged along the road. There was significant planning and disguises were worn. D was of good character. E had eight previous convictions including a knife robbery. Held. In most [of these] cases the following consideration will be relevant:

- 1) The temptation to use a moped in the context of street robbery is particularly strong because it provides the means by which to combine the seamless transition between a surprise assault and a quick getaway.
- 2) Such robberies give rise to a higher risk of serious injury to victims because of the increased force generally involved in the snatch when compared with robberies which are carried out on foot.
- 3) The wearing of crash helmets and visors provides the opportunity for perpetrators to disguise themselves without raising prior suspicion.
- 4) This method of committing robbery gives rise to a serious collateral risk that control may be lost of the moped leading to an accident thereby putting pedestrians and other road users at serious risk of injury.
- 5) Such offending is often facilitated by the theft of the moped to be used in order to ensure that identification of the moped and its registration number does not lead directly to the identity of the offenders.
- 6) Lone pedestrians carrying handbags are particularly vulnerable to such attacks.

The offences call for strong deterrent sentences. D's **5-year detention** and E's **10-year detention** were robust but not manifestly excessive.

319.40 Defendant has significant record 5+ years etc.

R v Scott 2017 EWCA Crim 2235 D was convicted of robbery. V was cycling down a cycle track in daylight and passed D, who was standing propped up on his bicycle on a corner of the track. D then started to follow V on his bike. He was mumbling to himself. V asked, "Are you alright? What do you want?" D replied, "Go up there" and indicated a grass verge. He went on to say he had something to give V. When V said she didn't want it, D said, "I want to fuck you" to which V replied, "No". D asked, "Why not?" and V said, "One, because I've got a boyfriend and two, because I don't want to." D said, "If you don't say yes, I'll just take you in the bushes." D then cycled into her, grabbed her bag from the cycle basket and rode off. The victim personal statement showed that V had been seriously psychologically affected by the incident. D was aged 28 and had 79 previous convictions on 21 occasions. D had breached an ASBO, for which he received a suspended sentence. This was breached (16 weeks concurrent). The Judge placed the offence in Category 1 for the psychological harm to V and Category A for the use of very significant force with regard to the robbery. The starting point was therefore 8 years. Held. D had an exceedingly bad criminal record. Whilst it is undoubted that this offence involved vile behaviour, the force used cannot be categorised as very significant and therefore falls within Category B (5-year starting point). The nature of the offence puts it at the top of the range. **7½ years** not 10.

319.58 Persistent offenders

Post-2016 guideline case

R v Hawkins 2018 EWCA Crim 633, 2 Cr App R (S) 11 (p 82) D pleaded to robbery, attempted robbery and theft. He took 8-10 steaks from a shop shelf and when challenged showed two members of staff a metal object in a threatening manner. One member of staff thought they would be stabbed by a pair of scissors. D said it was a decorative pin. Eight days later, D was in a different store, from which he had been banned, and stole £90 with threats. D was now aged 29. He was on licence and had 147 previous convictions. They were mostly shoplifting but in 2005 he was sentenced to 18 months' detention for

two robberies and an attempted robbery. The Judge found the new offences were Category 3B offences (starting point 2 years). The Judge started at 3 years and with the previous convictions moved to 4 years. With full credit and totality he passed 32 months and 16 months consecutive making 4 years. Held. These were nasty offences. There was no mitigation. The sentence might be severe but not manifestly excessive.

Note: Surprisingly a Criminal Behaviour Order was not made banning D from convenience stores etc. Larger stores would have more staff, better CCTV and security staff. That order would mean if he entered a shop with one member of staff where he was known and banned they could have him arrested. Normal sentencing had failed to protect shop staff, many of whom lived in fear of him. If he continued to terrorise staff he could be given a new order forcing him to shop on-line only. If one was made he would only have himself to blame. Ed.