

262.33 *Firearms Act 1968 s 17(1)*

Att-Gen's Ref 2018 Re Alcock 2018 EWCA Crim 2940 After a *Goodyear* indication was sought and given, D pleaded to possessing an imitation firearm with intent to resist arrest and escape. Police had been alerted to possible drug dealing in an area in Hertfordshire. Two plain clothes police officers, V1 and V2 attended and conducted an area search. The officers observed D driving a vehicle that matched the description that had been given and so pulled the car over. V1 approached D's car and asked him to get out of the vehicle. D had a laptop-style bag which he started to search, complaining that he was always getting stopped and that it was unfair. Eventually he got out of the car and was told that he was being detained for the purpose of a search. D was uncooperative and an attempt was made to handcuff him. D became aggressive and a struggle ensued in which D kicked out at the officers. He was then arrested for assault of a police officer but managed to get back into his vehicle. He was sprayed, to no apparent effect, and as V2 stood to prevent the car door being closed, D punched him in the face. D then reached behind him in the car and pulled out what looked like a firearm. Both officers had had firearms training and one said, "I was left in no doubt that this was real; there was nothing about its appearance that would make me think otherwise." D pointed the gun at the police and they fled the scene fearing for their lives. D drove off. 40 minutes later, another police officer spotted D's car and followed at a distance until three units of armed police arrived. They pulled D over and arrested him on suspicion of possessing a firearm. The vehicle was searched but no firearm was recovered. D was now aged 38 and has previous convictions for robbery, for which he was sentenced to 3 years imprisonment, and affray for which he received a 9-month prison sentence. A doctor's report confirmed that D suffers from emotional/mental health difficulties and has seizures caused by stress. In fact, D suffered two such seizures on the first day of the trial and was taken to hospital. D also displayed traits of high functioning autistic disorder and depression and anxiety. However, the doctor also considered that these features had little impact upon D's actions on the day of the offence. The Judge said that it was D's personal circumstances that enabled him to suspend the sentence. Held. The personal circumstances may reduce the sentence as does the change from a community sentence to custody. **3 years** not 15 months suspended.

262.53 *Minimum sentences Are these exceptional circumstances Custodians*

R v Francis 2019 EWCA Crim 140 D was convicted of possessing a prohibited weapon, a sawn-off double-barrelled shotgun. The gun was found in a bag in a storage facility. She was linked to the gun by a mixed DNA profile on its fore-end grip. D gave inconsistent accounts in interview. D was aged 34 and a mother of a then 8-year-old son. She had worked hard all her life and was essentially a woman of good character. The Judge found that the bag was left at D's property by someone named R. R was a client of D's partner who worked as R's personal trainer. R had originally gone to D's property uninvited. D had realised what was in the bag when she touched the firearm. She had telephoned R and demanded that he collected it, which he did shortly after. D did not have any ulterior motive in relation to the weapon and was not connected to any serious crime. However, she knew what the gun was, and the gravamen of the offence was that the firearm had been allowed back into circulation. The Judge found exceptional circumstances did not exist. Held. The dangers of firearms being available to criminals are all too obvious. Criminals seek to have others holding them. The mitigation was her son and her mental health (depression). The Judge should have found exceptional circumstances. 3 years not 5.

Note: D was fortunate both with the Judge's facts and with the appeal decision. Ed.