

222.7 Dwellings

R v Ismay 2019 EWCA Crim 767 D, C and J pleaded to two counts of aggravated burglary (counts 1 and 2) and D also pleaded to attempted theft. Count 1 facts were at around 2.15 pm, CCTV captured a white van outside a large detached property with substantial grounds. D was seen there accompanied by C and J and all three had their faces covered. D was seen to force the gates open and all three entered the grounds. D was carrying a large knife as was one of the others. The third man was carrying a lump hammer. They entered the house through an unsecured back door and carried out an untidy search. £5,800 in cash, jewellery and designer clothing was taken. From an outhouse in the grounds of the property they took four of five puppies. The fifth was killed in the course of the burglary, but there was nothing to suggest that was intentional. Count 2 was two days later and involved the same three men. Again, a van was parked outside another large detached property. D was seen carrying a knife or large pole and entering the gate of the house with another man running through the garden crouched low. There was an untidy search of the property but nothing was taken, perhaps because they were disturbed. The next day, the same white van was seen driving into a caravan park. It stopped outside one of the plots and two men ran from it, one of whom was D. The van contained masks, a balaclava and some gloves. A number of watches were also recovered and were identified as coming from a burglary that had taken place on the same day. The attempted theft involved a man breaking into a shed in a rural hamlet and two men were seen wheeling out a quad bike that was stored there. The police discovered D there and he was arrested. D was aged 18 and has four previous convictions, three of which were for theft. C was now aged 20 and was of good character. J was now aged 24 and had a conviction for handling. None had served a custodial sentence. The Judge gave a 20% discount for the guilty pleas for all three. D, J and C all received 8 years and 4 years for counts 1 and 2, making 12 in all. D received 6 months consecutive for the theft. Held. These were serious aggravated burglaries, requiring substantial terms of imprisonment and consecutive sentences were undoubtedly justified. Although D was the youngest of the three defendants, he was on bail for ‘other dishonesty’ at the time of these offences, a statutory aggravating factor. The first offence was plainly Category 1 involving greater harm and higher culpability which gave a starting point of 10 years. With plea, that is 7 years. The second offence does not fall squarely into either Category 1 or 2 but a starting point at the top of Category 2 or the bottom of Category 1 was appropriate. We move to 7 years, so with plea, 5 ½ years. With totality, 3 years consecutive for count 2. Therefore, **10 years** prison/YOI for each, not 12. The 6-month consecutive sentence for the attempted theft remains.

222.11 Dwellings *Victim injured etc.*

Att-Gen's Ref 2019 Re Sage 2019 EWCA Crim 934 D was convicted of aggravated burglary, wounding with intent, having an offensive weapon and some motoring offences which did not add to the total sentence. D learned the identities of two people, M and J, who had stolen some jewellery from D's partner. He also learned their address and drove to their house. He carried in his pocket an extendable baton. M and J lived with M's father V and V's 90-year-old mother. D knocked on the door and V answered. CCTV footage shows that V was appreciably smaller than D and at the time was only wearing a pair of shorts. D asked where M and J were and V said he didn't know. He said that they were not in the house. D then grabbed V by the throat and pushed him back and forth into a glass cabinet in the hallway a number of times until the glass broke. D then reached towards his pocket and V, fearing that D had a weapon, ran bare-footed out of the house. D, now carrying the baton, pursued V and hit him several times about the body, pushed him into a bush and kicked him in the legs. A neighbour, who happened to be an off-duty police officer, pulled D away from V. D was heard to shout to V that he would “come back and burn your house down” before driving off. V suffered multiple lacerations to his scalp, his back, and both his arms. There was a deep wound to his right forearm with skin loss and tendon damage. V required plastic surgery and a skin graft to replace the lost skin. In a victim personal

statement, V said that he had had to take six or seven weeks off work so that he could attend hospital appointments and allow his wounds to heal. D is now aged 52 and has 32 previous convictions, including ABH in 1998 (12 months) and 2013 (12 months), possession of an offensive weapon/bladed article in 2000 (short custody), 2007 (community sentence), 2007 (an extendable baton, 8 months) and 2009 (6 months including a threatening behaviour offence), assault PC in 2003 (6 months with threatening behaviour) and in 2011 possession of a prohibited CS gas cannister (6 months). In interview, D admitted going to V's house but falsely claimed that V had become aggressive and attacked D. The Judge described the incident as a “completely unprovoked and violent assault on a man inside his own home” and referred to the physical and psychological injuries suffered by V. He described D's record as “appalling” but also noted that D had been in work since 2013 and had been living with and caring for his elderly mother. The aggravated burglary (count 1) was considered by the Judge to be a Category 2 offence with a starting point of 6 years, the wounding (count 2) a Category 3 offence and the possession of a weapon (count 3) a Category B1 offence. Held. The sentence was not a just and proportionate punishment for the overall offending. Whilst count 1 was properly regarded as falling within category 2, it is difficult to see why the overall criminality should be regarded as substantially less serious merely because V managed to escape and run a few yards before being caught. Whilst the feature of being attacked with a baton inside his own home is absent, the added feature of pursuing and further attacking an already injured man is present. Count 2 was plainly a Category 2 offence involving higher culpability because of the use of a weapon. It seems that no weight at all was given to the fact that D had used an extendable baton to strike a number of blows. **9 years** concurrent on each main offence, not 6 1/2.