### 238.6a *Drug basis for the offence*

*R v Wilson* 2019 EWCA Crim 1141 D was convicted of causing death by careless driving (cannabis-based) and causing death whilst uninsured. On a Saturday evening, D got into a car owned by his friend's mother[1]. He was not insured to drive the vehicle. For 5 1/2 hours, D drove his two friends around Birmingham. The vehicle was fitted with a telematic system (black box) which recorded its speed and movements. The data showed that on several occasions D drove over the speed limit. He drove at 66.5 mph in a 30 mph zone and 69.3 mph in a 40 mph zone. V, aged 19, was a student at London University. As D approached a Pelican crossing, V emerged from an area of darkness and walked into the road. V did not look before crossing and was affected by his considerable intake of alcohol and by his consumption of cocaine. D's vehicle collided with V who died as a result of his injuries. The passengers in the car had heard D shout "Watch out" just before the collision. The Judge found the speed was 40+ mph in a 30 mph area. D stopped at the scene and a roadside drugs test showed that D had 6.3 µg of THC per litre of blood three hours after the collision. The prescribed limit is 2 µg. In a police interview, D accepted that he had been speeding and said that he had only had "a couple of drags" from a friend's spliff that evening. D was aged 19 and was effectively of good character, although he had been cautioned for possession of cannabis when he 'was much younger'. A pre-sentence report noted that D had pleaded not guilty to the offences but also showed a large degree of remorse and sympathy for V's family. In his sentencing remarks, the Judge noted that the drugs test carried out on D clearly disproved D's claims of having only had 'a couple of drags' of a spliff. He noted that D chose to drive a car that he knew he was not insured to drive and exceeded the speed limits several times. He also considered that V himself did contribute to the accident, due to his intoxication and crossing the road without looking. The Judge started at 5 years and moved upwards to reflect the driving without insurance and the high level of cannabis in D's blood. He made a reduction because D was not the sole cause of the accident and for D's age. The Judge noted D's remorse, in that D was sorry to have been involved in the accident and that a man had died, but also said that over the course of two trials, D blamed V solely for the accident and took no responsibility for the manner of his driving. Held. The critical points were: a) the car was a powerful car and b) during the journey the car had maximum acceleration and deceleration applied. D's 'lack of remorse' may have 'sounded too loud' in the facts of this case. D never denied the facts of this tragic collision and the pre-sentence report makes it clear that there was evidence of real sorrow and understanding on D's part and of the impact on V's family. That is relevant to the culpability and mitigation in this case. D was a young man with many qualities, who has been profoundly chastened by the damage he has caused. V had made a real contribution to his own death. In the relevant guideline, allowance is made for a mitigating factor arising from a contribution to the death by the victim. The 5-year starting point was appropriate. Therefore, (after increasing the sentence for the other count[2] and reducing it for the mitigation), **5 years** not 6.

1 It seems unlikely he would have had permission to use the car, but TDA was not mentioned.
2 The Court had mentioned the speeding earlier. There was the additional factor that D had two passengers. His driving put their lives at risk as well. Ed.