

291.18 Glassing Cases

R v Brunning 2019 EWCA Crim 1047 D pleaded to wounding with intent and unlawful wounding. D was in a convenience store buying wine when V and V2 entered. V was a hairdresser and there had been some animosity between D and V over non-payment for a haircut. There was some verbal exchange between the two of them as D stood at the counter and V stood in the doorway. CCTV footage showed D grabbing a bottle of wine and swiftly moving across the shop. She swung the bottle at V's head and it smashed. As the struggle continued, D slashed V across the whole width of her stomach with what must have been the broken bottle neck, causing a very serious cut. V2 was also caught in the struggle and received a laceration across her upper right arm which required 16 stitches. D had to be pulled away and restrained by a member of the public. D was still holding the broken bottle at this point. She left the scene and was heard to say: "I told her she was going to get it" and, "She deserved it". D's 11-year old son had been waiting for his mother in the car at the start of the incident but certainly witnessed the later stages of the attack as he can be seen on the CCTV footage standing in the shop doorway. D returned to the scene whilst V was being put into an ambulance. She said to the police: "I'm the one you're looking for. I only left because I wanted to get my boy away". She asked, "Is the other girl in the white dress okay?" - a reference to V2. D then said: "That was a mistake. I didn't mean to get her. She got in the middle. It was an accident." In interview, D said that she had had 5 glasses of wine prior to the incident but that was not a lot for her as she was an alcoholic. In a witness statement made a week after the attack, V said that she thought she was going to die. Both V and V2 will likely have prominent scarring for the rest of their lives. D was now aged 41 and had previous convictions for criminal damage and possessing an offensive weapon. In a neighbour dispute, D had used a baseball bat to damage a car. D expressed some remorse in the pre-sentence report, saying that she was disgusted and ashamed of what she had done. D's son had been traumatised by the attack and D bitterly regretted that. D suffered from various mental health issues (including unstable personality disorder) and had a long-standing history of alcohol abuse. The Judge had extremely supportive character testimonials from D's family and friends. Since her remand into custody, D had taken advantage of every course available to her and had shown a determination to address her alcohol problem. The Judge considered it was a Category 1 offence and found the following mitigation: it was a single attack, D had shown remorse, there were no relevant previous convictions, her medical condition was prolonged and she was the primary carer for her children. No aggravating factors were identified. Held. The location was an aggravating factor and that the offence was committed in the presence of a child. Nonetheless, we start at 12 years not 13-14 and move to 10 years, not 12, before credit for plea. The mitigating factors justified a significant reduction from the guideline starting point of 12 years for the section 18 wounding. The additional criminality in count 2 (the wounding of V2) would not have justified bringing the total back to 12 years. With full plea credit, **6 years 8 months** not 8 years.

291.20 Hammers, bars etc.

R v Wilson 2019 EWCA Crim 468 D was convicted of GBH with intent. There had been some friction between D and his neighbours due to parking difficulties in their road. D blocked V's son's car in with his own car. V went to D's house and asked him to move his car. He did not and V heard him shout, "If he doesn't fucking move that car I'm going to petrol bomb it." V asked again later that day and D became aggressive. Another man at the property tried to stop D going outside as he was obviously very angry. D's partner also tried to calm D down. V walked away fearing that she would make the situation worse. As she did so she felt something strike her back in the area of her left shoulder and then she felt a blow to the left side of her face. When she turned she saw D holding a black metal pole which was about 18 inches long and half an inch in diameter. D then got into his car and drove away. V suffered a 1 cm cut to her left cheek and there was severe swelling and bruising. She had also sustained a fracture

to her cheekbone and a probable skull-based fracture of the middle cranial fossa on the left side. D denied responsibility for the offence, saying that it had been V who had been abusive towards him. D had a previous conviction for a similar incident in which he armed himself with a metal bar and threatened a woman that he would use it. The Judge considered that this was a Category 1 offence and identified a number of aggravating features, namely, 1) the offence took place virtually on V's doorstep, 2) a 14-year-old child was present, 3) there was serious ongoing damage to V's hearing, 4) D was in breach of a suspended sentence, 5) D was drunk at the time of the offence and 6) he tried to conceal the weapon after the incident. Held. It is unlikely on the facts of the case that two blows can be described as a repeated assault but there was clearly greater culpability and therefore this offence falls squarely in Category 2, albeit at the top end. **9 years** not 10.

291.25 Knives, With 8+ years appropriate

R v Paine 2019 EWCA Crim 341 LCJ D was convicted of wounding with intent and criminal damage. D, V and R were long-term friends. V was registered disabled. D, his female partner, her son and R all went to visit V at his home. They had been drinking before they arrived and continued to drink with V. D also took some amphetamine. Later in the afternoon, D became aggressive towards his partner. When R tried to intervene, D became aggressive towards him too. By now, everyone was in the kitchen. V asked them all to leave but D opened a drawer and took out two large kitchen knives. He put them down when everyone shouted at him but then picked up a smaller knife and lunged at V. R got between them but V suffered wounds to his cheek, back of the head and forearm. Fortunately, there was no major penetrating injury. The criminal damage was to R's jacket, caused by the knife as D attacked V. D was now aged 43 and had one previous conviction for GBH when he was aged 18. The Judge said that this was a case of greater harm due to the repeated assault on V. The use of a knife indicated greater culpability. The Judge therefore placed this in Category 1 with a starting point of 12 years. He noted the personal mitigation, namely, an isolated offence by a man of effective good character who was in work. There was also remorse and V was in fact a good friend of D. The Judge took a year off for the mitigation. Held. We reject the argument that this was not a repeated attack with a knife. It may not have been the kind of repeated attack where a group attacks with multiple weapons and a victim is stabbed many times, but this was not a single isolated blow. Notwithstanding the fact that this was an attack with a knife, the fact is that the knife was simply taken up from where it was convenient to D at the moment he lost his temper. A sentence at the bottom of the category range would have been appropriate. **9 years** not 11.

291.31 Relationship attacks Men attacking wives etc.

R v Hinkley 2018 EWCA Crim 3054 D was convicted of wounding with intent and three assaults by beating. He lived with V. In December 2015, at about 11.40 pm, paramedics were called. They found V in a towel and she was wet. V told them there had been a fight. D said V had had an asthma attack. Police arrived and found V seriously wounded and extremely distressed. V said she was getting out of the bath and D, without warning, lost his temper. He became violent by strangling her and punching her in the face and chest. V feared he was going to kill her. V had four wounds to the face, two were below the eyes and one was 15 cm over an eye. V had bruising over all her body. D was interviewed and lied. He was released on bail with a condition not to contact V. V allowed D to stay with her because she loved him. He did so. In September 2016, during an argument, D stamped on V and kicked her to the head. They reconciled. Ten days later during an argument, D repeatedly punched V to the head. Twelve days later, during an argument, D dragged V by the hair and punched her in the face. D was aged 30 and had 26 convictions from 2004 to 2015. Most were acquisitive offences but they included: in 2008, threatening behaviour; in 2009, ABH; in 2010, battery; in 2012, ABH, where he punched and strangled an ex-partner when on bail for an earlier assault on the same victim; in 2013, battery against another partner (suspended sentence); and in 2015, possession of a knife. D refused to attend a video interview with the Probation Service. Held. There were features of a Category 1 case, as it was a 'sustained or repeated assault on the same victim'. In certain circumstances teeth can amount to the equivalent of a

weapon. The Judge was entitled to conclude that the offence was on the cusp of Categories 1 and 2. There were the following factors increasing the seriousness of the offence: a) highly relevant previous convictions, b) breach of bail, c) offences committed in V's home, d) an element of gratuitous degradation, and e) an element of control, coercion and abusive power. The three summary only offences did not warrant the raising of the sentence to 14 years. The aggravating factors and the additional offending warranted an increase from 9 years to 12 not 14, so 16 years' extended sentence (**12 years'** not 14 years' custody 4 years' extended licence).

Note: Although common assault/assault by beating is described as a summary only offence, it is triable on indictment under [Criminal Justice Act 1988 s 40](#). The charging of such serious offending on bail with offences carrying only 6 months seems wholly wrong. It seems most likely that ABH took place. However, 14 years seems too long for what appears to be D's first, or first significant custodial sentence. Ed.

291.34 Robbery 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.