

Banks on Sentence

Sentencing Alert No 87

2 September 2014

Aviation offences

Drunk, Being

R v Pitchers 2014 EWCA Crim 1350 D pleaded at the Magistrates' Court to entering an aircraft when drunk, criminal damage and being drunk on an aircraft. He boarded a plane at Heathrow bound for Australia. There were 477 passengers. The staff noticed D was drunk and he said he was suffering from depression and had left his medication in the hold. Because he was apologetic the Captain agreed that the plane should take off. The $\frac{3}{4}$ of the bottle of vodka he had was poured away by staff. Twenty minutes into the flight, D was aggressive with a passenger who wanted to remove a bag from the overhead locker. There was a tussle and D became aggressive and swore. The air stewardess was very frightened. A passenger came to her aid and D was restrained but continued to be aggressive. The passenger and the stewardess thought they would be assaulted. Five male crew members took over and took D to the business lounge where he became even more aggressive. He ripped a piece of wood from a cup holder and used it as a weapon. D shouted, swore and threatened to kill the crew. A doctor was found who advised D needed to be sedated. When the doctor mentioned D had a carpet burn, D said, "You're a condescending cunt". D was sedated and the aggression ended. The flight which by then was near Germany was diverted back to Heathrow. The cost of that diversion was £32,000. D was arrested and made frank admissions. D was aged 40 and had no convictions. For 10 years he had been his partner's sole carer and D was very badly affected when the relationship broke up. The Judge referred to the severe inconvenience to other passengers. Held. There was no significant violence. We start at 15 months, so with plea, **10 months** not 13 in all.

Note: The lack of significant violence was irrelevant as he was charged with being drunk and criminal damage. Bearing in mind these incidents are every passenger's and crew member's nightmare, D seems to have been very fortunate. Ed.

Cruelty to children

Violence to child aged less than 2 years

R v MM 2014 EWCA Crim 1622 D pleaded to child cruelty (25% credit). D's 7-month-old girl, V, fell asleep and after 40 minutes D's partner returned home to find V's ear was very red. V was examined at a hospital and the redness lasted for over nine hours.

V's ear had swelling, three bruises and discolouration which it was agreed amounted to ABH. D said V fell asleep on her rattle but medical opinion disagreed. In interview D accepted pulling V's ear when trying to feed her in frustration. D worked night shifts and his partner had been ill. D was 23 at sentence and of positive good character. Social services had no concerns and D was having regular unsupervised access to V. Held. The Judge was entitled to pass immediate custody but suspension should have been seriously considered. **5 months** not 9.

Note: Whether the access was required because the child had been taken into care (which seems unlikely) or because his relationship had broken up is not revealed. Ed.

Fraud and financial services offences

Confidence frauds

R v Williams 2014 EWCA Crim 1356 D pleaded (20% credit) to fraud. He falsely told his family and friends that he had terminal cancer. He put that information up on Facebook and opened a 'giving page' to raise money. His purported progress was uploaded. When his family became suspicious, he produced a forged letter from a hospital to perpetuate the lies. £840 was raised and D kept £99.50. He was aged 28. A psychiatric report recorded a degree of instability in D's relationships and employment. The Judge said the offence was contemptible. The defence on appeal said that failed to take into account D's good character and the value was less than £100, so the sentence should have been suspended. Held. An immediate custodial sentence was inevitable. **6 months** was not manifestly excessive.

Manslaughter

Diminished responsibility

Att-Gen's Ref No 34 of 2014 2014 EWCA Crim 1394 D pleaded guilty (full discount) to two counts of manslaughter (diminished responsibility). D said he would kill V1, his mother, and then attempt to commit suicide. [Presumably nothing happened.] D was hospitalised, having taken a cocktail of drugs and alcohol, but released after his mental state was assessed. Two days later, D had an argument with V1 and V2, his sister and struck V2 with an axe. The next day he killed V1, with an axe, in a premeditated attack. When V2 discovered what had happened, D killed her, with the same axe. The killings were minutes apart. He also killed his dog with the same axe. D was later found in a very disturbed state. D was aged 24 at sentence and of good character. The Judge found D had significant responsibility for the offences because they were based on the voluntary taking of LSD, which had triggered a vulnerability to psychosis. The Judge made a hybrid hospital order with the sentence. Held. The aggravating factors were two victims, the significant degree of culpability, the clear intent to kill, a degree of premeditation and the use of the axe. A nuanced approach is needed to assess reflect D's residual culpability in that the greater it is, the greater the impact of Schedule 21 factors, (which are used in murder cases). Here, the serious aggravating factor of more than one intentional homicide should have its own impact on sentence. We start with 20 years minimum term. With plea, **13 years 4 months**, not 6 years.

Note: There is a problem here with using the murder guidelines for non-murder cases. If the Court thought a 20 year minimum term was appropriate, then the determinate term would have started at 40 years which is significantly out of line with comparable cases. Ed.

Offences against the Person Act 1861 s 18

Revenge/punishment, Motive was

Att-Gen's Ref Nos 55 and 56 of 2014 2014 EWCA Crim 1727 D1 and D2 were convicted of GBH with intent on V1. D1 was also convicted of ABH on V2. They were bouncers of substantial build and D2 was D1's manager. Outside their nightclub, D1 and D2 had an argument with V1 and V2 about entry. There were derogatory remarks and a scuffle. The police were called by a friend of V1 and V2. The police searched them looking for a knife but none was found. About 1 ½ hours later, after their nightclub had closed, four bouncers in a number of cars chased V1, V2 and another X in their car. After over 1 1/2 miles, V1 and V2 stopped and X ran off. D1 and D2 smashed the Vs' car windows with batons and pulled the Vs out through them. D1 used a knife and D2 a baton to injure V1 and V2, including when they were on the ground. The incident lasted at least two minutes. They required hospital treatment for multiple serious injuries. V1 required 57 stitches. He had multiple bruises, deep scalp wounds down to the bone, a severe ear laceration, a broken elbow and defensive wounds. V2 (ABH count) had cuts, bruising and a black eye. The attacks lasted at least two minutes. At sentence D1 was aged 27 and D2 was 37. Both were of good character or treated as such, with references. Held. No provocation occurred and one of the victims was vulnerable as he was trapped in a car. Greater harm and higher culpability were present. D2, as manager, could have prevented the attack. Regard was to be had to the short period V1 spent in hospital. This was a premeditated and determined act of revenge aggravated by the weaponry use and that the Ds' job was to keep order. D2 did not carry a knife but had a managerial role. D1, **10 years** not 5 and 8 months concurrent not consecutive. D2, **10 years** not 6.

Sexual Offences Prevention Orders

Minimum and maximum length

R v Wilkins 2014 EWCA Crim 1175 D pleaded to sexual activity with a child (x4) and making indecent photographs. He formed a relationship with a woman over the Internet. She had two daughters aged 10 and 15. D moved in with them and began to sexually abuse the elder daughter by touching her breasts and vagina and then tried to remove her clothing. She resisted but he was too strong. He inserted his finger into her vagina. There were 23 images at levels 1 to 4 found on his computer. D was aged 56 and had convictions for indecent assault in 1982 and 1991. The Judge imposed an indefinite SOPO. Held. Though the terms of the order needed amending, there was nothing wrong with an indefinite order. These were serious offences carried out by a man with relevant previous convictions and had shown no insight into the harm caused by such offending. There was a significant risk of further similar offending from D at this time and no indication when, if at all, that risk might diminish to the extent that the order may become unnecessary. Moreover, D was allowed to apply to vary or discharge the order. Indefinite order upheld.

Theft

Livestock theft

R v Birnie 2014 EWCA Crim 1720 D was convicted of theft and witness intimidation (9 months consecutive not appealed). V traded livestock and had 700 sheep. D telephoned V numerous times telling him that a number of his sheep had strayed. W saw D herding a 'large number' of sheep and D then sold some or all of them. V later recognised 64 of his sheep for sale which were recovered. V challenged D who said that V was wrong or that their sheep had been mixed up after the sheep strayed. D threatened to report V for not caring for his sheep. Overall D recruited assistance and sold sheep to several different markets. Unknown to D, the sheep had been injected with a substance noxious to humans. During D's trial, he and another man drove to W's house, shouted abuse and threatened W. W chased them off and continued to assist the Crown at trial. W's partner was particularly distressed. D was aged 48 and of good character with references. V's loss was around £4,500 plus the loss of grazing rights. He was sentenced on the basis that 70 sheep were stolen and an element of deterrence was to be included. Held. Theft by one sheep farmer from another was very plainly a breach of the high degree of trust farmers have with each other. Farmers can be expected to keep an eye out for each others' sheep but theft undermines this trust. The Judge was bound to place this offending in the middle bracket. Significant planning, recruiting others and endangering health were aggravating factors. **3 years** was perhaps at the upper end but upheld.

Shop theft

Removing articles from shelves

Persistent offenders

R v Moran 2014 EWCA Crim 1713 D was convicted on two theft counts and pleaded to a third. On the same day, at three different shops, he shoplifted clothing twice (worth £300 and £400 (which he dropped and left behind)) and aftershave (worth £110). He was caught on the third occasion (the plea). D was aged 45 and had 81 previous convictions and over 40 shoplifting convictions. He had received up to 9 months imprisonment. The Judge noted that D was one of a group of local shoplifters who had become a real and serious menace. To deter D and the group, the Judge departed from the Guidelines. Held. Nothing had stopped his stealing. He had a pattern of not abiding by court orders. A sentence within the Guideline range was wholly inadequate. **18 months** not 26 by making one of sentences concurrent.

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