

## Sentencing Alert No 98

27 February 2015

### Burglary

#### *Defendant under 18*

*R v L and D* 2015 EWCA Crim 59 L and D (a girl) pleaded (full credit) to a dwelling burglary. V lived in a room in a shared house. The front door was key operated and each room had its own PIN code. V knew both L and D. V went to F's house where D and others were. F was V's friend. V mentioned that she had £1,130 in cash in her room for buying a car. F asked V if she could borrow her Hoover. V returned to her own house with D in a taxi to get it. Both V and D then returned to F's house. Later that evening, V returned home, finding that she had been burgled. There was no damage to the front door, but she had lost her keys a few days earlier, and her room's door was damaged and hanging off the frame. The room was left intact and only the cash had been stolen. Text messages between L and D implicated L and another person breaking in. The messages also highlighted a complete and utter lack of remorse. D and L also continued to pretend to be V's friend whilst spending her money on hotels and alcohol. No money was ever recovered. V was affected badly, she had to move away, lost her room and had to pay for the damage. She took anti-depressants and felt frightened and vulnerable with D having betrayed her trust. It was accepted that the burglary fell into Category 1. L was aged 17 with only a reprimand and a caution for cannabis possession. Having left college at 16, he had no regular employment. He used the stolen money to fund his cannabis habit and to purchase luxury items. D was aged 16 and of good character. She was in full-time education with an interview for an apprenticeship. Held. L had no relevant previous convictions, a mitigating factor identified in the guideline and was still aged only 17. 2 years' detention in a YOI was too harsh, so **12-month community order with supervision** substituted. For D, Having regard to the *Overarching Principles: Seriousness Guideline 2004* and the welfare of D, **12-month youth rehabilitation order with supervision** not 1-year Detention and Training Order.

### Fraud

## ***Identity fraud***

*R v Agrigoroaie and Another* 2015 EWCA Crim 50 D pleaded with full credit to seven fraud-related offences. Compromised or stolen credit cards were used to pay for flights between Romania and the UK. The bookings were traced to S and D's flat and a search revealed a large amount of equipment including computers, USB items, encoding devices and items for cloning cards and identity documents, including blank and embossed cards. Also found were various documents with photos of S and D with false names and bank statements in different names. The computer contained a large number of emails, passwords and the details of around 150 bank accounts from around the world which were obtained by phishing. The fraud had been running for at least a month with 15-20 transactions totalling £15,410, and attempts were made to gain a further £10,000, although that was just 'the tip of the iceberg' as the computers were heavily encrypted. D made no comment in interview and had herself entered the UK using a booking made with a compromised credit card a year earlier. She was aged 23 on appeal, a Romanian national and of good character. Held. This was a highly professional fraud, which would generate a large return for those involved. The Court shares the single Judge's view that a starting point of 9 years was wrong. The fact that the offence was committed across borders and involved damage to third parties and card issuers, because of identity theft, are serious aggravating factors. Frauds such as these cause harm to others and the direct victim. They also...cause aggravation and stress to those who have to unravel the consequences. They lead to erosion of public confidence in payment mechanisms. For these reasons we consider that identity fraud, and frauds of this sort, are particularly serious. **4 years**, not 6. For S (convicted of fraud in 2010),

## **Offences Against the Person Act 1861 s 18**

### ***Knives, With***

*R v Guiled* 2015 EWCA Crim 57 D pleaded late (10% credit) to wounding with intent and possessing an offensive weapon. D, who was drunk and had taken cannabis, and his cousin, V, got into an argument. There was a scuffle in the High Street. It was possibly due to a conversation that V had had with a woman who later described D as 'angry and restless'. During the struggle, D produced a kitchen knife, which he swung and thrust at V's head three times. However, only one blow connected and V suffered a 5 cm head wound which required stapling and left a scar. V also

had low blood pressure, indicating a significant loss of blood. D then ran and hid the knife and some gloves, which were all later recovered. He denied responsibility for the attack until trial when, viewing the CCTV which captured the whole event, he pleaded. D was remorseful, had made progress in custody and had a favourable pre-sentence report. D was aged 25 on appeal and had a poor record.<sup>[1]</sup> The Judge placed the offence into Category 2. (Category 2's starting point is 6 years.) The Judge increased the sentence to 10 years to take into account the following: a) D was drunk, b) it was a public place, c) D's convictions and d) the attempts to conceal the knife. With the plea and the mitigation he reduced it to 8 years. Held. This Court has frequently said that the carrying of a knife is a grave offence and must be met with severe punishment. The use of a knife as against some other less lethal weapon carried to the scene pushed this case up the range from the starting point of 6 years in Category 2, as did the repeated use of the knife aimed at V's head. However, the Judge did push the case too far up the range. **7 years**. 12 months concurrent for the offensive weapon upheld. **5 years** not 8.

## **Offences Against the Person Act 1861 s 20**

### ***Unproved/Unwarranted attack***

*R v Burgin* 2015 EWCA Crim 49 D pleaded (25% credit) to section 20. V and a group of friends went to get a takeaway. The group encountered D and his co-accused, Br. Br asked V to fight in a tunnel<sup>[2]</sup> out of sight of CCTV. Br felled V by punching him in the face. D kicked V's face whilst he was on the floor. V suffered a fractured jaw, requiring the insertion of surgical plates, but suffered no long-term or lasting effects. D denied any involvement in the altercation and was on licence, having been released two months before the offence from 3 years' detention for robberies (×3). He was aged 21 on appeal and had ten court appearances in all between 2009 and 2011, including battery. The pre-sentence report indicated that D had entrenched antisocial attitudes, limited insight and minimum victim awareness and posed a high risk of causing serious harm to the public. Br pleaded to s 47, receiving an 18-month community order, and this caused a nine-month delay to D's sentencing. Held. **30 months' detention** was not manifestly excessive and it had been slightly reduced to take into account the recall.

## **Rape**

### ***Fathers/Stepfathers etc. Post-guideline case***

*R v JH* 2015 EWCA Crim 54 D was convicted of five rapes and three indecent assaults. The victim was V, his daughter, who was aged 13-15 at the time of the rapes and 11-15 for the assaults. The offences started in about 1979. D would provide his wife with money to go out and play bingo so he could be left alone with V. D would apply emotional and sometimes physical pressure and there was a degree of degradation and humiliation as D would comment on the level of satisfaction V provided. D told her that she would not be believed and would split up the family. V withdrew her initial complaint in 1984 following pressure from D. The offences had an appalling effect on V, causing very serious and lifelong psychological damage. D denied everything throughout. He had a conviction for indecent assault on another girl, about 13 years prior to the rape offences. Held. There were grave aggravating factors namely: a) multiple offences over a prolonged period, b) gross breach of trust, c) the offences were planned and money was given to D's wife so she would not be there, d) emotional and sometimes physical pressure was involved, e) there was an element of degradation and humiliation, f) comments about the satisfaction provided and V was told if she complained, the family would be split up. One has to focus on the statement in the *Sexual Offences Guideline 2014*, 'Offences may be of such severity, for example involving a campaign of rape, that sentences of 20 years and above may be appropriate.' Because of that, it is unnecessary to consider whether the case is a Category 1 case. **22 years** upheld.

### **Sex Offences: Children, with**

#### ***Physical contact under clothing Post-guideline case***

*R v TW* 2015 EWCA Crim 63 D pleaded (full credit) to sexual assault on a child under 13 (x5), inciting a child to engage in sexual activity, taking (x4) and making (x4) indecent photos of a child. V, D's step-granddaughter, was aged 4-6 at the time and she regularly stayed with D and his wife. When V and D were alone, D sexually assaulted V, photographing and videoing the activity on his mobile phone. This occurred around 20 times. V later described this as D touching her 'fiddy' with his 'willy'. On D's phone were: seven images, two of which were from the Internet and not of V, and three videos (level 1), one video (level 2) and two images and nine videos (level 3). D denied any wrongdoing until his phone was analysed whereupon he admitted the offences. V now faced acute difficulties with the 'scars persisting for the rest of her life' and the events placed great strain

on her family as a whole. D was aged 49-51 during the offending and of effective good character. He had a settled and stable life and struggled to explain his behaviour, appearing quite distressed at it, and expressing remorse. D was described as 'honest, caring and hardworking' with a low reoffending risk and a suspended sentence with unpaid work and a sex offender treatment programme was proposed. The Court of Appeal received further character references emphasising the adverse effect on D's family. The Judge placed the sexual assaults into Category 2. Held. The Judge was right to stress that D's offending involved a gross breach of trust. The sentence plainly...had to go beyond the bracket for a single offence as the gross breach occurred repeatedly over a prolonged period which called for a severe sentence. A non-custodial sentence would have been quite inappropriate. Starting at 10 years, **6 1/2 years** was severe but not manifestly excessive.

## **Theft**

### ***Cash machines***

*R v Chandrarajah* 2015 EWCA Crim 55 D pleaded (full credit) to conspiracy to defraud bank account holders. ATMs were tampered with by using skimming devices and miniature cameras. Customers' cards would be retained and then shortly afterwards, using the cards and the customers' information, unauthorised withdrawals would be made. The fraud was planned, well-organised and covered a large geographical area. The evidence against D was of him being with the ringleaders when they made fraudulent ATM withdrawals and D's car being filled with fuel paid for with the same stolen card as was used for the withdrawals. The Judge identified D's role as somewhere between the principals and the drivers. D was aged 32 on appeal and had one conviction, for drink/driving. Held. Notwithstanding D's lies, he should have been sentenced on the basis of the evidence, which demonstrated involvement on one day only and at the very outset and as a driver. **16 months**, not 2 years.

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[1] The judgment is silent on the nature of D's convictions.

[2] Assuming I have amended a typo correctly.