

## Sentencing Alert No 119

12 October 2015

### Blackmail

#### *Embarrassing material/behaviour*

*R v C* 2015 EWCA Crim 1519 D pleaded (full credit) to blackmail. D was aged 33 and married with three children. J, his wife's 14-year-old half-sister, was staying with D and they were together when J was sending messages to V, a 16-year-old boy from school. V sent J a photo of his erect penis, which D saw. D sent V a picture of himself saying he was J's brother and he would beat the shit out of him. D said he would report V and V was apologetic. D referred to J being underage and told V he could go to prison for this. V asked to make it up. D said that was not good enough and money might help to prevent the matter going to the police. V said he was skint and D said, "Police it is then". V pleaded for another chance. D said apologising was not enough and that V would go down for one picture. Various exchanges followed ending with '£75 in four weeks.' The exchanges lasted about 30 minutes. D was on bail for nearly a year and was barred from his own home and barred from unsupervised contact with anyone under the age of 16. (This is likely to have been because of a charge he was acquitted of. Ed.) Held. There was no sophistication or premeditation. With D's good character, we start at 12 months, so with plea, **8 months**.

### Dangerous Driving Causing Serious injury

#### *Very serious injury*

*R v Sandulache* 2015 EWCA Crim 1502 D pleaded at the Magistrates' Court to dangerous driving causing serious injury. D drove on a twisty road with white lines prohibiting overtaking. He overtook at least two cars and whilst overtaking a third he hit a motorcyclist. The driver, V, was thrown off his bike and suffered a bleed to his brain, haematoma to his vertebrae, bruising to his lungs, 'some loss of dentition' and extensive injuries to both knees. V was an inpatient in hospital for six weeks. Afterwards he continued to suffer pain and loss of sleep. He had only been married for two months and the accident had changed him from being active and independent to largely inactive and dependant for much of his physical needs on his wife. He suffered from depression and frustration

about his inability to look after himself. In interview, D said he was collecting members of his family from an airport and had started his journey later than he had expected. Further he knew that overtaking was prohibited and he 'regretted it terribly'. D was aged 22 and had lived most of his life in Romania. He had no convictions and worked as a lorry driver. Held. The collision had the most appalling consequences for V and his wife. In considering whether the maximum sentence was merited we consider the harm and the culpability. There was the highest level of harm. This was a very bad piece of driving, which created an obvious danger to other road users. If V had been killed, the case would have been level 1. There were no other road traffic offences committed at the same time. He did not flee the scene and he was not under the influence of drink and drugs. We start at 4 ½ years, so with plea, **3 years** not 4.

## **Perverting the course of Justice etc.**

### ***Speed cameras***

*R v Walker* 2015 EWCA Crim 1526 D pleaded (full credit) to conspiracy to pervert the course of justice. He drove at 37 mph in a 30 mph area and was caught by a speed camera. D was liable to totting up. He agreed with his mother, D2, that she would take the points on her clean licence and she did so. A few days later they agreed to admit it to the police and that was done. D made admissions and was remorseful. Held. Ordinarily a custodial sentence is required. It was appropriate for D2's 4 month sentence to be suspended because she was aged 71. We start at 6 months not 9 and with the plea and the fact they reported themselves, **3 months**.

## **Rape**

### ***Series of rapes***

*Att-Gen's Ref No 52 of 2015* 2015 EWCA 1594 D was convicted of five rapes and three ABHs. Between 1997 and 2013, he committed rapes against four females. When aged 25 and 26, he was in a flat where V1, a 15-year-old school girl, sometimes slept. V1 woke up to find D raping her and eventually she managed to push him off. Then and in the morning he treated the rape with callous indifference. D gave her a sexual disease. At the time she was coping with the death of her brother. She later became a police officer dealing with sex cases and endured psychological problems. She only spoke out when she learnt D had been arrested. In 2001, V2 and D began a sexual

relationship, when she was aged 30 and D was 29. D became violent (the ABH counts). In 2001, he strangled her with a scarf. In 2003, there was a) strangulation with D hitting her with a broom and kicking her and b) 'driving away while she was being dragged by her hair'. Intercourse became non-consensual (where the two counts of rape reflected specimen offences) while on other occasions there was consent. In 2010, D persuaded V3 to get in his car and against her wishes drove her to a club. In the club she had a drink and passed out. She awoke in her home to find him in bed with her rubbing her clitoris. Her vagina was sore and it was clear he had had sexual intercourse with her. D showed a callous indifference to her. D met V4 in a pub. They drank and D took her back to another woman's flat. V4 woke up to find D having intercourse with her. He treated her with callous indifference. Shortly before she was due to give evidence, V4 tried to hang herself. D had a number of convictions including ABH and possession of an offensive weapon in 2010 (2 years prison). The pre-sentence report said D posed a very high risk of serious harm to females and he was willing to manipulate the vulnerable. Held. Over 16 years, D had callously sexually degraded four women. One was aged 15, sad, vulnerable and in mourning. We increase one of the concurrent ABH sentences to 4 years. An extended sentence of 24 years (20-year custodial term not 10 and 4 years' extended licence).

## **Robbery**

### ***Security guards***

*Att-Gen's Ref No 53 of 2015* 2015 EWCA 1580 M and C pleaded to robbery at their PCMH. H was convicted of the same count. After planning, observing the premises for about two hours and stealing a getaway car, M and C approached a security guard, V, who was about to take a cash box from a petrol station to his van. C said, "Cut him" and M produced a large knife and stabbed at V's head and face several times. The knife did not connect. V let go of the cash box and the two men ran to the getaway car with it where H was waiting. At a safe distance the two changed to another car. £12,000 was stolen. H was aged 34. He had 37 convictions between 1994 and 2009. Six were for robberies. There were: 1997, plea, attempt, (business premises with gun, axe and knife) 2 years detention; 1999, with knife; 2002, convicted, (jewellers, £5,000 worth of jewellery taken, two staff attacked), 7 years; and 2009, convicted, (jewellers with M and hammers and tools, owner attacked with fists, feet and hammers and slashed about the face), 7 years, (M received 56 months). M was aged 30 and had 21 convictions. He had two robberies. The other one was in

2004 (4 years). C was aged 20 and only had minor convictions. The pre-sentence report said H and M had taken advantage of C. Held. The robbery fell outside the guidelines. It was aggravated by pre-planning, the fact it was a group offence, the disguises, the vulnerable victim, the large sum and the stolen car. For H, a 16-year extended sentence (**13 years** custodial term not 10 and 3 years extended licence). For M, we start at 11 years, so with plea, **7 years 4 months**, not 64 months. For C because of his age, his lack of criminal experience, manipulation and naivety we start at 5 ½ years, so with plea, **3 years 8 months** not 32 months.

## **Sex Offences: Historical**

### ***Child vaginal and anal rape***

*Att-Gen's Ref No 44 of 2015* 2015 EWCA Crim 1330 D was convicted of four specimen counts of buggery, four rapes, seven indecent assaults/indecency counts/sexual assaults and ABH. D had a relationship with W since she was aged 15. He married her and W said he had a violent temper and was excessively controlling. She was afraid of him. Between 1982 and 1985, when he was 15-18, he encouraged his nephew, N, to masturbate him. This led to touching of N's penis, oral sex and after gifts, anal rape of N. N was then aged between 9 and 12. N treated D like an uncle. D made threats that if N told anyone, D would kill him. N didn't report the abuse because he thought D was a violent man. In about 2004, when D's daughter, M, was aged about 9, D demanded she took an ash tray to his bedroom. When she did, he got out of bed naked and seized her. He forced her to suck his penis and then undressed her. Next he forced her onto his bed and raped her. M was told not to tell anyone. When M was between 10 and 13, D would touch her breasts, which was dealt by one specimen count. When S, another daughter, was aged between 13 and 15, he touched her breasts and genitals. It happened about once a month. On an unknown date, he raped W. She cried during the rape and it lasted 25 minutes. In 2014, he anally raped W. Also in 2014, S intervened in an argument and D hit her with his fist or hand. It caused bruising over a large area of S's cheek. That led her school to report the matter to the police. In interview, D made denials of all matters. He was now aged 48 with one trifling conviction. He had had a heart attack and there were indications he had been abused as a child. The pre-sentence report said D had a complete lack of insight into what he had done and was preoccupied with his sexual gratification. The risk of serious harm to family members and others was high. N had experienced significant psychological harm. He had attempted suicide and had become an alcoholic and drug user. The police

considered the victims as part of a travelling community who found it difficult to talk to the authorities. The Judge was misled into believing the maximum for the historic buggery counts was only one year. Held. Bearing in mind his age when N was abused, the least sentence that can be imposed is **20 years** not 16.

Follow us on Twitter [@BanksonSentence](#)

[book@banksr.com](mailto:book@banksr.com)

[www.banksr.com](http://www.banksr.com)

To sign up to receive the Sentencing Alert emails, please [click here](#).