

Banks on Sentence

Sentencing Alert No 162

18 July 2017

Attempted offences

Basic principles

Att-Gen's Ref 2017 Re Edwards 2017 EWCA Crim 1592 D pleaded to attempted false imprisonment and attempting to administer a drug to stupefy. He lured a girl to his home and she brought a friend, V, along. D seized V. She and her friend fought back and eventually the two girls locked themselves in the lavatory and D fled. Held. It is important to underline the observations in *R v Joseph* 2001 2 Cr App R (S) 88 (p 398), "We must bear in mind that attempted offences usually carry a lesser sentence than that imposed for the commission of the full offence, but in this instance that is not a potent factor because the seriousness of this offence was that it was only the determination of the victim that prevented him from being robbed of his computer". [Joseph was convicted of robbery. The victim was punched and headbutted six or seven times, threatened with a knife, chased and tackled to the ground. The robbers failed to prise a computer from the victim's grasp.]

Cruelty to children

Offences against the Person Act 1861 s 18

R v Kaek 2017 EWCA Crim 572 D was convicted of causing GBH to V with intent. D was in a physically violent relationship with his partner, T. Although D realised he could not control his temper and posed a real threat to his daughter V, he took no steps to deal with that. He 'smashed' the head of V, who was then 56 days old, against a hard surface. She suffered catastrophic injuries. D made no attempt to seek medical help. V's head injuries resulted in widespread hypoxic-ischaemic injury, intra-cranial bleeding, retinal bleeding and a skull fracture. She will require one-to-one treatment for the foreseeable future. V had epilepsy, cerebral palsy, global developmental delay and was effectively blind. It is unlikely she will ever walk or talk. T was convicted of causing or allowing serious physical harm and cruelty to V (3 years). D was aged 30 and has some previous convictions but none for violence. The Judge saw no remorse, just self-pity. He said V was "as vulnerable a victim as it was possible to imagine". Held. The injuries were devastating but the assault was not repeated or sustained. However, his action against V equated with an attack with a shod foot or with acid. Although it could be said the assault did not have the higher culpability factors, the case needed to be uplifted to that level. However, **15 years** not 18.

Firearms

Firearms Act 1968 s 16A offences Shotguns

Att-Gen's Ref 2017 Re Barnett 2017 EWCA Crim 573 D pleaded to possession of a firearm with intent to cause fear of violence, assault, battery and driving with excess alcohol. D did not have a

good relationship with his brother-in-law, V, and there was a degree of hostility between them. At around 10pm, D drove to V's house where he lived with his mother and girlfriend, and pushed his way in, brandishing a sawn-off shotgun. D pointed the gun at V and shouted, "Your family have been saying things about me" and "You asked for this you little cunt." D struck V between the eyes with the butt of his gun, causing him to fall to the ground. V's mother came downstairs and told D that if he killed V, he would have to kill her too. D replied, "If I have to, I will," and grabbed the mother by the throat and threw her to the ground. D took a cartridge from his pocket and tried to load it into the gun, at which point V's girlfriend knocked the gun out of D's hand, took it upstairs and hid it. D punched and kicked V whilst he was on the floor and then went upstairs to look for the gun. This allowed V and his mother to retreat into the kitchen and when D returned without the gun they fought him off with kitchen utensils. D then left the house and drove off. V's girlfriend had alerted the police and they found D stuck on a verge on a cliff edge. He had apparently told his wife that he intended to kill himself. He was arrested and a breath test showed 58 micrograms of alcohol in 100 millilitres of breath. The shotgun was in working order. A live cartridge was recovered but because of its dimensions, the gun was not treated in law as a prohibited weapon. V had a 1-inch cut above the bridge of his nose, which left a permanent scar, and extensive bruising to his face and body. In his witness statement, V described the physical and psychological effect on him from the attack. He said the ordeal was "terrifying" and described the house as "wrecked" and "covered in blood" and he'd had counselling to help him cope. D was aged 38 and had 36 previous convictions, mostly to do with violence fuelled by his problem with alcohol. He had served 2 years in prison for ABH. The prosecution relied on: a) the offence happened in a family home at night, b) D was drunk, c) there was more than one victim, d) the offence was premeditated, e) a sawn-off shotgun has no lawful use, and f) a live cartridge was attempted to be loaded into the firearm in the house. Held. This was a very bad case. We rely on the fact that D had a shotgun and attempted to load it and have regard to the very serious assault which was inflicted on V. It was a Category 1A assault. D was extremely remorseful. The offence occurred when he had personal and mental health issues confronting him. These included business and family matters. With the mitigation we start at 6 years for the firearms offence and 30 months for the assault. With maximum plea credit **4 years** for the firearm and 20 months consecutive for the assault. 5 years 8 months not 40 months.

Offences against the Person Act 1861 s 18

Pubs

Att-Gen Ref 2017 Re Vye-Parminter and Howes 2017 EWCA Crim 452 D and H pleaded to causing GBH with intent and ABH. V1 and V2, a gay couple, were in a bar in Brighton, at night. They became aware of D and H staring at them in an intimidating way. V1 and V2 decided to leave and moved outside to the smoking area, where they encountered the offenders again. One of the offenders said "Is that your boyfriend?" in a sarcastic tone and they both shouted abusive and derogatory comments at the victims. Security staff were forced to step in and hold D and H back. As the victims left the club to look for a taxi, D and H appeared, shouting "faggot" and "gay boys". V1 was knocked to the ground in excruciating pain and felt kicks to his face and head. His contact lenses came out and he was knocked unconscious. V2 was also knocked to the ground and forced to curl up to protect his head as he was kicked. He managed to get to his feet but was knocked down and kicked again. When V1 came to, he was lying on the side of the road unable to see and in great pain. Police attended and described D and H as being very drunk. One offender was still shouting homophobic abuse as the police arrived. A witness said the offenders "absolutely battered and kicked the shit out of" the victims. One offender advanced angrily towards the witness shouting "You're a bitch". The other offender threatened a police officer with a clenched fist saying "You touch my mate, I'll flip out." He also told the officer to "fuck off" when asked what had happened. V1 suffered fractured eye sockets and cheek bones, a chipped tooth, cuts to his nose, chin and arms, bruising to his cheeks, face and shoulder, pain in his back and stomach and a swollen knee. A CT scan showed a blowout fracture of the right orbital floor and a displaced left nasal bone. He underwent surgery and more was required. There was the risk of sight loss in one eye. V2 suffered cuts to his lip and inside his mouth and was in considerable shock and pain. The psychological impact on both victims has been lasting and severe. V1 has suffered a significant loss of confidence and remains in constant fear. D, aged 18, and H were of previous good

character.¹ Their families said their behaviour was totally out of character. D expressed a great deal of remorse to probation. The Judge placed the offending in Category 1 and listed the aggravating features as a) the use of shod feet, b) the incident took place in a public street, c) in the presence of the public, d) under the influence of alcohol and e) the lasting and severe impact. [The homophobic nature of the offence was a factor making the offence Category 1.] Held. On the one hand the reason for the attack was the victim's sexuality and the injuries could have been even more serious. There were devastating consequences for both victims and [we must factor in both assaults]. On the other hand, D and H were young and immature and not used to drinking to excess. There was deep and genuine remorse and both were of good character. We start at 12 years and with the remorse, youth and immaturity of the defendants, we move to 10-½ years. With a full discount, **7 years** not 5 years 4 months.

1. A newspaper report says they were both aged 19 at the time of the appeal.

Theft

Persons in public places, by thieves from scooters

R v Hutson 2017 EWCA Crim 561 D pleaded to theft and dangerous driving. The thefts were of 21 mobile phones committed with another. The scooter would drive up behind those with phones, the pillion passenger would grab the phone and the scooter would drive off. The thieves wore balaclavas. During the subsequent police chase, the scooter mounted the pavement forcing pedestrians to take evasive action because of the dangerous driving. During the chase, D entered an area forbidden by his Criminal Behaviour Order; (£700 fine, no appeal). The second offender was not caught. All the phones were recovered undamaged and no injuries resulted from the dangerous driving. D was aged 21 and had 12 previous convictions and had been sentenced to 12 months YOI and 3 months imprisonment, (no details of what for). Held. We take into account, D's age, the lack of injury, the recovery of the stolen property and the period of offending. We start at 3 years not 4, concurrent for the thefts reduced to 2 for the pleas and agree with 8 months for the dangerous driving. Therefore **2 years 8 months** not 3 years 4 months.

Voyeurism

R v Lone 2017 EWCA Crim 546 D was convicted of two offences of voyeurism. One related to the installation of equipment and the other related to recording. V rented a room in D's house and noticed a CCTV camera hidden under a cushion in her room when she returned from having a shower. The police were informed and arrested D. A search uncovered a laptop and hard drive hidden in a bench seat in the garden. Police found a folder on the computer with V's full name that contained a video of V naked from the waist down and a number of non-explicit pictures. D admitted placing the camera but gave no reason for doing so. D had placed the camera in V's bedroom at a time he knew she would be returning to the room naked. He also wiped the images from his mobile and hid his laptop. V was extremely distressed when the camera was found and her humiliation and degradation was increased when she saw the footage. D blamed his obsessive, compulsive and anxiety disorders and the strain of looking after his very ill mother. The Judge said D was seeking to excuse himself and indulging in self-pity. Held. The conduct was 'serious' and in Category 1 due to a significant degree of planning (namely linking the camera to D's bedroom and recording the images). There was an aggravating factor in that D sought to conceal the evidence, but also mitigation in the absence of any previous convictions and D's psychiatric difficulties. **6 months** not 15.

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