

Banks on Sentence

Sentencing Alert No 164

11 August 2017

Causing/allowing the death of a vulnerable adult

Judicial guidance

Att-Gen's Ref 2017 Re Mills and Others 2017 EWCA Crim 559 D was convicted of causing or allowing the death of a vulnerable adult. Held. Parliament has imposed a positive duty on members of a household to protect the vulnerable. para 54 Causing or allowing a child or vulnerable adult to die is a serious offence, in some cases as serious an offence as the most serious offence of manslaughter. It is an offence that can be committed in a wide variety of circumstances and for the purposes of sentence, an offender's culpability must be assessed very carefully. This will involve an assessment of all the circumstances including the nature of the relationship between the offender and the victim and the nature of the breach of duty towards the victim. Both the nature of the relationship [and] the breach of duty may be equally relevant. Allowing a child or vulnerable adult to die is [not] necessarily less culpable than causing a child or vulnerable adult to die. It will depend on all the circumstances.

Case

Att-Gen's Ref 2017 Re Mills and Others 2017 EWCA Crim 559 D and others were convicted of allowing the death of a vulnerable adult, V, and conspiracy to pervert the course of justice, which was an attempt to cover up the death. V was aged 24 and had severe learning disabilities. He was in the bottom 1% for intellectual capability and his vulnerability was described as 'obvious'. He struggled with everyday life. In early 2014, V attached himself to D's family and began living with them. D's son, W, lived at home. W was well known as an extremely violent man who liked to control all those around him. L was W's latest girlfriend and was often at D's house. B was D's lodger. In May 2015, L obtained V's bank card from his mother to gain access to V's benefit payments. With W, she opened online banking arrangements on V's account and it was claimed withdrew his benefits, not all of which was used for D's living expenses. Witnesses saw W hit V many times. D gave V anti-psychotic medication meant for her and let him take Ritalin which had been prescribed for W. D told a neighbour that W had given V cardiac medicine that had been prescribed for a dog. On 28 May 2015, W attacked V for urinating in his bed. W sent a text to L saying that he had 'smashed' V 'all over' and later sent another message telling L that he had given V a broken nose, two black eyes and a cut on his eye. Later that evening, W assaulted V again, probably by kicking and stamping. The combined effects of the assaults were 21 separate rib fractures, fractures of the nasal bones and injuries to the soft tissues of the face. The rib fractures caused almost a litre of blood to accumulate in the pleural cavity and cause a lung to partially collapse. V would have been in severe pain and his breathing would have been significantly impaired. A pathologist said the force necessary to have caused such injuries could be equated to someone being in a car crash without wearing a seatbelt. The offenders knew of the attacks but did not seek medical help or contact V's mother. Instead they fed V various drugs to keep him sedated and kept him out of sight when police called on an unrelated matter. On the same day, L sent a message to a friend saying 'Fkn spacka here has been stamped all over'. The

next day, L took a photo of V which showed him lying on a blood-stained pillow, his face bleeding and injured. In another text, L mentioned that V had asked her to tell W to stop bullying him. D also took a photo of V's injuries showing severe swelling to the side of his face. Further texts revealed that D, L and W planned to keep V in the property until his facial injuries had healed, leave him on a street and destroy all evidence of his presence at the house. W attacked V once more causing a further three rib fractures, a bruised right lung and bruising to the spleen. B had been in the house for most of the period in question and on 5 June 2015 was instructed to move V downstairs to another room. When he did so, he became concerned about V's condition and raised the alarm with the others. L's phone revealed internet search terms for explanations about V's condition such as why would someone's face turn yellow, the symptoms of brain haemorrhage and why a person's extremities may have become cold. V died and the offenders tried to hide the fact that V had ever been at the house. Bloodstained trainers and mobile phones were hidden in a garage. Drugs of the type given to V were thrown in a bin. V's body was dressed and attempts were made to clean up the blood. The offenders agreed that they would claim that V and B had never been at the property. B was instructed to dispose of the body. At 8 am on Saturday 6 June 2015, approximately 4 hours after V had died, B put V's body in a pram, walked half a mile and left the body at the side of a public footpath. B called the emergency services and told them he had discovered a body. He gave his address as D's house and was arrested on suspicion of murder. Officers went to the house and W and L said the only other person in the house during the relevant period was D. D returned home and provided a similar account. B maintained his story that he did not know the identity of the deceased man but was later caught on tape saying he couldn't get the picture of V's body lying in the house out of his mind.

The victim impact statements from V's parents set out the devastating impact that V's death had on them and other members of the family. D, aged 52, had several previous convictions including public order offences, assault and perverting the course of justice (bribing a witness relating to another one of her sons). L, aged 22, had one previous conviction for ABH. B, aged 35, had no relevant previous convictions. He had a significant learning disability himself and gave evidence at trial with the help of an intermediary. The aggravating factors were: a) V's prolonged suffering before he died, b) V's suffering must have been obvious to all, c) the attacks were carried out in what had effectively become V's home, d) the cruel and exploitative treatment of V over a year, and e) V's body was removed from the scene and dumped unceremoniously. The additional aggravating factors for D were: f) it was her household, g) she was the mother of the perpetrator, h) she fed V a cocktail of drugs, and i) her previous conviction for perverting. L's aggravating factors were: j) she had a relevant previous conviction, and k) she played an active part in preventing the police from seeing V's condition. The mitigation for D included the fact that there is no evidence that the violence was committed in D's presence and no evidence that D was aware of the extent of V's injuries. L's mitigation included the fact she was young and in thrall to W. Also, that she did not administer drugs to V. B's mitigation included his learning disability and the fact that his principal motivation was to do as he was told and not to conceal the death. W was convicted of murder (minimum term 23 years). Held. V was a particularly vulnerable adult. The defendants must all have been aware of V's prolonged suffering and the seriousness of his condition. The conduct of at least two of them went beyond a mere failure to get help. The offenders thought only of themselves, determined to protect themselves and to protect W. Both D and L took active steps to prevent V getting the medical attention he needed and that might have saved his life. They were callously indifferent to his suffering and thereby played a part in his death. D was the most culpable of these offenders, so **8 years** and 2 years consecutive making 10 years not 8 in all. L's culpability was not as high as D's but she did play an active part in the offences, therefore **5 years** and 2 years consecutive, making 7 years in all, not 5. B sentence was not straightforward. He did nothing to help V and was responsible for the disposal of the body. He simply was doing what he was told to do. B was himself a vulnerable adult and in other circumstances he could have been W's victim. The Judge was aware of the treatment B received from D's family and his harrowing time in prison, where W subjected him to a campaign of violence and intimidation designed to frame B and get him to confess to the killing. **3 years** was lenient but not unduly lenient. The 2 years for the perverting count will remain concurrent.

Offences against the Person Act 1861 s 18

Pub violence

R v Bell 2017 EWCA Crim 613 D was convicted of attempting to cause GBH with intent. D was drunk and entered a pub in breach of a licence condition to keep him out of licensed premises. An altercation took place and D left. A member of staff told V, the licensee (who was upstairs in the pub and not part of the altercation) what had happened and V then followed D outside and told him he was barred. As V turned away, D punched him in the face and he fell to the ground. D continued to kick and stamp on V's head and a witness said at one point D supported himself on a wall and D jumped on V's head. V was rendered unconscious and suffered a fractured nasal bone, swelling and abrasions. Through sheer good fortune, V did not suffer serious or lasting injury. D was aged 45 and had been convicted of 28 previous offences, including GBH. The pre-sentence report revealed that D had a well-established and entrenched pattern of violent behaviour whilst under the influence of alcohol. The report said that D represented a high risk of re-offending and satisfied the dangerousness criteria. The Judge sentenced on the basis that D was using a weapon for the attack and that he had intended to do more damage than had in fact been done. The Judge placed the offence in Category 1, calling it a sustained attack, and started at 12 years. Held. D's previous was an aggravating factor but the fact the attack was an attempt which did not result in serious injury justified downward movement within the range. 12 years' extended sentence (**10 years' custody** 2 years' extended licence), not 14 years' extended sentence (12 years' custody 2 years' extended licence).

Note: Many would consider the scale of the attack with all the aggravating factors was the critical sentencing basis. They would also consider the good fortune was worth no reduction. Ed.

Rape

Victim then aged 12 Defendant then aged 17

R v Carlisle 2017 EWCA Crim 612 D pleaded to rape, attempted rape and robbery (3 years concurrent, but added to rape sentence giving a global sentence of 3 years more). The mothers of D, aged 17½, and V, aged 12, were friends and V stayed at D's house when V's family were moving home. D and V were left alone for a time and D pestered V for sex. He put his penis to her lips but V pushed him away. This was the attempted rape. Later, when D persisted, V gave in and they had sexual intercourse. No condom was used but D did not ejaculate. They were disturbed by D's mother returning home and she noticed the two were acting suspiciously. D tried to explain away their behaviour but the facts came to light when V was questioned by her mother later that day. The Judge started at 8 years with a 25% discount for the plea giving 6 years. He then added 3 years for the robbery giving 9 years in total for the rape. D appealed on the sole ground that the starting point of 8 years was too high. Held. The starting point for an adult was 8 years. So, we start at 8 years, make a 25% reduction for D's age and another 25% for the plea, making **4 years**. No deduction should be given for the robbery sentence, therefore 7 years' YOI (a global 4 years and 3 years).

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