

Banks on Sentence

Sentencing Alert No 165

17 August 2017

Affray

Judicial guidance

Serious affrays

R v Regan and Johnson 2017 EWCA Crim 112 D was convicted of violent disorder. One group of football supporters attacked another group in a pub. The Judge said, "I must have regard to the effect of the disorder on members of the public in the area who are likely to be caused real anxiety and distress. It is not the individual conduct of each of you which is of importance but the nature of the offending as a whole. Any participation in violent disorder in the streets of this city, irrespective of its precise form, is serious because of the disturbance to the public peace caused by an uncontrolled mob engaged in a common and unlawful purpose. Those guilty of participating in this sort of public street battle must expect severe sentences, designed not only to punish them but also to deter others from following their example." Held. [We endorse that.] The judge must consider the level and the nature of the violence, the extent it was premeditated, the number of persons involved and their involvement in the context of the specific acts.

Football offences

R v Regan and Johnson 2017 EWCA Crim 112 D was convicted of violent disorder and assault (a separate incident at St Pancras station, 1 month consecutive, upheld). A group of Everton supporters, who had mostly been drinking, went off their route home and entered a pub in Caledonian Road in London, where they expected Newcastle United supporters would be. Over six minutes, the Everton group punched and kicked the other supporters. Glasses, bottles and other missiles were thrown. Members of the public, including children, fled the pub. Some of the victims fell to the floor. One victim's motionless body was 'dragged' out of the pub. The Judge found D had danced towards a number of scuffles and thrown a few punches. Further D had not used any weapon. D was aged 19 and of good character. D had lost his brother to cancer when the brother was aged 22, less than two years before. D now admitted the offence and felt shame and remorse. His references said he was a hard-working, conscientious young man much given to charitable work, who acted out of character. The Judge started for the offence at 2½ years for those participating in the violence. He gave 25% discount for D's age and good character. Held. The Judge did not give enough credit for D's mitigation. **15½ months** not 22½ months with the 1 month remaining consecutive.

Court of Appeal

Power to rehear concluded appeals

R v Weekes 2017 EWCA Crim 819 D, aged 17, was convicted of aiding and abetting rape. She appealed the sentence that she was given in November 2014. The single Judge said the victim surcharge was the wrong amount and considered the appeal otherwise to be without merit. She referred the application to the full court on both points. In May 2015, D was told about the full court hearing the day before the hearing. Counsel was not told. The full court amended the victim

surcharge and considered the substantive appeal to be without merit. No one attended. Held. There was a procedural irregularity which led to D being denied the opportunity to be represented before the full court for her application for leave to appeal. We have power to allow the case to be reopened on the ground it was required to avoid a real injustice, but this is subject to our discretion. It cannot be justified to reopen the case because the application to reopen was not sent to the Court until late January 2017. The explanation for the delay was wholly unsatisfactory. The strong interest in finality must prevail. We see little merit in the grounds now sought to be advanced and agree with the single Judge. Appeal dismissed.

Offences against the Person Act 1861 s 18

Vehicle, After using

R v Lashley 2017 EWCA Crim 260, 2 Cr App R (S) 4 (p 14) D pleaded to section 18. J and his brother, V, returned to J's home. They found J's partner, who was heavily pregnant, upset because K and N had demanded money said to be owed by J. They called two people to help and J and V waited outside to meet them. D, under the influence of cannabis, arrived in a VW Polo car, which had been taken from K and N's mother without consent. K and N and another were inside. The three men left the car with rounders bats and D remained in the driver's seat. The three initially focused on J and then attacked V. V was hit on the head from behind and he defended himself by holding one of the bats. The three backed away towards and beyond V's car. D deliberately drove her Polo fast onto the pavement straight at V after a loud revving noise. V could see the hatred on D's face. V jumped in the air quickly but landed on the bonnet and windscreen of the Polo. He fell off onto the ground on the driver's side of the car. D deliberately reversed the car over V's legs. V's father and sister-in-law witnessed it. Both V's legs were fractured twice. His bones went through the skin. Surgery lasted about 12 hours. The wounds took a long time to heal. V also had cuts to the top of his head, bruising and grazing to an arm and bruising to his eye. He had lost his job and had nightmares. D gave herself up to the police and was tearful. She was aged 26 and had a non-relevant previous conviction. She had a stable relationship, a son and a job. The defence accepted that the offence was Category 1. The Judge said that V's attack occurred after the earlier incident had fizzled out. He also said that D had until recently lived a blameless life. The Judge accepted that D was devastated by what she had done and accepted full responsibility. He arrived at 13½ years, after considering the aggravating and mitigating factors. Held. The serious injuries and the vulnerability of V on the ground gave two aspects of greater harm. As the Polo was used as a weapon there was higher culpability. The offence was aggravated by: a) the public location, b) the serious effects on V, c) the presence of others, d) D was under the influence of cannabis, e) there had been earlier violence, and f) the vehicle had been taken without consent. The starting point is significantly in excess of 12 years. With the mitigation, we arrive at 12 years, so with full plea discount, **8 years** not 9.

Rape

Defendant aged 15

Att-Gen's Ref 2017 Re O 2017 EWCA Crim 640 D was convicted of attempted rape. V, aged 23, was returning home on a bus with her 3-year-old daughter. D, aged 15 years and 3 weeks, boarded the bus and spoke to a number of girls and women before speaking to V. D told V he was drunk and lost. V was concerned for him and asked him where he lived. He told her. When V got up to leave the bus, D followed despite V telling him that he should stay on and wait for another stop. V gave him directions but he asked her to accompany him, which she did. D asked V to detour through parkland and D seemed to sober up very quickly. He grabbed V by the hair and dragged her to the ground causing her to drop her daughter. D tried to remove V's clothing and took out his erect penis, telling her "You're going nowhere", and tried to force open her legs. V fought back hard shouting and kicking, which allowed her and her daughter to escape. V lost a clump of her hair in the process and suffered scratches down her back. On arrest, D denied any wrongdoing and said he had hugged and kissed V to thank her for the directions. V developed a speech impediment and tried to commit suicide on the day of the retrial, putting back the trial. The victim impact statement makes it clear that V's children have also suffered due to their

mother's distress and the family have had to move home. D was aged 16 at the date of sentence. A trial proceeded on the charge of attempted rape with D having pleaded to a sexual assault count only. The jury was unable to reach a verdict and a retrial was held. A youth offending team report says that D was an intelligent young man who had good academic prospects and supportive parents. Held. The effect of the offending on V was very severe. The Judge did not follow the current guidelines for sentencing but appears to have followed the previous guidelines on sexual offending and fell into error in doing so. Welfare and rehabilitation are at the heart of the sentencing process for young offenders. The aggravating factors were a) a degree of planning in speaking to several women, b) the location of the attack was isolated, c) the presence of a child, d) a deeply unpleasant assault, and e) catastrophic consequences for V. The mitigation was D's young age. It was Category 1B. We start at 12 years, which we reduce to 10 years. With a 50% reduction for D's age. **5 years** not 3.

Supply

Cocaine **Couriers**

R v Rexha 2017 EWCA Crim 769 D pleaded to cocaine supply. Police stopped a motor vehicle that D was driving and found ten 1 kilo blocks of cocaine. D presented a forged Romanian driving licence. D was aged 37 and of good character. D said he was paid £1,000 and that he was unaware of the amount of drugs he was transporting. The Judge sentenced him as a courier playing a lesser role. Held. The starting point is not purely a mathematical exercise. We start at 9 years, so with credit, **6 years** not 11.

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