

Banks on Sentence

Sentencing Alert No 178

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Firearms

Firearms Act 1968 s 16A Imitation weapon

R v Elezaj 2017 EWCA Crim 1713 D was convicted of a) possession of a firearm with an intent to cause fear, and b) affray (2 years concurrent). D was a member of one of two Albanian gangs. In the weeks before these offences, a disagreement arose between the two gangs and each had used violence towards the other. This included the use of weapons. Following an incident where D's friend was knocked unconscious after being attacked by someone wearing a knuckleduster, D acquired a starting pistol for his protection. On the evening of the offences, a fight broke out in a residential road in Oxford between the two gangs. Many people were involved and golf clubs and estate agents' signs were used as weapons. D was in the smaller of the two groups and there was some evidence that they were retreating. However, video footage showed D drawing the pistol from his pocket as he returned to the scene. D fired it three times in close succession at men from the other group who were approximately 3 metres away. D eventually threw the pistol in a river. D said he fired the gun to protect himself. He wanted to frighten the other men and make them fear they would be shot. D was aged 25 on the date of sentence and was of previous good character. Held. This was a case of gang warfare on a residential street. Suburban Oxford is not the Wild West. Sentences, even in the case of imitation firearms, need to make clear to gang members that this sort of behaviour will be severely punished. However, partly because D had no previous convictions, **4 years** not 5.

Note: The importance attached to D's good character seems at odds with his membership of a violent gang whose activities were no doubt mostly illegal. Ed.

Fraud

Avoiding maintenance payments

R v W 2017 EWCA Crim 1758 D (full credit) and T pleaded to conspiracy to defraud. In 1999, D formed a relationship with V and she became pregnant. Their relationship was transitory. In 2004, D's brother, T, took a paternity test which revealed he was not the father of the child. V then assumed that D was the father and made an application for child benefit. D denied paternity but agreed to supply a DNA sample. T then attended the doctor's surgery, pretending to be D, and provided the sample. He also signed a declaration slip and provided a photograph by way of identification. The DNA test unsurprisingly excluded T as the father. V was certain that D was the father and pursued her enquiries. V was eventually shown the photograph that T had provided. In 2016, D and T were arrested. The amount of maintenance owed by this time was over £10,000. The Judge observed that this was a deliberate attempt to avoid paying the money which D was obliged by law to pay and to undermine the system upon which the public relies to ensure that maintenance is paid in such circumstances. The case fell into Harm Category 4 but was of high

culpability and therefore Category A. Held. The starting point was 18 months, but the Judge moved outside the category range before affording credit for the personal mitigation and guilty plea. There was substantial aggravation to be found in the use of T, the emotional cost to the child, the financial loss caused to the mother and the damage to public confidence. There must be a general deterrent element in such sentences. For those reasons the Judge was right to move some way above the 18-month starting point. However, as D was aged 36, of good character, had worked in the same job for 15 years and provided for his immediate family, **18 months** not 2 years.

Money laundering

Category 4 Criminal conduct money About £130,000

R v Russell 2017 EWCA Crim 1582 D was convicted of money laundering and possession of criminal property. In 2013 and 2014, the co-accused, J and K, ran a money laundering business. Cash was collected at neutral public locations and D was one of their couriers. D was arrested by police, who had been following him as he transported £197,800 in cash from one address to another. A further £32,000 was later recovered from his home address. D was aged 55 at the time of the appeal and had some serious previous convictions. In 1989 he received 10 years' imprisonment for conspiracy to escape from prison, hijacking, kidnapping and firearms offences. D had escaped from prison using a hijacked helicopter. While an escapee, he took part in an armed robbery. In 1992 he received 10 years' imprisonment, to run concurrently to the previous sentence, for the armed robbery. Since his release in 2001, D had no convictions. He had set himself up in business and become a family man. The Judge found that on a conservative estimate, the sums laundered exceeded £30m. When passing sentence, the Judge said that there were no aggravating features but did refer to D's previous prison sentences on a number of occasions. The Judge put the offences into Category 4 with medium culpability (3 years' starting point) and gave concurrent sentences. J and K were also convicted and received 10 and 11 years. The defence pointed out that the total was less than the £300,000 the starting point was based on. Held. The previous convictions carry less weight than the Judge attributed to them and the Judge did not refer to the mitigation of D setting about leading an honest life, creating his own business and becoming a family man. **3 years** not 4.

Murder

Child murders

Att-Gen's Ref 2017 Re Iheanacho 2017 EWCA Crim 1712 D was convicted of murder. D was in a relationship with M, the mother of V, who was aged 5. One afternoon D took V to a park. Witnesses heard repeated booming noises and saw the park gate moving, as if it was punched or hit about eight times, in quick succession. This sounded to one witness as if someone was throwing metal items into a skip.¹ By about 6 pm, when it was dark, D was seen coming from the park with V. V had lost a shoe and told D that it was in the park. This made D angry and V apologised in a fearful voice. Later the shoe was found in a playground. About half an hour later, D and V were together in the park. V was lying flat on his back on a bench with his arm dangling over the side. D said to M on a mobile, "He's fallen asleep and he's heavy". M told D to bring V home and D picked V up and carried him in a fireman's lift. About 15 minutes later, the two left the park. Just before 7 pm, D booked a taxi at a cab office to take them back to M's flat. V was unconscious and was being carried as if he were a baby. En route to the cab office, D had passed a parked ambulance with its lights on. The cab office was only a short distance from a hospital. At the flat, D said that V had fainted and fallen on his knees. V was unconscious, but breathing. He had bruising to his face which D claimed had been caused by slapping him to try to wake him up. M wanted to call an ambulance, but D got angry and stopped her. M was fearful that she would be hit if she tried to call one. At D's suggestion V was put in a bath but he remained unconscious. When the mother began to scream and said that D was a danger to her family, D knelt on her chest and choked her so that she could not breathe. When V had been in the flat for about an hour and a quarter, and something like 2½ hours since the assault, he began to get cold and turned blue in the face. M called for an ambulance and V was taken to hospital. He was operated

on but died. When police separated D from M, D told M in a whisper to tell a false story. A post mortem revealed two serious injuries. The first was the fatal injury, a significant traumatic brain injury. This was caused by a violent impact. The Judge found that it had been caused by the hand or hands, rather than by kicks or stamps. Second, there was a deep, blunt impact injury to the abdomen. That injury was not fatal but had been caused by at least one forceful blow. There was also bruising consistent with a forceful slap to the left side of the face.

D was now aged 39. In 1996, he robbed an 80-year-old woman and broke her collar bone. In 1998, D assaulted a girlfriend who refused to give him money by punching her, putting her to the ground and kicking and stamping on her. In 2003, he robbed a jeweller in his shop (8 years). D had used a hammer and a chair to strike the jeweller on the head. In 2010, D punched a former girlfriend in the face and attacked her with a wine glass (battery). Again in 2010, D threatened a girlfriend, G, with a knife, striking her with a saucepan and stamping on her face (ABH). D hit and kicked G's son who attempted to protect her. In July 2013, D squeezed an ex-girlfriend's throat with both hands (battery). In January 2014, D punched and kicked an ex-girlfriend. D broke her jaw and she became unconscious (GBH). In the same month D assaulted the same victim using a belt and punching her. In March 2016, he was convicted of a further assault on an ex-girlfriend, with a belt and holding her by the neck. D forced a bottle into her face. On a previous occasion (no conviction), D had smacked V when he was sick in a taxi. The Judge found that: a) the offending was not premeditated, b) it was triggered by the loss of V's shoe, and c) there was no intention to kill. Held. D appears to be well built and powerful. Right from the outset the offender gave differing accounts as to how V had sustained his injuries, including differing accounts to the paramedics and in the police interviews. The series of convictions showed D's deeply entrenched streak of violence. The 15-year starting point was correct. The aggravating features were: a) V was very young and vulnerable, b) D was in a position of trust, c) D did not get medical assistance. The delay was prolonged and V's mother's attempts to get help were thwarted, d) D lied to medical staff as to how V had suffered his injuries, e) D caused M to give a false account, and f) D has a very large number of relevant previous convictions which indicate a propensity to lose his temper and inflict violence on others. **21 years** not 18.

Note: It looks as though inappropriate charging for the serious domestic violence contributed to this catalogue of offending. The case also illustrates the deeply unsettling evidence and defendants' backgrounds that courts have to deal with. Ed.

1. The conclusions that were drawn from this evidence are not set out.

Sex Offences: Children, With

Seeking sex Child aged 15

See also: *R v Ahmed* 2017 EWCA Crim 1158 (D pleaded (full credit) to four offences of inciting a child (section 10). Aged 19. Exchanged messages with a vulnerable 15-year-old, G, who replied to them. D sought digital and penile penetration of G. They never met. Good character. Remorse shown. Put in Category 1A. Held. We start at 45 months not 60, so **30 months'** detention not 40.)

Note: This case shows clearly how the guidelines encourage high sentences and discourage fair sentences. There is nothing in the case to indicate that custody was appropriate. Ed.

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