

Banks on Sentence

Sentencing Alert No 179

17 Jan 2018

Explosive Offences

Device to be taken on a plane

Att-Gen's Ref 2017 Re Muhammed 2017 EWCA Crim 1832 D was convicted of possessing an explosive with intent to endanger life. D was flying from Manchester to Bergamo, Italy and had with him a suitcase as hand luggage. He regularly travelled between the UK and Italy for business. His case was X-rayed and the operator identified a suspicious object in the internal zipped lining. When questioned, D claimed ignorance and said a family member could have put it there. Neither the security staff nor the police recognised the object as an improvised explosive device. The item was retained by staff and D was allowed to continue on his journey. The device was then examined by a counter-terrorism officer. The officer summoned an army bomb disposal squad, who partially dismantled the item to render it safe. At a forensic explosive laboratory, the device was found to be a form of pipe bomb that used a smokeless propellant. It was designed to be detonated when wires from batteries were brought into contact with a hot-wire igniter. Within the propellant were a number of dressmaker's pins included to increase the harm caused by an explosion. The device was described as crude but potentially viable. D was arrested when he returned from Italy and maintained that he hadn't known the device was in his case. D was now aged 43 and had no previous convictions. He was married with five children. The Judge said that he could not be sure that the offence had a terrorist connection within the meaning of Counter-Terrorism Act 2008 s 30. In the absence of any evidence of motivation, ideology, political or religious purpose, he said that he could not be satisfied to the criminal standard that section 30 applied. The Judge also found that D was dangerous and that, given the extreme nature of the offence, there was a considerable risk of D committing a similar offence at some point in the future. Held. We bear in mind *Att-Gen's Ref No 120 of 2015 and R v Ziamani and Others 2016 EWCA Crim 568, 2 Cr App R (S) 32 (p 304)*, see 345.15, whilst we recognise that the terrorism factor is absent. That reduces its gravity, but most of the consequences of a successful detonation of this device would have been little different from those which would have accrued had this offender been motivated by terrorism. **27 years'** extended sentence (**22 years'** custody 5 years' extended licence) not 23 years' extended sentence (18 years' custody 5 years' extended licence).

Murder

Women killing partners

R v Withers 2017 EWCA Crim 1534 D was convicted of the murder of her partner, V. D and V lived together and their relationship was volatile. They had been drinking and arguing one evening. V went to the off-licence and, whilst there, received a text from D saying that he was not to come back to the house. V did return and argued with D at the front door. At this time, D's son C turned up and argued with V about what he was doing there. They began to fight. D fetched a knife from

the kitchen and came back out to find V on top of C but not much in terms of aggression or fighting was happening at that stage. D stabbed V four or five times in the back. These wounds were not fatal. V got up and walked away. D pursued V even though he was leaving and stabbed him two or three more times. One of these blows pierced his lung, which deflated, and also severed a major blood vessel causing it to haemorrhage. After V had collapsed and was bleeding on the road, D stood over him shouting, "I hope you fucking die...you can't hurt me now." When C asked for something to stop the bleeding D replied, "Let him die." D was aged 47 at the time of the appeal and had no previous convictions. She did, however, suffer from profound mental illness. Three psychiatrists agreed that D suffered from depression with some psychotic elements. The Judge found that, although D was in drink at the time of the offence, she knew what she was doing, what she was going to do and why she was doing it. He said, "It may be that you believed that C himself was under attack but your response was wholly disproportionate." He added, "you pursued him remorselessly as he retreated...and dealt him what was almost certainly the fatal wound." The Judge did say that he recognised that D acted initially at least to protect C and he saw that as a mitigating feature. The aggravating features were the number of wounds inflicted and the contemptuous way in which she treated V as he lay dying. The Judge found an intention to kill or that there was no mitigation for the lack of premeditation. He started at 25 years. Held. The Judge here was plainly entitled to adopt the starting point he did, but he did not identify the extent to which he thought it appropriate to raise the sentence above the 25 years. The sentence did not reflect the mitigating features, including D's good character, which he had identified. **23 years**, not 26 years.

Prison offences

Possession of spice

R v Ware 2017 EWCA Crim 1266 D pleaded guilty (full credit) to possessing spice and anabolic steroids whilst in HMP Dartmoor. D was serving 5 years for robbery. His cell was searched and officers found 2.93 grams of spice and 31.5 tablets of anabolic steroids. The head of security at the prison said the use of psychoactive substances there was a major issue. Details of why the drugs had become so problematic were given (but are not in the judgment). D was aged 27 at sentence, had a number of previous convictions (although none were drug-related) and had received numerous custodial sentences. The Judge said that he was imposing a deterrent sentence. He passed 14 months consecutive for both offences, making 28 months. Held. We pass concurrent not consecutive sentences for the drugs, which will remain consecutive to the 5-year sentence. **14 months** in total for both offences would act as a sufficient deterrent.

Robbery

Shops

R v Laws 2017 EWCA Crim 1788 D pleaded early to attempted robbery and possession of an offensive weapon (12 months concurrent). V ran a convenience store and was closing up for the night. D approached V and asked to buy some beer. V invited him into the shop as he was well known to him. They chatted for some time and D took beer from the shelves and paid for it. D then said, "I want the fucking money out of the till" and V saw that D was holding a kitchen knife (with a least a 9-inch blade) in his hands. V asked D what he was doing and reminded him that V had helped him out in the past. D said, "I don't care, I'm sick of my life, I just want the money." D indicated that he knew there was a CCTV camera on the premises. V was not frightened but was clearly surprised by D's actions. During the conversation, D held the knife by his side with the tip pointed down. He did not raise it or point it at V. Another customer came into the shop who was known to both D and V. He intervened and eventually D left the shop with the customer. As D left he poked his head back in and said, "I'm sorry." The incident lasted about 10 minutes. V made a statement shortly after the incident and said that he was not frightened by the attempted robbery and was disappointed by the way D acted. V made a victim personal statement two months later in which he said that since the crime he had had sleepless nights. He gets scared at closing time and needs his son with him to make him feel safe. He had helped D a lot over the years and D had put him through this ordeal. D was aged 33 at the time of the sentence and had 34 previous

convictions for 108 offences. The offending included robbery, three possessions of a bladed weapon and most significantly an offence of aggravated burglary for which he received a 42-month prison sentence in 2006. A pre-sentence report said that D confirmed that the offences were financially motivated and that he was under the influence at the time. His marriage had broken down and he had become homeless and began taking drugs. He appeared genuinely concerned about how his actions would affect V. The Judge said that D posed a high risk of serious harm to the public as he had a history of carrying weapons and violent offending. She noted that D had made efforts to help himself in prison. However, she said D's culpability was high because he produced a knife that he took to the scene and it lasted more than 10 minutes. Held. D did pose a high risk of serious harm to the public and the Judge was entitled to conclude that he was dangerous. The impact on V falls a long way short of serious psychological harm and so it was Category 2A, not 1A. A Suspended Sentence Order (12 weeks) for shoplifting was activated concurrently after the sentence in the Magistrates' Court. 6 years' extended sentence (**4 years'** custody, not 6 and 2 years' extended licence, not 3).

Supply

Prison staff *Supplying prisoners*

R v Lee 2017 EWCA Crim 1848 D pleaded (full credit) to possession of cocaine, cannabis and diamorphine, all with intent to supply, and to conveying a List B article into prison. D worked at HMP Doncaster. The prison had a serious drug problem and four inmates were admitted to hospital due to medical problems arising from taking illicit substances. The procedures were tightened up and all staff were searched on arrival. When D arrived, he tried to enter a toilet but it was locked. The staff searched him. A number of items were found about his person including two substantial packages. Two further packages were found in his underwear. The packages contained 5.19 grams of crack cocaine, 31.8 grams of cocaine, 17 grams of heroin, 69.5 grams of skunk cannabis, 62.5 grams of cannabis resin, 5.21 grams of a substance which included methadone, 87 buprenorphine tablets and 182 grams of other material suspected to be a psychoactive substance. D also had eight mobile phones, seven SIM cards, memory cards and charging leads. The total street value of the drugs was thought to be around £2,000 but likely to be fivefold in prison. Further material was found in D's car. He told the prison officers that he had been fully involved in this matter and admitted his part to them. He said he had also brought drugs into the prison on six previous occasions and that he was saving for a holiday to Las Vegas. The Judge sentenced D for seven occasions of bringing drugs into prison and said that D's conduct "corrupted the office of prison officer". The Judge felt the drug offences fell into Category 3 and that D had played a leading role. He started at **15 years**. He reduced it for assistance given and the fact that as a prison officer prison might be more difficult for him. Held. These offences represent a striking breach of trust. This is not simply a case of supplying drugs for money in the usual course of events. This was purely for greed, done to finance a holiday. There were repeated occasions of offending over a comparatively short period of time. The abuse of drugs in prison is well known and causes great violence and danger not only to other inmates but to other prison officers. **9 years** was at the top of the range but we uphold it.

Follow us on Twitter [@BanksonSentence](https://twitter.com/BanksonSentence)

book@banksr.com

www.banksr.com

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

To unsubscribe from future newsletter and promotional mailings, simply click on the following link:
[Unsubscribe Now](#)

[CLICK HERE TO GO BACK](#)

