Banks on Sentence

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Alert material

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Dangerous driving (Simple)

Alcohol/drugs, Driving under the influence of ***Police chases***

R v Sweeney 2018 EWCA Crim 1410 D pleaded to dangerous driving and driving with cannabis over the limit. At 12.05 am, D drove off in an Audi A3 at speed. In a 20-mph limit, he drove at 40-45 mph. A police car chased him and he went passed a 'No Entry sign', mounted a pavement, went through a red light and lost control of his car. The car hit a kerb and was damaged. D ran off. In interview he claimed he felt threatened and had panicked. D was aged 30 with a conviction for driving without a licence or insurance and a number of drug-related convictions. In 2013, D had been seriously assaulted in his vehicle and suffered post-traumatic stress disorder as a result. His cannabis reading was 10 mμ (legal limit 2 mμ). The Judge said D had driven at an extremely dangerous speed. He found high culpability and high risk of harm. Held. Although the driving was bad and aggravated by cannabis, it was short lived. **8 months**, not 12, for the driving and 2 months, not 6, for the cannabis offence. The sentences remain concurrent.

Cruelty to children

Encouraging dangerous acts

R v D 2018 EWCA Crim 458 D pleaded (25% credit) to cruelty to a person under 16. D had been addicted to various opioids. He had tried hard to defeat the addiction and would often turn to alcohol instead. D had a 12-year-old son, V. One morning, D returned home with bottles of wine which he began to drink. He told his wife to go to the shop and buy some lighter fluid for him. When she refused he said he would take V, their son, with him. There was an argument and V didn't want to go but D insisted and so they left the house together at about 10.30 am. After buying the fluid, D took V to a wooded area and told him to inhale some of it. D said to V that there was a 50/50 chance that he would die and that the fluid might freeze his lungs. When V protested, D accused him of "pussying out". V inhaled the liquid five times and felt dizzy. D called his wife to say that they were fine. By this stage, his wife had called the police. In interview, D admitted everything except having forced V to inhale the fluid. A pre-sentence report said that D described the day of the offence as the worst day of his life. He felt he had lost everything in a moment of madness when heavily intoxicated. The author of the report assessed D as having a low likelihood of re-conviction. D was aged 41 at the time of the offence and had 10 previous

convictions including two offences against the person. The Judge said that V must have been terrified. He also noted that D had not sought medical attention for V, which was a serious aggravating factor. Held. The 2-year starting point was too high. **9 months** not 18 months.

Explosive offences

Judicial guidance

R v Harvey 2018 EWCA Crim 755 D pleaded to making an explosive substance. Held. para 22 Three matters must be considered in this type of case, namely: i) the background of the offence and the motivation of the offender, ii) the potential for harm posed by the explosive substance (even if there was no intention of use), and iii) the strong need for deterrence. In R v Riding 2009 EWCA Crim 892, 2010 1 Cr App R (S) 7 (p 37), this Court approved reference to sentence for firearms offences as being the nearest analogy.

Making an explosive device

R v Harvey 2018 EWCA Crim 755 D pleaded to making an explosive substance. D lived an isolated life and displayed traits of schizoid and paranoid personality disorders. He was interested in scientific experiments and had turned his kitchen into a laboratory which contained, among other things, chemicals, test tubes, explosives and propellants, bomb-making books, clippings relating to the 7/7 bombings in London and a box of screws. Over a period of three years, D had fallen out with his immediate neighbours, who D thought caused too much noise. The neighbours lived in fear of D's 'unsocial actions' and what he was going to do next. D decided to scare the family to such an extent that they would be forced to move from their house. D constructed a small explosive consisting of a metal cube around an inch across, match heads and a flash bulb. The cube was tightly taped up with two long wires emerging from it. An expert who later examined the device said that if an electric current from a battery was passed through the wires, the flash bulb would operate and ignite the match heads, causing a loud bang. The expert also said that the fragments of the metal cube would be projected away from the explosion and potentially harm people or damaging property. D attached another wire to the device and lowered it from his upstairs window to just above the fence between him and his neighbours. He left the device hanging there. The father of the family next door, V, saw the device, took his young children inside and then came back to take photographs. He thought it was a nail bomb. As this was only four days after the Manchester Arena bombing, V said he was reluctant to call the police and so instead went to D's front door but there was no answer. V then saw D pulling the device back inside and heard him say, "It's just wires." V then took the photographs he had taken to his local police station. Police then searched D's house and found the device in question as well as the homemade laboratory. In interview D said that he had dangled the device to frighten V and had not intended to detonate it. In his victim personal statement, V said that he thought daily about the likely consequences of D returning home and spoke of the fear and distress that D had caused him and his family. D was aged 54 at the time of sentence and had no previous convictions. The pre-sentence report indicated that D displayed limited victim empathy. He was assessed as posing a high risk of serious harm to the public. There was a 5½ month delay before sentence because of D's ill-health, caused by a rat bite to D when he was in custody. The Judge considered D to be a rather eccentric man who conducted amateur experiments of no great threat. He considered that D had achieved his purpose, which was to scare his neighbours. The Judge started at 5 years and reduced that by a third for the guilty plea. Held. D made not just an explosive but a small, functional, explosive device, which had the potential to injure people in proximity to it, albeit not seriously. V's children were exposed and, unsurprisingly, the whole family were very scared. The Judge was entitled to take into account the diversion of public resources in Manchester. The Judge had to give effect to the strong need for deterrence. After full discount for the plea, **28 months** not 3 years 4 months.

Harassment section 4

Racially aggravated

R v Misalati 2017 EWCA Crim 2226 D pleaded to racially aggravated harassment and racially aggravated common assault. D was in the waiting area of a Jobcentre drinking a cup of coffee. V1, a customer care officer, approached D and told him that he would need to finish his coffee before he could attend his appointment. D swore at V1 and said "You Pakis clean toilets. Are you a Paki?" When V1 said that he was not, D said "So you are a sand nigger." D attended his appointment with V2, a work coach. She had interviewed D before and had warned him about his language. V2 examined D's record and said to him that it appeared he had not actually been looking for work. D became abusive saying, "You have stolen my money. You Pakis stole my passport. You're a fucking devil. You're a motherfucker. You open your pussy to niggers." Referring to V2's hijab, D said, "you wear all of this, but you are the devil inside." A security guard asked D to leave. D spat at him and called him a Paki. V2 was frightened by the event and, in her victim impact statement, said that she required security to be close by when she saw men. D was in his early 30s at the time of the sentence and had no previous convictions but had three cautions in respect of damage to property and possession of drugs. He was from Libya and had been in the UK for some 15 years. The Judge said that without the racial aggravation the offences would have attracted a sentence of 6 months, but the racial aggravation required an uplift of 9 months. Held. The maximum sentence is 2 years. The Judge must have started at 22½ months. We start at 15 months and take into account there were three public servant victims, so with plea, **10 months**, not 15.

Rape

Victim then aged 14-15

R v Storie 2018 EWCA Crim 501 D was convicted of three rapes, eight sexual assaults and three counts of causing a person to engage in sexual activity. In 2015, when D's wife died, a friend of hers, M, showed some kindness to D and they became friends. M had two sons, V1, then aged 15 to 16, and V2, then aged 14. D took V1 and V2 on holiday where all three of them shared two beds that had been placed together. One night, D pulled down V1's boxer shorts and started to masturbate him. V1 asked him to stop, which D initially ignored, but then did stop when V1 asked more forcefully. The offending continued over the next few months with D masturbating V1 every two weeks. D would stop when V1 told him to. Sometimes D would stay overnight in the family home and would text V1 with a message such as whether he would like a drink. D would use this as a pretext to visit V1 in his room. D performed oral sex on V1 even though V1 made it clear he did not want it. D would stop when asked but also said that he thought V1 was welcoming his actions. On one occasion D tried to insert V1's penis into his anus. He achieved partial penetration before V1 pushed him away shouting, "What the hell are you doing?" In 2016, V1 disclosed these offences to his older sister and D was confronted with them. He threw himself on the floor saying he could "not live with this". D then denied the allegation and left the family home. He next attempted suicide. The police became involved a week later. V2 was spoken to by police in the light of V1's allegations and denied that D had committed any offence against him. However, six months later V2 admitted to his mother that D had kissed him on the lips, masturbated him and penetrated him anally. Various offences of this nature were committed against V2 regularly over the space of year. D denied any sexual offending against V1 and V2. The victim personal statements spoke of the effect on their mental well-being, their ability to concentrate, which had impacted on their school studies, and their ability to trust and make friends. D was aged 54 at the time of sentence and had two previous convictions for indecent assault on a male under 14 years of age. When aged 19, D had been babysitting a child and had masturbated him and placed his finger in the child's anus. In 1983, D received a 2-year probation order. In the pre-sentence report, D continued to deny all offences and showed no remorse. The report identified D as posing a significant risk of harm to the public, particularly to adolescent males. The Judge placed the rapes in Category 2 due to the vulnerability of the boys and their relationship with D, and Category A. This gave a starting point of 10 years. The sexual assaults were placed within Category 2A. The aggravating factors were a) relevant previous convictions, b) the location of the offending, c) the presence of others, and d) there was ejaculation. Held. The number and nature of the offences with the insidious psychological pressure called for a long determinate sentence. We don't think this can be described as a 'campaign of rape'. The Judge was right to pass a global sentence on the rape count. **18 years** not 21.

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