

Banks on Sentence

Sentencing Alert No 206

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Alert material

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Dangerous driving

Driving at people

R v Duah 2018 EWCA Crim 2239 D was convicted of dangerous driving having been acquitted of causing serious injury by dangerous driving. In the early hours of the morning, J contacted D in distress and told him that he was being threatened by V. V had said that J owed him money. D drove into Manchester city centre to collect his brother, J. When D arrived, J got into the car but V stood in front of the vehicle preventing them from leaving. D moved the car forward slightly a number of times. V stepped backwards as the car moved forwards, but having no time to get out of the way and in a state of unbalance, jumped up onto the bonnet and then the roof of the car. D drove a short way down the street swerving twice to shake V off and on the second swerve V was thrown from the car and landed in the road. D drove away and reported the incident 16 hours later. V was taken to hospital and was shown to have sustained a swelling on the brain, lacerations to the back of the head which required stitches, a laceration under his eye and a fractured leg. V was in hospital for a week and was discharged with "no ongoing cognitive deficits". Subsequently V has complained of ongoing problems with his memory, a sensory loss of smell and taste and being unable to stand for long periods. He needed crutches for 2 months. D was aged 23 at the time of sentence. He had previously been fined for drink/drive and using a vehicle whilst uninsured. The Judge recognised that the driving was over a relatively short period of time but described it as a calculated and appalling piece of deliberate dangerous driving. He accepted that D had not intended to cause the injuries that V sustained but said the offence was aggravated by the fact that D did not stop and the delay in reporting the matter to the police. Held. The Judge was wrong to sentence D for causing serious injury. **10 months** not 14.

Firearms

Minimum sentences etc. Stun guns

R v Watson 2018 EWCA Crim 1634 D pleaded to possessing a stun gun. He was stopped in a town centre shortly after midnight. The defence on appeal contended there were exceptional circumstances and relied on his age of 19, D had been given it after a serious assault on him, there was no evidence it had been used, there no evidence D intended to use it for a crime, his good character and there was no risk it could fall into the hands of criminals. Held. There were exceptional circumstances. 26 weeks suspended substituted.

Guilty Plea

Defendant changes his plea

R v Collins 2018 EWCA Crim 2238 In October 2017, a week before his trial for sex offences, D pleaded guilty. The victim, V, was aged 12 when the offences were committed in 2015. D then changed his legal representatives and sought to vacate his pleas. The case had to be transferred to another Crown Court where a judge did not know his former legal representatives. His plea application was refused. In June 2018, D was sentenced to 8 years. V explained in her impact statement the roller-coaster of emotions and prolonged agony that D's plea application had caused her. The Judge said he would have given 10% for the pleas but because of the application, the discount would have been negligible, so he gave no discount. Held. The 10% discount was correct. We do not underestimate the effect the plea application had on V, but D should have had some discount. We give 5%.

Rape

Weapon used

Att-Gen's Ref 2018 Re Abdoule 2018 EWCA Crim 1758 D was convicted of an anal and a vaginal rape. D's 17-year-old sister, S, was best friends with V. D went on holiday to Scotland and unknown to D, S obtained the keys to the flat and held a series of parties there. At one, S and V were present with other young people and some alcohol was drunk, but not much. D returned home unexpectedly. After having some alcohol, at about 4 am, he went to the flat and evicted those there. He wasn't drunk. S and V were present. D remonstrated with S for the state of the flat and taking the keys. S was frightened of D, and S and V left the flat. They walked off in different directions. D got in his car and found V. He told her to get in the car. At that stage D intended to rape V. D brought her back to the flat on the pretext of making V tidy up the flat. D also lied saying that S was at the flat. D was frightened and felt she had no choice but to get in the car. She also trusted D as the brother of her best friend. D drove V to a shop and bought some alcohol and took V back to his flat. Once inside D locked V in the flat. D went to the kitchen and smashed a rolling pin on the floor. The inner handle was broken and a sharp 10-inch point was created. D instructed V to drink some of the alcohol. She declined. D didn't drink any and said V was boring. V was in tears and pleaded for D to release her. D held the rolling pin as a weapon. D ordered her upstairs and on her way there he poked the weapon in her stomach. He called her white trash. In a panic attack V was violently sick three times. While V begged to be allowed to leave, D made her lie on the bed still holding the weapon. He lay next to her and touched over and under her clothing. When V tried to get away he put the weapon to her neck. V said she was a virgin and D said, "You can't be, you are white". He told V to stop crying and pulled her top over her face. D removed both of their lower clothing. V was menstruating at the time. He tried to insert his penis in her vagina while she cried and while the weapon was still held to her neck. Then he turned V over and anally raped her causing her extreme pain for several minutes. Next, he put V on her back and tried to rape her vaginally. She struggled and D put the weapon to her neck again. He succeeded in that and told V that she was not the only girl to be punished. After he had finished, D drove V to near her home. V was extremely distressed. In interview D claimed he was the victim of V's sexual advances and he pushed her off. D was aged 32 with relatively minor convictions which included ABH (7 months). There were no sex convictions. V now felt unsafe and was unable to talk to men or boys. The Judge concluded the offending was all about punishment and degradation. Held. V was right to describe the wooden knife as a weapon. The word abduction does not precisely describe D's conduct with him making V get in the car, but there was a distinct element of cunning and coercion. The incident was sustained, lasting about 2½ hours, there were threats of violence beyond what was inherent in the offence, V was vulnerable and half D's age. D was very much stronger than her. For culpability there was a degree of planning, the rape was racially aggravated, it was in D's home so V could not escape and there were threats to kill V if she reported the offence. It was a Category 1A case not 2A. There was no mitigation. The starting point was 15 years which we substitute.

Note: I consider forcing V into the car and into the flat and then locking the flat door is clear evidence of an abduction. Fear can be caused whether there is a weapon or not. V felt she had no

choice but to get in the car. Ed.

Robbery

With firearm Two robberies

R v Jeffrey and Carroll 2018 EWCA Crim 2135 D and C pleaded to two robberies and two possessions of an imitation firearm. On a Sunday afternoon, D and C robbed the staff at two Post Offices within shops. These were in two villages in west Cornwall. D and C wore balaclavas throughout both robberies. In the first robbery, one of the men stood guard at the door and the other, holding an imitation firearm, ordered V, a member of staff, to open the till. Despite shaking, V managed to do so and D said, "Help me, I'm not going to hurt you." He took the cash drawer with £600 in it and emptied it into an orange bag. He also took miniature bottles of alcohol worth around £25. The two men sped off in a car. There was a £1,300 trading loss as well. The second robbery was similar to the first but there was a female customer present with her 10-year-old daughter. £550 was taken from the tills. The getaway car was found burnt out nearby along with the orange bag used in the robberies and some clothing, both of which had C's blood on them. The car was registered to D. V said that she had never been so scared and that she could not get the image of the man who had robbed her out of her head. She could not sleep, was anxious all the time and had been signed off work for seven weeks. D, now aged 40, had 22 previous convictions for 81 offences including possessing an imitation firearm and offences against the person. D had a long history of drug dependency. C was now aged 32 and had 35 previous convictions including in 2009 an assault with intent to rob. The Judge recognised that both D and C had not committed any offences in the preceding four years. He also noted the sharp escalation in the severity of offending compared to their previous convictions. The Judge found that other aggravating features were significant planning, acquisition of an imitation firearm, the presence of a child at the second robbery and the attempts to dispose of incriminating evidence. The Judge said the first offence was Category 1A, due in part to the psychological harm to V, with a starting point of 8 years. He said the second robbery was Category 2A with a 5-year starting point. With aggravating factors, he moved to 10 years for the first robbery and 6 years for the second, making 16 years before plea in all. Held. These were clearly serious offences, but it is debatable if the psychological harm to V was serious and thus whether the first robbery was Category 1A. We move to 7 years for the first robbery and after totality move to 5 years for the second, making 12 years. With plea, **8 years** not 10 years 8 months for both.

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