

# Banks on Sentence

## Sentencing Alert No 207

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### Appeals

#### *Disparity*

*R v James* 2018 EWCA Crim 2724 D was convicted of possession of a firearm and ammunition with intent to endanger life. C was under police surveillance. He took a taxi to a block of flats, which was the address of D's grandmother. He told the taxi to wait, went inside for a few minutes then returned to the taxi, which drove off. The taxi was stopped by police a minute later and C was found to be carrying a .41 Long Colt six-shot single-action army revolver. It was loaded with four rounds of live ammunition. The defence argued that the starting point of 15 years was too high when compared to the 12-year starting point of C's sentence. Held. The disparity point cannot be dismissed on the basis that C was dealt with leniently. 15 years was undoubtedly severe but that does not mean that we would have upheld the complaint that it was manifestly excessive. A person who holds and stores a gun may be (but will not necessarily be) more culpable than a courier. However, we can see no obvious justification for the significantly higher starting point for D. **12 years** not 15.

For more detail see the next but one case.

### False imprisonment

#### *Firearms, With*

*R v Clarke* 2018 EWCA Crim 1845 D pleaded to false imprisonment, possessing an imitation firearm with intent to cause fear, having an imitation firearm with intent, having an article with a blade or point and damaging property. D had seen his sister earlier on the day of the offence and appeared upset at the breakdown of the long relationship with his partner. Later he sent her a text saying, "I'm going to do something I've thought of since my birthday." D's sister thought he meant to harm himself and she sent supportive messages and sought to dissuade him. D later sent a text saying he was at their mother's grave and asking if she could look after his dog. The sister suggested they talk and D said, "It's got past that." J was the duty manager at a bowling complex and was on his way to work at around 1 pm that day. He saw D, whom he knew, and chatted to him. D was distressed and spoke of his need to find somewhere to live. Later, at around 2.43 pm, D entered the bowling hall carrying a bag. J gave D a drink and once he had finished it, D said "Right, it's time." He reached into the bag and pulled out a sawn-off shotgun. It was half term with children's parties going on. J pointed this out to D but he took no notice. He cleared the hall of people. Parents gathered their children and ran. One father returned for his

daughter's birthday presents. D put the gun to the back of his head and said: "You ain't making it out of here. You ain't going to see tomorrow." The father was allowed to leave. Police were holding the parents and children in a nearby cinema. The national press became involved and at one point the incident was thought to be terror related. Inside the bowling hall, D took out a 2-foot long, curved army knife and started damaging some fixtures and a computer screen. J and his employee, C, were told to change the music, turn off the lights and disable the telephone lines. D used J and C as human shields as he walked to the front doors at various times to see what was happening outside. This was all captured on CCTV. D said he wanted to see his former partner and his mood was volatile throughout. He paced whilst brandishing his knife and gun and flicked and damaged objects on the desk in front of him. D said that if he could speak to his ex-partner or stepdaughter he would put down his weapons and leave. He also said that if his ex-partner arrived with her new partner, D would decapitate J. J was told to go and fetch a samurai sword from D's car, which he did. He returned as he was fearful for C and he brought with him a mobile phone from the police as a means of communication. C described fearing for his life. At one point D bent C over a pool table and threatened to chop his arm off whilst pressing the blade against him. D threatened to chop both of them into pieces and said to the police negotiator that he wanted to go out "in a blaze of glory". At one point D went outside using J and C as human shields. D put the gun to J's head but the police feared to shoot as the risk to the hostages was too great. At 6.30 pm, once D and the hostages had gone back inside, police thought they heard a shot and so they entered the building and deployed stun grenades. As they entered, D held a knife to J's throat but the police managed to arrest him. It was only after the arrest that it was discovered that the shotgun had been deactivated, hence the charges of only an imitation firearm. The situation had affected a great many people very deeply, not least the two hostages, whom D had known. D was aged 53 and had four previous convictions for offences that were immaterial. The pre-sentence report said that D had an inability to cope with a relationship breakdown and noted that although he admitted the offence, D continued to minimise the impact of his actions. A psychiatric report noted that D had a long history of illicit substance abuse. On the day of the offences, D had consumed large quantities of vodka and taken tramadol and diazepam, which were purchased illegally. In determining culpability, the Judge noted that there must have been extensive planning due to the selection of a venue on a Sunday afternoon in half term. D had carried a gun and two large knives. The Court also considered harm, observing that there had been the potential for loss of life. There were vulnerable children there and C himself was a young person held in terrible circumstances. In mitigation the Court's attention was drawn to D's heart condition, which had caused him to suffer a number of heart attacks, and a report from his offender supervisor at prison speaking highly of his behaviour and helpful attitude. Held. D's actions were unquestionably very serious. His activity was planned in advance and gave rise to a very large public incident. Many people were affected. Although the gun was an imitation, it was believed by everyone to be real. The knife and sword were truly frightening. The hostages were detained for four hours and one of them was aged just 17. Armed police were deployed to the scene with all the risks of injury attendant on their presence. However, there was no physical injury to the hostages and they were not tied up, degraded or humiliated. There was no ransom demand and the firearm was not in fact genuine. The Judge was entitled to find D dangerous. We move to 13½ years not 16, so with 25% plea discount, **15 years'** extended sentence (10 years' custody 5 years' extended licence) not 17 years' extended sentence (12 years' custody 5 years' extended licence).

## **Firearms**

### ***Firearms Act 1968 s 16***

### ***Possession with intent to endanger life***

*R v James* 2018 EWCA Crim 2724 D was convicted of possession of a firearm and ammunition with intent to endanger life. C was under police surveillance. He took a taxi to a block of flats, which was the address of D's grandmother. He told the taxi to wait, went inside for a few minutes then returned to the taxi, which drove off. The taxi was stopped by police a minute later and C was found to be carrying a .41 Long Colt six-shot single-action army revolver. It was loaded with four rounds of live ammunition. Telephone data and CCTV footage established that C had called D as he walked to the flats. There was DNA evidence on one of the bullets implicating D's girlfriend and inconclusive DNA evidence against D. D was arrested some months later in possession of a

key to his grandmother's flat. He said nothing to the police and gave no evidence at trial. The Judge noted that the revolver was in full working order, loaded and ready to fire, and that it was the swift intervention of the police that stopped it from being fired. The Judge also noted D's absence of previous convictions for firearms and the evidence which placed D on the margins of gang activity. She said, "the lack of direct gang involvement means that the sentence is not increased for gang activity, but it is still an extremely serious situation." The starting point was 15 years. D was now aged 28. The defence argued that the starting point was too high when compared to the 12-year starting point for C's sentence. Held. The disparity point cannot be dismissed on the basis that C was dealt with leniently. 15 years was undoubtedly severe but that does not mean that we would have upheld the complaint that it was manifestly excessive. A person who holds and stores a gun may be (but will not necessarily be) more culpable than a courier. However, there was no obvious justification for the significantly higher starting point for D. **12 years** not 15.

## **Offences against the Person Act 1861 s 18**

### ***Knives, With***

*Att-Gen's Ref 2018 Re Gedi* 2018 EWCA Crim 1364 D was convicted of GBH with intent and having an offensive weapon. L pleaded to the GBH with intent count. At 3.45 am, V was chased into a McDonald's restaurant by D, L and an unidentified man, X. L and X were carrying large knives. Inside the restaurant were a very large number of young people. Some were standing by the entrance. The three pushed past security staff to gain entry and L threw a glass bottle at V which smashed against the wall. The three attackers then cornered V, who tried to defend himself with a child's high chair. L and X both stabbed V repeatedly. D was in close proximity to the other two attackers and at one point managed to hold V briefly. The final attack occurred by and under a table where three people were trying to eat a meal. A security guard then smashed another high chair over X's head which caused him to fall and then he ran out of the restaurant followed by D. L remained, picked up X's knife and then swung it and threw it at V before running out. V was then slumped on the floor in a pool of blood. The attack lasted one minute and was captured by multiple CCTV cameras. V suffered a serious wound to the head and a deep wound to an arm and other injuries. There was no detailed medical evidence available as V refused to co-operate. L was now aged 19 and had 17 previous convictions for offences on 11 occasions. He also had a police caution for possessing an offensive weapon. L was in breach of two separate suspended sentences of detention at the time of this offence. He had not served a custodial sentence. D was now aged 22 and had significant health issues. He had 17 previous convictions for offences mostly relating to drugs on nine occasions. In 2011, there was a robbery conviction. In 2015, D received two concurrent sentences of 28 months' YOI for class A supply. At the time of the offence in question, D had been in breach of his licence of detention for the 28 months' imprisonment, and was also on bail. In December 2017, he received two concurrent sentences of 6 years and 3 months for similar drug offences. L's pre-sentence report detailed a very troubled background where 'alcohol and drug taking had been a feature, with many of his friends involved with the criminal justice system'. The Judge placed the offending within Category 1 (starting point 12 years). He referred to D and L's immaturity and said that he bore well in mind that D was at that time serving a substantial sentence for the drug offending. Held. We start at 12 years. There were a very significant number of aggravating factors present. This was a group attack involving three people. L was at the forefront of the pursuit of V and was the last to leave. The attack occurred in a very busy restaurant. Two large knives were used and both offenders have very bad records. The mitigation was sparse, being namely the offenders' youth and L's plea. The gravity of this offending and the significant aggravating factors here were such as to wholly outweigh the mitigation. The Judge moved too far downwards from the starting point. We move to perhaps around 13 years after considering the aggravating and mitigating factors. We give 25% credit not full credit for the plea so for L, 12 years' extended sentence (**9 years'** custody 3 years' extended licence) not 9½ years' extended sentence (6½ years' custody 3 years' extended licence). For D, considering totality [which must mean the sentence was consecutive to the December 2017 sentences], **9½ years** not 7 years.

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