

Banks on Sentence

Sentencing Alert No 214

6 March 2019

Aggravated Burglary

Shops ***More than one offence***

R v Hennessy 2018 EWCA Crim 2779 D pleaded to conspiracy to commit aggravated burglary. The conspiracy involved 17 attacks on three stores¹ by a large group of youths. There were common features across all the offences. The attacks took place in the early hours of the morning between 2 am and 5 am. The attackers used mopeds which had false number plates or none at all. There were normally two or three mopeds per attack, each with a rider and a passenger. External shutters were forced open by sheer manual force or angle grinders were used to cut padlocks. Glass doors were smashed to gain entry. The attackers all wore similar dark clothing which was layered so that they could remove items to change their appearance. They wore balaclavas under motorcycle helmets to disguise their faces. Some attackers entered the premises whilst others waited outside to keep watch. Large bags were used for carrying away high-end mobile phones. The getaways were quick and almost certainly followed a predetermined route, in some cases specifically chosen to make it difficult to be pursued by a police car. The thieves gave the phones to handlers and were then rewarded with cash payments that were transported back to others using trusted delivery people. Cabs were used to transport the phones, people and cash. The cabs were ordered using false names, and false addresses were given which were close to the required destination but not actually correct. The overall loss due to the damage caused and phones stolen was estimated at around £1.2 million. D was sentenced for his involvement in offences 5 and 8. In offence 5, D and at least five others smashed their way into a shop using a concrete block. The group entered the storeroom and stole phones worth nearly £50,000. In offence 8, members of the public saw the gang breaking into the phone shop. It was similar to offence 5. The police were called and they arrived promptly. Two of the gang rode off, leaving D and an accomplice, M, inside the shop. Three bags had been filled with goods when the police arrived. One was handed to a moped driver and passenger who escaped, one was found outside the shop and the third was found inside. M struggled with the police violently before being detained. D was also arrested after a short struggle and was found to be carrying a knife, although it wasn't produced in the struggle. About £10,350 worth of phones were stolen. £28,000 worth of phones were recovered from bags inside and outside the store. D was aged 18 at the time of the offences and had no previous convictions. He was originally sentenced, for the second burglary only, at Wood Green Court in 2016 and was charged with an offence of simple burglary and possession of a bladed article. He pleaded to both offences and was sentenced to 32 months. The matter came to the Crown Court in late 2017 as D had now been charged with the conspiracy. There were 10 other co-conspirators who received periods of custody ranging from 7 to 14 years. In sentencing D for the conspiracy, the Judge said that it fell into Category 1 of the burglary offences guidelines because of the greater harm and higher culpability features. The greater harm factors were the significant degree of loss to the victims, vandalism of the properties, guards were present at some of the properties (although not specifically the ones that D had targeted) and the presence of a weapon. The higher culpability factors were listed as follows: the premises were deliberately targeted, there was a significant degree of planning, the defendants were equipped for burglary, a

weapon was present on entry and D was a member of a group which was involved in this offending. The Judge started at 10 years and said that D's sentence had to reflect not only his participation in the specific aspects of the conspiracy but also his involvement in the conspiracy in its broader sense. He increased the 10 years to 10½ to take into account the burglary for which he had served the sentence [and, it appears, the mitigation]. That was reduced to 8 years for the 25% plea discount. This was reduced by 2 years 8 months and 1 month² for the time already served, making 5 years 3 months. Held. Whilst we agree with the Judge's conclusions, which put the whole conspiracy into Category 1 with a starting point of 10 years, we believe the Judge did not give enough credit for those factors in the guidelines which reduce seriousness or reflect personal mitigation, which were: a) the subordinate role in the group, b) the lack of previous convictions, c) his remorse, d) his good character, and e) his age at the time of the involvement in the conspiracy. We start at 10 years for the whole conspiracy. With the reduced role we move to 8 years. With 25% credit for a late plea and a reduction of 32 months for time already served, **40 months** not 63.

Note: I consider that the predominant factor is that the offences were committed by such a large, ruthless and highly organised group causing, if someone was present, terror for very large rewards. For involvement with 17 offences, 12 years not 10 seems more appropriate. Ed.

1. It appears that this means stores owned by three separate companies.
2. This part of the judgment is hard to follow.

Dangerous driving causing serious injury

Overtaking

R v Leahy 2018 EWCA Crim 2858 D pleaded (20% credit) to dangerous driving causing serious injury and drug/driving (cocaine no penalty). He drove a van and overtook a cyclist as he approached a blind corner in a country lane. He hit a motorbike driven by V coming the other way. The lane was mostly single carriageway, but at the collision point there was enough room for the two vehicles to pass. V had an open fracture to his knee and had screws inserted, Other bones in his legs were broken. D was aged 48 with no relevant previous convictions. Held. The injuries were at the lower end of the scale. It was a Level 3 offence but we move from 3 years to 2, making with plea 19 months not 28.

Firearms

Firearms Act 1968 s 16A Imitation weapons

R v Gardener 2019 EWCA Crim 170 D pleaded to two section 16A offences and possession of cannabis (2 weeks concurrent, no appeal). On 20 August 2017, after about an eight-year relationship with V, V left D's address with their two children and moved in with her mother and stepfather, Clifford Connors, C. A few days later, D sent abusive and threatening text messages to V. One said, 'You're lucky I didn't get someone to throw acid in your face'. D also attended V's new address but was refused entry. On 27 August 2017, in the early hours, after drinking, D went to the address again and threatened to smash the windows and burn the house down. V's mother and C were present. V was not. Next D sent three short videos to V's mobile which showed D with another man in a BMW. D was holding a shotgun with clingfilm over his hands. There was also a pistol lying in the car. D could be heard saying, "I am going to ruin your fucking life. Your fucking stepdaughter thinks she can hide but she can't. I'll fucking blow them away. Clifford, I'll come and knock your fucking door off. I've got a semi-automatic. I swear to you I am ready for any of you." The remarks were principally directed at C. There was more similar abuse. At one stage he drove his car at her car to frighten her. The police were called and D asked V to retract her complaint. D had a previous conviction for wounding³. He also 'had a previous Domestic Violence Prevention Order'. The pre-sentence report said, 'D acts in an instrumental manner most likely as a means of asserting his control over V and her mother and C. Further D poses a high risk of serious harm towards V and her mother and C.' Held. The Judge was entitled to impose an extended sentence. As the maximum sentence was 10 years and the Judge sentenced on the basis that the firearms

were imitation and the minor mitigation that the threats were not made face to face, we start at 7 years not 8. With full credit, 80 months' extended sentence (**56 months'** custody 2 years' extended licence) not 7 years 4 months' extended sentence (5 years 4 months' custody 2 years' extended licence).

3. D's age and character are not otherwise dealt with. A news report says D was aged 27.

Guilty plea

Defendant accepts guilt but challenges the offence particulars

R v Papworth 2019 EWCA Crim 61 D 'admitted five charges' at the Magistrates' Court. For two he accepted guilt but said the dates were wrong. He did not plead. The matter was committed for trial. The Judge gave D only 25% credit for the two he had not pleaded to at the Magistrates' Court. Held. D was right not to plead, as the dates were wrong. D was entitled to full credit for all the counts.

Note: As one of the counts was rape, I am not sure the judgment properly distinguishes between an indication of guilt and a plea. Ed.

Offences against the Person Act 1861 s 18

AIDS/HIV infection

R v Rowe 2018 EWCA Crim 2688 D was convicted of five section 18 offences and five attempted section 18 offences. In 2011, D was warned by a sex clinic not to have unprotected sex. In 2015, he tested positive for HIV. He went on to have sex with his ten victims. D lied about his HIV status and sent mocking messages to victims. He also sabotaged condoms. The victim impact statements set out the devastating lifelong effects the offences had. D was aged 27. The pre-sentence report said D had issues with power and control. The Judge made the offence Category 1 (12-year starting point) and noted that D continued offending when released on bail. She took into account the number of victims and gave **life** with a minimum term of **12 years**. Held. The Judge was right.

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