

# Banks on Sentence

## Sentencing Alert No 148

16 January 2017

### Money laundering

#### **Category 6**

*R v Butler* 2016 EWCA Crim 1671 D pleaded (full credit) to converting criminal property. A group operated a Gumtree fraud, which was receiving money on the Internet for non-existent goods. D allowed his bank account to be used for laundering £1,225 in total of the proceeds on three occasions. D made early admissions. D was aged 18 with no convictions. It was agreed it was a 6B offence with high-level community order as a starting point. Held. **4 months** suspended and 100 hours unpaid work was a stern sentence bearing in mind D's age, but as the offence was prevalent a deterrent sentence was justified.

### Public Order Act

#### **Public Order Act 1986 s 4 and 4A      Racially aggravated**

*R v Meechan* 2016 EWCA Crim 1602 D pleaded to racially aggravated harassment. The Magistrates dealt with pleas to theft and common assault (8 weeks with a 3-week-old, 18 week suspended sentence activated in full). D was arrested for shoplifting and two common assaults. At the police station, it was noticed D was unwell and under the influence of drugs. A 'healthcare' worker decided to administer an injection to help D, but D shouted, "You fucking Paki cunt". When interviewed, D said, "I would never say that. I have mixed race children, but if I did I am sorry". D elected trial for the harassment matter. She was now aged 36 with an extensive list of previous convictions [reflecting her addictions]. Held. These were deeply offensive words spoken to a person performing a public duty who was trying to help D. However, the action was very brief and not repeated. With 25% credit and a regard to totality, **4 weeks**, not 4 months consecutive to the other matters.

### Rape

#### **Historical cases      Defendant then aged under 18**

*R v B* 2016 EWCA Crim 1006 D pleaded to rape and eight indecent assaults. In 1998, V was aged 5 and D was aged 13. D started by kissing V and took off V's clothes from the lower half of her body. On many occasions D took off her top so he could touch her upper body. The touching and kissing was intimate and occurred on many occasions. These offences were counts 2 and 3. Counts 4 and 5 were specimen counts. D made V stand on a toilet seat while he 'played' with her labia and kissed and touched her body. D often exposed his erect penis and asked her to touch it through his trousers. Counts 6 and 7 were specimen counts where he wanted her to touch and rub his exposed penis. D made her stroke it and pull it. He would put a condom on before ejaculating. Count 8 involved D putting his penis with a condom in V's mouth. V did not like the taste of the condom. Count 9 concerned D removing the condom and reinserting his penis in her mouth. Count 1 was rape and involved D kissing V and the removal of her clothing followed by D trying to insert his penis in V's vagina. It reached the mouth of the vagina only. In 2001, D moved to America with his family and the offending stopped. When V was aged 13, she

confronted D who denied rape. The police were not told. In 2014, D's family returned to the UK and on seeing D at a funeral, V went to the police. It was agreed counts 1, 8 and 9 were committed when D was aged 15 and V was aged 7 and 8. The offending had a profound and long-lasting effect on V. D had committed no other offending of this type since 2001. He had a number of references. For count 1, the Judge started at 8 years for an adult, reduced it by a third for the plea and then 10 months because of D's youth. Held. That was the wrong approach. When the offender is a young person, age is not simply a mitigating factor, it goes to the heart of the assessment of culpability and harm and therefore to the seriousness of the offences. [The guilty plea discount should be made at the end.] The rape was category 3B, so we start at 8 years. We reduce that by a third because of D's age with a modest reduction for the mitigation. Next we give a full plea discount, making 3 years 4 months. For counts 8 and 9, we start at 4 years. Taking the same approach we arrive at 30 months. We make that consecutive, making **5 years** in all.

### ***Victim aged 14-15 Defendant slightly younger***

*R v E* 2016 EWCA Crim 1028 D pleaded at the Youth Court to rape and he was committed for sentence. D developed a relationship with V when they were both aged 14. It became sexual and there was an element of play fighting. When V had turned 15 and D was still 14, there was consensual sexual activity. D anticipated it would develop into sexual intercourse but V asked him to stop. D held her neck and inserted his penis into her. V did not struggle. After 5-10 minutes he stopped and apologised. The relationship continued and with intercourse for several months. V's father contacted the police. D's 'general intellectual function was lower than 99.7% of people of his age'. Because of D's immaturity, the pre-sentence report argued for an **18-month Youth Rehabilitation Order**. The Judge said the recommendation would be the most constructive way forward for D's welfare, but passed 32 months' detention. Held. That is the proper way forward. This was an exceptional case. It is to the clear benefit for society that D receive the help and guidance [provided] by a Youth Rehabilitation Order. We quash the SHPO and replace it with a Restraining Order.

## **Sex Offences: Children, with**

### ***Physical contact***

*R v EY* 2016 EWCA Crim 1551 D pleaded early to three offences of sexual assault of a child under 13 years of age. D was from originally from Ghana but came to the UK to assist his stepmother in caring for her two children one of whom was the victim in this case. D's role was to dress the children and get them to school each morning. The offences took place in the mornings after the stepmother had gone to work. On the first occasion V, aged 5, was asleep. D pulled down her underwear and rubbed bio oil onto her upper thighs. He then lowered his own underwear and rubbed his semi-erect penis on her bottom and the top of her legs. He did not ejaculate and said he stopped because he knew it was wrong. The second incident was similar but no oil was used and D kept his underwear and trousers on. He rubbed his clothed penis against V's bottom. The third incident again saw D pull his underwear down so there was contact between his penis and V's naked bottom. The incidents were discovered when a teaching assistant noticed D demonstrating sexualised behaviour and talking about 'sexing'. D had just turned 18 and had no previous convictions. It was accepted that the location of the offence (the mother's bedroom) was an aggravating factor and as was the presence of V's sister, even though she was asleep. **4 years 8 months YOI** not 6 years.

## **Theft**

### ***Shop theft***

*R v Kearney* 2015 EWCA Crim 2509 D pleaded to three thefts by shoplifting. The first was for stealing two Dyson vacuum cleaners from a Curry's store in Harlow. The goods were recovered. The second was for stealing 15 Bosch power drills from a B&Q store in Dover. These goods were not recovered. The third was for stealing 9 drills and 232 DVDs from a Homebase store in Chelmsford. These goods were recovered. The total value of the stolen goods was about £1,600. D was aged 58 and a prolific shoplifter with 114 previous convictions mainly for shoplifting. Held. Relying on *R v Page* 2004 EWCA Crim 3358 para 4 iv) [an old authority which perhaps is best ignored, because previous sentences had not deterred D], **18 months** not 24.

## **Violent disorder**

## ***Kicking others***

*R v Norton* 2016 EWCA Crim 1516 D pleaded early to violent disorder. An argument arose between two groups of men standing in queues for opposite nightclubs. The argument escalated into a running fight which was caught on CCTV. The co-accused G punched V1 four or five times. V1 moved away but was knocked down by the second co-accused A and was attacked again by both G and A. D was not with the co-accused that night but was in the vicinity. D knew the co-accused but did not know the victims. He pursued V1 up the street after the first attack and, when V1 was knocked down by A, joined in the attack. he kicked or stamped V1 twice and appears to have punched him. D then backed off. V2 who was walking back up the road was punched heavily by G and immediately knocked unconscious. Fortunately, neither victim suffered any long-term effects from the attacks. D's record shows no history of violence. Aggravating factors were a) serious violence, b) impact on the public and c) risk of more serious injury. **20 months** not 26.

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