

Sentencing Alert No 120

12 November 2015

Burglary

Non-dwelling Club

R v Murphy 2015 EWCA Crim 1523 D pleaded (full credit) to two burglaries. Both were at a Social club where his girlfriend once worked and were just over a month apart. In both he forced a fire door. In the first he smashed gaming machines, doors, snooker tables and stole £300 cash. In the second, with two other people, he stole a TV worth £300, several bottles of spirits and a monitor for a computer. The goods were worth just over £1,000 and the damaged caused was £400. The club was not insured. D was aged 24 and had convictions but none for burglary. He lived with his mother and was unemployed. He said he was short of money. Held. Together the two merited 3 years, so with plea, **2 years**.

Confiscation

VAT frauds

R v Chahal and Another 2015 EWCA Crim 816 C and S were convicted of cheating the public revenue in a missing trader VAT fraud. The total trading exceeded £181.5m. C was a director and 50% shareholder of Letting Solutions which was largely a buffer company. S was a director/manager of another such company. Each were party to the making of false claims. Held. para 23 It is an important matter that the fraud operated by the presentation of apparently genuine claims for inputs which were actually part and parcel of the fraud. para 38 The buffer and export traders' receipt of a credit or payment in respect of the input claims, amounts to a pecuniary advantage within the terms Proceeds of Crime Act 2002 s 76(5); see *R v Dimsey and Allen* 2000 1 Cr App R (S) 497. Indeed, if the input claims had not been made, then the relevant trader would have owed HMRC a very substantial sum indeed for output tax charged on its sales. para 39. The total turnover of the transactions (i.e. upon which VAT was calculated) represented the benefit obtained. It was appropriate that the Crown limit its claim to the amounts of VAT which had been claimed. para 40. For the VAT inputs i) the court is not concerned under the POCA code

to determine the amount of profit made, as calculated in an accounting exercise. It is no less a benefit received because he has not, in the event, seen the full fruits of it because he elected to use it in the next part of the fraud. ii) equally, the exercise is not concerned with limiting the benefit obtained by reference to the loss caused to another. The effect of the Code is not to limit the recovery of benefit generated by criminal conduct by reference to whether it is equivalent to the actual loss caused to another: see *R v Dimsey and Allen* 2000 at p 501. The offender cannot set off his expenses. There was no need to moderate the application of Proceeds of Crime Act 200 s 10(6). Appeal dismissed.

Offences against the Person Act 1861 s 20

Sporting

R v Billam-Stevens 2015 EWCA 1636 D pleaded early to section 20. During a seven-a-side football match, V's elbow made contact with D's chin while they were [clashing over the football]. D demanded an apology. V refused to give one. D complained to the referee who took no action. A few seconds later, D punched V hard on the jaw, knocking him over. V's cheek bone was fractured. V left the pitch but returned to play in the second half. After the game, D said to V if he had apologised it would not have happened. D offered to shake V's hand and advised him to apply ice to his jaw which was swollen. Both sides went to the police. V's fracture required an internal metal plate and V had to live on a soft food diet over the Christmas period. D was aged 27 and of good character. He was genuinely remorseful and was supported by his employers. Held. There was clearly greater harm. There was an element of pre-meditation but not significant premeditation, so it was Category 2 not 1. We start at 18 months, so with plea, **12 months** not 20.

Sex Offences: Historical

Oral penetration* *Victim(s) aged 10-12

Att-Gen's Ref No 52 of 2015 2015 EWCA 1581 D pleaded on the day his trial was listed to seven indecent assaults and four indecency counts. When D was aged between 25 and 30, he abused his sister, V1 who was then aged between 11 and 15. On five occasions, once on each year, D

digitally abused V1. On two occasions he rubbed his erect penis on her vagina when she was aged 13 and 15. He also asked his brother, V2, V1's twin, aged 11 to perform oral sex on him. V2 refused in vehement terms and ran off. D was then married with children. D was now aged 68. When the offending ceased he had not offended again. D had some health problems. The trial process was delayed and this was very stressful to the victims. Held. There were no threats of violence or force. V2 was not touched. The victims were vulnerable. In some cases D was brought to ejaculation. The starting point should have been **at least 6 years**. 10% credit makes 5 years 4 months. Because D had complied with his supervision we make it 5 years.

Sex Offences: Images

Category A

R v E 2015 EWCA 1599 D pleaded to 32 offences of indecent photographs of a child and an extreme pornographic image count. Police searched D's home and found on various devices about 2,600 indecent images. There were 394 Category A images, (39 moving); 535 Category B images (17 moving); and 1,674 Category C images (36 moving). There was oral sex, vaginal sex and a child performing oral sex on a dog and dog penis in a child's vagina. For the Category A offences, the children were aged 4/5 years to 10/11. For the Category B offences, the children were aged 3/4 years to about 12. The Category C offences included children as young as 12 months. D was aged 41 and in good and stable employment. There were testimonials. In 2008, D was sentenced to a community order for making an indecent photograph of a child. He received a police caution for a breach of his notification requirements. The Judge noted the following aggravating factors, a) the children's ages, b) the children's distress, c) the number of images, d) the moving images, e) the large number of different victims, f) the convictions, g) D's notification period ended shortly before these offences were committed and h) D had been involved in a paedophile Internet chat room. Held. We start at 4 ½ years not 6, making **3 years** not 4.