

**295.7 Defendant under 21**

*R v CJC 2014 EWCA Crim 525* D pleaded to attempted murder. Not guilty pleas to committing an offence with the intent to commit a sexual offence and possession of an offensive weapon were accepted and remained on the file. D, aged 16, lived with his parents and attended the same school as V. V, aged 12, agreed to meet D in a quiet, rural lane not far from their respective homes. D arrived wearing a hooded jumper with the hood up and his hands in his pockets. He asked V whether he was scaring her, to which V replied that he was. D then pounced on her. V saw that D was wearing surgical gloves. He knocked her to the ground and produced a Swiss Army knife. V shouted “No” and began to fight back. D said, “I am going to have to kill you now” and threatened her with rape. He repeatedly stabbed her throat and chest but the knife appeared to be blunt and fortunately only caused superficial wounds. D then tried to strangle V but was interrupted by a passerby who was walking her dog. When D realised that the passerby could see him with his hands around V’s throat, he got up and left. V had blood on her hands, was unsteady on her feet and had wet herself. She was treated in hospital. D was arrested the same day and still had the knife and gloves in his possession. He told officers he had tried to kill V but declined to comment when formally interviewed. There was significant background to those events. V had become aware that D was infatuated with her. He stared at her at school. They occasionally talked on the way home from school and D had sent her numerous text messages telling V that he was interested in her. She let him know that she did not share those feelings. Between September 2012 and March 2013 there was no communication between them and V believed the matter was over. D had, however, not forgotten about V. He was in regular contact with Childline via an online chat forum and explained that he really liked an 11 or 12 year old girl and wanted to resolve his feelings for her. He said he was depressed because the girl had a boyfriend and described her as being ‘a bit of a bitch’. He said he wanted to do illegal things to V because her life was too good and he wanted to balance things out. When asked what he meant he said ‘Rape’. Subsequent analysis of his computer revealed that he had accessed material about rape and murder. Childline contacted the police who in turn spoke to D. D said he had said those things to attract attention. There was a psychological report which stated that D had said after V had been ‘very cool’ to him, he decided to punish her. Having accessed material about the trauma experienced by rape victims, he thought that might be a good way to take his revenge on V. The report noted that D had said became very depressed and the urge to punish V worsened. He decided the only way to put an end to his distress was to kill V, not merely traumatise her. He was worried that he would not go through with the killing and had practiced stabbing a cardboard box in front of a mirror. In the days leading up to the offence, D had sent V a number of text messages saying that he would kill himself if she did not meet him. A psychiatric report noted that D had not experienced any appropriate remorse. He made it clear he regretted the offence because he had been apprehended. D said his efforts were to no avail as V would suffer no lasting harm. When the psychiatrist told him it was virtually certain V would suffer lasting harm, D seemed more fulfilled and said it made him feel better. It was accepted that the dangerousness criteria were met. D was previously reprimanded for common assault committed against a fellow student but was highly intelligent and expected to do very well in his GCSEs. The Judge reduced the minimum term to reflect the days in custody which appear to be 3 months 21 days. Held. It was argued that an extended sentence would have sufficed. The Judge could have come to no other conclusion than a life sentence was appropriate. It was then argued that a 7-year minimum term was too long. Having given up trying to stab V to death, D attempted to strangle her. That attempt did not result in significant visible harm. For an adult, the appropriate starting point would have been 26 years. The minimum term must reflect D’s youth, although there is no requirement that it be reduced in part at all. D was mature for his age and a very intelligent young man. The troubling feature of the case is that he was not deterred by the intervention of the police after they were contacted by Childline. The offence was planned and rehearsed

and he had shown no remorse. Starting in the region of 26 years, to account for his age that would be reduced to 21 years. Applying the discount for his guilty plea, that is reduced to 14 years. Accordingly, detention for life, with a minimum of **7 years** was appropriate minimum term, so term of 7 years upheld.

*R v Gomes-Monteiro and Others Re NT 2014 EWCA Crim 7471* LCJ D was convicted of attempted murder. D, aged 13, became involved in an altercation with V, aged 14, at McDonald's where D demanded a battery for a mobile phone from V. At 9.15 pm., the argument continued outside a youth club. D had taken a knife to the club. The disagreement became violent involving a number of people, including V who hit back at TM and D. V, on roller skates, calmed down and skated a short distance away. D followed, produced a knife and stabbed V twice. V was taken to hospital by air ambulance. The knife entered the chest and penetrated the kidney. He suffered a collapsed lung, a significant gastric injury, a shattered spleen and a very serious renal injury. V will require life-long antibiotic medication. D had a number of convictions, including common assault where he surrounded a 14-year-old girl and held a knife to her throat (a referral order). D denied he had a knife. He received a 9-month rehabilitation order for ABH. He had also used threatening behaviour towards a bus driver. The PSR indicated a difficult home life and emotional and behavioural difficulties. The report also highlighted D's genuine remorse for his actions. Held. The Judge was entitled to make a finding of dangerousness with the information presented. Further information post-trial highlighted V's vast improvement in behaviour and the positive effect of medication so **10 years extended** sentence (**7 years** custody not 10 and 3 years extended licence).

### **295.9 Firearms, With**

*R v Powell 2014 EWCA Crim 596* D was convicted of attempted murder and possession of a prohibited weapon with intent. D attended a party and E fired shots into the ceiling. This caused panic and everyone rushed outside where E and a friend of D were shot dead by V. D pursued V into an adjacent street shooting him a number of times at close range. V managed to escape but was shot again from behind. When D finally caught up with V, D stood over him and shot him in the face. There were nine shots in all. D went into hiding. By extraordinary chance V made a full recovery. D had a conviction for possession of a firearm and ammunition (8 years imprisonment). V was convicted of both murders. Held. D used the gun to inflict serious harm in residential London streets with complete disregard for public safety. **34 years** upheld.

### **295.12 Knives (since new murder starting point)**

*Att-Gen's Ref No 63 of 2013 2014 EWCA Crim 2763* D was convicted of attempted murder, breaching a Restraining Order (x2) and possession of an offensive weapon. He could not come to terms with the break-up of his marriage to V1. In January 2012, D rang V1's doorbell and when V1 opened the door, he stepped inside and put his hands around her throat in a threatening manner. V1 was forced against a wall and V2 stepped in and asked D to leave. D left. In July 2012, a court made a Restraining Order. Three days later, D breached the order. V1 and V2 moved to an address which they assumed D would not know of. In December 2012, the doorbell rang at the new address and V2 opened it. No one was there and suddenly D appeared and sprayed a liquid containing cleaning products and lighter fluid in V2's eyes, causing a stinging sensation. D said "I'll kill you, you bastard". D stabbed him in the chest and V2 fell backwards. V2 grabbed the knife and was able to force it out of D's hand. V2 kept hold of D and shouted for help. Two neighbours restrained D until police arrived when he was arrested. D had taken parcel tape and cable ties with him. V2 had a penetrating chest wound of at least 5 cm. With the knife at a different direction it would have penetrated V2's heart. An impact statement said that V2 had lived in fear since the attack and his personality had changed as a result of the attack. He had undergone counselling and was

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<sup>1</sup> This case is also referred to as *R v Monteiro and Others 2014 EWCA Crim 747*.

taking anti-depressants. D was aged 70 at appeal with no convictions. He expressed remorse but that was wholly absent at trial. Held. The aggravating features were that D took a knife to the scene, there was significant planning and there was a background of harassment and repeated breaches of Restraining Orders. It was correct for the Judge to impose a **discretionary life** sentence, given the risk that D posed to V1 and V2. D's settled intention to kill was undoubted. The offence is in level 1 for the purposes of the attempted murder guideline bearing in mind the effect of Schedule 21 para 5A. The notional determinate term ought to have been 24 years, not 14. Because of his age, that would be reduced to 20 years. The **minimum term** was therefore **10 years** not 7.

### **295.16 Relationship/Emotional offences**

*Att-Gen's Ref No 63 of 2013 2014 EWCA Crim 2763* D was convicted of attempted murder, breaching a Restraining Order (x2) and possession of an offensive weapon. He could not come to terms with the break-up of his marriage to V1. In January 2012, D rang V1's doorbell and when V1 opened the door, he stepped inside and put his hands around her throat in a threatening manner. V1 was forced against a wall and V2 stepped in and asked D to leave. D left. In July 2012, a court made a Restraining Order. Three days later, D breached the order. V1 and V2 moved to an address which they assumed D would not know of. In December 2012, the doorbell rang at the new address and V2 opened it. No one was there and suddenly D appeared and sprayed a liquid containing cleaning products and lighter fluid in V2's eyes, causing a stinging sensation. D said "I'll kill you, you bastard". D stabbed him in the chest and V2 fell backwards. V2 grabbed the knife and was able to force it out of D's hand. V2 kept hold of D and shouted for help. Two neighbours restrained D until police arrived when he was arrested. D had taken parcel tape and cable ties with him. V2 had a penetrating chest wound of at least 5 cm. With the knife at a different direction it would have penetrated V2's heart. An impact statement said that V2 had lived in fear since the attack and his personality had changed as a result of the attack. He had undergone counselling and was taking anti-depressants. D was aged 70 at appeal with no convictions. He expressed remorse but that was wholly absent at trial. Held. The aggravating features were that D took a knife to the scene, there was significant planning and there was a background of harassment and repeated breaches of Restraining Orders. It was correct for the Judge to impose a **discretionary life** sentence, given the risk that D posed to V1 and V2. D's settled intention to kill was undoubted. The offence is in level 1 for the purposes of the attempted murder guideline bearing in mind the effect of Schedule 21 para 5A. The notional determinate term ought to have been 24 years, not 14. Because of his age, that would be reduced to 20 years. The **minimum term** was therefore **10 years** not 7.