36 CRIME

36 Crime Criminal Updates

Winter 2019

CONTENTS

Welcome to the 36 Crime Criminal Updates Winter 2019

Christopher Donnellan Q.C.

Head of 36 Crime

As we approach Christmas 2019 and contemplate the outcome of a General Election, the wheels of justice just carry on turning.

The complexity and interpretation of recent legislation continues to exercise the Court of Appeal as advocates and judges try to keep pace with the change. Apparently straightforward provisions can easily be overlooked, and there can be unintended consequences, as discussed by **Mary Loram Q.C.** in her analysis of s.45 of the Modern Slavery Act 2015.

In the report of *R -v- Mader [2018] EWCA Crim 2454* we are reminded that important aspects of the character provisions of the Criminal Justice Act 2003 can also be overlooked, but not by **Caroline Bray**. Persuasive argument at first instance before HH Judge Lucking Q.C. (a member of 36 until her appointment) and sustained in the Court of Appeal provides a good example of how a provision should be applied.

A timely and thought provoking article by **Katherine Kelleher** should be compulsory reading for all who appear in the Youth and Adult Criminal courts and in the Family court, and not just the lawyers. If you have a few moments, even on a busy evening approaching Christmas, watch the BBC programme "*Responsible Child*" due for broadcast on Monday 16th December 2019 with Kate's questions in your mind.

We may have an idea of cybercrime but when you have read **Adrian Amer's** contribution to this Newsletter I have no doubt you will be better informed of the worldwide ramifications of all the many and varied ways that new crimes are being committed, coming with a new language for us to get to grips with.

David Ball poses the question "When is a judicial authority not a judicial authority?" I will let him give the answer!

We are grateful as ever to **Mary Prior Q.C.** for the round-up of recent decisions of general practical use in the Crime Bulletin.

Merry Christmas!

CDQC

The Section 45 Modern Slavery Defence: Undermined by its Own Limitations?

Mary Loram Q.C.
Barrister, Queen's Counsel, Recorder

In ***R v N* [2019] EWCA Crim 984,** the Court of Appeal allowed an appeal against a conviction (by way of a guilty plea) when it found there was clear evidence that the Appellant had been the victim of trafficking. Indeed, the mitigation had been on that basis and he was sentenced accordingly. The Court of Appeal made clear that ALL those involved - CPS, defence, and the judge – should have been alert to the provisions of section 45;

(1) A person is not guilty of an offence if –

(a) the person is aged 18 or over when the person does the act which constitutes the offence,

(b) the person does that act because the person is compelled to do it,

(c) the compulsion is attributable to slavery or to relevant exploitation, and

(d) a reasonable person in the same situation as the person and having the person's relevant characteristics would have no realistic alternative to doing that act.

Further, this is not purely a matter for the defence to plead at Court – the Crown are under an obligation to also consider whether a defendant could have been the victim of trafficking; CPS guidance (reproduced at paragraph 22 of the judgment) states as follows:

"*When considering whether to proceed with prosecuting a suspect who might be a victim of trafficking, prosecutors should be aware of the clear obligation imposed to consider whether to not to prosecute where the suspect has been compelled to commit a criminal offence as a direct consequence of being trafficked*" [sic].

It is clear, therefore, that the Court of Appeal expect vigilance from all, including the judiciary, and will intervene if there are failings. There cannot be too many examples in which a guilty plea is successfully appealed. But, however alert we are to the potential for a section 45 defence, the question is still worth asking - what is its extent? Is it really going to assist all victims of trafficking, or are its parameters overly limited?

Prior to the introduction of section 45, a defendant in such circumstances would have been dependent on pleading duress. Whilst he or she would have had to raise it, the burden would then be on the Crown to disprove it. The wording of section 45 is that of compulsion rather than the more restrictive threat of death or serious bodily harm or injury – and under section 45(2), a "*person may be compelled to do something by another person or by the person's circumstances.*" A broader, more forgiving defence is clear.

However, there are two aspects to section 45 which are still problematic and may allow for genuine victims of human slavery to fall through the legal net. Firstly, there are the restrictions imposed on the offences that the defence applies to by Schedule 4. Whilst duress applies to all offences except murder and attempted murder, Schedule 4 lists over 90 different offences to which it does not apply. Whilst one can struggle to see how it could sensibly be pleaded in cases of sexual offences and the public interest in not applying the defence to acts of terrorism can also be understood, what about burglary? What of kidnapping? If – to take a typical

example – someone involved in the production of drugs attracts the defence because they have been trafficked from country to country and compelled to carry out tasks as a result, why should those tasks be restricted to drug production or dealing? Why not burglary? It is arguably too restrictive to allow for some offences (the "stereotypical" ones such as the cannabis gardener) and not for others.

The second aspect of the Section 45 defence that may water down its value can be seen in the test set out in subsection (4):

(4) A person is not guilty of an offence if –

(a) the person is under the age of 18 when the person does the act which constitutes the offence,

(b) the person does that act as a direct consequence of the person being, or having been, a victim of slavery or a victim of relevant exploitation, and

(c) a reasonable person in the same situation as the person and having the person's relevant characteristics would do that act.

The Act goes on to say that the "relevant characteristics" referred to are age, sex, and any mental or physical illness or disability. So we have the objective "reasonable person" along with some more subjective characteristics. The objective test, it is understood, was the result of political concern that too broad a defence would be created and therefore a "legal loophole" (presumably one which could then be used in tabloid headlines). But if we take the facts of ***R v N*** as an example, we can see the potential difficulties. The Appellant there had been taken from Vietnam aged 13 to Russia, where he was kept in a garment factory for 7 years. He was then trafficked to Germany, where he initially managed to escape but was returned to the trafficking network and beaten for escaping. He was then taken to France and ultimately the UK. He was forced to work in these countries and was found to bear the scars of numerous beatings and acts of violence. Under the Act, however, his "characteristics" would have been unremarkable – a relatively young man with no recorded disability. The question arises of how a jury from Northampton or Plymouth or Worcester could ever properly assess the true position of someone with the experiences of N, however hard they tried. The impact of a childhood in servitude does not, under the Act, count. It is not a "relevant characteristic." The lack of subjectivity in section 45 is a shame.

On the plus side, the Court of Appeal have, in **R *v MK and Gega* [2018] EWCA Crim 667** firmly rejected the notion that the persuasive burden lies on the defence where section 45 is invoked; whilst the defence have the evidential burden of establishing the basis of the defence, it is for the Crown to then disprove it to the criminal standard. This is something, at least, and it is to be hoped will assist in preserving the aspects of the defence that are of true value.

Mary prosecutes and defends in cases of serious crime, including homicide, fraud, serious sexual offending and human trafficking. She has acted in cases involving the kidnapping, trafficking and exploitation of workers. She is known as a "true jury advocate" with excellent client care.

Email Mary: mloram@36crime.co.uk

Good Character of Prosecution Witnesses: the Case of *Mader*

Caroline Bray
Barrister

The good character of prosecution witnesses is rarely referred to at trial. The writer remembers a young opponent, in her first trial at the Crown Court, trying to lead it from a witness before she was reminded by the Judge that "we don't do that sort of thing in this court".

But sometimes we do, as in the case of ***Mader* [2018] EWCA Crim 2454.** The defendant was convicted of GBH, having launched a knife attack on his victim when in drink. The issue in the case was one of self-defence. At trial, Mader launched a verbal attack against his victim and another witness who had been present at the time. In doing so, he went further than was necessary to assert self-defence, describing one witness as like a crazed animal and accusing another of theft and assault in unusual circumstances.

As a result, the Crown felt that the very proper and careful balance had been tipped and applied to adduce the witnesses' good character, relying on the useful cases of ***R v Junior Lodge* [2013] EWCA Crim 987** and ***R v IWAT (also known as Amado-Taylor)* [2001] EWCA 1898**.

It is a well-established principle that evidence of the positive good character of a prosecution witness should not be led to bolster a complaint. No "oath helpers" please, and quite right too. This principle remains unchanged.

In recent years however, a two-strand approach to the issue of good character of prosecution witnesses has developed and has now, as a result of ***Mader***, been again confirmed and approved.

The first strand is that evidence to bolster a non-defendant witness' credibility may not generally be led in examination-in-chief. The second strand is that such evidence is admissible if the evidence is relevant to an issue in the case.

The approach then is simply this (as set out by Lady Justice Hallett at paragraphs 32 and 33 of ***Mader***, edited here):

"32. Drawing those strands together, we consider the following propositions are now well established and should be applied when considering if evidence of good character of a non-defendant witness should be admitted:

i) The starting position is that, generally, evidence is not admissible simply to show that a prosecution witness has a good character in the sense that he or she is a generally truthful person who should be believed.

ii) However, evidence is admissible if it is relevant to an issue in the trial (unless, of course, excluded by one of the normal exclusionary rules of evidence).

iii) The category of issues to which evidence of disposition may be relevant is not closed. However:

> *(a) The issue of consent in a trial involving sexual conduct is an issue to which evidence of character or disposition may be relevant.*

(b) If the accused's defence to a crime of violence is that he was defending himself against an attack launched by the complainant, it is apparent that the non-violent character of the latter is no less relevant as a matter of logic than that of the former.

iv) If admitting evidence on the basis that it is "issue-relevant", a trial judge should be astute to ensure that the issue to which it is relevant and its limitations are understood by the jury. The judge should also ensure that the effect of admitting the evidence is not to water down the protection provided by the primary obligation upon the prosecution to prove its case and any good character direction that may be given for the defendant.

33. Nothing that we have said in setting out those general principles should be taken to ignore the exclusionary powers that a judge has to refuse to admit evidence that he or she feels will have an unduly prejudicial and less than probative impact upon the jury."

So there it is. Clarity and cogency, and what some may feel looks like an entirely sensible approach to this issue. The judgment goes carefully through the authorities and is worth a read, if you like.

Caroline prosecuted the case of *Mader* in the Crown Court and Court of Appeal. Her practice is focussed on serious sexual and violent offences. Caroline is particularly skilled in dealing with vulnerable witnesses and defendants, and she is well-liked for her easy approach and demeanour.

Email Caroline: cbray@36crime.co.uk

36 CRIME

Responsible Child? Responsible Adults?

Katherine Kelleher
Barrister

In the face of the upcoming, much advertised BBC Drama "Responsible Child", one of the Responsible Adults involved in the original court case reflects on the criminal proceedings and ancillary issues which are the subject of this drama.

The doctrine of *Doli Incapax* (that a child between the ages of 10 and 14 does not possess the necessary knowledge to have criminal intention, rebuttable by the prosecution calling evidence to refute the defence) was abolished by section 34 of the Crime and Disorder Act 1998. A question arose later in the courts as to whether that section abolished the presumption that the child has that defence, or the defence itself, leaving it open to the child to prove that, at the relevant time, he/she did not have the necessary knowledge. This aspect seems to have faded away and the reality is that in England and Wales, children are routinely tried in the adult courts, particularly when charged with grave crimes and usually when there is more than one defendant and those co-defendants are adults.

The case that is the subject of Responsible Child started with the first appearance when the Police - the investigators - approached and asked whether there would be a plea. The child was surrounded by social workers, he was in Local Authority care and there was a Youth Offending Team ("YOT") worker who wanted to be involved in every conversation. The most difficult issue with representing a 14-year-old child charged with a grave crime is explaining the role of the "Responsible" Adults who surround him or her. How does one go about explaining - and simplifying - the concept of legal privilege to such a young person?

Unfortunately, yet usually, these children come from an underprivileged background and find themselves, by reason of the events, suddenly surrounded by adults who are there in a professional capacity. Adult guidance and support is something that these children are not used to, and so, it will fall to the 14-year-old child's barrister to sit in a room with them and explain privilege as it applies in the criminal courts.

The barrister will ask that child to listen and will have to check he can understand her as she speaks. The barrister will explain to him that he has been charged with the most serious offence, and that everything he has said or done, from the moment he and his brother handed themselves in to Church Bellringers on an August night in 2014 was recorded – whether accurately or not.

Then the really difficult part will begin. He will be told that the social workers are not subject to legal privilege – anything he said to them will be recorded and reported and can be used against him – he is under constant "caution". Whether any comments made are used in the criminal courts will remain to be seen, but they will almost certainly be used in the family courts, because all of his siblings and half-siblings are now the subject of family proceedings.

The child is told that his YOT worker will be writing reports for the courts. It will be explained that she too, a very caring person, is not subject to legal privilege and so anything he says to her will be recorded. He will be placed in Local Authority care as he is too young even for a Young Offenders' Institution. The carers there are also not subject to legal privilege.

The barrister will then explain that ONLY the barrister and solicitor are subject to legal privilege and those are the only people in this new world of his that are able to keep his secrets. The child will be informed that everything he told his lawyers is in confidence and they cannot ever tell anyone else without his express permission… BUT that if he is to admit the crime, then matters will change.

In simple terms, the child will be told that were he to admit both the *actus reus* and *mens rea* of murder, the barrister will be subject to their oath as an officer of the court and would not be able to put forward a positive defence on his behalf - in effect being limited in their representation of him.

This child is being asked to trust yet another stranger when he is being informed that he can trust no-one. This includes everyone who now surrounds him with perceived love, attention and care. In effect, this 14-year-old child is being told that he can trust no-one, that he is on his own, that his lawyers are his only hope and even then, he cannot tell them everything, if he is to preserve his right against self-incrimination.

There is no more difficult a job in this profession than to explain to a child the roles of ALL the professional adults who attend to "help" them. Sometimes they listen and understand. In the majority of cases, they do not. The subject of Responsible Child listened.

Responsible Child was made possible because the section 39 order was lifted on the first day of trial as a result of the child being tried alongside an adult. The journalists in court won their application to lift the embargo on reporting names. It clearly caught the attention of a wider audience.

Perhaps it is not the age of criminal responsibility which needs to be re-visited, but a review of the adults who are assigned to help these children. Is an extension of the rules on privilege worth exploring? Should we extend the privacy that surrounds family cases? Perhaps also the lawmakers could look at ensuring that no publication is allowed until the child turns 18?

We need to look at each case on its facts and own merits. We need to protect the children who find themselves in such situations. This is necessary so that they are not faced with public reminders many years later when their sentence is served, adulthood has arrived and they are endeavouring to move on with their lives.

This Responsible Child acquitted himself. One hopes that the drama holds true to this fact, if none other.

Do we not have a responsibility as adults, privileged to be able to represent these children in the legal system – to ensure that once rehabilitated, a child is entitled to live a life in peace? To grow into adulthood with the opportunity of *real* rehabilitation and anonymity – and not to be named again or preferably not at all in the press so many years later?

Kate's practice comprises mainly criminal defence work. She is adept at understanding complex issues of law and is known for being tenacious and hard-working, with a good sense of humour. Kate defends robustly and prosecutes fairly. She has a strong practice in representing the vulnerable, both children and adults.

Email Kate: kkelleher@36crime.co.uk

Cyber Update: Hey Baby, I'm the Telegram Man!

Adrian Amer
Barrister

We are now all used to the term cybercrime and many of us have a degree of understanding as to what it means. However, cybercrime itself doesn't purely exist in the criminal law arena. It crosses over to civil, company, commercial and intellectual property law. And all areas can be very interconnected. The fact that we all rely on and are affected by computers, computerisation, electronics, electronic communications and the internet makes it an all-encompassing topic whether at work, rest or play. Cybercrime can affect us on a personal level, a national level and an international level. They too are very often interlinked as the "internet of things" grows more complex as each day passes. Whether it is hopping on the underground, shopping, catching a plane or dealing with national and international trade in banking and insurance, shipping and aviation, or dealing with rigged political elections, spyware and personal and commercial espionage. It is all pervading. It makes George Orwell's 1984 look like Alice in Wonderland in comparison. We all tend to assume electronics, computers, the internet, artificial intelligence are used for the good of mankind. That is not necessarily so or always the case. Some countries seem to be obtaining and using the cyberworld as a means of threatening and harming human rights and directly attacking democracy itself. Large global and international companies have the capacity to do this also. Both countries and companies can and have used this power for their so called benefit but causing detriment and havoc to the suspecting and unsuspecting victim whether that be an individual human being, a company or a country or simply a state of being.

It goes without saying that strong and effective laws are needed to prevent the worst effects of the above happening to an individual, company or country. This is hard to achieve in any event. What is even more difficult is having the legal will to enforce such laws backed up by the appropriate social mores and culture of any society as well as appropriate enforcement backing and authorities to carry out such investigation, instigating regulation, promoting legal remedies, providing the appropriate arenas to do so, and sanctioning the remedies to be provided. All this costs. And costs huge. And there often isn't the political will or the funds to initiate any of this to any huge degree where it could actually prevent cybercrime and its related activities. Take one example: **financial crime**. London is a world magnet for financial crime due to the financial strength of the City. Banking and insurance are the mainstay of the City and generates enormous income and wealth for the rest of the country. Cybercrime and cyber enabled crime particularly in the areas of financial fraud and money laundering and proceeds of crime that come to the attention of the courts are only the tip of the iceberg. Banks and financial organisations face a continual uphill struggle to deal with such issues on a daily level. Another example is the use of **cryptocurrency** which on a daily basis gains more acceptance in commercial dealings. It belies the fact that is used on the dark

net and TOR to fund terrorism, child sex and pornography, modern slavery, organised crime drug dealing and international money laundering. Cryptocurrency now is so legitimised that Banks and financial institutions, industry and government ignore the brutal reality for those it truly affects and have no real way of dealing with its ill effects and in practice are powerless to do so because of the internet. Even though many financial organisations have thorough processes and systems that try to prevent cyber and cyber related crime happening, the reporting of most financial crimes to the authorities and fraud in particular go legally undetected. These institutions and organisations, at most, are simply putting out fires on a daily basis as well as having to protect themselves from **cyber attacks**.

In an alarming report the FCA and the Pensions Regulator disclose that 42% of pension savers in their sample have been scammed and five million people have been at risk. There are five tactics used by fraudsters promoting investments to those wanting to increase their retirement income in a low-interest environment: overseas property, renewable energy bonds, forestry, storage units and bio-fuels – all high risk investments. **The average loss is £82,000**. Reports to Action Fraud have been criticised as being rarely followed up and there have been recent complaints that Action Fraud have actually mocked victims. Furthermore there has been a huge increase in the number of cyber attacks that have breached systems on financial firms received. The FCA received 819 reports of cyber incidents in 2018, up from 69 the previous year. Retail banks are the most popular targets (60%) but wholesale financials and retail firms are also being affected. Continued under-reporting of incidents by firms is suspected for fear of penalties. That would be an understatement of the year.

I know we are all aware of many of the **Acts relating to cybercrime**. The Fraud Act 2006, The Computer Misuse Act 1990, Data Protection Act 2018 and GDPR, Misconduct in a Public Office: Common law, Investigatory Powers Act 2016, The Sexual Offences Act 2003. The Information Commission Office will also now look at large security data breaches and the FCA and the SFO will continue their work as diligently as they can. Cyber terrorism and cyber warfare and hacktivism continue their march and the main legislation in this area is of course the Terrorism Acts 2000 and 2006. **It is not all just about phishing, spear phishing, pharming, spoofing and doxing**. The Part 3A Public Order Act 1986, The Communications Act 2003 and the Human Rights Act 1988 all have their part to play. Intellectual Property Law breaches are governed by the Copyright, Designs and Patents Act 1998 relating to tangible and intangible property and their breaches especially in the computer hardware, software, programmes and games as well as the music and entertainment industries have the capacity to be severely affected by cybercrime and cyber enabled crimes. Not to forget **cyber harassment, cyber bullying, cyber stalking, trolling, flaming**, **malwaring and outing**, which can have the most serious consequences for an individual in particular children.

The commercial world is not immune to the effects of cybercrime. Systems disruptions in ports and airports to name but two can massively affect national and international trade. Whether it be a direct attack on a particular organisation or one that takes years to recognise, as is often the case with silent slow revealing breaches, the damage can be enormous, take years to repair, and sometimes may simply not survive. At the very least each commercial organisation or any institution should have a corporate or commercial or company health check taking into account all the

relevant risk factors that are commensurate with such a check including proportionality and the willingness to accept that such cybercrime and related breaches can occur. The ubiquity of Facebook, Twitter, Google, Instagram, WhatsApp and other social media platforms and organisations have lulled us all into a false sense of security. Their lack of scrutiny in all areas must not be allowed to continue. Not only on a personal level can personal and financial loss be devastating, but on a commercial and corporate scale the future losses to business can be extraordinarily large. Every legal weapon that can be used, if affordable, must be used to mitigate any breach or potential future financial loss or otherwise.

An interesting case that raises such fundamental issues is occurring at the moment in New York: **Securities and Exchange Commission v Telegram Group Inc and Ton Issuer Inc October 2019.** The Commission is seeking an injunction against the defendants who they say are engaging in the unlawful sale and offer to sell securities in violation of Sections 5(a) and 5(c) of the Securities Act. The case concerns the alleged ongoing illegal offering of digital-asset securities called "Grams". The Commission alleges the defendants plan to sell securities that will quickly come to rest in the hands of U.S. investors without providing those investors important information about their business operations, financial condition, risk factors and management. Telegram Group Inc. is a privately owned British Virgin Islands company with its principal place of business in Dubai, United Arab Emirates. Its primary product is Messenger, an encrypted messaging application with approximately 300 million users worldwide that has been called the "cryptocurrency world's preferred message". Argument exists about grams, digital tokens, blockchain technology, TON blockchain, cryptocurrency, initial coin offerings, lock up periods, teasers, primers, indications of interest, user friendly interfaces, light wallets, speculative trading, token ownership, existing ecosystem of communities, engaged user base, and similar issues. No doubt you get the message of the seriousness and importance of this case for the New York Stock Exchange, the largest as you know in the world. A very significant case to watch, considering its ramifications for other entities, especially for us here in England.

Adrian is regularly instructed as leading and junior counsel, prosecuting and defending in cases of murder and violence, fraud and money laundering, drugs, sexual offences and cybercrime. He holds an Operations Certificate from the Chartered Institute for Securities and Investment, majoring in Cybercrime.

Email Adrian: aamer@36crime.co.uk

36 Extradition Seminar Review: When is a Judicial Authority Not a Judicial Authority?

David Ball
Barrister

At the risk of spoiling the punch line – which, let's face it, was never going to be any good, the answer to: When is a Judicial Authority, not a Judicial Authority – is – whenever the European Court of Justice say it is not. This, and much else besides, was debated at the recent 36 Extradition flagship seminar held in Gray's Inn at the end of November. Three experts from Germany, France and the Netherlands considered the recent jurisprudence on the matter.

At issue, is the fact that under Article 6 of the Framework Decision governing the European Arrest Warrant ("EAW") system, only a "judicial authority" is able to issue an EAW. There are a number of countries where not only a judge can issue an EAW, but also a public prosecutor. For decades the received wisdom had been that public prosecutors were entitled to be considered a judicial authority, and were perfectly entitled to issue an EAW. Much of that changed on 27 May 2019 when in two judgments issued on the same day the European Court of Justice decided that German public prosecutors did not count as a judicial authority, and Lithuanian public prosecutors did (OG & PI, C-508/18, C-82/19 PPU; PF, C-509/18).

For the Germans the problem was that there was a particular provision in their constitution which said that "officials of the public prosecutor's office must comply with service-related instructions of their superiors." (Section 146 of the otherwise unpronounceable GVG). The Court of Justice said that this provision meant that a Minister for Justice could interfere in the decision to issue an EAW. As a result it held that a public prosecutor's office could not be considered a judicial authority where it was "exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice, in connection with the adoption of a decision to issue a European arrest warrant." (*OG & PI*, §90) Germany fell on the wrong side of the line. Lithuanian public prosecutors on the other hand, fell on the right side of the line. They had the benefit of independence and were able to act free of any external influence. The position in France is far from clear cut. Indeed a decision is awaited from the Court of Justice on the position of French Prosecutors on 12 December. As for the Netherlands, they have already had to change their constitution. But this has not stopped them, perhaps it has even encouraged them, to proactively identify other jurisdictions where they consider a public prosecutor is not entitled to issue an EAW.

David specialises in extradition and human rights work. He has considerable experience in international mutual legal assistance and completed a secondment at the Crown Prosecution Service Extradition Unit in January 2019.

Email David: dball@36civil.co.uk

36 EXTRADITION

Crime Bulletin

Mary Prior Q.C.

Barrister, Queen's Counsel, Mediator, Recorder

Proceeds of Crime Act 2002:

***R v Morrison* (2019) 4 All ER 181.** There is no general judicial discretion permitting a failure to order confiscation. Judges should not attempt to balance injustice and hardship.

***R v Panayi* (2019) 2 Cr App R 51**. The charge read on or about the date of the incident. An order for confiscation was reduced from £95,000 to £58. Take care when drafting.

Firearms:

***R v Asif Mohammed* (2019) 1 Cr App R 26**. If there are a number of firearms found at the same location at the same time one cannot impose consecutive sentences to circumvent the maximum sentence for each individual offence.

***R v Nancarrow* (2019) 2 Cr App R (S) 4**. The health of a defendant and the delay in the commencement of proceedings did not amount to exceptional circumstances to reduce the minimum 5 years term.

***R v Hussain* (2019) 2 Cr App R (S) 8**. Exceptional circumstances to reduce the minimum five years term existed where the defendant was in possession of a stun gun disguised as a mobile telephone where the defendant did not know that he was in possession of it, had no intent to be in possession of it or to use it and had no convictions for violence and where the weapon was not lethal.

Credit:

***R v West* (2019) 2 Cr App R (S) 27**. Informal discussions about alternative pleas are insufficient to afford a defendant full credit.

***R v A* (2019) 2 Cr App R (S) 11**. Time served whilst remanded to local authority accommodation when subject to an electronically monitored curfew does not count towards a sentence. The sentencer must therefore reduce the length of the sentence to take account of the time that the defendant was subject to the curfew.

Consecutive Sentences:

***R v Majeed* (2019) 2 Cr App R 529**. It is possible to impose a consecutive sentence for possession of a bladed article and grievous bodily harm if the weapon was carried to the scene.

***R v McGeechan* (2019) 2 Cr App R (S) 12**. A person who offends during the operation period of supervision on a detention and training order if sent to custody for the new offence cannot receive a consecutive sentence for the breach of the order.

TIC:

***R v Gamble* (2019) 2 Cr App R (S) 30**. A defendant must be asked if he admits the offences to be

taken into consideration in open court. Otherwise the court cannot take them into consideration.

Fraud:

***R v D* (2019) 2 Cr App R 15**. There is no general duty for a council tax payer to notify the local authority of his continuing residence in a property. Such conduct would not amount to fraud under section 3 of the Act.

Appeals:

***Thakrar v CPS* (2019) 2 Cr App R 17**. Parties are responsible for considering the method by which they appeal. If judicial review is sought and the single judge indicates that the claim is without merit there is no right to a renewed oral hearing. Unlike civil cases the applicant cannot then appeal to the Court of Appeal. The Court indicated that it is not easy to see why the criminal courts are treated so much more restrictively than the civil courts.

Majority Verdicts:

***R v Patten* (2019) 2 Cr App 21**. A majority in a crown court trial means that at least 10 members agree. This can never reduce to 9.

Using Sentencing Guidelines - Blackmail:

***R v Murphy* (2019) 2 Cr App R (S)13**. There are no sentencing guidelines for blackmail. The guidelines for threats to kill are unlikely to be helpful, even when there is a threat to kill in the blackmail.

Section 5 Domestic Violence Crime and Victims Act 2004:

***R v Smythe* (2019) 2 Cr App R (S) 7**. The judge followed the draft guidelines for child cruelty. It is wrong to follow draft guidelines and the cruelty guidelines do not apply to section 5 offences.

Sentencing - Drugs:

***R v Williams* (2019) 2 Cr App R (S) 15**. Appealing a sentence as part of a large scale conspiracy is never easy. The Court of Appeal will not interfere in relation to length or parity unless the judge has made an error of principle, mistaken entirely the factual basis or been Wednesbury unreasonable.

Criminal Behaviour Orders:

***R v Potter* (2019) 2 Cr App R (S) 5**. The Crown Court cannot vary or discharge a CBO made in the Magistrates Court.

Mary prosecutes and defends in equal measure and has a reputation for being a powerful, persuasive advocate who gets results. She has particular expertise in dealing with vulnerable witnesses and defendants, and serious sexual offences. Mary runs the RASSO training programme for the Midland Circuit and is often instructed in complex, historic sexual offences.

Email Mary: mprior@36crime.co.uk

36 CRIME

Members of 36 Crime

- Dean Armstrong QC
- Frances Mary Oldham QC
- Philip Hackett QC
- William Harbage QC
- Christopher Donnellan QC
- David Herbert QC
- John Lloyd-Jones QC
- Kate Brunner QC
- Mary Prior QC
- Mary Loram QC
- John Cammegh QC
- David Lee
- Sam Mainds
- Adrian Amer
- Robert Underwood
- Andrew Howarth
- Andrew Copeland
- Sarah Gaunt
- James Keeley
- Nicola Moore
- Nathan Palmer
- Sarah Knight
- Kevin Barry
- Grace Hale
- Simon Ash
- Henry James
- Katya Saudek
- Caroline Bray
- Claire Fraser
- Katherine Kelleher
- Adam Pearson
- Nadia Silver
- John Hallissey
- Paul Prior
- Jonathan Cox
- Kathryn Howarth
- Kakoly Pande
- James Bide-Thomas
- Nadeem Holland
- James McLernon
- Matthew Rowcliffe
- Samuel Skinner
- Derek Johashen
- Kathryn Hovington
- Emilie Pottle
- James Armstrong-Holmes
- Dharmendra Toor
- Saoirse Townshend
- Roxanne Aisthorpe
- Ami Jones
- Helen Marley
- Catherine Rose
- Michael Haggar
- Arthur Kendrick

Contact our clerks on 020 7421 8007

Michelle Simpson
Lloyd Hawkins
Jack Curtis
Elliot Styles
Jake Sperinck
Daisy Jolly

36 CRIME

Email: clerks@36crime.co.uk
Secure: clerks@36crime.co.uk.cjsm.net

Website: https://36group.co.uk/crime

Address: The 36 Group, 4 Field Court, Gray's Inn, London, WC1R 5EF

Follow us for news and updates: https://twitter.com/36CrimeTeam

36 Crime

Specialist Areas

- Serious & Complex Crime
- Consumer & Trading Standards
- Cybercrime
- Economic Crime & Regulation
- Extradition
- Financial Crime & Fraud
- Health & Safety
- Homicide
- Judicial Review
- Modern Slavery
- Professional Misconduct & Disciplinary
- Regulatory
- Serious Sexual Offences

With thanks to the 36 Crime Update Editorial Team:

Christopher Donnellan QC

Michelle Simpson

Catherine Rose