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## Crime Team Bulletin: When Life Threatening Isn't

Submitted by Jessica Armfelt on Thu, 01/06/2022 - 16:17

### **Interpretation of the new S.18 guidelines**

In yet another in the raft of references being brought before the court, *Regina v Charles O'Bryan* (2021) EWCA Crim 1472, is the first case to consider the revised Guidelines which came into effect in July 2021.

#### **Facts**

The offender was 21 when he encountered the victim and the two engaged in a fight which lasted for just 20 seconds. During a scuffle on the floor in which both exchanged punches, the appellant stabbed at the victim four times with what appeared from the CCTV to be a lock knife. It was at that point, that the fight was interrupted by a passing taxi driver and both the offender, and the victim fled the scene.

The victim was subsequently found to have stab wounds to his back, leg, and abdomen and when police officers attended his home, he was also losing consciousness. Treatment in the Emergency Department included the administration of a central line cannula, blood transfusions, frozen plasma, and tranexamic acid to aid clotting.

An emergency operation was performed during which it was noted that there was a stab wound to the abdomen, a large volume of blood in the abdominal cavity, a large blood clot at the back of the abdomen on the right side, injuries to an artery and vessels in the abdomen, an injury to the middle part of the small intestine and an 'associated through-and-through injury' to the small bowel mesentery with active bleeding.

The stab tract to the abdomen had entered the area in the back of the abdomen behind the peritoneum adjacent to the inferior vena cava (the largest vein of the human body) at the level of the lower pole of the right kidney, but there was no obvious injury to either structure. The injured blood vein and vessels were clamped and repaired with sutures. The right side of the large bowel was removed, and a portion of the small bowel was also removed.

Four days later, a second operation was performed and two days after that he was breathing unaided, although it was noted that he had also sustained a fracture to his thumb and that there was possible infection at the site of the abdominal surgery.

The prognosis after four months, was that he had made a good recovery, but that it was early days. He refused to provide a statement.

The offender refused to answer when interviewed and was charged with attempted murder and possession of a bladed article. He subsequently pleaded guilty to s.18 and possession of the knife: pleas which were acceptable to the prosecution.

He had no previous convictions and provided 14 impressive character references and he fell to be

sentenced under the new Guidelines.

It was accepted that the knife placed the offence in culpability B and the judge determined that the harm was Category 2, although he also identified some relevant Category 3 factors.

The plea, although not entered at the first opportunity, was to a count that hadn't been available in Magistrates' court and so attracted a little less than a one third reduction.

Taking those matters into account, the judge concluded that the starting point was one of six years, which after a reduction for plea, age, and mitigation, resulted in a sentence of four-years' imprisonment. A concurrent sentence of 12 months was imposed for the bladed article which had never been recovered.

## **Reference**

The reference accepted that the judge had been right to determine that the offence was one of culpability B but challenged the finding that there were any culpability C elements. It was also argued that in terms of the category of harm, the judge had erred in concluding that it was a Category 2 case, rather that the level of harm meant that it was Category 1 on the basis of life-threatening harm.

## **The Assessment of the Guideline**

The 2021 guideline states that: "*all cases will involve 'really serious harm'*", which can be physical or psychological or wounding. In addition, the court should assess the level of harm caused with reference to the impact on the victim.

The categories are assessed as follows:

### **Category 1**

- Particularly grave or life-threatening injury caused.
- Injury results in physical or psychological harm resulting in life-long dependency on third-party care or medical treatment Offence results in a permanent irreversible injury or psychological condition which has a substantial and long-term effect on the victim's ability to carry out their normal day to day activities or on their ability to work.

### **Category 2**

- Offence results in a permanent, irreversible injury or condition not falling within Category 1.

### **Category 3**

- All other cases of really serious harm.
- All other cases of wounding.

It was accepted on behalf of the Attorney General, that the phrase "life-threatening injury" does not cover every wound-causing injury which, left untreated, might lead to death. On that point, the Court remarked that most non-superficial injuries caused by a knife, save perhaps to an arm or leg where no artery is severed, will lead to loss of blood which, if no intervention takes place, could lead to infection or death from loss of blood or the spreading of blood to neighbouring organs.

Looking at that background in terms of the Guideline, the court confirmed that it must be read as a

whole, and it must always be remembered that firstly, (as with the previous Guideline), the harm caused must be “really serious” to come within the s.18 Guideline at all.

Secondly, the categorisation of harm must be assessed “with reference to the impact on the victim”. Thirdly, apart from the reference to life-threatening injury, the cases placed within Category 1 are where “particularly grave” injury is caused (as opposed to “grave” injury, which is Category 2), or where the injury results in lifelong dependency on third party care or medical treatment; or where the injury is permanent and irreversible and will have a substantial and long term effect on the victim’s ability to work or carry out normal day to day activities. In terms of application to this case, the Court agreed with the submission made on behalf of offender, namely that Category 1 is reserved for cases of exceptional seriousness, even within the class of s.18 cases.

As the term life-threatening is not defined within the Guideline, the Court didn’t seek to provide their own definition but instead looked at the facts following the stabbing. Those included the victim running home, waiting for the attendance of first the police, and then paramedics, that there wasn’t a medical statement and that there was a delay of over two hours before he was operated on.

Applying those facts to the sentence, the Court did not consider that a starting point of more than seven years before discount for plea was justified nor that the sentence of four-years was unduly lenient.

As the first case to come before the Court of Appeal, this case provides essential early assistance in interpreting the Guidelines in serious cases. It is also a lesson in reading the Guideline in full before making an assessment of harm, and of applying the facts to the category in order to achieve a fair result. It is also a reminder that not only this Guideline, but many others carry within them an inherent risk of double-counting which means it is incumbent upon all in court to ensure that doesn’t happen.

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