

AN INTERESTING SENTENCING EXERCISE  
TO WHAT EXTENT IS A PATTERN OF OFFENDING TO BE REFLECTED IN THE MINIMUM TERM  
FOR MURDER

RICHARD BARRACLOUGH KC LEADING HOWARD SEARLE INSTRUCTED BY WEST MIDLANDS  
CPS PROSECUTED

1. On 18<sup>th</sup> August 2023 D pleaded not guilty to charges of rape of two vulnerable women and four robberies some of vulnerable people and murder, all committed over a matter of some four days. On 16<sup>th</sup> January 2024 he changed his plea to guilty to the charges of robbery and murder. On 25<sup>th</sup> January 2024 he was found guilty by a jury of raping the two women.
2. The murder was particularly brutal. Having seen the deceased withdraw money from a cash machine, D followed the victim and pushed him into the driveway of a care home where he stamped on his face, head and upper body with such ferocity that he caused fractures to the face, neck and ribs and the victim was killed. D stamped on the victim's head and face at least six times. He then kicked him to the torso. He walked away but then returned and dragged his victim, even as he lay unconscious, to a nearby bush where he stamped on him a further six times to the head area. He returned again and launched a further attack of kicks and stamps to the head and neck area. At one point he used a double footed stamp to jump on the victim's head. In the middle of the attack, he went off to a garage to buy a sandwich before returning and continuing his murderous attack. D tried to pay for a sandwich with a card. The shopkeeper refused to give the sandwich to him. The CCTV clearly showed D searching the deceased. The Court was sure that this was a murder for gain after he removed the deceased's credit card from his pockets and tried to use it in the garage and stole the £10 the deceased had withdrawn for the ATM. The card was found close to the deceased's body after the murder. When he was unable to buy a sandwich, D returned to where the deceased lay and continued his attack.
3. The first rape victim was a homeless and very vulnerable woman. He raped her vaginally and orally in a city square. At first, she was reluctant make a formal statement because as she said

*“why should they believe a little homeless girl”*. D committed a robbery later that day. On the same day a few hours later, he carried out another rape of an 18 year old woman. She had just been discharged from hospital, where she had been treated for stomach pains. The rape came to light when a 999 call was made from a shop in Wolverhampton. The controller spoke with her. She was greatly distressed. She told the operator that she had been raped in a forest (park) by a homeless man; the rapist had said that he would kill her; he was going to *“give her kids”*; she was hurting in her vaginal area; she felt she was going to die; she was raped on a wooden thing like a bed. She said *“He put a cloth in my mouth”*. She was sobbing and said *“I don’t wanna die” I don’t want him to kill me”*. When officers arrived at the shop, they found her on the floor of a store room. She was hiding there. She was distressed and frightened. The officers recorded her state and what she said on their BWV. She told the officers that she took *“coke and spliff”* which he gave her; he put a cloth over her mouth and said *“if you don’t shut up, I’m going to kill you”*; he thought he was going to kill her; *“He said he was going to kill me and I didn’t want to die. He said shut up or I’ll kill you right here and it was hurting but he just carried on doing it. He said I can’t wait to have kids with you”*. The officers recorded that she then became *“sluggish and non-responsive at times”*. The officers took her to hospital.

4. The judge sentenced D to three years imprisonment on each robbery to run concurrently with one another and with the minimum term. The judge correctly categorised the rapes as category 2A offences and imposed a sentence of 10 years concurrent in respect of the rapes of the two victims.
5. As regards the rapes there was additional degradation/humiliation, violence/threats of violence beyond that which is inherent on the offence and the victims were particularly vulnerable due to personal circumstances. D targeted vulnerable women; he ejaculated into one of them.

6. The judge commented on the ordeal faced by the two women in giving their evidence:

*“You are a bully and a coward, Mr Ellitts, picking on people you consider to be weaker than you and vulnerable. You used your height and strength to overpower and dominate them, thinking that they would be too fearful to go to the police.*

*But all these complainants have proved you wrong. They were brave enough and strong enough to report your crimes. They were listened to and were believed. (They) have stood up to you and faced the ordeal of giving evidence in court. I pay tribute to their resilience and courage. I also pay tribute to the care provided to them by the police and all the support systems and care workers who have helped them navigate the difficult process”.*

7. Robbery and assault with intent to rob and rape are Schedule 19 offences. The Court had some detail of the D’s criminal record. Most of his convictions concerned women (convictions for violence including strangling the victim, threatening with knives, threats to kill, including telling the victim that he had his *“murder weapon here”*, brandishing a curved knife, threatening to return with a gun, petrol bombing the car of a girlfriend’s parents. The Court was invited to make a finding that D was dangerous and they did so.

8. The Crown submitted and the judge accepted that the seriousness of the offence was *“particularly high”* (paragraph 3 (1) and (2)(c)) in that the murder was done for gain.

9. The judge approached sentencing as follows:

*i. I am sure it was a robbery in which you searched his pockets for cash and whatever else you might find. You stole his bank card and tried to use it at the garage to buy a sandwich.*

*ii. All of us who have seen the CCTV footage will find it hard to forget the brutal savagery of your sustained and merciless attack.*

*iii. You took his stolen bank card and swaggered to the garage and attempted to buy a sandwich.*

- iv. *The post-mortem found that he had died from violent sustained blunt force assault about the head, fracturing the bones in his head, face and eye socket. He suffered traumatic brain injury and bleeding on the brain. You stove his head in with your feet and beat and kicked him to death.*
- v. *I am sure from the ferocity of the attack and the way you kept returning to his body to stamp and kick him again and again, that you intended to kill him and not just cause him really serious harm. I am also sure that the murder was committed for gain in the furtherance of a robbery, even though you did not gain much from it.*
- vi. *The culpability is particularly high and the starting point for your offence is 30 years as the murder was done for gain in the course of a robbery (paragraph 3(2)(c) of Schedule 21).*
- vii. *It was senseless, brutal and violent and you appear to have been consumed with rage and anger, perhaps even gained some satisfaction from the assault and the attack was pitiless, but that is not the same as, and falls short of sadism.*
- viii. *.... the offence has to be seen as the culmination of your rampage in a four day tornado of criminal violence, both physical and sexual, which is an aggravating feature. There is no psychiatric, psychological or other evidence to explain your behaviour other than drugs and alcohol. But sadly, many people in this society have drug and alcohol issues but very, very few people behave as you do. This offending is of a piece with your previous convictions. You have a history of violence and intimidation, particularly towards women whom you terrorised with an escalating pattern of increasingly serious and violent behaviour.*
- ix. *I make an upward adjustment of two years for both your previous convictions and the other offences you committed over that four day period culminating in Roy's death.*
- x. *I deduct two years for the lack of premeditation and a further three years for your guilty plea, amounting to 10% which spared Roy's family from the trauma of a trial one month before the hearing".*

10. The judge therefore set the minimum term at 27 years.
11. The principles of totality must apply when fixing the minimum term where the term must reflect other offending. The Sentencing Guidelines on totality require that the overall sentence should reflect all of the offending behaviour with reference to overall harm and culpability together with aggravating and mitigating factors relating to the offences and those personal to the offender and be just and proportionate.
12. The sentence of 10 years for the rapes was appropriate. The sentencing judge must balance the length of the minimum term with the seriousness of the other offending and bear in mind that any increase in the minimum term will not be the same as an increase in a determinate sentence.
13. However, to reflect such egregious offending, the brutal rapes, robberies, and the previous convictions involving vulnerable women, having found the defendant to be dangerous in an increase of two years to the minimum term may be thought to be too little.
14. The notion that the two rapes should be reflected as part of the bundle of offending warranting an uplift of two years to the minimum term (even allowing for the fact that the two years would not carry the possibility of release before the expiry of the term if it had been a determinate sentence) when they were so serious as to merit 10 year sentences if standing alone, might arguably be considered to be such as not to encourage victims of such offending to be "*brave enough and strong enough to report (such) crimes (and) face(d) the ordeal of giving evidence in court*".

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