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Afkomplicering af juridisk sprog

Cand.ling.merc. engelsk tolk og translator

CBS

Februar 2010

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Vidensteknologi**

Antal sider: 79,06

Antal typeenheder: 142.303

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0. Resumé

Simplifying legal language

Through many decades criticism has been leveled against the problems of understandability a complex legal language usage can cause laymen both in Denmark and in England.

The language reform, which was introduced in the Danish courts in 2003, and part of the Woolf reform of the English civil procedure system, aim at making legal language easier to understand for laymen by simplifying complex language usage in communication between the courts and the citizens.

In connection with the two above mentioned reforms, it is relevant to investigate whether or not the reforms have had an actual effect on the language usage in the courts. I have therefore phrased the following thesis statement:

Has focus on language policy in communication between the courts and the citizens cf. the Danish Court Administration's language policy of 2003 and the English Woolf reform of 1999 caused changes in the language usage in criminal cases and has the language thereby become easier for laymen to understand?

Is the level of difficulty of the language different in Danish and English judgments respectively and if so, what are the differences?

The core of this thesis is a corpus based analysis of a limited amount of Danish and English judgments from before and after the reforms in 1999 and 2003. In my analyses I have chosen to focus on lexical and syntactic elements that frequently occur in legal language. My focus is passive constructions, initial and medial adverbials, compound prepositions, complex noun phrases, technical terms, legal collocations, and nominal constructions.

I have supplemented the analyses of lexical and syntactic elements with a readability index analysis, called lix, that indicates the level of difficulty of a text.

The analyses however, must be regarded with some reservations due to certain factors of uncertainty about the analysis methods. The results of a qualitative corpus analysis make it difficult to generalise about legal language. A generalising conclusion would demand an analysis of a quantitative corpus which has not been possible in my case. It should also be mentioned that the personal style of writing of the judges that have formulated the judgments may affect the level of difficulty and thereby the analysis results. Finally it has to be taken into account that the readability index may be imprecise when used on texts that are shorter than 200 sentences and 2000 words. In spite of these factors of uncertainty, I have been able to conclude on the tendencies within legal language in Danish and English criminal cases and whether or not the language has become easier to understand after the introduction of the language reforms in the two countries respectively.

The analyses of the Danish judgments indicate that the language has become easier to understand since the introduction of the language reform in the Danish courts. However, the Woolf reform does not seem to have had the same effect as the Danish reform. When comparing the English legal language before and after Woolf, it appears that the English judgments have become more difficult for laymen to understand since the reform was introduced in 2003, which is much against the expectations of an easier understandable language usage in the courts.

When comparing the Danish and English legal language before the two language reforms, it seems that the English judgments are less complex than the Danish ones. However, after the introduction of the two reforms in the Danish and English courts, the level of difficulty in the two languages respectively has become more similar than it was before the reforms. This is due to the Danish legal language becoming easier with the Danish reform and the English language becoming more complicated with the Woolf reform.

When comparing the Danish and English legal language before the two language reforms in 1999 and 2003, it seems that passive constructions, initial and medial adverbials, compound prepositions, complex noun phrases, technical terms, and

nominal constructions occur more frequently in the Danish judgments than in the English ones. The only element that occurs on an equal basis, in the Danish and English judgments, is legal collocations.

The occurrences of the analysed lexical and syntactic elements are very different after the reforms. The analyses indicate that passive constructions, long initial and medial adverbials, and compound prepositions occur more frequently in the Danish than in the English judgments. The opposite is the case with the technical terms and legal collocations which seem to occur more frequently in the English judgments than in the Danish judgments. And finally the complex noun phrases and nominal constructions seem to occur equally as much in the Danish and in the English judgments after the language reforms.

1. Indledning

Det må antages, at det er den almindelige opfattelse blandt personer, der ikke arbejder med jura til hverdag, at juridisk sprogbrug er meget komplekst og indviklet. Selv nogle jurister mener, at den juridiske sprogbrug er for kompleks for ikke-fagfolk. Den amerikanske jurist Rudolf Flesch arbejdede i mange år med afkomplicering af juridisk sprog i USA og er meget anerkendt for sin indsats på området. Han anførte i sin bog, *How to Write Plain English* (1979), at mange jurister ikke gør sig det klart, hvem de skriver til og lever i en tro om, at alle deres læsere uden problemer kan forstå, hvad de skriver. Det mener Flesch er en naiv og dybt problematisk tankegang (1979:6). Flesch er ikke alene om at kritisere juridisk sprogbrug for at være komplekst. Der har gennem mange år været stigende fokus på sværhedsgraden af juridisk sprog, og mange offentlige myndigheder er blevet opmærksomme på vigtigheden af at kommunikere på en måde, der kan forstås af alle.

Ved kommunikation mellem fagfolk forholder det sig dog anderledes, end når fagfolk kommunikerer til lægmænd. Mellem fagfolk er en mere avanceret diskurs naturlig, da brug af fagtermer hjælper til at gøre kommunikationen mere fagspecifik. I forbindelse med kommunikation fra fagfolk til lægmænd kan man imidlertid ikke forvente at kunne bruge samme fagterminologi, fordi budskabet derved i mange

tilfælde ikke vil blive afkodet korrekt. I 2003 blev der i de danske domstole indført en ny sprogpolitik udarbejdet af Domstolsstyrelsen (Domstolsstyrelsen, 2003). Det er min formodning, at sproget med indførslen af denne politik og de sproglige retningslinjer, som er blevet indført med denne, er blevet lettere at forstå for lægmænd. Det har om ikke andet været formålet (Domstolsstyrelsen, 2003).

Også i England menes sværhedsgraden af juridisk sprogbrug at volde forståelsesmæssige problemer for lægmænd, der ikke er specialiserede i juridisk sprog (Alcaraz, Hughes, 2002:5). I det engelske retssystem har Woolf-reformen fra 1999 bl.a. sat fokus på sværhedsgraden af juridisk sprogbrug i England. Reformen var ikke kun en sprogreform, men en reform af hele det civile retsvæsen, som skulle medføre forenkling af civilprocessen. Herunder blev sproget inden for retsvæsenet også reformeret, for at det skulle blive lettere forståeligt for lægmænd. Min formodning er, ligesom i forhold til indførelsen af Domstolsstyrelsens sprogpolitik i Danmark, at Woolf-reformens fokus på sværhedsgraden af sproget har betydet, at sprogbrugen i de engelske domstole er blevet mere enkel og lettere forståelig for lægmænd.

Jeg vil med denne opgave foretage en nærmere undersøgelse af, om juridisk sprog i straffedomme fra både Danmark og England er blevet lettere at forstå for lægmænd siden indførelsen af henholdsvis Domstolsstyrelsens sprogpolitik i 2003 og Woolf-reformen i 1999. Det vil jeg gøre ved at undersøge, hvordan sproget i de danske og engelske domstole har udviklet sig fra før reformernes indførelse til efter reformernes indførelse, og på baggrund deraf verificere eller falsificere min påstand om, at fokus på sprog i forbindelse med Domstolsstyrelsens sprogpolitik i Danmark og Woolf-reformen i England skulle have simplificeret sprogbrugen og gjort sproget lettere forståeligt for lægmænd. Dernæst vil jeg lave en komparativ analyse af sværhedsgraden af sprogbrugen i henholdsvis danske og engelske straffedomme, og udspecificere, hvad de sproglige forskelle består i.

2. Problemformulering

- Har fokus på sprogpolitik i kommunikation mellem domstol og borger, jf. den danske Domstolsstyrelses sprogpolitik fra 2003 og den engelske Woolf-reform fra 1999, medført ændringer i sprogbrugen i straffedomme og dermed gjort sproget lettere at forstå for lægmænd?
- Er sværhedsgraden i sprogbrugen forskellig i henholdsvis danske og engelske straffedomme, og i givet fald hvori består de sproglige forskelle?

For at tage stilling til, om det rent faktisk forholder sig således, at sproget er blevet lettere at forstå efter indførslen af Domstolsstyrelsens Sprogpolitik i 2003 og Woolf-reformen i 1999, vil jeg lave en kvalitativ undersøgelse af ændringen i brug af juridisk sprog i danske og engelske straffedomme. Det vil jeg gøre ved at sammenligne et antal domme, afsagt af danske og engelske domstole, fra inden og efter reformernes indførsel for derved at kunne konkludere på det anvendte juridiske sprog og identificere eventuelle forståelsesmæssige problematikker.

3. Afgrænsning

Jeg har valgt at afgrænse mit undersøgelsesfelt til straffedomme. Det forekommer mig relevant at se på straffesager, da udfaldet af disse evt. kan have fængselsstraf som konsekvens og dermed kan være af afgørende betydning for den tiltaltes fremtid. Den tiltalte kan i mange tilfælde mangle forudsætninger for at forstå avanceret og kompliceret juridisk sprogbrug. I sådanne tilfælde tages det for givet, at denne forstår eller får hjælp til at kunne forstå den komplicerede sprogbrug. Men selvom man, som tiltalt i en sag, i princippet kan få hjælp fra sin advokat til at forstå, hvad domstolene skriver, kan det virke begrænsende for borgeren ikke at kunne forstå på egen hånd, og et lettere forståeligt sprog ville derfor være ideelt.

4. Teori, metode og empiri

Herunder vil jeg beskrive hvilken teori, metode og empiri, jeg tager udgangspunkt i for at svare på min problemformulering.

4.1 Empiri

I Danmark er det forbudt ved lov at offentliggøre straffedomme¹, med mindre de er anonymiserede, således at navne på de involverede parter ikke fremgår. Der er derfor begrænset adgang til danske straffedomme, der kan bruges til at belyse min problemformulering. Jeg har været i stand til at finde nogle anonymiserede straffedomme på internettet, men udvalget har været meget lille. Jeg har derfor valgt at lave et minikorpus, og fokusere på den kvalitative analyse snarere end den kvantitative.

For at finde svar på de spørgsmål, jeg har stillet i min problemformulering, har jeg lavet et korpus bestående af ti danske straffedomme fra før sprogreformen i 2003 og ti straffedomme fra efter sprogreformens indførelse i Danmark. Da det kan forventes at have taget lidt tid at få den nye sprogbrug implementeret ordentligt i retsvæsenet efter den danske sprogreformens indførelse, har jeg valgt at koncentrere mig om domme dateret mellem 2007 og 2009.

Jeg vil desuden analysere ti engelske straffedomme fra før 1999, hvor Woolf reformen blev indført, og ti engelske straffedomme fra 2007-2009 for også her at få så stort et tidsspring som muligt, så chancen for, at ændringerne er blevet optaget i sproget er større. Det har ikke været problematisk at finde engelske domme, da der i England ikke er forbud mod at offentliggøre straffedomme, som i Danmark. Men det skal dog nævnes, at man kun kan finde straffedomme fra den engelske appelret (Court of Appeal), og jeg er derfor nødsaget til at koncentrere mig om dem.

Mit minikorpus og dermed analysemateriale består således af ti engelske domme fra før 1999, ti danske domme fra før 2003, ti engelske domme fra 2007-2009 og ti danske domme fra 2007-2009.

I afsnittet *Uddybning af den faglige metode og karakteristika ved juridisk sprog* vil jeg beskrive brugen af korpuslingvistik ved analyse af en lang række data og fordele og begrænsninger herved.

¹ Jf. den danske retsplejelov § 1017 d

Det faktum, at danske straffedomme er så svære at få fat på, betyder, at jeg er nødt til at gøre brug af både domme fra byretten og landsretten for at nå op på det antal domme, jeg ønsker at analysere. De vil så blive sammenlignet med de engelske domme, som udelukkende stammer fra appelretten, der svarer til den danske landsret. Da jeg har været nødsaget til at basere den komparative analyse på domme fra forskellige retsinstanser, er der en risiko for, at sproget kan være påvirket af retsniveauet, idet der kan være niveauforskelle i sprogbrugen i de forskellige instanser. Jeg vælger ikke desto mindre at se bort fra det i mine analyser, da jeg ikke anser problemet for at være så stort. Det baserer jeg på, at sprogbrugen må afhænge mere af den enkelte koncipists sprogvalg og skrivestil uanset hvilket retsniveau, der er tale om. Man må således have for øje, at der snarere af den grund kan være individuelle forskelle i dommernes sprogbrug, da domskoncipisterne kan være større eller mindre tilhængere af sprogreformerne, hvilket således vil være afspejlet i deres måde at formulere sig på.

Når jeg har analyseret alle 40 domme, vil jeg lave en sammenligning af mine resultater for hver af de fire delgrupper. Jeg vil dermed konkludere på, om der er forskel på sprogbrugen i de danske domme før og efter sprogreformens indførelse i 2003 og desuden, om den danske sprogreform har haft nogen effekt. Jeg vil også sammenligne sproget i engelske domme før og efter Woolf-reformen i 1999, og derved vurdere, om der er ændringer i sværhedsgraden af det engelske sprog. Dernæst vil jeg lave en komparativ analyse på tværs af de to sprog og dermed vurdere, om der er forskel i sværhedsgraden af det engelske og danske juridiske sprog i domme før reformerne, men også om der er forskel i sværhedsgraden af sprogbrugen nogle år efter, sproget burde være blevet afkompliceret, hvis anvisningerne i reformerne er blevet fulgt.

Analysen af dommene kan give et detaljeret indblik i sprogbrugen, når der kommunikeres fra myndighed til borger, både i danske og engelske domstole. Jeg er klar over, at det forholdsvis lille korpus gør det svært, hvis ikke umuligt at generalisere ud fra resultaterne af mine undersøgelser. Men selvom jeg ikke

forventer at kunne komme med en generaliserende konklusion, forventer jeg at kunne sige noget om tendenserne inden for juridisk sprogbrug i Danmark og England.

4.2 Faglig metode

Til brug for analysen af hvorvidt sproget i danske og engelske domme er let eller svært at forstå, vil jeg benytte mig af forskellige sproglige parametre. Med udgangspunkt i Domsstolsstyrelsens sprogpolitik og Woolf-reformen samt anbefalinger af sprogspecialisterne Garner (2001), Painter (2007), Flesch (1979), (Alcaraz, Hughes, 2002), (Møller, Olsen, 2001) og (Faber, Hjort-Pedersen, Madsen, Tournay, 1997) vil jeg undersøge udvalgte syntaktiske og leksikalske træk i dommene, der kendetegner juridisk sprogbrug og kan gøre sproget svært at forstå. Desuden vil jeg anvende lix-metoden, som måler tekstens sværhedsgrad, til at vurdere, hvorvidt de analyserede tekster ligger over eller under den anbefalede sværhedsgrad, og dermed om de er læsbare for ikke-fagfolk.

Lix, som står for læsbarheds-index, er en metode beregnet til at kategorisere og vurdere sværhedsgraden af tekster og dermed tilgængelighed for læseren.

For yderligere behandling af lix-metoden se punkt 5.3.

5. Uddybning af den faglige metode og karakteristika i juridisk sprog

Jeg vil med dette afsnit uddybe den faglige metode, jeg gør brug af i min opgave og desuden beskrive eventuelle usikkerhedsfaktorer derved.

5.1 Syntaktiske og leksikalske træk i juridisk sprog

Karakteristisk for juridisk sprog er, at det skrives i en upersonlig og afstandstagende stil kaldet kancellistil. Kancellistilen er kendetegnet ved at være meget tung og komprimeret og desuden bestå af lange sætninger med mange indskud. Denne skrivestil er karakteristisk for både dansk og engelsk juridisk sprog (Møller, Olsen, 2001:42-43) (Alcaraz, Hughes, 2002:18-19). Kancellistilens sætningslængde og

mange indskud får nemt den effekt, at læseren mister overblikket under læsningen (Sandersen, 2005).

På det syntaktiske niveau i kancellistilen finder man mange passivkonstruktioner, lange initiale og mediale adverbialer, sammensatte præpositioner, komplekse substantivsyntagmer og nominalkonstruktioner. Det gør sig gældende for engelsk så vel som dansk juridisk sprog (Alcaraz, Hughes, 2002: 9) (Faber, Hjort-Pedersen, Madsen, Tournay, 1997:69-76).

I det følgende vil jeg nærmere beskrive brugen af syntaktiske træk og leksikalske træk, som medvirker til at vanskeliggøre forståelsen af juridisk sprog og som jeg derfor vil fokusere på i min analyse.

5.1.1 Passivkonstruktioner

Ved brug af passivkonstruktioner frem for en aktiv form af verbet fjerner koncipisten agenten, og sætter i stedet fokus på modtageren af handlingen. Passivkonstruktionen er meget upersonlig og neutral, og bruges enten, fordi agenten er ukendt, irrelevant, eller fordi denne kan udledes af tekstsammenhængen, og derfor er overflødig at nævne (Bache, Davidsen-Nielsen, 1997:207). Resultatet, når der bruges passive frem for aktive verber, er, at teksten bliver afstandstagende, hvilket i mange tilfælde er unødvendigt, da samme sætning lige så vel kan udtrykkes i en aktiv form (Alcaraz, Hughes, 2002:19-20) (Domstolsstyrelsen, 2003:11).

Passivkonstruktionen bruges også i juridisk sprog til at synliggøre distancen og magtforholdet mellem borger og den offentlige myndighed. Men kan også, som nævnt ovenfor, bruges til at sløre agenten og dermed utydeliggøre, hvem der udfører handlingen. Den nævnte brug af passiv kunne f.eks. forekomme i forbindelse med ubehagelige meddelelser fra myndighed til borger, i tilfælde hvor det er ubehageligt for myndigheden at være direkte og evt. måtte tage skyld for en hændelse, der er til ulempe for modtageren, eller anklage modtageren for en lovovertrædelse eller lignende (Wydick, 1994:30)

F.eks.: *gerningsmanden blev fanget (af politiet)* = passiv

Politiet fangede gerningsmanden = aktiv

Investors are urged to consult their own tax advisers = passiv

We urge investors to consult their own tax advisers = aktiv

Det skal dog nævnes, at man i nogle tilfælde ikke kan undgå at bruge passivform af verbet. F.eks. er man i de tilfælde, hvor agenten er ukendt, nødsaget til at udelade agenten og fokusere på modtageren af handlingen. F.eks. i sætningen: *manden blev overfaldet på vej hjem fra et diskotek natten til søndag*. Her vil man bruge passivkonstruktion, hvis man stadig ikke har identificeret gerningsmanden, og denne derfor er ukendt for koncipisten. Men i langt fra alle tilfælde, hvor passivkonstruktionen anvendes, er den unødvendig, og kunne lige så vel erstattes af en aktiv verbalkonstruktion (Garner, 2001:24-25).

Jeg har valgt også at anse sætningstyper som *below the range indicated*, og *the other expert witnesses involved in this case*, som passivkonstruktioner, da der lige så vel kunne have stået *below the range (that is) indicated* og *the other expert witnesses (who are) involved in this case*. Agenten er udeladt i de to eksempler, hvilket indikerer, at der er tale om en passivform.

Det samme gælder for konstruktionen på dansk, som i f.eks.: *hvem D skulle sende regningen til vedrørende arbejde (som er blevet) udført på en værkstedsbygning*.

På dansk koncentrerer jeg mig desuden om sætningskonstruktioner, hvor agenten sløres ved, at koncipisten skriver *man* i stedet for at eksplicite agenten. Det kunne f.eks. være i en sætning som: *at man ikke havde sikret sig mod faren for antændelse*. Her kunne man lige så vel have udspecificeret agenten ved navn eller anden betegnelse end det neutrale og uspecifikke *man*, som slører agenten og holder denne skjult for læseren. *Man* bruges meget på dansk også i daglig tale, men tilsvarende konstruktion benyttes i meget mindre grad på engelsk, hvor man sjældnere ser en sætning, hvor *one* sættes i stedet for agenten. Det er kun relevant at se på passivkonstruktioner med brug af *man* på dansk, da koncipisten på engelsk i stedet ville benytte sig af almindelig passivkonstruktion, som allerede beskrevet tidligere i dette afsnit.

5.1.2 Lange foranstillede og mediale adverbialer

Der er forskel på placeringen af lange adverbialer i hverdagsprog og juridisk sprog både på engelsk og på dansk.

På engelsk hverdagsprog er det mest almindeligt, at lange adverbialer står i initial- eller slutposition, og kun korte adverbialer placeres i medialposition (Bache, Davidsen-Nielsen, 1997:141+146). Det engelsk juridiske sprog er dog kendetegnet ved at indeholde lange adverbialer både i initial- og medialposition, hvilket gør sproget kringlet og komplekst (Virenfeltd Sørensen, 2008:82). Den tunge struktur med adverbialer i initial- og medialposition, som er typisk for juridisk sprog, kaldes også syntetisk sætningsstruktur. I syntetisk sætningsstruktur sættes betingelser i initial- eller medialposition efterfulgt af hovedomstændighederne, hvorimod man i analytisk sætningsstruktur, som er typisk for hverdagsprog, skriver hovedomstændighederne først efterfulgt af biomstændighederne.

På dansk hverdagsprog kan lange adverbialer forekomme i medialposition så vel som i initial- og slutposition. Det er dog alligevel et karakteristika ved specielt dansk juridisk sprog at lange komplekse adverbialer forekommer i initial- og medialposition (Galberg Jacobsen, Skyum-Nielsen, 1996:125-128).

Adverbialerne kan forekomme initialt og medialt i både hovedsætninger og bisætninger (Christensen, 2005:23-24, 52). Jeg har valgt at fokusere min analyse på initiale og mediale adverbialer på begge sætningsniveau.

Eksempel på initialt adverbiale: *Efter en samlet vurdering af sagens forhold*, findes bøden passende at kunne fastsættes til 25.000 kr.

His application for leave to appeal having been refused by the Single Judge, he now renews it before this Court.

Eksempel på medialt adverbiale: ...og at han senere, *formentlig en eller få dage efter den 27. juni 2009*, hvor han havde haft en telefonsamtale med

Forbrugerombudsmanden vedrørende tilretning af hjemmesiden, tilrettede hjemmesiden.

that which the learned judge said *in the passage just recited* was more than efficient in all the circumstances.

På engelsk hverdagsprog ser man meget sjældent adverbialer i medialposition, det er lidt mere normalt på dansk. Men i både dansk og engelsk juridisk sprog er det ikke ualmindeligt, at der forekommer komplekse adverbialer i medialposition, hvilket gør sætningerne lange og kringlede at forstå, da meningen først kan dannes, når læser har identificeret både subjektet og verbalet (Christensen, 2005:25-31) (Galberg Jacobsen, Skyum-Nielsen, 1996:125).

Christensen (2005:52-65) definerer medialposition som adverbialer, der på den ene eller anden måde splitter verbalsyntagmet op. Jeg vælger at se mediale adverbialer, som noget lidt bredere. Dette skyldes, at mit fokus er, at sætningens mening bliver forstyrret, hvis der pludselig indsættes et adverbiale midt i en betydningsmæssig sammenhæng Derfor har jeg valgt at udvide definitionen af et medialt adverbiale fra kun at vedrøre adverbialer, der indsættes midt i verbalsyntagmet til også at omfatte adverbialer, der står efter verbalsyntagmet men før objektet. Det kunne for eksempel være en sætningskonstruktion som:

*it was left to the judge to decide, **having heard the evidence in the appellant's trial,***
adverbiale

whether a Newton hearing was necessary.

Direkte objekt

Og

*whether it is appropriate **by the use of Pepper v Hart** to extend the ambit of the -*

adverbiale

Dirkete objekt

statute

Det kan desuden diskuteres, hvad man bør anse for at være et langt adverbiale. Jeg har valgt at definere et langt adverbiale som værende på 3 ord eller derover, da jeg

mener, at et adverbiale på bare et to ord er overskuelige selv i foranstillet eller medial position. Jeg har markeret adverbialet i sætningen med kursiv skrift i min analysedel, for at man tydeligt skal kunne skelne det fra resten af sætningen, som er taget med for at vise sammenhængen. I min analyse ser adverbialet derfor ud således:
On 24 September 2008, at Barnsley Magistrates' Court, the applicant pleaded guilty to one offence of handling stolen goods

5.1.3 Sammensatte præpositioner

Både på dansk og engelsk juridisk sprog forekommer der tunge sammensatte præpositioner. Min analyse er fokuseret på sammensatte præpositioner af typen præposition + substantiv + præposition som f.eks. *i medfør af*, og *in pursuance of*, da sammensætningen af de tre led, gør præpositionen kompleks og dermed må formodes at kunne skabe forvirring for læseren.

For at undgå den tunge skrivestil, som de lange, sammensatte præpositioner er med til at danne, vil det være mere hensigtsmæssigt at bruge kortere præpositioner (Faber, Hjort-Pedersen, Madsen, Tournay, 1997:74-75). Det kunne f.eks. være, at man i stedet for at skrive ”reglerne finder *i medfør af* § 2, stk. 3, nr. 3 også anvendelse *i forhold til* personer der ikke er i ansættelsesforhold”, skrev ”reglerne finder *ifølge* § 2, stk. 3, nr. 3 også anvendelse *på* personer, der ikke er i ansættelsesforhold”.

5.1.4 Komplekse substantivsyntagmer

Lange komplekse substantivsyntagmer, der modificeres af relativsætninger, præpositionssyntagmer, eller participialsyntagmer, er også typisk for kancellistil. De lange indskud kan umiddelbart gøre det svært at holde styr på meningen med sætningen, fordi læseren mister overblikket (Sandersen, 2005) (Faber, Hjort-Pedersen, Madsen, Tournay, 1997:73-74).

Eksempel på participialsyntagme: aftaler *indgået ved fjernsalg om køb af varer og visse tjenesteydelser*

Eksempel på præpositionssyntagme: ved *mail af 4. april 2007* blev tiltalte af forbrugerombudsmanden gjort opmærksom på, at...

Eksempel på relativsætning: *den fortjeneste, der må antages at være indvundet eller tilsigtet ved overtrædelse*

5.1.5 Fagterminologi og juridiske kollokationer

I juridisk sprogbrug anvendes mange fagudtryk, som kan være svære at forstå for den ikke fagspecialiserede lægmand. Når læseren støder på ord, vedkommende ikke kender, nedsættes forståelsen af tekstens sammenhæng. Selvom læseren, ud fra sammenhængen, kan regne ud, hvad termen betyder, er læseprocessen stadig blevet forstyrret af, at læseren skal stoppe op og tænke over fagtermens betydning, inden vedkommende kan fortsætte sin læsning. Der kan være tale om danske fagtermer som f.eks. *kendelse, domfældelse, frifindelse, votering* m.v. og engelske termer som *mitigation, writ, prosecution* m.v. (Domstolsstyrelsen, 2003:16) (Alcaraz, Hughes, 2002: 16).

Den samme forståelsesmæssige barriere kan opstå ved brug af juridiske kollokationer så som *at afgive forklaring, at gøre bekendt med, at afsige kendelse*, og de engelske kollokationer *to grant leave to appeal, to give evidence, to call a witness* (Domstolsstyrelsen, 2003:16).

Der er dog en del gråzoner inden for definitionen af juridisk fagsprog. Selv specialister inden for juridisk sprog er uenige om, hvilke ord der kan betegnes som juridisk fagterminologi (Garner, 1991, som citeret i Faber Rasmussen, 1996:48). Mange juridiske udtryk er med tiden også blevet inkorporeret i almindeligt hverdagsprog, hvilket er tilfældet med ord som *dom* og *judgment*. Så trods, at ordene oprindeligt er juridiske udtryk, forstås de generelt af alle og kan forventes at blive forstået af lægmænd, hvilket gør termerne uinteressante for mine undersøgelser. Jeg vil udelukkende koncentrere mig om termer, som jeg vurderer, ikke optræder udenfor juridiske sammenhænge, så som *appellant, prosecution, sagsøger, anklagemyndighed*. Jeg har valgt at se bort fra ord som *proceed, sentence, order, submission, application, assessment, judgment* og *direction*, samt ord som

parter, forklaring, sag og straf, da jeg mener, at disse også optræder i hverdagsprog og derfor ikke vil volde læseren vanskeligheder.

Jeg har valgt at medtage termen *offence*, da ordets betydning er en del anderledes som juridisk fagudtryk end som hverdagsterm. I juridiske sammenhænge betyder *offence lovovertrædelse* eller *forseelse*, hvorimod betydningen på almindeligt hverdagsprog er mere i retningen af *forargelse, fornærmelse, krænkelse*.

Ordet *forhold* kan umiddelbart også ses som en del af en gråzone, men efter at have overvejet termens brug, kom jeg frem til, at den skulle medtages i analysen som en del af fagterminologi, da *forhold* i ikke juridiske sammenhænge defineres som *et personligt forhold mellem mennesker*. I modsætning til termens hverdagsproglige betydning betyder *forhold* som strafferetlig term *en hændelse eller gerning, som den anklagede er sigtet eller tiltalt for*.

Hvad angår juridiske kollokationer, er der ligeledes gråzoner, som kan gøre det usikkert, om der er tale om kollokationer eller ej. En kollokation defineres som flere leksemer, der har tendens til at optræde sammen. Da der ikke findes et korpus, som jeg kan tage udgangspunkt i for at tage stilling til, om en sammensætning af ord er en kollokation eller ej, må det komme an på min egen vurdering af, om en sammensætning skal defineres som en kollokation eller ej. Jeg vil koncentrere mig om kollokationer, der udelukkende optræder i juridiske sammenhænge, så som *a pre-sentence report, to pass sentence, at påstå frifindelse, at tage til følge, at stadfæste en dom* etc.

5.1.6 Nominalkonstruktioner

Nominaliseringer er substantiver, der er dannet ud fra verber så som *decision* og *beslutning*. Mange nominaliseringer kan uden besvær erstattes med aktiv brug af det verbum, som substantivet er dannet ud fra. Så i stedet for at skrive ”nævningene *tog en beslutning* om at...” kan man lige så vel skrive ”nævningene *besluttede* at...”. Det samme gælder på engelsk, hvor formuleringen *to examine* er at foretrække frem for *to conduct an examination* (Garner, 2001: 39). Der er her tale om forfatterens aktive

valg mellem nominalkonstruktioner og verbalkonstruktioner, hvor brugen af nominalkonstruktionen gør sproget mere passivt og stift.

Det er hermed ikke sagt, at man altid skal prøve at undgå verbalsubstantiver. Det er tit hensigtsmæssigt at have verbalsubstantiver i en tekst, da det kan hjælpe til at undgå lange komplicerede verbalfraser. Men da det giver teksten et tungt og upersonligt præg, skal man så vidt muligt forsøge at begrænse brugen af nominalkonstruktioner, der kan erstattes af en aktiv verbalkonstruktion uden, at betydningen ændres.

I sætningen ”under *arbejdet* med en Fiat-bil og ved *trykmåling* af benzintilførselen skete *antændelse* fra en gnist eller mindre flamme fra motoren...af et bæger med benzin,...”, som er en formulering fra en af mine analysedomme, kunne man sagtens omskrive nominaliseringerne til aktive verbalformer, så sætningen kommer til at lyde mere livlig og dynamisk: Imens mekanikerne *arbejdede* med Fiat-bilen og var ved *at måle trykket* af benzintilførselen, *antændte* en gnist eller mindre flamme fra motoren et bæger med benzin,...” (dom af 15. februar 2000²). Selv i det omskrevne eksempel har jeg bibeholdt verbalsubstantivet *benzintilførselen*, da det ville blive kringlet at omskrive ordet til en aktiv verbalfrase.

Mit fokusfelt, hvad angår nominaliseringer, er sætningskonstruktioner, hvor forfatteren for at gøre sproget mere aktivt lige så vel kunne have brugt en verbalkonstruktion med et bøjet verbum frem for nominalkonstruktionen uden, at sætningens betydning ændres. I analysearkene har jeg sat nominalenheden, som, jeg mener, kan omskrives til en verbalkonstruktion, i kursiv. Og i parentes ud for sætningen, har jeg givet et eksempel på en evt. verbalkonstruktion, der kan erstatte nominaliseringen.

5.2 Sammenligningsgrundlag

For at få et solidt sammenligningsgrundlag for alle de analyserede domme uanset deres længde, har jeg valgt at udregne den procentvise forekomst af de forskellige leksikalske og syntaktiske elementer. Det danner ikke en god sammenligningsbasis at

²

Se bilag nr. 1

stille f.eks. 15 forekomster af passivkonstruktioner i en tekst på kun 78 sætninger op mod en forekomst af 20 passivkonstruktioner i en tekst, der eksempelvis indeholder 150 sætninger. Derfor er det hensigtsmæssigt at udregne forekomsterne af alle de analyserede elementer i procent, og derefter sammenligne andelen i de pågældende tekster.

Jeg har udregnet procentdelen af passivkonstruktioner, adverbialer, sammensatte præpositioner, komplekse substantivsyntagmer og nominalkonstruktioner i forhold til antallet af sætninger i dommene. Procentdelen af fagterminologi og juridiske kollokationer har jeg udregnet i forhold til det samlede antal ord i dommene.

5.3 Lix

I det følgende vil jeg nærmere beskrive lix-metoden, som jeg benytter som supplement til mine analyser af syntaktiske og leksikalske træk i dommene.

Lix-metoden blev udtænkt af svenskeren C. H. Björnsson i et forsøg på at finde en måde at vurdere teksters sproglige udformning for derved at kunne måle deres sværhedsgrad (Togeby, 1971:15-16). Vha. undersøgelser, hvor han brugte forsøgspersoner til at finde ud af, hvilke sproglige træk der var svære, fandt han frem til, at en teksts sværhedsgrad kan måles ud fra sætningslængde og antal lange ord i sætningen (Togeby, 1971: 16).

Lix-metoden er sprogneutral og kan derfor benyttes lige godt på både de danske og engelske domme, som er relevante for mig at analysere. I Domsstolsstyrelsens sprogpolitik anbefales det, at man bruger lix-metoden som rettesnor for sværhedsgraden af sin tekst og holder lix på mellem 40 og 45 (Domstolsstyrelsen, 2003:19).

Björnssons lix-metode har været udsat for kritik også fra opfinderen selv. Björnsson advarer mod, at man misbruger og mistolker lix og mener, at lix bør anvendes i samspil med andre vurderingskriterier. Han er ikke af den overbevisning, at læsbarheden bliver bedre udelukkende af, at man halverer sætningslængden og

bruger korte ord frem for lange (Hahn Møller, 2006 [2005]: 29) (Björnsson, 1971:129) (Björnsson, 1969:28).

Der er nogle usikkerhedsfaktorer ved lix, som man må tage i betragtning ved brug af metoden. Hvis lix-metoden anvendes på tekster, der er kortere end 2000 ord og 200 sætninger, kan man risikere at resultatet bliver statistisk misvisende pga. mangel på analysemateriale. Der er derfor større sikkerhed ved at bruge metoden på længere tekster, så som bøger og lange artikler. Det skal dog understreges, at metoden godt kan bruges på kortere tekster, dog med den usikkerhedsfaktor, at der kan dannes et ufuldstændigt billede af tekstens sværhedsgrad ud fra lix-resultatet, fordi tekstens korthed gør det svært at generalisere ud fra analysen (Galberg Jacobsen, Skyum-Nielsen, 1996:31).

Ud over risikoen for, at lix-metoden bliver misvisende ved brug på korte tekster, skal det også tages i betragtning ved brug af metoden, at den ikke anviser læsbarhedsfaktorer som fremmedord, fagterminologi og kringlede sætningsopbygninger. Den usikkerhedsfaktor omgår jeg ved at anvende metoden som supplement til mine analyser af syntaktiske og leksikalske træk i dommene.

Læsbarheden beregnes ved at se på, hvad procentdelen af lange ord er i en tekst og desuden hvor mange ord, der er i en periode mellem to lange pauser i en tekst. Et langt ord betegnes som bestående af 7 eller flere bogstaver (Galberg Jacobsen, Skyum-Nielsen, 1996:30-31) (Domstolsstyrelsen, 2003:19).

Det følger af lix-metoden, at forkortelser og tal tæller som deres fulde stavemåde. Dvs. at står der ”f.eks.” tæller det som antal bogstaver i ”for eksempel” og ”25” regnes som antal tegn i ”femogtyve”. Tabeller og lignende regnes ikke med i lix, fordi det ikke anses for at være en del af den sammenhængende tekst.

Lix udregnes ved at gange antal lange ord med 100 og dividere med det samlede antal ord, som giver procentdelen af lange ord i teksten (resultat A). Dernæst divideres det samlede antal ord i teksten med antal perioder i teksten (resultat B).

Resultat A og B lægges sammen og giver det endelige lix-tal.

$$\begin{array}{r} \text{Lix-udregning:} \quad \text{Antal lange ord} * 100 \\ \quad \quad \quad \quad \quad / \quad \text{Antal ord i teksten} \\ \quad \quad \quad \quad \quad \text{-----} \\ \quad \quad \quad \quad \quad = \quad \% \text{ lange ord: A} \\ \\ \quad \quad \quad \quad \quad \text{Antal ord i teksten} \\ \quad \quad \quad \quad \quad / \quad \text{Antal perioder} \\ \quad \quad \quad \quad \quad \text{-----} \\ \quad \quad \quad \quad \quad = \quad \text{Antal ord pr. periode: B} \end{array}$$

$$A+B = \text{lix-tal}$$

(Domsstolsstyrelsen, 2003: 19) (Galberg Jacobsen, Skyum-Nielsen, 1996:30-31)

Lix-resultatet vurderes derefter ud fra en skala, der angiver hvad sværhedsgraden kategoriseres som:

Lix 0-24 = meget let

Lix 25-34 = let

Lix 35-44 = middelsvær

Lix 45-54 = svær

Lix 55- = meget svær

(Galberg Jacobsen, Skyum-Nielsen, 1996:30)

5.4 Korpuslingvistik

Som basis for mine analyser af sværhedsgraden af juridisk sprog har jeg, som tidligere nævnt, samlet et minikorpus. Nedenfor vil jeg beskrive fordelene og begrænsningerne ved brug af et mindre korpus til analyse af specifikke tekstuelle elementer.

Korpuslingvistik er en forholdsvis ny måde at arbejde med sprog på, som først kom rigtig frem i 1960erne (Teubert, Čermáková, 2007: 50). Ifølge John Sinclair (1991) består et korpus af en samling tekster, der, når de analyseres, kan fortælle noget om sproget, og hvordan det eventuelt kan variere pga. forskellige faktorer som tid og sted. Ved brug af korpusanalyse kan man påvise hyppighed og placering af forskellige ord og formuleringer (Teubert, Čermáková, 2007:53-54) og dernæst sammenligne resultaterne på tværs af f.eks. tid og geografi. Man kan derved konkludere på sprogets udvikling og sproglige tendenser i forskellige geografiske områder, hvilket gør korpusanalyse til et relevant værktøj i min analyseproces.

Når man påbegynder sin analyse, skal man overveje, om det valgte korpus er stort nok, og om teksterne er afbalancerede og repræsentative for det område, man vil analysere (Meyer, 2002:100). Afhængigt af korpusets størrelse, kan resultaterne af analysen være mere eller mindre repræsentative for hele det sproglige område, man ønsker at undersøge. Der skal et meget stort korpus til for, at undersøgelserne kan betegnes som fuldstændigt repræsentative (Teubert, Čermáková, 2007:60). Men selvom analyse af et mindre korpus ikke dækker alle tekster, der potentielt kunne vise noget om den pågældende sproglige tendens, vil man alligevel dermed kunne påvise tydelige sproglige tendenser.

6. Udviklingen af dansk og engelsk juridisk sprog gennem tiden

For at give en bedre forståelse af juridisk sprogbrug i Danmark og England vil jeg herunder give et indblik i udviklingen af det danske og engelske juridiske sprog og udviklingen mod bedre forståelighed for lægmænd.

6.1 Udviklingen i dansk juridisk sprog

I slutningen af 1800-tallet begyndte man i Danmark at sætte fokus på sprogkvaliteten i love. Folketinget vedtog i 1894-1895 en opfordring til at være opmærksom på sproget ved arbejde med og affattelse af ny lovgivning (Møller, Olsen, 2001:7). Men først i 1960erne og 1970erne opstod debatten om sprogbrogen i mere direkte

kommunikation mellem myndighed og borger som domme og andre skrivelser (Faber Rasmussen, 1996:17).

I 1950 sendte Forvaltningskommissionen et brev til statsministeren, hvori der blev udtrykt bekymring for loves og retsforskrifters almene forståelighed. Kommissionen anbefalede i forbindelse hermed, at sproget blev gjort lettere forståeligt for borgerne (Møller, Olsen, 2001:10-11). Det førte til, at statsministeren i 1952 udsendte et cirkulære om udformning af love (Møller, 1952). Cirkulæret indeholdt bestemmelser om, at sproget skulle gøres mere enkelt og forståeligt ved at udelade overflødigheder. Det blev hermed bestemt, at man f.eks. skulle udelade overflødige ord i titler på love m.v. og foretrække korte ord som “om” frem for “angående” og “vedrørende”.

Cirkulæret af 1952 blev afløst af et nyt cirkulære af 12. maj 1966 og dernæst af *Vejledning om sproget i love og andre retsforskrifter* fra Justitsministeriet d. 15. oktober 1969. Ifølge denne vejledning skulle man som koncipist være specielt opmærksom på at gøre teksten letforståelig for sin målgruppe. Vigtigheden af et kort og præcist sprog blev desuden understreget (Thestrup, 1969).

Folketingets Ombudsmand har haft stor indflydelse på den opmærksomhed, der er blevet givet det offentliges kommunikation med borgeren. Han har løbende gjort meget ud af at oplyse myndighederne om, hvor vigtigt det var, at kravene om et præcist og letforståeligt sprog blev ført til livs i både retsforskrifter og afgørelser (Møller, Olsen, 2001: 37). Det førte til, at ombudsmanden i 1970 gjorde statsministeren opmærksom på sine bekymringer om sprogbrugen i den offentlige forvaltning. Ombudsmanden påpegede, at der var et stort behov for, at borgerne kunne forstå det offentliges kommunikation til dem og pointerede, at sproget afspejler myndighedens holdning til borgeren og det emne kommunikationen omhandler. Han opfordrede desuden til, at alle administrative myndigheder blev bedt om at benytte sig af anbefalingerne i Justitsministeriets *vejledning om sprog i love og andre retsforskrifter* ved al slags kommunikation med borgerne (Thestrup, 1969) (Møller, Olsen, 2001:37-38).

Ombudsmandens pres for at få bedre og lettere forståelig sprogbrug implementeret i offentlige myndigheders kommunikation til borgerne førte til, at Justitsministeriet i 1972 udsendte en *skrivelse vedrørende forbedring af den sproglige udformning af skrivelser fra administrationen til borgerne*. Skrivelsen udtrykte, at al kommunikation til borgerne burde være venlig og hensynsfuld, og henviste desuden til retningslinjerne for sprogbrug i Justitsministeriets vejledning af 1969 (Jensen, 1972) (Møller, Olsen, 2001:38).

Ud over at give retningslinjer for et kort og præcist sprog og gøre opmærksom på hvor vigtigt det var, at koncipisten var opmærksom på sin målgruppe, udspecificerede Justitsministeriet i vejledningen af 1969 også andre rettesnore for, hvordan sproget kunne blive lettere forståeligt (Thestrup, 1969).

Det forhold, at ombudsmanden fik gennemtruffet retningslinjer for sprogbrugen i skrivelser fra administration til borger, må betragtes som en milepæl inden for afkomplisering af juridisk sprog. Men der er trods alt lang vej fra, at retningslinjerne bliver udformet til, at de bliver implementeret i den daglige kommunikation mellem myndighed og borger, så derfor har ombudsmanden siden bibeholdt fokus på præcision og forståelighed i sproget (Møller, Olsen, 2001: 38).

Siden *Skrivelsen vedrørende forbedring af den sproglige udformning af skrivelser fra administrationen til borgerne* blev afgivet i 1972 er debatten om sprogbrugen ved skriftlig kommunikation mellem stat og borger fortsat. Statsminister, Anker Jørgensen, svarede i 1977 på en forespørgsel fra Bertel Haarder, der handlede om, hvordan statsministeren ville få implementeret retningslinjerne i vejledningerne af 1969 og 1972 i sprogbrugen i det offentliges kommunikation med borgerne. Ministeren svarede, at der fortsat var fokus på forståeligheden af sproget, men at juridisk sprog til tider kræver svært og kompliceret sprog for at gøre budskabet fuldstændig præcist (Møller, Olsen, 2001: 41-42).

Det samme dilemma med præcision overfor forståelighed kommenterede højesteretssagfører Hartvig Jacobsen i en artikel i Ugeskrift for Retsvæsen (Jacobsen,

1951). Jacobsen mente, at kompliceret juridisk sprog kunne være vanskeligt at forstå selv for jurister, og endnu mere problematisk for lægdommere. Han opfordrede jurister til at tage afstand fra kompliceret og kunstigt sprog, men gav samtidig udtryk for, hvor vigtigt det er, at sproget er præcist. Højesteretssagføreren pointerede, at det er af højeste vigtighed, at lægmænd forstår bl.a. domme og processkrifter, men samtidig, at formuleringerne er præcise nok til, at der ikke opstår misforståelser (Møller, Olsen, 2001: 37) (Jacobsen, 1951).

Højesteretsdommer J. L. Frost var dog uenig i højesteretssagfører Jacobsens opfordring til at bruge et letforståeligt sprog i retten. Han skrev i en artikel i *Juristen* (1956/195), at sproget i retten på ingen måde kunne tåle at blive for dagligdags, da man derved nemt kom til at udelade afgørende detaljer, hvilket i Frosts øjne overskyggede nødvendigheden af et ukompliceret sprog i retten (Frost, 1956:233).

I 1981 udgav Statens Information en pjece med råd om, hvordan sproget kunne forbedres ved kommunikation fra myndighed til borger (Møller, 1981). Pjecen, som fik navnet *Og uden omsvøb tak!* blev skrevet, som var det borgerens bøn til myndighederne om at skrive klart, tydeligt og forståeligt, når de henvender sig til dem. Pjecen indeholdt mange af de samme problematikker, som der blev advaret i mod i *vejledningen om sproget i love og andre retsfor skrifter* af 1969. Det generelle budskab er, at man som koncipist bør sætte sig i målgruppens sted og skrive så let forståeligt og ukompliceret som overhovedet muligt, så man tilgodeser læserens forudsætninger for at forstå teksten (Møller, 1981).

Som seneste tiltag udkom Domstolsstyrelsen i 2003 med sin sprogpolitik for Danmarks Domstole. Heri har man bestræbt sig på at lave et sæt retningslinjer for sprogbrugen i domstolene, der stadig respekterer den juridiske faglighed (Seest, 2005). Målet med sprogpolitikken er at ændre den traditionelle og tunge juridiske skrivestil til et skriftsprog, der er tidssvarende, klart og letforståeligt, så alle ubesværet kan forstå skrivelser fra de Danske Domstole (Domstolsstyrelsen, 2003:2). Politikken koncentrerer sig om mange af de samme punkter som vejledningen af 1969 (Thestrup) og *Og uden omsvøb tak!* (Møller, 1981) så som, at man bør skrive

korte sætninger med et gennemsnitligt antal ord på 15-18, at man skal skrive i et konkret, aktivt sprog og undgå nominaliseringer. Endnu en fællesnævner for vejledningen af 1969, Statens Informations pjece fra 1981 og Domstolsstyrelsens sprogpolitik er en advarsel imod misbrug af indskudte sætninger, som lige så vel kan stå som selvstændige hovedsætninger, samt overforbrug af fagtermer.

Domstolsstyrelsens sprogpolitik er et forsøg på at gøre sproget lettere uden, at fagligheden og præcisionen går tabt (Seest, 2005),

og den opfordrer generelt til brug af et nutidigt og professionelt sprog. Som overordnet vejledning opfordres koncipisten til at tage hensyn til modtagerens forståelsesforudsætninger og situation. Det er specielt vigtigt i domme og kendelser, som har en bred målgruppe bestående af bl.a. parterne, dommere, advokater og pressen, og det er afgørende, at alle parterne kan forstå indholdet.

6.1.1 Delkonklusion

Siden 1960erne og 1970erne er der sket en stor udvikling i sprogbrugen ved kommunikation fra de offentlige myndigheder til borgerne. Der er desuden blevet gjort et ihærdigt forsøg på at gøre sproget mere brugervenligt (Tema:klarsprog, 2005). Dog har debatten om det komplicerede sprog også gået på overvejelser om, hvorvidt det komplicerede sprog til tider skyldes, at de beskrevne omstændigheder er komplicerede, og kompliceret sprogbrug derfor er svært at undgå. Nogle argumenterer for, at det netop ikke kan undgås at skrive kompliceret, når det drejer sig om juridiske forhold, fordi juridisk sprog kræver meget stor præcision, for at opretholde retssikkerheden.

Til trods for nogen modstand fra fagfolk, der mener, det juridiske fagsprog må bestå for at sikre præcision i retsprocessen, er der i løbet af de sidste fire årtier blevet arbejdet ihærdigt for at lette forståelsen af det offentliges kommunikation med borgerne, herunder også retssproget. Afkompliceringen af juridisk sprog og sprogbrugen i myndighedernes kommunikation til borgerne er udsprunget af debatten om et ukompliceret lovsprog. Statsministeriet og Justitsministeriet lavede vejledninger herom i henholdsvis 1952 og 1969. Og sidenhen kom disse vejledninger i 1972 til at danne grundlag for Justitsministeriets *skrivelse vedrørende forbedring af den sproglige udformning af skrivelser fra administrationen til borgerne* på

opfordring fra ombudsmanden. Justitsministeriets skrivelse á 1972 blev efterfulgt af Statens Informations pjese *Og uden omsvøb tak!*, som er en vejledning til bedre sprogbrug i det offentlige udgivet i 1981. Og som det sidste nye tiltag har Domstolsstyrelsen udgivet sin sprogpolitik i 2003, som er af specifik relevans for sprogbrugen i domstolene, og derfor for min problemstilling.

6.2 Udviklingen af engelsk juridisk sprog

Igennem tiden har store forfattere, som Charles Dickens, udtrykt utilfredshed med sværhedsgraden af juridiske sprog. Dickens var modstander af kancellistilen og mente, at jurister havde en speciel forkærlighed for overflødige ord og omstændige sproglige formuleringer. I sit værk *Bleak House* (1852) sammenlignede Dickens tågen i London med ”tågen i retten”, som var et billede på den forvirring og uklarhed, han syntes, der var omkring sprogbrugen i retsager, og som dermed ikke kunne undgå at smitte af på retsagernes indhold:

...at the very heart of the fog sits the Lorst High Chancellor in his High Court of Chancery (Dickens, 1852:9).

Winston Churchill gjorde også et forsøg på at simplificere offentlige myndigheders sprogbrug. Han opfordrede generelt til at skrive korte og præcise tekster. I sit notat *Brevity* ((1940), bragt i Cutts & Maher, 1986: 9) udspecificerede Churchill vigtigheden af at skrive korte, præcise sætninger, at placere længere analyser m.m. i bilag og ikke midt i teksten, og at afskaffe komplicerede sætninger. *Brevity* var en opfordring til de offentlige myndigheder om at skrive kortere rapporter. Ifølge Churchill burde komplicerede sætninger, som det ovenstående eksempel, omformuleres til let og forståeligt sprog. Hans generelle holdning til sprog var, at præcision skaber lettere forståelse, og han stræbte derfor efter at få implementeret et lettere sprog i de engelske offentlige myndigheder (Cutts & Maher, 1986: 9).

I 1948 skrev Sir Ernest Gowers sin bog *Plain Words*, hvori han argumenterede for brug af læservenligt sprog i officielle skrivelser. Hans opskrift på et godt sprog var, at man skulle skrive kort, enkelt og menneskeligt (Gowers, 1986 [1954]: 21). *Plain*

Words blev revideret og genudgivet flere gange af f.eks. Sir Bruce Fraser. Værket behandlede dog ikke juridisk sprog, da Frasers argumenterede for, at kun jurister ville kunne vurdere, om sproget kunne skrives mindre kompliceret uden at miste sin præcision (Gowers, 1973 [1954] :8). Men *Plain Words* er dog stadig at betragte som et skridt på vejen mod et mere læservenligt sprog i offentlige myndigheder.

Endnu et skridt på vejen mod en mere forståelig sprogbrug er George Orwells *Politics and the English Language* (1945). Selvom værket ikke omhandler juridisk sprog direkte, er det relevant at nævne, da det giver nogle retningslinjer for, hvad der er acceptabel sprogbrug, når der kommunikeres fra myndighed til borger. Orwell understregede, at man ikke burde bruge metaforer, sammenligninger og symbolsk tale. Han mente også, at lange ord burde erstattes af korte ord, hvis der findes kortere ord af samme betydning. Desuden argumenterede han mod brug af fremmedord, fagsprog og fagjargon, hvis der vel at mærke findes en tilsvarende term på almindeligt sprog. Endelig rådede Orwell til, at man generelt skriver i et aktivt sprog og ikke bruger passivformer (Orwell, 1945).

I 1970'erne i England, USA, Canada og Australien opstod *the Plain English Movement*, som kæmpede og stadig kæmper for forenklet sprogbrug. I England blev bevægelsen for alvor stor, da Chrissie Maher dannede *the Plain English Campaign (PEC)* i 1979. PECs forbilleder er Gowers, Churchill og andre forkæmpere for afkomplicering af sproget i offentlige instanser (Cutts & Maher, 1986: 9).

PEC har gjort brug af ukonventionelle metoder for at få opmærksomhed. De lancerede f.eks. i 1979 en happening, hvor de kastede makulerede officielle dokumenter ud over Parliament Square i London, hvilket gjorde organisationen kendt i både medierne, myndighederne og blandt folket (Cutts & Maher, 1986: 11-12). PEC har siden 1979 udgivet bladet *the Plain English Story* og uddeler årligt priser til værste og bedste koncipister. Prisen for værste skrivelse, ved navn *the Gobbledygook award*, har tilsyneladende vist sig at være meget effektiv, da modtagerne typisk efterfølgende gør en ekstra indsats for at forbedre deres sprog (Plain English Campaigns hjemmeside).

Udover PEC findes der også en forening af jurister for forenkling af juridiske dokumenter. Foreningen kalder sig *Clairty* og blev dannet i 1983 af jurist Mark Adler. Foreningen udgiver et tidsskrift også ved navn *Clarity* og laver desuden seminarer om udfærdigelse af juridiske skrivelser. Foreningens mål er at få indført god sprogbrug blandt jurister ved at opfordre til, at der skrives i et letforståeligt sprog, hvor man undgår overflødig fagterminologi og fagjargon (Claritys hjemmeside).

I midten af 90erne fik lord Woolf til opgave at udarbejde en rapport om det civilretslige system i England og Wales med henblik på at reformere systemet. Projektet førte til en foreløbig rapport i 1995, hvori lord Woolf kommenterede på og lavede anbefalinger til ændringer i det engelske civilretlige system (Woolf, 1995). Lord Woolfs endelige rapport og anbefalinger kom i 1996 (Woolf, 1996).

Både Woolfs foreløbige og endelige rapport indeholdt anbefalinger om sprogbrugen i civile retsager. I sin foreløbige rapport anbefalede han, at man moderniserer terminologien, hvor det måtte være hensigtsmæssigt. Woolf anbefalede, at man forsøgte at finde en mellemvej, hvor man skillede sig af med termer, der er ukendte blandt lægmænd, og som gør sproget gammeldags og svært at forstå for lægmænd, men, at man fastholder juridiske termer, der er velkendte blandt både fagfolk og lægmænd. Som eksempler på alment accepterede juridiske termer, gav Woolf f.eks. *defendant* og *application* (Woolf, 1995).

I sin endelige rapport gjorde lord Woolf opmærksom på, at det er en nødvendighed, at det civilretligt system er generelt forståeligt. Han understregede i den forbindelse behovet for et mere enkelt og tydeligt sprog, og anbefalede endnu engang, at sprogbrugen blev moderniseret, hvor det var muligt uden, at der ændredes på betydningen. Han anbefalede, at svære fagtermer blev erstattet af mere fyldestgørende og forståelige ord, hvilket f.eks. betød, at *plaintiff* blev skiftet ud med *claimant*, at *pleading* blev erstattet af *statement of case*, og at *affidavit* blev til *witness statement*. Dog gjorde Woolf opmærksom på, at man ikke fuldstændigt ville kunne undgå fagterminologi, da nogle juridiske termer er nyttige at beholde, fordi de er præcise og ikke kan erstattes af en anden lige så præcis term. Han foreslog i stedet, at man

vedlagde en gloseliste til svært forståelige dokumenter, som en hjælp til ikke-fagfolk (Woolf, 1996).

Lord Woolfs rapporter førte til etableringen af de engelske *Civil Procedure Rules* (CPR), som var en reform af hele det civilretlige system (Gillespie, 2007: 412), der blev indført i april 1999. CPR er et regelsæt, der danner ramme om civile søgsmål. Det generelle formål med de nye regler var at reducere den tid, der bliver brugt på den enkelte retsag og samtidig nedsætte omkostningerne derved. Man ville desuden administrere sagerne, så de blev ført på retfærdig vis (Gillespie, 2007: 414). De sproglige fokusområder i CPR var, at retssystemet skulle være tilgængeligt. Woolf mente, at sproget var en barriere i traditionelle civile retsager, da sproget var uforståeligt for mange brugere af retssystemet, som derfor var nødsaget til at købe sig til advokatbistand for at få hjælp til at forstå, hvad der foregik. Woolf understregede derfor vigtigheden af, at man afskaffede *legalese*, som er det komplicerede juridiske fagsprog, der typisk er baseret på latin (Gillespie, 2007: 416). I de nye CPR-regler blev dette forsøgt ført ud i praksis ved, at retten fremover almindeligvis skulle bruge den almindelige betydning af ord for dermed at sikre et tilgængeligt retssystem.

Da man i det engelske retssystem ikke opererer med et separat retssystem til civilsager og straffesager, kunne det formodes, at de sproglige ændringer i de nye civilprocesregler ville sprede sig fra civilsagerne og med tiden også blive implementeret i sprogbrugen i straffesager. Alle større ændringer er svære, og det, som jurist, at skulle ændre sine sprogvaner må ikke undervurderes, da juridisk fagsprog er en indgroet og dybtliggende del af faget. Men det forekommer logisk og naturligt, at jurister og andre involverede parter i retsager, med indførelsen af de nye CPR-regler, ville begynde at benytte sig af den nye, mindre komplicerede sprogbrug i alle slags sager frem for kun i civilproces, da det ville skabe yderligere sproglig forvirring, også for dem selv, hvis de skulle benytte sig af forskellig terminologi afhængig af sagens karakter.

Der gik dog også kun nogle år, før der blev udarbejdet en vurdering af det engelske strafferetssystem. Formålet med vurderingen var at reformere systemet, så det, lige

som civilretten, blev mere effektivt og retfærdigt for alle parter (Auld, 2001: scope of the review). Lord Justice Auld blev sat til at udarbejde rapporten i 1999, og kunne præsentere sit endelige resultat i 2001. Det indeholdt, ud over forslag til optimering af strafferetssystemet generelt, også forslag til forbedringer på det sproglige område. De sproglige ændringsforslag er baseret på lord Woolfs anbefalinger til det civile retssystem (Auld, 2001: chapter 11, point no. 189). Lord Auld argumenterede for, at der også i strafferet er brug for at gøre sprogbrugen mere simpel. Han anbefalede, at simpelt engelsk bør være normen, da det er vigtigt, at strafferet er forståelig for alle involverede parter. Auld sagde dog, ligesom Woolf, at man skal være varsom med at skifte tekniske termer ud med almindelige hverdagstermer, da fagtermerne i mange tilfælde er mere præcise og kan være af afgørende juridisk betydning. Det kan i så fald være ugunstigt at skifte disse termer ud med andre lettere termer, da det kan føre til retslig usikkerhed i stedet for fremmelse af retssikkerheden, som er det overordnede formål med både lord Woolfs og lord Aulds anbefalinger (Auld, 2001: chapter 11, point no. 189).

6.2.1 Delkonklusion

Der har været løbende fokus på afkomplisering af juridisk sprogbrug i England. Både intellektuelle forfattere, som Charles Dickens, højtstående politikere som Winston Churchill og organisationer som PEC har taget emnet meget alvorligt og arbejdet hårdt for at få afkompliseringen af juridisk sprog ført ud i praksis. Det nyeste tiltag er lord Woolfs og lord Aulds anbefalinger til simplificering af juridisk sprog i henholdsvis civilret og strafferet. I min analyse af, hvorvidt engelsk juridisk sprog i straffesager er blevet lettere at forstå vil jeg tage udgangspunkt i Woolf-reformen og ikke i lord Aulds anbefalinger, da sidstnævnte er udarbejdet på baggrund af lord Woolfs forslag til sproglige forbedringer, og da Woolfs anbefalinger har ført til reformen af de civile rets CPR-regler, hvorimod lord Aulds anbefalinger endnu ikke har ført til lovmæssige ændringer.

7. Analyseresultater og bearbejdning deraf

Det er vigtigt at have overblik over analyseresultaterne, når man behandler omfattende analysemateriale, som er tilfældet ved min problemstilling. Derfor finder jeg det relevant at opsummere analyserne i procenttal for overskuelighedens skyld og for bedre at kunne konkludere på hvert enkelt analyseområde.

Analysearkene er en opstilling af hvert enkelt leksikalske og syntaktiske analysekategori og giver et overblik over den procentvise forekomst af analyseelementerne i hver dom. De procentvise analyseark giver et overblik over forekomsten af de forskellige analyseelementer. I venstre side angives dommen og i højre side angives det procentvise resultat. Efter hver delgruppe domme angives det gennemsnitlige analyseresultat i procent.

De procentvise forekomster af passivkonstruktioner, adverbialer, sammensatte præpositioner, komplekse substantivsyntagmer og nominaliseringer er taget af det samlede antal perioder i dommen.

Den procentvise udregning af fagterminologi og juridiske kollokationer er baseret på det samlede antal ord i dommen.

7.1 Analyseresultater for de analyserede danske domme før og efter reformen

Passivkonstruktioner	
Danmark før reformen:	
2. december 1999	$(12 * 100) / 17 = 70,6 \%$
6. juli 1999	$(26 * 100) / 29 = 89,7 \%$
27. januar 2000	$(16 * 100) / 27 = 59,3 \%$
30. marts 2000	$(11 * 100) / 15 = 73,3 \%$
7. juni 2000	$(36 * 100) / 42 = 85,7 \%$
15. juni 2000	$(19 * 100) / 21 = 90,5 \%$
21. aug 2000	$(9 * 100) / 16 = 56,3 \%$
16. maj 2001	$(24 * 100) / 33 = 72,7 \%$
25. juni 2001	$(21 * 100) / 38 = 55,3 \%$

17. august 2001	$(35 * 100) / 75 = 46,7 \%$
Gennemsnit heraf:	70,01 %
Danmark efter reformen:	
18. januar 2007	$(39 * 100) / 82 = 47,6 \%$
5. juli 2007	$(17 * 100) / 43 = 39,5 \%$
15. oktober 2007	$(37 * 100) / 53 = 69,8 \%$
13. august 2008	$(22 * 100) / 40 = 55 \%$
27. november 2008	$(17 * 100) / 34 = 50 \%$
16. december 2008	$(31 * 100) / 68 = 45,6 \%$
30. januar 2009	$(19 * 100) / 50 = 38 \%$
11. marts 2009	$(19 * 100) / 43 = 44,2 \%$
30. april 2009	$(15 * 100) / 36 = 41,7 \%$
23. juni 2009	$(22 * 100) / 69 = 31,9 \%$
Gennemsnit heraf:	46,33 %

Der er en betydelig forskel på andelen af passivkonstruktioner i de danske straffedomme før og efter Domstolsstyrelsens sprogreform blev indført. Det laveste resultat før reformen er 46,7 % mod det laveste resultat efter reformen på bare 31,9 %. Det højeste resultat før reformen er 90,5 % mod 69,8 % efter reformen. Der skal ikke herske nogen tvivl om, at 69,8 % stadig er en høj procentdel passivkonstruktioner ud af det samlede antal sætninger i dommen, men det er en væsentlig forbedring i forhold til de 90,5 % fra før reformen, som betyder, at stort set hele dommen er udformet ved passivkonstruktioner. Hvis man tager gennemsnittet af resultaterne før og efter reformen, fremgår en betydelig forskel på et gennemsnitligt resultat af 70,01 % før reformen mod 46,33 % efter reformen. Det er en nedgang på 23,77 procentpoints og en procentvis nedgang på 33,82 %.

Adverbialer	
Danmark, før reformen:	
2. december 1999	$(14 * 100) / 17 = 82,4 \%$
6. juli 1999	$(17 * 100) / 29 = 58,6 \%$
27. januar 2000	$(13 * 100) / 27 = 48,1 \%$
30. marts 2000	$(6 * 100) / 15 = 40 \%$
7. juni 2000	$(21 * 100) / 42 = 50 \%$

15. juni 2000	$(8 * 100) / 21 = 38,1 \%$
21. aug 2000	$(8 * 100) / 16 = 50 \%$
16. maj 2001	$(15 * 100) / 33 = 45,5 \%$
25. juni 2001	$(6 * 100) / 38 = 15,8 \%$
17. august 2001	$(30 * 100) / 75 = 40 \%$
Gennemsnit heraf:	42,3 %
Danmark, efter reformen	
18. januar 2007	$(20 * 100) / 82 = 24,4 \%$
5. juli 2007	$(8 * 100) / 43 = 18,6 \%$
15. oktober 2007	$(23 * 100) / 53 = 43,4 \%$
13. august 2008	$(8 * 100) / 40 = 20 \%$
27. november 2008	$(7 * 100) / 34 = 20,6 \%$
16. december 2008	$(37 * 100) / 68 = 54,4 \%$
30. januar 2009	$(15 * 100) / 50 = 30 \%$
11. marts 2009	$(15 * 100) / 43 = 34,9 \%$
30. april 2009	$(8 * 100) / 36 = 22,2 \%$
23. juni 2009	$(11 * 100) / 69 = 15,9 \%$
Gennemsnit heraf:	28,44 %

For så vidt angår de lange foranstillede og mediale adverbialer, er der også her en betydelig forskel på gennemsnittet af de procentvise resultater før og efter reformen. Før reformen er gennemsnitsresultatet på 42,3 % mod et resultat på 28,44 % efter reformen. Det er en forbedring på 13,86 procentpoints og en procentvis forbedring på 32,76 %.

Det højeste procenttal fra før reformen er på 82,4 %, hvorimod det højeste procenttal efter reformen er på bare 54,4 %. Derimod er det laveste resultat før reformen 15,8 % mod 15,9 % efter reformen, hvilket er meget ens resultater. Men det meget lave resultat før reformen er også det eneste så lave resultat ud af de 10 undersøgte domme før Domstolsstyrelsens sprogpolitik og er efterfulgt af det næstlaveste resultat på 38,1 %. Der er et stort spring mellem det laveste og det næstlaveste resultat før reformen på henholdsvis 15,8 og 38,1 %. Det laveste resultat før reformen lader til at være det eneste så lave resultat og afviger meget fra resten af gennemsnittet.

Sammensatte præpositioner	
Danmark, før reformen:	
2. december 1999	$(5 * 100) / 17 = 29,4 \%$
6. juli 1999	$(2 * 100) / 29 = 6,9 \%$
27. januar 2000	$(2 * 100) / 27 = 7,4 \%$
30. marts 2000	$(0 * 100) / 15 = 0 \%$
7. juni 2000	$(7 * 100) / 42 = 16,7 \%$
15. juni 2000	$(3 * 100) / 21 = 14,3 \%$
21. aug 2000	$(2 * 100) / 16 = 12,5 \%$
16. maj 2001	$(3 * 100) / 33 = 9,1 \%$
25. juni 2001	$(2 * 100) / 38 = 5,3 \%$
17. august 2001	$(7 * 100) / 75 = 9,3 \%$
Gennemsnit heraf:	11,09 %
Danmark, efter reformen:	
18. januar 2007	$(11 * 100) / 82 = 13,4 \%$
5. juli 2007	$(2 * 100) / 43 = 4,7 \%$
15. oktober 2007	$(5 * 100) / 53 = 9,4 \%$
13. august 2008	$(3 * 100) / 40 = 7,5 \%$
27. november 2008	$(1 * 100) / 34 = 2,9 \%$
16. december 2008	$(8 * 100) / 68 = 11,8 \%$
30. januar 2009	$(5 * 100) / 50 = 10,0 \%$
11. marts 2009	$(2 * 100) / 43 = 4,7 \%$
30. april 2009	$(2 * 100) / 36 = 5,6 \%$
23. juni 2009	$(3 * 100) / 69 = 4,3 \%$
Gennemsnit heraf:	7,43 %

Før indførelsen af Domstolsstyrelsens sprogpolitik var der en noget større andel sammensatte præpositioner i danske straffedomme. Det drejer sig om 11,09 % sammensatte præpositioner før reformen og en nedgang til 7,43 % efter reformen, hvilket er en forskel på 3,66 procentpoints og en procentvis forskel på 33 %.

Før reformen er den laveste andel af sammensatte præpositioner på 0 %, og den højeste procentdel er på 29,4 %. Både den laveste og den højeste procentdel

sammensatte præpositioner er yderpunkter, som ligger langt fra de resterende otte analyseresultater. Resten af resultaterne ligger mellem 5,3 og 16,7 %.

Efter reformen er det laveste analyseresultat på 2,9, imens det højeste er på 13,4 %. Der ses her en betydelig forskel mellem det højeste resultat før reformen på 29,4 % og det højeste resultat efter reformen på 13,4 %.

Der er ikke de store forskelle i resultaterne efter reformen, og ingen af dem skiller sig betydeligt ud fra resten. Alle resultater efter reformen er jævnt fordelt mellem det laveste resultat på 2,9 og det højeste resultat på 13,4 %, uden væsentlige afvigelser.

Komplekse substantivsyntagmer	
Danmark, før reformen:	
2. december 1999	$(8 * 100) / 17 = 47,1 \%$
6. juli 1999	$(7 * 100) / 29 = 24,1 \%$
27. januar 2000	$(11 * 100) / 27 = 40,7 \%$
30. marts 2000	$(4 * 100) / 15 = 26,7 \%$
7. juni 2000	$(21 * 100) / 42 = 50 \%$
15. juni 2000	$(14 * 100) / 21 = 66,7 \%$
21. aug 2000	$(6 * 100) / 16 = 37,5 \%$
16. maj 2001	$(3 * 100) / 33 = 9,1 \%$
25. juni 2001	$(5 * 100) / 38 = 13,2 \%$
08/17/01	$(10 * 100) / 75 = 13,3 \%$
Gennemsnit heraf:	32,84 %
Danmark, efter reformen:	
18. januar 2007	$(51 * 100) / 82 = 62,2 \%$
5. juli 2007	$(8 * 100) / 43 = 18,6 \%$
15. oktober 2007	$(27 * 100) / 53 = 50,9 \%$
13. august 2008	$(10 * 100) / 40 = 25 \%$
27. november 2008	$(9 * 100) / 34 = 26,5 \%$
16. december 2008	$(33 * 100) / 68 = 48,5 \%$
30. januar 2009	$(16 * 100) / 50 = 32 \%$
11. marts 2009	$(12 * 100) / 43 = 27,9 \%$

30. april 2009	$(13 * 100) / 36 = 36,1 \%$
23. juni 2009	$(19 * 100) / 69 = 27,5 \%$
Gennemsnit heraf:	35,52 %

Resultaterne af de komplekse substantivsyntagmer før reformen er meget spredte og består af det mindste procentresultat på blot 9,1 % mod det højeste resultat på 66,7 %.

Der er ikke den store forskel i brugen før og efter reformen i de domme, jeg har anvendt til mine analyser. Hvis man laver en gennemsnitlig sammenligning, forekommer de komplekse substantivsyntagmer faktisk en smule mindre hyppigt før reformen (32,84 %) end efter reformen (35,52 %), hvilket svarer til en gennemsnitlig procentuel forskel på 7,54 %. Det er en så lille forskel i resultaterne, at jeg vælger at betragte forekomsten af komplekse substantivsyntagmer før og efter sprogreformen i de danske domstole som uforandret. Resultatet lever ikke op til min forventning, da der efter min formodning burde være færre forekomster efter indførslen af reformen, som har sat større fokus på at lette formuleringer i domme.

Ser man nærmere på resultaterne før reformen, lader det til at være tre ud af 10 tilfælde, der trækker gennemsnittet ned, nemlig det laveste resultat på 9,1 % og desuden to andre resultater på henholdsvis 13,2 og 13,3 %. De tre resultater er en del lavere end resten af resultaterne før reformen, som spænder mellem 24,1 og 66,7 %.

Efter reformen er det laveste resultat på 18,6 % mod det højeste resultat på 62,2 %. Her kan man generelt sige, at resultaterne er mere ens, og over halvdelen af analyseresultaterne ligger på mellem 25 og 36 % bortset fra de få udsving på det laveste resultat (18,6 %) og et par høje resultater på 62,2 %.

Fagterminologi	
Danmark før reformen:	
2. december 1999	$(9 * 100) / 510 = 1,8 \%$
6. juli 1999	$(9 * 100) / 655 = 1,4 \%$

27. januar 2000	$(26 * 100) / 571 = 4,5 \%$
30. marts 2000	$(9 * 100) / 285 = 3,2 \%$
7. juni 2000	$(30 * 100) / 1192 = 2,5 \%$
15. juni 2000	$(15 * 100) / 487 = 3,1 \%$
21. aug 2000	$(20 * 100) / 289 = 6,9 \%$
16. maj 2001	$(16 * 100) / 465 = 3,4 \%$
25. juni 2001	$(14 * 100) / 462 = 3,0 \%$
17. august 2001	$(29 * 100) / 1292 = 2,2 \%$
Gennemsnit heraf:	3,2 %
Danmark efter reformen:	
18. januar 2007	$(43 * 100) / 2043 = 2,1 \%$
5. juli 2007	$(6 * 100) / 547 = 1,1 \%$
15. oktober 2007	$(25 * 100) / 1054 = 2,4 \%$
13. august 2008	$(8 * 100) / 579 = 1,4 \%$
27. november 2008	$(6 * 100) / 472 = 2,1 \%$
16. december 2008	$(38 * 100) / 1280 = 3 \%$
30. januar 2009	$(28 * 100) / 809 = 3,5 \%$
11. marts 2009	$(18 * 100) / 547 = 3,3 \%$
30. april 2009	$(10 * 100) / 433 = 2,3 \%$
23. juni 2009	$(6 * 100) / 1048 = 0,6 \%$
Gennemsnit heraf:	2,18 %

Før den danske sprogreform er den laveste procentuelle forekomst af fagterminologi 1,4 % mod den højeste forekomst på 6,9 % af det samlede antal ord i dommen. Af de domme, jeg har anvendt til min analyse, er der kun to resultater før reformen, der er afvigende højere end resten. Det drejer sig om ovennævnte resultat på 6,9 % samt dommen fra d. 27. januar på 4,5 %. Derudover ligger de resterende otte analyseresultater på under 3,5 %, hvilket jeg vurderer til at være rimeligt lavt.

Gennemsnittet af analyseresultaterne før sprogreformen er på 3,2 % og resultatet efter reformen på 2,18 %. Det er en forskel på 1,02 procentpoints, som umiddelbart virker lille, men trods alt svarer til en procentvis forskel på 31,87 %. Forskellen på de to udfald før og efter reformen må betragtes som betydelig.

Efter reformen er det laveste resultat på bare 0,6 % mod det højeste på 3,5 %. Der er kun tale om to resultater på over 3 %, som er fra d. 30. januar og d. 11. marts 2009 på henholdsvis 3,3 og 3,5 %. Ellers ligger resten af analyseresultaterne på blot 3 % og derunder.

Juridiske kollokationer	
Danmark før reformen:	
2. december 1999	$(7 * 100) / 510 = 1,4 \%$
6. juli 1999	$(5 * 100) / 655 = 0,8 \%$
27. januar 2000	$(11 * 100) / 571 = 1,9 \%$
30. marts 2000	$(6 * 100) / 285 = 2,1 \%$
7. juni 2000	$(13 * 100) / 1192 = 1,1 \%$
15. juni 2000	$(6 * 100) / 487 = 1,2 \%$
21. aug 2000	$(10 * 100) / 289 = 3,5 \%$
16. maj 2001	$(10 * 100) / 465 = 1,5 \%$
25. juni 2001	$(7 * 100) / 462 = 1,5 \%$
17. august 2001	$(16 * 100) / 1292 = 1,2 \%$
Gennemsnit heraf:	1,62 %
Danmark efter reformen:	
18. januar 2007	$(18 * 100) / 2043 = 0,9 \%$
5. juli 2007	$(9 * 100) / 547 = 1,6 \%$
15. oktober 2007	$(11 * 100) / 1054 = 1 \%$
13. august 2008	$(13 * 100) / 579 = 2,2 \%$
27. november 2008	$(8 * 100) / 472 = 2,1 \%$
16. december 2008	$(22 * 100) / 1280 = 1,7 \%$
30. januar 2009	$(12 * 100) / 809 = 1,5 \%$
11. marts 2009	$(5 * 100) / 547 = 0,9 \%$
30. april 2009	$(8 * 100) / 433 = 1,8 \%$
23. juni 2009	$(8 * 100) / 1048 = 0,8 \%$
Gennemsnit heraf:	1,45 %

Forekomsten af juridiske kollokationer i analysedataet før reformen er mellem 0,8 og 3,5 %. Bortset fra det højeste resultat på 3,5 % fra dommen af d. 21. august 2000 ligger de resterende 9 resultater på 2,1 % og derunder. Det gennemsnitlige

resultat før reformen er på blot 1,62 %, hvilket ikke forekommer mig at være en stor procentdel. De 1,62 % er dog stadig en højere procentdel end det gennemsnitlige resultat efter reformen på bare 1,45 %. Der er en afvigelse i de to gennemsnitlige resultater før og efter sprogreformen på 0,17 procentpoints, som umiddelbart ikke ser ud af meget, men alligevel svarer til en procentvis forskel på 10,49 %.

Det laveste resultat efter reformen er på 0,8 % mod det højeste på 2,2 %. Med en afvigelse på blot 1,4 procentpoints er der ikke de store spring i resultaterne, som ligger meget stabilt og ikke trækkes betydeligt op eller ned af få meget høje eller lave forekomster af juridiske kollokationer i enkelte af de analyserede domme.

Nominalkonstruktioner	
Danmark før reformen:	
2. december 1999	$(9 * 100) / 17 = 5,3 \%$
6. juli 1999	$(11 * 100) / 29 = 37,9 \%$
27. januar 2000	$(6 * 100) / 27 = 22,2 \%$
30. marts 2000	$(2 * 100) / 15 = 13,3 \%$
7. juni 2000	$(27 * 100) / 42 = 64,3 \%$
15. juni 2000	$(9 * 100) / 21 = 42,9 \%$
21. aug 2000	$(7 * 100) / 16 = 43,8 \%$
16. maj 2001	$(4 * 100) / 33 = 12,1 \%$
25. juni 2001	$(5 * 100) / 38 = 13,2 \%$
17. august 2001	$(14 * 100) / 75 = 18,7 \%$
Gennemsnit heraf:	27,37 %
Danmark efter reformen:	
18. januar 2007	$(29 * 100) / 82 = 35,4 \%$
5. juli 2007	$(4 * 100) / 43 = 9,3 \%$
15. oktober 2007	$(12 * 100) / 53 = 22,6 \%$
13. august 2008	$(4 * 100) / 40 = 10 \%$
27. november 2008	$(3 * 100) / 34 = 8,8 \%$
16. december 2008	$(14 * 100) / 68 = 20,6 \%$
30. januar 2009	$(10 * 100) / 50 = 20 \%$
11. marts 2009	$(8 * 100) / 43 = 18,6 \%$
30. april 2009	$(4 * 100) / 36 = 11,1 \%$

23. juni 2009	$(8 * 100) / 69 = 11,6 \%$
Gennemsnit heraf:	16,8 %

Brugen af nominalkonstruktioner, hvor der lige så let kunne have været anvendt en verbalkonstruktioner er ifølge mine analyseresultater meget mere udbredt i danske straffesager før reformen end efter reformen. Hvor det gennemsnitlige resultat før reformen er 27,38 %, er det gennemsnitlige resultat efter reformen blot 16,8 %. Der er en betydelig forskel på de gennemsnitlige resultater fra før og efter reformen på hele 15,33 procentpoints og 38,64 %, hvilket kunne tyde på, at nominalkonstruktioner bruges mindre hyppigt nu, hvor reformen har sat fokus på de sproglige ulemper derved.

Resultaterne før reformen er dog meget spredte og varierer fra 12,1 % til 64,3 %, hvilket kan have noget at gøre med den dommer, der har udfærdiget dommen og vedkommendes tilbøjelighed til at bruge kompliceret juridisk sprog. Allerede inden Domsstolsstyrelsens sprogpolitik havde der været fokus på problematikken i at benytte kompliceret juridisk sprog, når der kommunikeredes til lægmænd, hvilket jeg også har beskrevet i afsnittet om dansk juridisk sprogs udvikling. Som nævnt i min afgrænsning, kan jeg ikke gardere mig mod eventuelle forskelle i sprogbrugen i domstolene, heller ikke før reformen, og må derfor se bort fra, at koncipisterne kan være mere eller mindre tilhængere af et simpelt juridisk sprog.

Efter reformen er det gennemsnitlige resultat, som sagt, på bare 16,8 %. Det højeste resultat er fra d. 18. januar 2007 og ligger på 35,4 %, hvorimod det laveste resultat fra d. 27. november 2008 er på kun 8,8 %. Det højeste antal nominalenheder efter reformen på 35,4 %, er en noget højere procentdel end, hvad er tilfældet for de resterende 9 analyseresultater, som alle ligger på 22 % og derunder.

7.1.1 Delkonklusion

Hvad angår de leksikalske og syntaktiske træk i de danske domme, er der en betydelig nedgang i brugen af passivkonstruktioner, initiale og mediale adverbialer,

sammensatte præpositioner, fagterminologi og juridiske kollokationer samt nominalkonstruktioner efter indførelsen af Domstolsstyrelsens sprogpolitik i 2003.

Ved passivkonstruktionerne er de gennemsnitlige resultater før og efter sprogreformen meget forskellige. Det gennemsnitlige resultat før reformen er på 70,01 % mod et resultat på 46,33 % efter reformen. Det er en forskel på hele 23,77 procentpoints og 33,82 %.

Før reformen var den gennemsnitlige forekomst af initiale og mediale adverbialer på 42,3 % mod et resultat på 28,44 % efter reformen. Det er en forbedring på 13,86 % procentpoints, hvilket svarer til en procentvis nedgang på 32,76 %.

Der er også en væsentlig nedgang i brugen af sammensatte præpositioner. Det drejer sig om et fald fra 11,09 % før reformen til 7,43 % efter reformen, hvilket er 3,66 procentpoints, som svarer til et fald på 33%.

I kategorien fagterminologi er den gennemsnitlige procentdel på 3,2 før reformen stadig højere end det gennemsnitlige resultat efter reformen, som er på 2,18 %. Det er en mindre nedgang på 1,02 procentpoints, som umiddelbart ser ud til at være ubetydelig, men hvis man regner den procentvise forskel ud, svarer det til en nedgang på hele 31,87 %, hvilket må betragtes som en væsentlig forbedring i resultatet.

Hvad angår de juridiske kollokationer, er der et lille fald i brugen i de analyserede straffedomme. Før reformen var den gennemsnitlige forekomst af juridiske kollokationer på 1,62 % mod et gennemsnitligt resultat på 1,45 % efter reformen. Det er en forskel på 0,17 procentpoints, som er en lille procentvis forskel på 10,49 % , men som trods alt må betragtes som væsentlig nok til, at den må tages i betragtning og anses som et fald i brugen af juridiske kollokationer siden sprogreformens indførelse.

Brugen af nominalkonstruktioner, hvor koncipisten lige så vel kunne have formuleret sig vha. en aktiv verbalfrase, er, ifølge mine analyser, meget mindre udbredt i danske straffedomme efter Domstolsstyrelsens sprogreform end før reformen. Der er tale om et fald i det gennemsnitlige analyseresultat på hele 15,33 procentpoints, som også er en procentvis stor forskel på 38,64 %.

Den eneste kategori, hvori forekomsten er steget, er de komplekse substantivsyntagmer.

De komplekse substantivsyntagmer forekommer lidt mindre hyppigt før reformen (32,84 %) end efter reformen (35,52 %), hvilket ikke lever op til min forventning om, at kompliceret sprogbrug i domstolene skulle være mindsket efter Domstolsstyrelsens sprogpolitik blev indført i 2003.

Med en betydelig bedring inden for analysekategorierne passivkonstruktioner, tunge adverbialer, sammensatte præpositioner, fagterminologi, juridiske kollokationer og nominalkonstruktioner, må man sige, at Domstolsstyrelsens sprogreform bestemt lader til at have haft effekt på sprogborgen i danske straffedomme. Det konkluderer jeg trods den lille forøgelse af antallet af komplekse substantivsyntagmer, som tyder på, at der stadig er mulighed for forbedringer inden for afkomplicering af juridisk sprog i de danske domstole.

7.2 Analyseresultater for engelske domme før og efter reformen

Passiver	
England før reformen:	
1. april 1996	$(38 * 100) / 78 = 48,7 \%$
14. maj 1996	$(55 * 100) / 138 = 39,9 \%$
21. maj 1996	$(35 * 100) / 113 = 31 \%$
4. juni 1996	$(8 * 100) / 49 = 16,3 \%$
17. juni 1996	$(52 * 100) / 124 = 41,9 \%$
25. oktober 1996	$(54 * 100) / 146 = 37 \%$
28. januar 1997	$(20 * 100) / 77 = 26 \%$

14. februar 1997	$(25 * 100) / 65 = 38,5 \%$
2. maj 1997	$(40 * 100) / 87 = 46 \%$
14. oktober 1997	$(58 * 100) / 120 = 48,3 \%$
Gennemsnit heraf:	37,3 %
England efter reformen:	
20. januar 2009	$(42 * 100) / 256 = 16,4 \%$
21. januar 2009	$(65 * 100) / 172 = 37,8 \%$
18. februar 2009	$(58 * 100) / 106 = 54,7 \%$
2. april 2009	$(81 * 100) / 155 = 52,3 \%$
14. maj 2009	$(67 * 100) / 184 = 36,4 \%$
4. juni 2009	$(72 * 100) / 231 = 31,2 \%$
16. juni 2009	$(84 * 100) / 230 = 36,5 \%$
6. juli 2009	$(79 * 100) / 169 = 46,7 \%$
29. juli 2009	$(150 * 100) / 355 = 42,3 \%$
30. juli 2009	$(76 * 100) / 214 = 35,5 \%$
Gennemsnit heraf:	38,98 %

Umiddelbart er der ikke den store forskel på den procentvise andel af passivkonstruktioner i de engelske domme før og efter Woolf-reformen. Gennemsnittet af analyseresultaterne før reformen er på 37,3 %. Og det gennemsnitlige resultat efter reformen er 38,98 %, hvilket er 1,68 procentpoints højere end resultatet før reformen, hvilket kun svarer til en stigning på 4,5 %. De meget ens gennemsnitlige resultater før og efter Woolf-reformen antyder, at der ikke er nogen ændring i brugen af passivkonstruktioner i engelske domme.

Den laveste forekomst af passivkonstruktioner før reformen er på 16,3 %, hvilket er det eneste resultat før reformen, der ligger under 20 %. De resterende ni resultater er på 26 % og opefter, det højeste resultat værende på hele 48,7 %.

Efter reformen er den laveste forekomst af passivkonstruktioner på 16,4 %, hvilket ikke er meget anderledes end den laveste forekomst før reformen på 16,3 %. De 16,4 % er igen, ligesom var tilfældet før reformen, det eneste ananalyseresultat, der holder sig under 20 %. Alle de andre ni resultater ligger her på over 30 % og toppe med det højeste resultat på hele 54,7 %. Efter reformen er der hele to resultater fra

henholdsvis d. 18. februar og 2. april 2009, der overstiger 50 %, hvilket slet ikke ses før reformen.

Det er bestemt imod min forventning til brugen af passivkonstruktioner, at de skulle forekomme lige meget før og efter Woolf-reformen. Brugen af passivkonstruktioner i straffesager burde tværtimod være mindsket med det øgede fokus på let og forståelig sprogbrug i engelsk strafferet.

Adverbialer	
England før reformen:	
1. april 1996	$(48 * 100) / 78 = 61,5 \%$
14. maj 1996	$(50 * 100) / 138 = 36,2 \%$
21. maj 1996	$(41 * 100) / 113 = 36,3 \%$
4. juni 1996	$(16 * 100) / 49 = 32,7 \%$
17. juni 1996	$(47 * 100) / 124 = 37,9 \%$
25. oktober 1996	$(32 * 100) / 146 = 21,9 \%$
28. januar 1997	$(27 * 100) / 77 = 35,1 \%$
14. februar 1997	$(15 * 100) / 65 = 23,1 \%$
2. maj 1997	$(30 * 100) / 87 = 34,5 \%$
10/14/97	$(42 * 100) / 120 = 35 \%$
Gennemsnit heraf:	35,42 %
England efter reformen:	
20. januar 2009	$(42 * 100) / 256 = 16,4 \%$
21. januar 2009	$(32 * 100) / 172 = 18,6 \%$
18. februar 2009	$(37 * 100) / 106 = 34,9 \%$
2. april 2009	$(64 * 100) / 155 = 41,3 \%$
14. maj 2009	$(62 * 100) / 184 = 33,7 \%$
4. juni 2009	$(55 * 100) / 231 = 23,8 \%$
16. juni 2009	$(63 * 100) / 230 = 27,4 \%$
6. juli 2009	$(65 * 100) / 169 = 38,5 \%$
29. juli 2009	$(153 * 100) / 355 = 43,1 \%$
30. juli 2009	$(91 * 100) / 214 = 42,5 \%$
Gennemsnit heraf:	32,02 %

Forekomsten af adverbialer i dommene før reformen er på 35,42 % i gennemsnit. Det er en smule højere end det gennemsnitlige resultat efter reformen, som er på 32,02 %. Det kan dog ikke siges at være en meget væsentlig nedgang i brugen af foranstillede og mediale adverbialer, men trods alt en bedring på 3,4 procentpoints, som svarer til en procentvis bedring på 9,59 %.

Før reformen er den højeste procentdel af initiale og mediale adverbialer fra dommen af 1. april 1996 på hele 61,5 %. Det er det eneste meget høje resultat. De resterende ni analyseresultater ligger alle på under 40 % med det laveste resultat på 21,9 %. Bortset fra de ovennævnte 61,5 % og 21,9 % samt det næstlaveste resultat på 23,1 %, ligger de resterende syv analyseresultater mellem 30 og 40 %.

Efter reformen er det højeste analyseresultat på 43,1 %, hvilket er forholdsvis lavt sammenlignet med det højeste resultat inden reformen på 61,5 %. Det laveste resultat efter reformen er på 16,4 %, tæt efterfulgt af det næstlaveste resultat på 18,6 %. Efter reformen ligger en større andel af resultaterne under 30 %, end det var tilfældet før reformen. Det drejer sig om fire ud af 10 resultater under 30 % efter reformen. I modsætning til kun to ud af 10 resultater under 30 % før reformen.

Sammensatte præpositioner	
England før reformen:	
1. april 1996	$(1 * 100) / 78 = 1,3 \%$
14. maj 1996	$(13 * 100) / 138 = 9,4 \%$
21. maj 1996	$(3 * 100) / 113 = 2,7 \%$
4. juni 1996	$(2 * 100) / 49 = 4,1 \%$
17. juni 1996	$(7 * 100) / 124 = 5,6 \%$
25. oktober 1996	$(7 * 100) / 146 = 4,8 \%$
28. januar 1997	$(2 * 100) / 77 = 2,6 \%$
14. februar 1997	$(1 * 100) / 65 = 1,5 \%$
2. maj 1997	$(3 * 100) / 87 = 3,4 \%$
14. oktober 1997	$(15 * 100) / 120 = 12,5 \%$
Gennemsnit heraf:	4,79 %

England efter reformen:	
20. januar 2009	$(5 * 100) / 256 = 2 \%$
21. januar 2009	$(11 * 100) / 172 = 4,7 \%$
18. februar 2009	$(10 * 100) / 106 = 9,4 \%$
2. april 2009	$(16 * 100) / 155 = 4,5 \%$
14. maj 2009	$(10 * 100) / 184 = 5,4 \%$
4. juni 2009	$(6 * 100) / 231 = 2,6\%$
16. juni 2009	$(9 * 100) / 230 = 3,9 \%$
6. juli 2009	$(9 * 100) / 169 = 3,6 \%$
29. juli 2009	$(30 * 100) / 355 = 8,5 \%$
30. juli 2009	$(11 * 100) / 214 = 5,1 \%$
Gennemsnit heraf:	4,97 %

I de analyserede engelske domme er der ingen betydelig forskel på den gennemsnitlige procentdel sammensatte præpositioner før og efter Woolf-reformen. Det drejer sig om et gennemsnitligt resultat på 4,79 % før reformen mod 4,97 % efter reformen. Udfaldet efter reformen er kun 0,18 procentpoints og 3,75 % højere end udfaldet før reformen, hvilket er så lille en forskel, at jeg vælger at betragte forekomsten af sammensatte præpositioner som uændret efter Woolf-reformen

Før Woolf-reformen er det laveste analyseresultat på 1,3 mod det højeste på 12,5 % af det samlede antal ord i de enkelte domme.

Efter reformen er det laveste resultat 2 %, og det højeste resultat er 9,4 %. Hverken før eller efter reformen er der nogle enkelte analyseresultater, der skiller sig meget ud fra de andre. Både før og efter reformen ligger alle resultaterne jævnt fordelt mellem det laveste og det højeste resultat.

Komplekse substantivsyntagmer	
England før reformen:	
1. april 1996	$(32 * 100) / 78 = 41 \%$
14. maj 1996	$(31 * 100) / 138 = 22,5 \%$
21. maj 1996	$(21 * 100) / 113 = 18,6 \%$

4. juni 1996	$(5 * 100) / 49 = 10,2 \%$
17. juni 1996	$(44 * 100) / 124 = 35,5 \%$
25. oktober 1996	$(42 * 100) / 146 = 28,8 \%$
28. januar 1997	$(21 * 100) / 77 = 27,3 \%$
14. februar 1997	$(11 * 100) / 65 = 16,9 \%$
2. maj 1997	$(41 * 100) / 87 = 47,1 \%$
14. oktober 1997	$(37 * 100) / 120 = 30,8 \%$
Gennemsnit heraf:	27,87 %
England efter reformen:	
20. januar 2009	$(44 * 100) / 256 = 17,2\%$
21. januar 2009	$(49 * 100) / 172 = 28,2 \%$
18. februar 2009	$(54 * 100) / 106 = 50,9 \%$
2. april 2009	$(76 * 100) / 155 = 49 \%$
14. maj 2009	$(91 * 100) / 184 = 49,4 \%$
4. juni 2009	$(71 * 100) / 231 = 30,7 \%$
16. juni 2009	$(79 * 100) / 230 = 34,3 \%$
6. juli 2009	$(51 * 100) / 169 = 30,2 \%$
29. juli 2009	$(134 * 100) / 355 = 37,7 \%$
30. juli 2009	$(62 * 100) / 214 = 29 \%$
Gennemsnit heraf:	35,72 %

Den procentvise andel af komplekse substantivsyntagmer før og efter Woolf-reformen går stik imod min forventning om, at reformen og generel fokus på afkomplicering af juridisk sprog skulle have reduceret brugen af komplicerede konstruktioner som lange substantivsyntagmer. Ifølge min analyse af, hvor hyppigt substantivsyntagmer anvendes i juridisk sprog, lader det ikke til, at brugen af komplekse substantivsyntagmer er reduceret, siden Woolf-reformen blev indført. Tværtimod viser mit gennemsnitlige analyseresultat efter reformen et væsentligt højere resultat end før reformen. Der er tale om et resultat før reformen på 27,85 % og et resultat efter reformen på 35,72 %. Det er en stigning på hele 7,87 procentpoints og en procentvis stigning på 28,25 %.

Før reformen er den laveste forekomst af komplekse substantivsyntagmer på bare 10,2 % mod det højeste resultat på 47,1 %. Der er kun tale om yderligere et resultat

på over 40 %, nemlig 41 % fra d. 1. april 1996. Derudover ligger de resterende resultater på under 35 %, og hele tre ud af de ti resultater er på under 20 %, hvilket kan betragtes som lavt.

Efter reformen er der kun et analyseresultat under 20 %, nemlig det laveste resultat på 17,2 %. Det højeste resultat er på 50,9 %, hvilket ikke er så meget højere end det højeste resultat fra før reformen på 47,1 %. Men bortset fra det laveste resultat på 17,2 % er samtlige resultater forholdsvis høje. Hele fire ud af ti resultater er på over 35 %, henholdsvis 37,7, 49, 49,4 og 50,9 %. Det er meget ulig resultaterne før reformen, hvor en meget større andel var under 35 %. Desuden er der yderligere tre analyseresultater efter reformen på mellem 30 og 35 %, henholdsvis 30,2, 30,7 og 34,3, hvilket også hjælper til at trække gennemsnittet væsentligt op.

Fagterminologi	
England før reformen:	
1. april 1996	$(25 * 100) / 2166 = 1,1 \%$
14. maj 1996	$(75 * 100) / 2750 = 2,5 \%$
21. maj 1996	$(67 * 100) / 2238 = 3 \%$
4. juni 1996	$(24 * 100) / 918 = 2,6 \%$
17. juni 1996	$(80 * 100) / 2279 = 3,5 \%$
25. oktober 1996	$(84 * 100) / 2896 = 2,9 \%$
28. januar 1997	$(37 * 100) / 1431 = 2,6 \%$
14. februar 1997	$(7 * 100) / 1081 = 0,6 \%$
2. maj 1997	$(76 * 100) / 1956 = 3,8 \%$
14. oktober 1997	$(135 * 100) / 2841 = 4,4 \%$
Gennemsnit heraf:	2,44 %
England efter reformen:	
20. januar 2009	$(66 * 100) / 3618 = 1,8 \%$
21. januar 2009	$(87 * 100) / 3125 = 2,8 \%$
18. februar 2009	$(63 * 100) / 1991 = 3,2 \%$
2. april 2009	$(64 * 100) / 3949 = 1,6 \%$
14. maj 2009	$(113 * 100) / 4410 = 2,6 \%$
4. juni 2009	$(67 * 100) / 3545 = 2 \%$

16. juni 2009	$(114 * 100) / 3461 = 3,3 \%$
6. juli 2009	$(161 * 100) / 3766 = 4,3 \%$
29. juli 2009	$(367 * 100) / 9617 = 3,8 \%$
30. juli 2009	$(43 * 100) / 4550 = 0,9\%$
Gennemsnit heraf:	2,73 %

Det procentvise udfald af fagterminologi er gennemsnitligt lidt højere efter end før Woolf-reformen. Det drejer sig kun om en stigning på 0,29 procentpoints, som svarer til en procentvis stigning på 11,88 %, hvilket ikke er en meget stor stigning, men trods alt er væsentlig nok til, at jeg vil betragte det som en forøgelse, der gør en forskel for forståelsen af dommene.

Før Woolf-reformen var det laveste resultat i de enkelt domme på 0,6 % og det højeste resultat var på 4,4 %.

Efter reformen ligger det laveste resultat fra de enkelte domme på 0,9% og det højeste resultat er 4,3 %.

Der er ikke nogle specielt bemærkelsesværdige udfald blandt resultaterne hverken før eller efter reformen. Alle de enkelte analyseresultater ligger jævnt fordelt mellem det laveste og højeste resultat uden bemærkelsesværdige afvigelser.

Juridiske kollokationer	
England før reformen:	
1. april 1996	$(18 * 100) / 2166 = 0,8 \%$
14. maj 1996	$(30 * 100) / 2750 = 1,1 \%$
21. maj 1996	$(38 * 100) / 2238 = 1,7 \%$
4. juni 1996	$(28 * 100) / 918 = 3,1 \%$
17. juni 1996	$(70 * 100) / 2279 = 3,1 \%$
25. oktober 1996	$(31 * 100) / 2896 = 1,1 \%$
28. januar 1997	$(22 * 100) / 1431 = 1,5 \%$
14. februar 1997	$(13 * 100) / 1081 = 1,2 \%$
2. maj 1997	$(42 * 100) / 1956 = 2,1 \%$

14. oktober 1997	$(34 * 100) / 2841 = 1,2 \%$
Gennemsnit heraf:	1,69 %
England efter reformen:	
20. januar 2009	$(41 * 100) / 3618 = 1,1 \%$
21. januar 2009	$(94 * 100) / 3125 = 3 \%$
18. februar 2009	$(63 * 100) / 1991 = 3,2 \%$
2. april 2009	$(141 * 100) / 3949 = 3,6 \%$
14. maj 2009	$(38 * 100) / 4410 = 0,9 \%$
4. juni 2009	$(70 * 100) / 3545 = 2 \%$
16. juni 2009	$(129 * 100) / 3461 = 3,7 \%$
6. juli 2009	$(140 * 100) / 3766 = 3,7 \%$
29. juli 2009	$(359 * 100) / 9617 = 3,7 \%$
30. juli 2009	$(78 * 100) / 4550 = 1,7 \%$
Gennemsnit heraf:	2,66 %

De gennemsnitlige resultater af juridiske kollokationer er 1,69 % før reformen og 2,66 % efter reformen, hvilket giver en forskel på 0,97 procentpoints, som umiddelbart ikke virker som en stor forskel, men hvis man ser på den procentvise stigning er på hele 57,39 %. Da det er en stor procentvis stigning, må mængden af de juridiske kollokationer, der bruges i engelske straffedomme, betragtes som øget betydeligt siden Woolf-reformen.

Før reformen ligger analyseresultaterne mellem 0,8 og 3,1 % uden, at nogle resultater træder frem som mere bemærkelsesværdige end andre.

Efter reformen er det laveste resultat 0,9 % og det højeste resultat er 3,7 %. Heller ikke her er enkelte resultater mere bemærkelsesværdige end andre, men ligger alle jævnt spredt mellem det laveste og det højeste analyseresultat.

Nominalkonstruktioner	
England før reformen:	
1. april 1996	$(9 * 100) / 78 = 11,5 \%$
14. maj 1996	$(20 * 100) / 138 = 14,5 \%$

21. maj 1996	$(15 * 100) / 113 = 13,3 \%$
4. juni 1996	$(6 * 100) / 49 = 12,2 \%$
17. juni 1996	$(11 * 100) / 124 = 8,9 \%$
25. oktober 1996	$(14 * 100) / 146 = 9,6 \%$
28. januar 1997	$(9 * 100) / 77 = 11,7 \%$
14. februar 1997	$(12 * 100) / 65 = 18,5 \%$
2. maj 1997	$(12 * 100) / 87 = 13,8 \%$
14. oktober 1997	$(22 * 100) / 120 = 18,3 \%$
Gennemsnit heraf:	13,23 %
England efter reformen:	
20. januar 2009	$(8 * 100) / 256 = 3,1 \%$
21. januar 2009	$(31 * 100) / 172 = 18 \%$
18. februar 2009	$(22 * 100) / 106 = 20,8 \%$
2. april 2009	$(34 * 100) / 155 = 21,9 \%$
14. maj 2009	$(59 * 100) / 184 = 32,1 \%$
4. juni 2009	$(19 * 100) / 231 = 8,2 \%$
16. juni 2009	$(45 * 100) / 230 = 19,6 \%$
6. juli 2009	$(17 * 100) / 169 = 10,1 \%$
29. juli 2009	$(31 * 100) / 355 = 8,7 \%$
30. juli 2009	$(37 * 100) / 214 = 17,3 \%$
Gennemsnit heraf:	15,98 %

Brugen af nominalkonstruktioner, hvor man lige så vel kunnet have formuleret sig ved verbalkonstruktioner, er gennemsnitligt en del højere efter reformen en før reformen. Den gennemsnitlige procentvise brug af nominalenheder er 13,23 % før reformen mod 15,98 % efter reformen, hvilket er en procentvis stigning på 17,20 %. Her ses endnu en uventet stigning, hvor et fald var forventet pga. b.la. lord Woolfs og Lord Aulds fokus på, at juridisk sprog burde gøres lettere forståeligt for lægmænd.

Før Woolf-reformen var den laveste forekomst af nominalkonstruktioner, der kunne erstattes af verbalformer, 8,9 % af det samlede antal perioder i dommen, og den højeste forekomst var på 18,5 %. De otte mellemliggende resultater ligger spredt i værdi mellem det laveste og højeste resultat uden, at der er enkelte resultater, der skiller sig bemærkelsesværdigt ud.

Efter Woolf-reformen er der betydeligt større forskel på det laveste og det højeste procentvise udfald. Det laveste resultat er på 3,1 % og det højeste resultat er på 32,1 %. Det er en forskel på 29 procentpoints.

Resultaterne er forholdsvis spredte efter reformen. Der er to resultater under 10 %, henholdsvis det laveste resultat på 3,1 og det næstlaveste på 8,7 %. Derudover er ligget størstedelen af resultaterne på mellem 10 og 20 %, det drejer sig om 10,1, 17,3, 18 og 19,6 %. Der er to resultater i starten af tyverne på henholdsvis 20,8 og 21,9 %, og kun et meget højere resultat på 32,1 %.

7.2.1 Delkonklusion

Ud fra resultaterne i analysen af de leksikalske og syntaktiske træk i de engelske domme kan det konkluderes, at komplekse substantivsyntagmer, fagterminologi, juridiske kollokationer og nominalkonstruktioner ses mere hyppigt i de engelske domme efter Woolf-reformen, end det var tilfældet før reformen, hvilket er mod min forventning.

Derimod må passivkonstruktioner og sammensatte præpositioner vurderes at være brugt lige meget før og efter Woolf-reformen.

Som det eneste resultat ved sammenligning af engelske straffedomme, er forekomsten af initiale og mediale adverbialer faldet, efter Woolf-reformen blev indført.

Brugen af komplekse substantivsyntagmer er steget betydeligt efter reformen. Der er en stigning på 7,87 procentpoints og 28,25 % i hyppigheden af komplekse substantivsyntagmer i mine analysetekster, som er gået op fra 27,85 % til 35,72 %.

Mange koncipister vælger efter reformen stadig hyppigt at bruge nominalkonstruktioner frem for verbalkonstruktioner. Der er en stigning i brugen af nominalkonstruktioner, hvor det havde været muligt at formulere sig vha. et aktivt

verbum i stedet. Det drejer sig om en stigning på 2,75 procentpoints og en procentvis stigning på 20,78 %.

Der er en lille stigning i brugen af fagterminologi på 0,29 procentpoints, som svarer til en procentvis stigning på 11,88 %, og brugen af juridiske kollokationer er steget med 0,97 procentpoints, hvilket umiddelbart også ser ud til at være en lille forandring, men når man regner den procentvise forskel ud, svarer til en stigning på 57,39 %.

Andelen af passivkonstruktioner i de engelske domme er ifølge mine analyseresultater steget minimalt efter Woolf-reformen. Gennemsnittet af analyseresultaterne før reformen er på 37,3 %, mod det gennemsnitlige resultat efter reformen, som er 38,98. Der er tale om en minimal procentvis stigning på 4,5 %, som jeg ikke vurderer, kan have en betydelig effekt på sværhedsgraden af engelsk juridisk sprogbrug i straffedomme, og jeg vurderer derfor resultatet til at være uforandret efter reformen.

Også hvad angår de sammensatte præpositioner er der en minimal stigning i brugen efter Woolf. Det drejer sig om en stigning fra 4,79 % til 4,97 %, hvilket svarer til 0,18 procentpoints og 3,75 %. Det er så lille en forskel, at jeg vælger at betragte andelen af sammensatte præpositioner før og efter Woolf som uforandret.

Den eneste kategori, hvor brugen er faldet, er initiale og mediale adverbialer. Den gennemsnitlige forekomst er gået ned fra 35,42 % før reformen til 32,02 % efter reformen, hvilket er en forbedring på 9,59 %. Det er ikke et meget stort fald, men tyder trods alt på, at de kringlede sætningskonstruktioner med stor forvægt bruges mindre nu end tidligere.

8. Sammenligning af syntaktiske og leksikalske træk i danske og engelske domme før reformerne

For at lette sammenligningen på tværs af de to lande og gøre analyseresultaterne mere overskuelige har jeg herunder stillet de danske domme før sprogreformen i

2003 og de engelske analyseresultater før Woolf-reformen i 1999 op overfor hinanden.

Passivkonstruktioner	
Danmark før reformen:	
2. december 1999	$(12 * 100) / 17 = 70,6 \%$
6. juli 1999	$(26 * 100) / 29 = 89,7 \%$
27. januar 2000	$(16 * 100) / 27 = 59,3 \%$
30. marts 2000	$(11 * 100) / 15 = 73,3 \%$
7. juni 2000	$(36 * 100) / 42 = 85,7 \%$
15. juni 2000	$(19 * 100) / 21 = 90,5 \%$
21. aug 2000	$(9 * 100) / 16 = 56,3 \%$
16. maj 2001	$(24 * 100) / 33 = 72,7 \%$
25. juni 2001	$(21 * 100) / 38 = 55,3 \%$
17. august 2001	$(35 * 100) / 75 = 46,7 \%$
Gennemsnit heraf:	70,01 %
England før reformen:	
1. april 1996	$(38 * 100) / 78 = 48,7 \%$
14. maj 1996	$(55 * 100) / 138 = 39,9 \%$
21. maj 1996	$(35 * 100) / 113 = 31 \%$
4. juni 1996	$(8 * 100) / 49 = 16,3 \%$
17. juni 1996	$(52 * 100) / 124 = 41,9 \%$
25. oktober 1996	$(54 * 100) / 146 = 37 \%$
28. januar 1997	$(20 * 100) / 77 = 26 \%$
14. februar 1997	$(25 * 100) / 65 = 38,5 \%$
2. maj 1997	$(40 * 100) / 87 = 46 \%$
14. oktober 1997	$(58 * 100) / 120 = 48,3 \%$
Gennemsnit heraf:	37,3 %

Før reformerne gøres der væsentligt større brug af passivkonstruktioner i de analyserede danske domme end i de engelske domme. Det gennemsnitlige resultat af de danske domme er på 70,01 %, hvor det engelske gennemsnitlige resultat er på 37,3 %. Der er en forskel i det procentvise udfald på hele 32,71 procentpoints og en procentvis afvigelse på 46,72%.

Adverbialer	
Danmark før reformen:	
2. december 1999	$(14 * 100) / 17 = 82,4 \%$
6. juli 1999	$(17 * 100) / 29 = 58,6 \%$
27. januar 2000	$(13 * 100) / 27 = 48,1 \%$
30. marts 2000	$(6 * 100) / 15 = 40 \%$
7. juni 2000	$(21 * 100) / 42 = 50 \%$
15. juni 2000	$(8 * 100) / 21 = 38,1 \%$
21. aug 2000	$(8 * 100) / 16 = 50 \%$
16. maj 2001	$(15 * 100) / 33 = 45,5 \%$
25. juni 2001	$(6 * 100) / 38 = 15,8 \%$
17. august 2001	$(30 * 100) / 75 = 40 \%$
Gennemsnit heraf:	42,3 %
England før reformen:	
1. april 1996	$(48 * 100) / 78 = 61,5 \%$
14. maj 1996	$(50 * 100) / 138 = 36,2 \%$
21. maj 1996	$(41 * 100) / 113 = 36,3 \%$
4. juni 1996	$(16 * 100) / 49 = 32,7 \%$
17. juni 1996	$(47 * 100) / 124 = 37,9 \%$
25. oktober 1996	$(32 * 100) / 146 = 21,9 \%$
28. januar 1997	$(27 * 100) / 77 = 35,1 \%$
14. februar 1997	$(15 * 100) / 65 = 23,1 \%$
2. maj 1997	$(30 * 100) / 87 = 34,5 \%$
14. oktober 1997	$(42 * 100) / 120 = 35 \%$
Gennemsnit heraf:	35,42 %

Hvad angår de lange foranstillede og mediale adverbialer er forskellen mellem udfaldet i de danske og de engelske domme ikke så stor, som det var tilfældet med passivkonstruktionerne. Der er dog stadig en forskel på 6,88 procentpoints og en procentvis forskel på 16,26 %, hvilket jeg anser for en betydelig forskel.

Sammensatte præpositioner	
Danmark før reformen:	

2. december 1999	$(5 * 100) / 17 = 29,4 \%$
6. juli 1999	$(2 * 100) / 29 = 6,9 \%$
27. januar 2000	$(2 * 100) / 27 = 7,4 \%$
30. marts 2000	$(0 * 100) / 15 = 0 \%$
7. juni 2000	$(7 * 100) / 42 = 16,7 \%$
15. juni 2000	$(3 * 100) / 21 = 14,3 \%$
21. aug 2000	$(2 * 100) / 16 = 12,5 \%$
16. maj 2001	$(3 * 100) / 33 = 9,1 \%$
25. juni 2001	$(2 * 100) / 38 = 5,3 \%$
17. august 2001	$(7 * 100) / 75 = 9,3 \%$
Gennemsnit heraf:	11,09 %
England før reformen:	
1. april 1996	$(1 * 100) / 78 = 1,3 \%$
14. maj 1996	$(13 * 100) / 138 = 9,4 \%$
21. maj 1996	$(3 * 100) / 113 = 2,7 \%$
4. juni 1996	$(2 * 100) / 49 = 4,1 \%$
17. juni 1996	$(7 * 100) / 124 = 5,6 \%$
25. oktober 1996	$(7 * 100) / 146 = 4,8 \%$
28. januar 1997	$(2 * 100) / 77 = 2,6 \%$
14. februar 1997	$(1 * 100) / 65 = 1,5 \%$
2. maj 1997	$(3 * 100) / 87 = 3,4 \%$
14. oktober 1997	$(15 * 100) / 120 = 12,5 \%$
Gennemsnit heraf:	4,79 %

Sammensatte præpositioner bruges i meget højere grad i danske domme end i engelske domme før reformerne. Hvor den gennemsnitlige brug i danske domme er 11,09 %, er procentdelen bare 4,79 % i de engelske domme. Det er en forskel på 6,3 procentpoints og en procentvis forskel på 56,80 %, hvilket er mere end en fordobling af procentdelen.

Komplekse substantivsyntagmer	
Danmark før reformen:	
2. december 1999	$(8 * 100) / 17 = 47,1 \%$
6. juli 1999	$(7 * 100) / 29 = 24,1 \%$

27. januar 2000	$(11 * 100)/27 = 40,7 \%$
30. marts 2000	$(4 * 100)/15 = 26,7 \%$
7. juni 2000	$(21 * 100)/ 42 = 50 \%$
15. juni 2000	$(14 * 100)/ 21 = 66,7 \%$
21. aug 2000	$(6 * 100)/ 16 = 37,5 \%$
16. maj 2001	$(3 * 100)/ 33 = 9,1 \%$
25. juni 2001	$(5 * 100) /38 =13,2 \%$
17. august 2001	$(10 * 100) /75 =13,3 \%$
Gennemsnit heraf:	32,84 %
England før reformen:	
1. april 1996	$(32 * 100)/ 78 = 41 \%$
14. maj 1996	$(31 * 100)/ 138 = 22,5 \%$
21. maj 1996	$(21 * 100)/ 113 = 18,6 \%$
4. juni 1996	$(5 * 100)/ 49 = 10,2 \%$
17. juni 1996	$(44 * 100)/ 124 = 35,5 \%$
25. oktober 1996	$(42 * 100)/ 146 = 28,8 \%$
28. januar 1997	$(21 * 100)/ 77 = 27,3 \%$
14. februar 1997	$(11 * 100)/ 65 = 16,9 \%$
2. maj 1997	$(41 * 100)/ 87 = 47,1 \%$
14. oktober 1997	$(37 * 100)/ 120 = 30,8 \%$
Gennemsnit heraf:	27,87 %

Ligesom det var tilfældet med de initiale og mediale adverbialer og sammensatte præpositioner, er andelen af komplekse substantivsyntagmer også større i de danske end i de engelske domme før reformerne. Forskellen er ikke meget stor, men dog stadig bemærkelsesværdig. Det drejer sig om 4,97 procentpoints og en procentvis afvigelse på 15,13 %.

Fagterminologi	
Danmark før reformen:	
2. december 1999	$(9 * 100)/ 510 = 1,8 \%$
6. juli 1999	$(9 * 100)/ 655 = 1,4 \%$
27. januar 2000	$(26 * 100)/ 571 = 4,5 \%$
30. marts 2000	$(9 * 100)/ 285 = 3,2 \%$

7. juni 2000	$(30 * 100) / 1192 = 2,5 \%$
15. juni 2000	$(15 * 100) / 487 = 3,1 \%$
21. aug 2000	$(20 * 100) / 289 = 6,9 \%$
16. maj 2001	$(16 * 100) / 465 = 3,4 \%$
25. juni 2001	$(14 * 100) / 462 = 3,0 \%$
17. august 2001	$(29 * 100) / 1292 = 2,2 \%$
Gennemsnit heraf:	3,2 %
England før reformen:	
1. april 1996	$(25 * 100) / 2166 = 1,2 \%$
14. maj 1996	$(75 * 100) / 2750 = 2,7 \%$
21. maj 1996	$(67 * 100) / 2238 = 3 \%$
4. juni 1996	$(24 * 100) / 918 = 2,6 \%$
17. juni 1996	$(80 * 100) / 2279 = 3,5 \%$
25. oktober 1996	$(84 * 100) / 2896 = 2,9 \%$
28. januar 1997	$(37 * 100) / 1431 = 2,6 \%$
14. februar 1997	$(7 * 100) / 1081 = 0,6 \%$
2. maj 1997	$(76 * 100) / 1956 = 3,9 \%$
14. oktober 1997	$(135 * 100) / 2841 = 4,4 \%$
Gennemsnit heraf:	2,44

Forskellen mellem hvor stor en andel fagtermer, der bruges i danske og engelske straffedomme før reformerne ser ubetydeligt lille ud, hvis man tager udgangspunkt i den procentpointsvise forskel, som er på bare 0,76. Hvis man i stedet ser på den procentvise forskel i resultaterne, viser der sig en betydeligt større forskel på 23,75%.

Juridiske kollokationer	
Danmark før reformen:	
2. december 1999	$(7 * 100) / 510 = 1,4 \%$
6. juli 1999	$(5 * 100) / 655 = 0,8 \%$
27. januar 2000	$(11 * 100) / 571 = 1,9 \%$
30. marts 2000	$(6 * 100) / 285 = 2,1 \%$
7. juni 2000	$(13 * 100) / 1192 = 1,1 \%$
15. juni 2000	$(6 * 100) / 487 = 1,2 \%$
21. aug 2000	$(10 * 100) / 289 = 3,5 \%$

16. maj 2001	$(10 * 100) / 465 = 1,5 \%$
25. juni 2001	$(7 * 100) / 462 = 1,5 \%$
17. august 2001	$(16 * 100) / 1292 = 1,2 \%$
Gennemsnit heraf:	1,62 %
England før reformen:	
1. april 1996	$(18 * 100) / 2166 = 0,8 \%$
14. maj 1996	$(30 * 100) / 2750 = 1,1 \%$
21. maj 1996	$(38 * 100) / 2238 = 1,7 \%$
4. juni 1996	$(28 * 100) / 918 = 3,1 \%$
17. juni 1996	$(70 * 100) / 2279 = 3,1 \%$
25. oktober 1996	$(31 * 100) / 2896 = 1,1 \%$
28. januar 1997	$(22 * 100) / 1431 = 1,5 \%$
14. februar 1997	$(13 * 100) / 1081 = 1,2 \%$
2. maj 1997	$(42 * 100) / 1956 = 2,1 \%$
14. oktober 1997	$(34 * 100) / 2841 = 1,2 \%$
Gennemsnit heraf:	1,69 %

Andelen af juridiske kollokationer, der bruges i danske og engelske straffedomme før reformerne, er også meget ens. Her er analyseresultatet for de engelske domme en smule højere end det danske resultat, men det drejer sig blot om 0,07 procentpoints og 4,14 %. Dog er forskellen så ubetydelig, at jeg vælger at konkludere, at juridiske kollokationer bruges lige meget i danske og engelske straffedomme før reformerne.

Nominalkonstruktioner	
Danmark før reformen:	
2. december 1999	$(9 * 100) / 17 = 5,3 \%$
6. juli 1999	$(11 * 100) / 29 = 37,9 \%$
27. januar 2000	$(6 * 100) / 27 = 22,2 \%$
30. marts 2000	$(2 * 100) / 15 = 13,3 \%$
7. juni 2000	$(27 * 100) / 42 = 64,3 \%$
15. juni 2000	$(9 * 100) / 21 = 42,9 \%$
21. aug 2000	$(7 * 100) / 16 = 43,8 \%$
16. maj 2001	$(4 * 100) / 33 = 12,1 \%$

25. juni 2001	$(5 * 100) / 38 = 13,2 \%$
17. august 2001	$(14 * 100) / 75 = 18,7 \%$
Gennemsnit heraf:	27,37 %
England før reformen:	
1. april 1996	$(9 * 100) / 78 = 11,5 \%$
14. maj 1996	$(20 * 100) / 138 = 14,5 \%$
21. maj 1996	$(15 * 100) / 113 = 13,3 \%$
4. juni 1996	$(6 * 100) / 49 = 12,2 \%$
17. juni 1996	$(11 * 100) / 124 = 8,9 \%$
25. oktober 1996	$(14 * 100) / 146 = 9,6 \%$
28. januar 1997	$(9 * 100) / 77 = 11,7 \%$
14. februar 1997	$(12 * 100) / 65 = 18,5 \%$
2. maj 1997	$(12 * 100) / 87 = 13,8 \%$
14. oktober 1997	$(22 * 100) / 120 = 18,3 \%$
Gennemsnit heraf:	13,23 %

Nominalkonstruktioner, som lige så vel kunne have været formuleret i et aktivt sprog vha. verbalkonstruktioner, er, ifølge mine analyseresultater, meget mere brugt i danske end i engelske straffedomme før reformerne. I danske domme er det gennemsnitlige resultat 27,37 %, hvor det kun er 13,23 % i de engelske domme. Det er en forskel på hele 18,9 procentpoints, som svarer til en procentvis afvigelse på 51,66 %.

8.1 Delkonklusion

Der gøres betydeligt mindre brug af passivkonstruktioner, initiale og mediale adverbialer, komplekse substantivsyntagmer, sammensatte præpositioner, fagterminologi og nominalkonstruktioner i de analyserede engelske domme, end det er tilfældet i de analyserede danske domme, før Woolf-reformen og Domstolsstyrelsens sprogpolitik blev indført.

Det samme er dog ikke tilfældet med juridiske kollokationer, som bruges lige meget i de danske og de engelske straffedomme før reformerne.

9. Sammenligning af syntaktiske og leksikalske træk i danske og engelske domme efter reformerne

Passivkonstruktioner	
Danmark efter reformen	
18. januar 2007	$(39 * 100) / 82 = 47,6 \%$
5. juli 2007	$(17 * 100) / 43 = 39,5 \%$
15. oktober 2007	$(37 * 100) / 53 = 69,8 \%$
13. august 2008	$(22 * 100) / 40 = 55 \%$
27. november 2008	$(17 * 100) / 34 = 50 \%$
16. december 2008	$(31 * 100) / 68 = 45,6 \%$
30. januar 2009	$(19 * 100) / 50 = 38 \%$
11. marts 2009	$(19 * 100) / 43 = 44,2 \%$
30. april 2009	$(15 * 100) / 36 = 41,7 \%$
23. juni 2009	$(22 * 100) / 69 = 31,9 \%$
Gennemsnit heraf:	46,33 %
England efter reformen:	
20. januar 2009	$(42 * 100) / 256 = 16,4 \%$
21. januar 2009	$(65 * 100) / 172 = 37,8 \%$
18. februar 2009	$(58 * 100) / 106 = 54,7 \%$
2. april 2009	$(81 * 100) / 155 = 52,3 \%$
14. maj 2009	$(67 * 100) / 184 = 36,4 \%$
4. juni 2009	$(72 * 100) / 231 = 31,2 \%$
16. juni 2009	$(84 * 100) / 230 = 36,5 \%$
6. juli 2009	$(79 * 100) / 169 = 46,7 \%$
29. juli 2009	$(150 * 100) / 355 = 42,3 \%$
30. juli 2009	$(76 * 100) / 214 = 35,5 \%$
Gennemsnit heraf:	38,98 %

Når man ser på den procentvise andel af passivkonstruktioner, der bruges i danske og engelske straffedomme efter reformen, er der en tydelig forskel i hvor meget passivformer bruges i de to sprog henholdsvis. I danske straffedomme optager passivkonstruktioner gennemsnitligt 46,33 % af det samlede antal perioder i dommene, hvor resultatet i engelske domme er en smule lavere på bare 38,98 %. Det giver en forskel på 7,35 procentpoints og en procentuel forskel på 15,86 %.

Adverbialer	
Danmark efter reformen	
18. januar 2007	$(20 * 100) / 82 = 24,4 \%$
5. juli 2007	$(8 * 100) / 43 = 18,6 \%$
15. oktober 2007	$(23 * 100) / 53 = 43,4 \%$
13. august 2008	$(8 * 100) / 40 = 20 \%$
27. november 2008	$(7 * 100) / 34 = 20,6 \%$
16. december 2008	$(37 * 100) / 68 = 54,4 \%$
30. januar 2009	$(15 * 100) / 50 = 30 \%$
11. marts 2009	$(15 * 100) / 43 = 34,9 \%$
30. april 2009	$(8 * 100) / 36 = 22,2 \%$
23. juni 2009	$(11 * 100) / 69 = 15,9 \%$
Gennemsnit heraf:	28,44 %
England efter reformen:	
20. januar 2009	$(42 * 100) / 256 = 16,4 \%$
21. januar 2009	$(32 * 100) / 172 = 18,6 \%$
18. februar 2009	$(37 * 100) / 106 = 34,9 \%$
2. april 2009	$(64 * 100) / 155 = 41,3 \%$
14. maj 2009	$(62 * 100) / 184 = 33,7 \%$
4. juni 2009	$(55 * 100) / 231 = 23,8 \%$
16. juni 2009	$(63 * 100) / 230 = 27,4 \%$
6. juli 2009	$(65 * 100) / 169 = 38,5 \%$
29. juli 2009	$(153 * 100) / 355 = 43,1 \%$
30. juli 2009	$(91 * 100) / 214 = 42,5 \%$
Gennemsnit heraf:	32,02 %

Hvad angår brugen af foranstillede og mediale adverbialer, er tendensen omvendt af, hvad vi så før reformerne, hvor andelen var større i de danske end i de engelske domme. Det gennemsnitlige resultat af de analyserede danske domme er på 28,44 %, hvor resultatet af de engelske domsanalyser er på 32,02 %. Det giver en forskel på 3,58 procentpoints, svarende til 11,08 %, hvilket stadig er en betydelig forskel, men trods alt en meget mindre forskel end før reformerne. Ændringen skyldes et stort fald i brugen af adverbialer i danske domme, som er faldet med 13,86 procentpoints,

hvorimod der ikke er sket den store ændring i brugen i de engelske domme, som kun er gået ned med 3,4 procentpoints.

Komplekse substantivsyntagmer	
Danmark efter reformen	
18. januar 2007	$(51 * 100) / 82 = 62,2 \%$
5. juli 2007	$(8 * 100) / 43 = 18,6 \%$
15. oktober 2007	$(27 * 100) / 53 = 50,9 \%$
13. august 2008	$(10 * 100) / 40 = 25 \%$
27. november 2008	$(9 * 100) / 34 = 26,5 \%$
16. december 2008	$(33 * 100) / 68 = 48,5 \%$
30. januar 2009	$(16 * 100) / 50 = 32 \%$
11. marts 2009	$(12 * 100) / 43 = 27,9 \%$
30. april 2009	$(13 * 100) / 36 = 36,1 \%$
23. juni 2009	$(19 * 100) / 69 = 27,5 \%$
Gennemsnit heraf:	35,52 %
England efter reformen:	
20. januar 2009	$(44 * 100) / 256 = 17,2 \%$
21. januar 2009	$(49 * 100) / 172 = 28,2 \%$
18. februar 2009	$(54 * 100) / 106 = 50,9 \%$
2. april 2009	$(76 * 100) / 155 = 49 \%$
14. maj 2009	$(91 * 100) / 184 = 49,4 \%$
4. juni 2009	$(71 * 100) / 231 = 30,7 \%$
16. juni 2009	$(79 * 100) / 230 = 34,3 \%$
6. juli 2009	$(51 * 100) / 169 = 30,2 \%$
29. juli 2009	$(134 * 100) / 355 = 37,7 \%$
30. juli 2009	$(62 * 100) / 214 = 29 \%$
Gennemsnit heraf:	35,66 %

Den mængde komplekse substantivsyntagmer, der bruges i henholdsvis danske og engelske straffedomme efter reformerne er meget lige. Ifølge mine danske analyseresultater optager komplekse substantivsyntagmer i gennemsnittet 35,52 % af hele dommen. Og i de engelske domme optager de komplekse substantivsyntagmer

35,66 % af hele dommen, hvilket er meget lige resultater, der kun adskilles af 0,14 procentpoints og 0,39 %.

Sammensatte præpositioner	
Danmark efter reformen	
18. januar 2007	$(11 * 100) / 82 = 13,4 \%$
5. juli 2007	$(2 * 100) / 43 = 4,7 \%$
15. oktober 2007	$(5 * 100) / 53 = 9,4 \%$
13. august 2008	$(3 * 100) / 40 = 7,5 \%$
27. november 2008	$(1 * 100) / 34 = 2,9 \%$
16. december 2008	$(8 * 100) / 68 = 11,8 \%$
30. januar 2009	$(5 * 100) / 50 = 10,0 \%$
11. marts 2009	$(2 * 100) / 43 = 4,7 \%$
30. april 2009	$(2 * 100) / 36 = 5,6 \%$
23. juni 2009	$(3 * 100) / 69 = 4,3 \%$
Gennemsnit heraf:	7,43 %
England efter reformen:	
20. januar 2009	$(5 * 100) / 256 = 2 \%$
21. januar 2009	$(11 * 100) / 172 = 4,7 \%$
18. februar 2009	$(10 * 100) / 106 = 9,4 \%$
2. april 2009	$(16 * 100) / 155 = 4,5 \%$
14. maj 2009	$(10 * 100) / 184 = 5,4 \%$
4. juni 2009	$(6 * 100) / 231 = 2,6 \%$
16. juni 2009	$(9 * 100) / 230 = 3,9 \%$
6. juli 2009	$(9 * 100) / 169 = 3,6 \%$
29. juli 2009	$(30 * 100) / 355 = 8,5 \%$
30. juli 2009	$(11 * 100) / 214 = 5,1 \%$
Gennemsnit heraf:	4,97 %

Hvad angår brugen af sammensatte præpositioner er de danske analyseresultater noget højere end de engelske resultater efter reformerne. Det danske resultat er på 7,43 % mod det engelske resultat på 4,97 %. Det er en forskel på 2,46 procentpoints, og en procentuel forskel på 33,10 %. Resultatet i de engelske domme før og efter reformen er ikke meget forskellige, men varierer blot fra hinanden med 3,75 %.

Derimod er der en betydelig bedring i andelen af sammensatte præpositioner, der anvendes i danske straffedomme, efter Domstolsstyrelsens sprogpolitik blev udformet, hvor gennemsnittet er faldet med 33 %.

Fagterminologi	
Danmark efter reformen	
18. januar 2007	$(43 * 100) / 2043 = 2,1 \%$
5. juli 2007	$(6 * 100) / 547 = 1,1 \%$
15. oktober 2007	$(25 * 100) / 1054 = 2,4 \%$
13. august 2008	$(8 * 100) / 579 = 1,4 \%$
27. november 2008	$(6 * 100) / 472 = 2,1 \%$
16. december 2008	$(38 * 100) / 1280 = 3 \%$
30. januar 2009	$(28 * 100) / 809 = 3,5 \%$
11. marts 2009	$(18 * 100) / 547 = 3,3 \%$
30. april 2009	$(10 * 100) / 433 = 2,3 \%$
23. juni 2009	$(6 * 100) / 1048 = 0,6 \%$
Gennemsnit heraf:	2,18 %
England efter reformen:	
20. januar 2009	$(66 * 100) / 3618 = 1,8 \%$
21. januar 2009	$(87 * 100) / 3125 = 2,8 \%$
18. februar 2009	$(64 * 100) / 1991 = 3,6 \%$
2. april 2009	$(64 * 100) / 3949 = 1,6 \%$
14. maj 2009	$(113 * 100) / 4410 = 2,6 \%$
4. juni 2009	$(67 * 100) / 3545 = 2 \%$
16. juni 2009	$(114 * 100) / 3461 = 3,3 \%$
6. juli 2009	$(161 * 100) / 3766 = 4,3 \%$
29. juli 2009	$(369 * 100) / 9617 = 3,8 \%$
30. juli 2009	$(43 * 100) / 4550 = 0,9\%$
Gennemsnit heraf:	2,73

Hvad angår brugen af fagterminologi i danske og engelske domme efter reformerne, er der stor forskel i den gennemsnitlige forekomst. Det danske og det engelske resultat efter reformerne varierer kun med 0,73 procentpoints, hvilket umiddelbart ikke ser ud til at være en stor forskel. Det viser sig dog at være anderledes, hvis man

tager udgangspunkt i den procentuelle forskel på de danske og engelske analyseresultater, som varierer med 20,14 %. Det må på baggrund af den procentuelle forskel konkluderes, at brugen af fagterminologi i de engelske domme er betydeligt højere end forekomsten i de danske domme.

Juridiske kollokationer	
Danmark efter reformen	
18. januar 2007	$(18 * 100) / 2043 = 0,9 \%$
5. juli 2007	$(9 * 100) / 547 = 1,6 \%$
15. oktober 2007	$(11 * 100) / 1054 = 1 \%$
13. august 2008	$(13 * 100) / 579 = 2,2 \%$
27. november 2008	$(8 * 100) / 472 = 2,1 \%$
16. december 2008	$(22 * 100) / 1280 = 1,7 \%$
30. januar 2009	$(12 * 100) / 809 = 1,5 \%$
11. marts 2009	$(5 * 100) / 547 = 0,9 \%$
30. april 2009	$(8 * 100) / 433 = 1,8 \%$
23. juni 2009	$(8 * 100) / 1048 = 0,8 \%$
Gennemsnit heraf:	1,45 %
England efter reformen:	
20. januar 2009	$(41 * 100) / 3618 = 1,1 \%$
21. januar 2009	$(94 * 100) / 3125 = 3 \%$
18. februar 2009	$(63 * 100) / 1991 = 3,2 \%$
2. april 2009	$(141 * 100) / 3949 = 3,6 \%$
14. maj 2009	$(38 * 100) / 4410 = 0,9 \%$
4. juni 2009	$(70 * 100) / 3545 = 2 \%$
16. juni 2009	$(129 * 100) / 3461 = 3,7 \%$
6. juli 2009	$(140 * 100) / 3766 = 3,7 \%$
29. juli 2009	$(359 * 100) / 9617 = 3,7 \%$
30. juli 2009	$(78 * 100) / 4550 = 1,7 \%$
Gennemsnit heraf:	2,66 %

Den gennemsnitlige forekomst af juridiske kollokationer i de danske og engelske analysedomme efter reformerne er ved første øjekast kun en smule forskellige. Det drejer sig om en forskel på 1,21 procentpoints, hvilket umiddelbart ikke virker så

væsentlig. Men ser man på den procentvise forskel, varierer resultaterne med hele 45,48 %, hvilket må anses for at være en betydelig forskel.

Nominalkonstruktioner	
Danmark efter reformen	
18. januar 2007	$(29 * 100) / 82 = 35,4 \%$
5. juli 2007	$(4 * 100) / 43 = 9,3 \%$
15. oktober 2007	$(12 * 100) / 53 = 22,6 \%$
13. august 2008	$(4 * 100) / 40 = 10 \%$
27. november 2008	$(3 * 100) / 34 = 8,8 \%$
16. december 2008	$(14 * 100) / 68 = 20,6 \%$
30. januar 2009	$(10 * 100) / 50 = 20 \%$
11. marts 2009	$(8 * 100) / 43 = 18,6 \%$
30. april 2009	$(4 * 100) / 36 = 11,1 \%$
23. juni 2009	$(8 * 100) / 69 = 11,6 \%$
Gennemsnit heraf:	16,8 %
England efter reformen:	
20. januar 2009	$(8 * 100) / 256 = 3,1 \%$
21. januar 2009	$(31 * 100) / 172 = 18 \%$
18. februar 2009	$(22 * 100) / 106 = 20,8 \%$
2. april 2009	$(34 * 100) / 155 = 21,9 \%$
14. maj 2009	$(59 * 100) / 184 = 32,1 \%$
4. juni 2009	$(19 * 100) / 231 = 8,2 \%$
16. juni 2009	$(45 * 100) / 230 = 19,6 \%$
6. juli 2009	$(17 * 100) / 169 = 10,1 \%$
29. juli 2009	$(31 * 100) / 355 = 8,7 \%$
30. juli 2009	$(37 * 100) / 214 = 17,3 \%$
Gennemsnit heraf:	15,98 %

Forekomsten af nominalkonstruktioner, hvor der lige så vel kunne være brugt en aktiv verbalform, er meget ens i de analyserede danske og engelske domme efter reformerne. Ifølge den danske analyse optager unødvendige nominalkonstruktioner gennemsnitligt 16,8 % af en hel dom. Resultatet for de engelske domme er 15,98 %, hvilket kun er 0,82 procentpoints og 4,88 % lavere.

9.1 Delkonklusion

Efter Domstolsstyrelsens sprogpolitik og Woolf-reformen er blevet indført, er andelen af komplekse substantivsyntagmer og nominalkonstruktioner meget ens i de danske og engelske domme.

Passivkonstruktioner bruges betydeligt mere i de analyserede danske domme efter Domstolsstyrelsens sprogpolitik blev indført, end de bruges i engelske domme efter Woolf-reformens indførsel. Det samme gælder for de sammensatte præpositioner, som også bruges betydeligt mere i danske end engelske domme. Forekomsten af sammensatte præpositioner i de danske domme er 33,10 % højere end resultatet for de engelske domme efter reformerne. Efter reformerne bruges initiale og mediale adverbialer stadig mere i danske end engelske domme, men overstiger kun resultatet i de engelske domme med 11,08 %, hvor forskellen var betydeligt større før reformerne.

Det tyder derimod på at brugen af fagterminologi og juridiske kollokationer er betydeligt større i de engelske domme end i de danske domme efter reformerne.

10. Lix-udregning for danske og engelske domme

For at gøre resultaterne mere overskuelige har jeg opstillet lix-udregningerne i skemaform, hvor jeg anviser, hvilke domme der er tale om, og angiver derudfor dommens lix-værdi og i parentes sværhedsgraden. Efter hver analyseperiode på ti domme har jeg udregnet det gennemsnitlige lix-resultat for hele perioden.

10.1 Danmark før Domstolsstyrelsens sprogpolitik

Lix	
Danmark før reformen	
2. december 1999	70 (meget svær)
6. juli 1999	59,5 (meget svær)
27. januar 2000	54 (svær)

30. marts 2000	56,5 (meget svær)
7. juni 2000	74,3 (meget svær)
15. juni 2000	58,9 (meget svær)
21. aug 2000	58,2 (meget svær)
16. maj 2001	53,9 (svær)
25. juni 2001	42,3 (middelsvær)
17. august 2001	44,8 (middelsvær)
Gennemsnit:	57,24 (meget svær)
Danmark efter reformen	
18. januar 2007	64,5 (meget svær)
5. juli 2007	42 (middelsvær)
15. oktober 2007	60,2 (meget svær)
13. august 2008	40,4 (middelsvær)
27. november 2008	45,8 (svær)
16. december 2008	54,1 (svær)
30. januar 2009	47,1 (svær)
11. marts 2009	48,4 (svær)
30. april 2009	43,2 (middelsvær)
23. juni 2009	45,8 (svær)
Gennemsnit:	49,15 (svær)

Før Domstolsstyrelsens sprogreform er lix-resultaterne hovedsageligt meget høje. Der er hele 6 tilfælde af kategorien *meget svær* lix på mellem 56,5 og 74,3. Fire af de *meget svære* resultater ligger under 60, hvilket er den lave ende af *meget svær* lix (Galberg Jacobsen, Skyum-Nielsen, 1996:30). De resterende to *meget svære* lix-resultater ligger på 70 og 74,3, hvilket er det højeste, der er forekommet i mine analyser af både danske og engelske straffedomme. Der er desuden to *svære* resultater på 53,9 og 54. De resterende to resultater er på 42,3 og 44,8, hvilket er i den høje ende af kategorien *middelsvær*.

Efter sprogreformen er der to resultater i den *meget svære* kategori på 60,2 og 64,5, hvilket er færre tilfælde af *meget svær* lix end før reformen. Der er til gengæld hele fem tilfælde af lix i kategorien *svær*. Heraf ligger fire af resultaterne i den lave ende af kategorien på mellem 45,8 og 48,4, og kun et resultat ligger i den høje ende af

den *svære* kategori på 54,1. Der er desuden tre tilfælde af lix-resultater i den høje ende af *middelsvær* på 40,4, 42 og 43,2.

Betrages det gennemsnitlige lix-resultat for de to perioder, fremgår det, at lix-værdien generelt er blevet meget lavere siden indførelsen af Domsstolsstyrelsens sprogreform i 2003. Hvor det gennemsnitlige lix-resultat før sprogreformen var *meget svært*, er det gennemsnitlige resultat efter reformen kun *svært*.

10.2 England før Woolf-reformen

Lix	
England før reformen	
1. april 1996	47,1 (svær)
14. maj 1996	44,8 (middelsvær)
21. maj 1996	39,5 (middelsvær)
4. juni 1996	39,6 (middelsvær)
17. juni 1996	46,7 (svær)
25. oktober 1996	40,1 (middelsvær)
28. januar 1997	42,3 (middelsvær)
14. februar 1997	42,8 (middelsvær)
2. maj 1997	47,8 (svær)
14. oktober 1997	46,3 (svær)
Gennemsnit:	43,7 (middelsvær)
England efter reformen	
20. januar 2009	35,2 (middelsvær)
21. januar 2009	44,5 (middelsvær)
18. februar 2009	45,5 (svær)
2. april 2009	54,5 (svær)
14. maj 2009	52,2 (svær)
4. juni 2009	32,2 (let)
16. juni 2009	57,3 (meget svær)
6. juli 2009	45,7 (svær)
29. juli 2009	53,6 (svær)
30. juli 2009	53,3 (svær)

Ifølge Galberg Jacobsen og Skyum-Nielsens lix-skala (1996:30) består lix-resultaterne før reformen af seks *middelsvære* og fire *svære* resultater. De *middelsvære* resultater ligger på mellem 39,5 og 44,8, hvoraf sidstnævnte ligger lige på grænsen til den *svære* kategori. Skellet mellem *middelsvær* og *svær* går ved lix 45. Så dermed kan det konkluderes, at de *middelsvære* lix-resultater før Woolf-reformen ligger i den høje ende af *middelsvær*, da der ikke er nogle resultater mellem 35 og 39,5, som er den lave ende af kategorien³.

De fire lix-resultater, der betegnes som *svære* (Galberg Jacobsen, Skyum-Nielsen, 1996:30) ligger på mellem 46,3 og 47,8. Da skalaen dikterer, at *svær* lix er mellem 45 og 54, må det siges, at de *svære* lix-resultater i analysen før reformen ligger i bunden af den *svære* kategori.

Efter Woolf-reformen ser lix-analysen af de ti engelske straffedomme en smule anderledes ud. Resultaterne er nu meget mere varierede, og i stedet for at være blevet lavere, er størstedelen af lix-resultaterne blevet højere. Der er nu et *let*, to *middelsvære*, seks *svære* og et meget *svært* lix-resultat. Det enestående *lette* resultat er på 32,2 og dermed i den høje ende af kategorien *let*. De to *middelsvære* ligger i hver sin ende af kategorien. Det drejer sig om lix på 35,2, som er i den lave ende, og lix på 44,5, som kun er 0,5 point fra at indgå i kategorien *svær* i stedet for *middelsvær*.

De seks *svære* lix-resultater ligger også noget spredt. I bunden af den *svære* kategori har vi to resultater på kun 45,5 og 45,7, hvor der så er et spring op til lix 52,2 for det næste *svære* resultat. Resten ligger mellem 53,3 og 54,5. Og til sidst har vi det meget *svære* lix-resultat på 57,3, som dog må siges at være i den lave ende af kategorien, som begynder på 55 og tæller alle lix-resultater, der er højere end det (Galberg Jacobsen, Skyum-Nielsen, 1996:30).

³

Se lix-skalaen på s. 21

Betragtes de gennemsnitlige lix-resultater før og efter Woolf-reformen, bekræftes det at lix er blevet højere siden reformen. Hvor det gennemsnitlige resultat før reformen var *middelsvært*, er det steget til kategorien *svær* siden reformen.

10.3 Danmark og England før reformerne

Lix	
Danmark før reformen	
2. december 1999	70 (meget svær)
6. juli 1999	59,5 (meget svær)
27. januar 2000	54 (svær)
30. marts 2000	56,5 (meget svær)
7. juni 2000	74,3 (meget svær)
15. juni 2000	58,9 (meget svær)
21. aug 2000	58,2 (meget svær)
16. maj 2001	53,9 (svær)
25. juni 2001	42,3 (middelsvær)
17. august 2001	44,8 (middelsvær)
Gennemsnit:	57,24 (meget svær)
England før reformen	
1. april 1996	47,1 (svær)
14. maj 1996	44,8 (middelsvær)
21. maj 1996	39,5 (middelsvær)
4. juni 1996	39,6 (middelsvær)
17. juni 1996	46,7 (svær)
25. oktober 1996	40,1 (middelsvær)
28. januar 1997	42,3 (middelsvær)
14. februar 1997	42,8 (middelsvær)
2. maj 1997	47,8 (svær)
14. oktober 1997	46,3 (svær)
Gennemsnit:	43,7 (middelsvær)

Før Domstolsstyrelsens sprogpolitik og Woolf-reformen blev indført, ser lix ud til at have været højere i de danske end i de engelske straffedomme. I de analyserede danske domme består lix af to *middelsvære*, to *svære*, seks *meget svære* resultater.

Resultaterne i de engelske domme før Woolf-reformen består af seks *middelsvære* og fire *svære* resultater. Der forekommer ingen *meget svære* resultater i de engelske domme, og hovedparten af resultaterne er *middelsvære*, hvor størstedelen af de danske analyserede domme før reformen er *meget svære*.

Betragtes de gennemsnitlige resultater, er der en tydelig forskel på sværhedsgraden i de danske og engelske straffedomme før de to sprogreformer. Gennemsnittet af lix-værdien i de danske domme er *meget svær*, imens det gennemsnitlige resultat af de engelske domme er *middelsvært*.

10.4 Lix efter reformerne

Lix	
Danmark efter reformen	
18. januar 2007	64,5 (meget svær)
5. juli 2007	42 (middelsvær)
15. oktober 2007	60,2 (meget svær)
13. august 2008	40,4 (middelsvær)
27. november 2008	45,8 (svær)
16. december 2008	54,1 (svær)
30. januar 2009	47,1 (svær)
11. marts 2009	48,4 (svær)
30. april 2009	43,2 (middelsvær)
23. juni 2009	45,8 (svær)
Gennemsnit:	49,15 (svær)
England efter reformen	
20. januar 2009	35,2 (middelsvær)
21. januar 2009	44,5 (middelsvær)
18. februar 2009	45,5 (svær)
2. april 2009	54,5 (svær)
14. maj 2009	52,2 (svær)
4. juni 2009	32,2 (let)
16. juni 2009	57,3 (meget svær)
6. juli 2009	45,7 (svær)
29. juli 2009	53,6 (svær)

30. juli 2009	53,3 (svær)
Gennemsnit:	47,7 (svær)

Hvis man laver en komparativ analyse af lix-resultaterne i de danske og engelske analysedomme efter indførelsen af Domstolsstyrelsens sprogpolitik og Woolf-reformen, ser man, at forskellen i sværhedsgraden er udlignet betydeligt siden reformerne blev til. Det skyldes en bedring i de danske resultater siden Domstolsstyrelsens sprogreform, hvor lix er blevet væsentligt lettere, end den var før reformen, men også, at lix i de engelske domme mod forventningen er blevet højere siden Woolf-reformen. Der er nu tre *middelsvære*, fem *svære* og to *meget svære* resultater i de danske domme mod et let, to *middelsvære*, seks *svære* og et *meget svært* tilfælde af lix i de engelske domme efter reformerne.

De gennemsnitlige lix-resultater efter sprogreformerne i det danske og engelske retssystem bekræfter, at forskellen er udlignet siden reformerne. Den gennemsnitlige lix-værdi af de danske domme er nu 49,15, som ligger inden for kategorien *svær*, og den gennemsnitlige lix-værdi af de engelske domme er 47,7, hvilket er en smule lavere end det gennemsnitlige danske resultat, men stadig ligger i kategorien *svær*.

10.5 Delkonklusion

Ved sammenligning af lix-resultaterne i de analyserede danske domme før og efter Domstolsstyrelsens sprogreform er det mest bemærkelsesværdige nedgangen i sværhedsgraden fra at have overvejende mange tilfælde af *meget svær* lix til at have flest tilfælde af *svær* lix. Det må betragtes som en væsentlig bedring i sværhedsgraden i danske straffedomme, hvad angår sætnings- og ordlængde, som er lix-metodens fokusområde.

I Domsstolsstyrelsens sprogpolitik anbefales det, at man bruger lix-beregningen som rettesnor for sværhedsgraden af sin tekst og holder lix på mellem 40 og 45 (Domstolsstyrelsen, 2003:19). Det er en lix-værdi, der ifølge Galberg Jacobsen og Skyum-Nielsens lix-skala (1996:30) betegnes som *middelsvære* resultater.

Selvom sværhedsgraden er sænket betydeligt efter Domstolsstyrelsens sprogreform, lever lix-tallene i mine analysetekster efter reformen ikke op til Domstolsstyrelsens mål på en lix-værdi mellem 40-45. Ud af de ti analyserede danske domme holder kun tre lix-tal sig inden for Domstolsstyrelsens anviste lix. Yderligere fire resultater ligger dog kun lige over den anbefalede øvre grænse på 45, nemlig 45,8, 45,8, 47,1 og 48,4. De resterende tre resultater på 54,1, 60,2 og 64,5 ligger langt over den øvre grænse for Domsstolsstyrelsens anbefalede lix.

Kaster man et blik på de engelske lix-analyser fra før og efter Woolf-reformen kan det konkluderes, at lix ikke er blevet lavere efter reformen, men mod min forventning i stedet er steget. Hvis man tager udgangspunkt i, at læsbarhedsindekset i de engelske domme også skal holde sig inden for Domsstolsstyrelsens rettesnor for sværhedsgraden af teksten og holde sig i den middelsvære kategori mellem lix 40 og 45, lever fire ud af ti resultater før Woolf-reformen op til kravet mod bare et resultat efter reformen.

Før reformen ligger seks lix-resultater, der ikke lever op til Domstolsstyrelsens krav, dog lige omkring de anbefalede lix-værdier på 40-45. Der er tale om to resultater på lige under 40, nemlig på henholdsvis 39,5 og 39,6, og fire resultater, der ligger lige over den anbefalede værdi på 45, nemlig 46,3, 46,7, 47,1 og 47,8.

Efter Woolf-reformen er lix-resultaterne i de engelske domme mere spredte end før reformen. Kun et resultat på 44,5 ligger helt inden for Domstolsstyrelsens anbefaling og to resultater ligger på 32, 2 og 35,2 og er dermed lavere end anbefalingen, hvilket også er acceptabelt. De resterende syv resultater er højere end anbefalingsgrænsen på lix 45. To af de høje resultater ligger lige over grænsen og er på 45,5 og 45,7. Imens de resterende fem resultater er på over lix 50, henholdsvis 52,2, 53,6, 53,3, 54,5 og 57,3.

Hvis man sammenligner lix på tværs af landene, fremgår det, at lix var højere i de danske end i de engelske straffedomme før Domstolsstyrelsens sprogpolitik og Woolf-reformen blev indført.

Ved sammenligning af lix-resultaterne i de danske og engelske analysedomme efter indførelsen af Domstolsstyrelsens sprogpolitik og Woolf-reformen, ser man, at forskellen i sværhedsgraden er udlignet betydeligt siden reformerne blev til. Det skyldes et fald i de danske resultater siden Domstolsstyrelsens sprogreform og en stigning i de engelske resultater siden Woolf-reformen, som har bragt resultaterne på tværs af landene tættere på hinanden.

12. Hovedkonklusion

Når dommere formulerer domme, der i sagens natur henvender sig til en meget bred modtagergruppe bestående af både fagfolk og lægmænd, kan de ikke forvente, at alle modtagere forstår kompliceret juridisk fagsprog. Det er nødvendigt, at den enkelte dommer formulerer sig præcist og ukompliceret, for at lægmænd, der har interesse i de pågældende domme, har mulighed for problemfrit at forstå budskabet.

Både i Danmark og i England har der gennem tiden været fokus på afkomplisering af sprogbrugen mellem offentlige myndigheder og borgere, herunder også juridisk sprog. Fagspecialister har advaret mod at gøre juridisk sprog for hverdagsagtigt af frygt for, at det mister sin præcision, og at der dermed slækkes på retssikkerheden. Men trods alt er debatten blevet holdt i live af både offentlige myndigheder, forfattere og politikere i både Danmark og England.

Man må formode, at sprogbrugen i de danske og engelske domme er blevet lettere siden indførelsen af Domstolsstyrelsens sprogpolitik i 2003 og Woolf-reformen i 2003. Ved hjælp af korpusanalyse af udvalgte leksikalske og syntaktiske træk i straffedomme har jeg formået at påvise sproglige tendenser i dansk og engelsk juridisk sprogbrug. Dermed har det været muligt konkludere på, hvorvidt sprogbrugen i den danske og engelske domstole faktisk er blevet lettere.

I de analyserede danske domme er brugen af passivkonstruktioner, initiale og mediale adverbialer, sammensatte præpositioner, fagterminologi, juridiske kollokationer og nominalkonstruktioner er mindsket siden indførelsen af

Domsstolsstyrelsens sprogpolitik i 2003. Den eneste kategori, hvor forekomsten mod forventningen er steget, er brugen af komplekse substantivsyntagmer.

Den store nedgang i brugen af de komplekse sproglige elementer, der indgår i min analyse, indikerer, at Domsstolsstyrelsens sprogpolitik har haft indvirkning på sprogbrugen i de danske domstole i og med, at sproget er blevet afkompliceret og lettere at forstå for lægmænd.

Det skal bemærkes at faldet i brugen af juridiske kollokationer ikke er lige så markant, som det er tilfældet ved faldet i passivkonstruktionerne, de initiale og mediale adverbialer, sammensatte præpositioner og nominalkonstruktioner. Andelen af juridiske kollokationer er kun faldet 10,49 % siden Domsstolsstyrelsens sprogreform, hvorimod sproglige elementer som passivkonstruktioner og adverbialer er faldet henholdsvis 33,82 % og 32,76 %. Denne forskel kunne skyldes, at de danske koncipister (dommere) måske har lettere ved at acceptere konstruktionsmæssige ændringer i sproget, end de har ved at acceptere terminologiske ændringer. Ved at bytte en passivkonstruktion ud med en aktiv verbalkonstruktion, dele lange substantivsyntagmer op i flere helsætninger, placere adverbialet sidst i sætningen eller ændre en nominalkonstruktion til en verbalform ændrer man ikke i samme grad på sætningens præcision, som man gør ved at udskifte en fagterm med et hverdagsord. Det kunne tænkes, at disse ændringer i sproget er blevet adopteret af koncipisterne, fordi de er nemmere at acceptere for juridiske eksperter i forhold til deres tidligere praksis og ønsker om præcision i juridisk sprog. Mange jurister har netop peget på, at præcision er altafgørende for ikke at miste vigtige detaljer i sproget, hvilket kan tilsidesætte retssikkerheden (Frost, 1956:233) (Tamm, 1994:60).

Hvis man sammenligner forekomsten af juridiske kollokationer med forekomsten af fagterminologi, fremgår det, at andelen af fagterminologi er faldet 31,87 %, hvilket er en del større end faldet af juridiske kollokationer, som kun er faldet 10,49 %. Da begge kategorier omhandler terminologi og dermed er meget ens, kan det virke underligt, at udviklingen inden for de to analysekategorier ikke er ens. I den

forbindelse må der henvises til usikkerhedsfaktorerne ved mine analyser, som beskrevet i afsnittet *teori, metode og empiri* samt senere i konklusionen.

Endnu en grund til, at faldet i brugen af juridiske kollokationer ikke er lige så stort som faldet af andre af de syntaktiske elementer som passivkonstruktioner, initiale og mediale adverbialer, sammensatte præpositioner og nominalkonstruktioner, kunne være, at der ikke findes ækvivalente termer på hverdagsprog, hvilket gør det umuligt for domskoncipister at bruge andet end juridiske fagudtryk. I sådanne tilfælde kunne man undgå misforståelser ved at forklare termerne i teksten eller i en vedlagt ordliste, hvilket både Woolf og Domstolsstyrelsen også foreslår i deres sprogpolitikker (Woolf, 1996:pkt. 16) (Domstolsstyrelsen, 2003:16).

Der er en stigning i brugen af komplekse substantivsyntagmer efter Domstolsstyrelsens sprogreform i 2003 er på 7,54 %. Det er en meget lille stigning, som er så ubetydelig, at jeg vælger at betragte forekomsten af komplekse substantivsyntagmer i de danske domstole før og efter sprogreformen som uforandret. Det er imod min forventning til, hvordan brugen af kompliceret sprog i domstolene ville udvikle sig, og jeg har umiddelbart ingen forklaring på resultatet. I den forbindelse er det relevant endnu engang at komme ind på usikkerhedsfaktorerne ved analysemetoden.

Der er visse usikkerhedsfaktorer ved analysemetoderne, der kan have betydning for, hvor præcise analyseresultaterne er. Det forholdsvis lille korpus på 40 domme kan gøre analyseresultaterne mindre repræsentative for hele genren og dermed gøre det svært at komme med en generaliserende konklusion.

Endnu en usikkerhedsfaktor er, at domskoncipisterne kan være større eller mindre tilhængere af sprogreformerne, hvilket således vil være afspejlet i deres måde at formulere sig på.

På trods af usikkerhedsfaktorerne har det, på baggrund af mine analyser, været muligt at belyse nogle tendenser inden for afkomplisering af juridisk sprog.

Ud fra analysen af de leksikalske og syntaktiske træk i de engelske domme kan det konkluderes, at kategorierne komplekse substantivsyntagmer, fagterminologi, juridiske kollokationer og nominalkonstruktioner er hyppigere brugt efter Woolf-reformen, end før reformen. Det er en udvikling, der ikke lever op til forventningen om, at Woolf-reformen skulle afkomplisere engelsk juridisk sprog.

Den eneste kategori i engelske straffedomme, hvor brugen er faldet efter Woolf, er initiale og mediale adverbialer. Her er den gennemsnitlige forekomst gået ned med 9,59 %. Det er ikke et meget stort fald, men tyder trods alt på, at de kringlede sætningskonstruktioner med stor forvægt bruges mindre nu end tidligere.

En grund til, at brugen af foranstillede og mediale adverbialer er mindsket, og det samme f.eks. ikke gælder for kategorierne fagterminologi og juridiske kollokationer, kunne være, at det måske er nemmere for koncipisten at finde en alternativ måde at formulere en sætning med stor forvægt på, end det ville være at formulere sig juridisk præcist uden at bruge fagterminologi og juridiske vendinger. Det er lettere at ændre en sætning, så adverbialet efterstilles hovedsætningen og stadig få præcist samme budskab ud til sin læser, end det er at formulere sig ved hverdagstermer, hvor det mest præcise og korrekte ville være at bruge et fagudtryk.

Der er ingen ændring i, hvor hyppigt passivkonstruktioner og sammensatte præpositioner forekommer før og efter Woolf-reformen.

Både de øgede og uændrede forekomster af analyseelementerne i engelsk juridisk sprog strider imod min forventning til tendensen, som burde være, at hyppigheden af de svære konstruktioner skulle være faldet efter Woolf-reformen. Der kan kun gisnes om årsagen, men det kunne evt. være, at juridisk sprogbrug er så indgroet i mange koncipisters sprog, at det er svært at slippe den stive, formelle skrivestil uden, at koncipisten føler, at sproget bliver ufagligt og uprofessionelt. Eller det kan være fordi, der, som tidligere nævnt, i Woolf-reformen ikke er gjort helt så meget ud af at præcisere, hvad der skal til for, at sproget bliver lettere forståeligt for lægmænd.

Woolf-reformen fokuserer meget på brugen af fagterminologi og ikke så meget på at udspecificere andre problemfelter, hvad angår juridisk sprogbrug. Det gøres der mere ud af i Domstolsstyrelsens sprogpolitik, og måske netop fordi den giver meget klare og specifikke retningslinjer for sprogidealet, når der kommunikeres fra myndighed til borger, har den også en bedre effekt end Woolf-reformen.

Det skal dog bemærkes, at niveauet af de sproglige analyseelementer i de engelske domme, allerede før Woolf-reformen blev indført, var betydeligt lavere end niveauet i de danske domme før Domstolsstyrelsens sprogpolitik. Mængden af komplicerede sproglige konstruktioner i det engelske juridiske sprog er stadig forholdsvist lav efter Woolf-reformen, selvom niveauet ikke er sænket med undtagelse af de tunge adverbialkonstruktioner. Det kunne tyde på, at kompliceret sprogbrug generelt har været et mindre problem i England, og der derfor har været mindre fokus fra myndighedernes side på at udforme tydelige og specifikke sproglige anbefalinger for at få koncipisterne til at ændre på sprogbrugen og gøre sproget lettere forståeligt og letlæseligt for lægmænd. I England har det i højere grad været sprogspecialister som Sir Ernest Gowers og organisationerne PEC og Clarity, der har pointeret behovet for at afkomplicere juridisk sprog. Men de engelske ministerier har ikke, i samme grad som det danske Justitsministerium og Statsministerium, udfærdiget cirkulærer og politikker, der har udspecificeret anbefalingerne i samme detaljerede form. I Woolf-reformen fokuseres der ikke på detaljerne i sproget, i samme grad som i Domstolsstyrelsens sprogpolitik, der behandler adskillige specifikke sproglige problematikker og anbefalinger.

Hvis man sammenligner på tværs af landene før Woolf og Domstolsstyrelsens sprogreform, fremgår det, at der gøres betydeligt mindre brug af passivkonstruktioner, initiale og mediale adverbialer, komplekse substantivsyntagmer, sammensatte præpositioner, fagterminologi og nominalkonstruktioner i de analyserede engelske domme, end det er tilfældet i de analyserede danske domme.

Det samme er dog ikke tilfældet med juridiske kollokationer, som bruges lige meget i de danske og de engelske straffedomme før reformerne.

Efter Domstolsstyrelsens sprogpolitik og Woolf-reformen er andelen af komplekse substantivsyntagmer og nominalkonstruktioner meget ens i de danske og engelske domme. Passivkonstruktioner og sammensatte præpositioner bruges betydeligt mere i de analyserede danske domme efter Domstolsstyrelsens sprogpolitik blev indført, end de bruges i engelske domme efter Woolf-reformens indførelse. Sammenligner man forekomsten af initiale og mediale adverbialer i danske og engelske domme, er forskellen udlignet betydeligt efter reformerne, men trods alt er der stadig en større andel initiale og mediale adverbialer i de analyserede danske domme end i de engelske. Fagterminologi og juridiske kollokationer forekommer hyppigere i engelske domme efter Woolf-reformen i 1999, end det er tilfældet i danske domme efter Domstolsstyrelsens sprogreform i 2003.

Der er en væsentlig bedring i sværhedsgraden i danske straffedomme, hvad angår sætnings- og ordlængde, som er lix-metodens fokusområde.

Selvom sværhedsgraden er sænket betydeligt efter Domstolsstyrelsens sprogreform, lever lix-tallene i mine analysetekster efter reformen ikke op til Domstolsstyrelsens mål på 40-45. Ud af de ti danske domme har kun tre domme en lix-værdi, der holder sig inden for Domstolsstyrelsens anviste lix. Yderligere fire resultater ligger dog kun lige over den anbefalede øvre grænse på 45. De resterende tre resultater ligger langt over den øvre grænse for Domstolsstyrelsens anbefalede lix.

Ved sammenligning af resultaterne af de engelske lix-resultater fra før og efter Woolf-reformen kan det konkluderes, at lix i de engelske domme ikke er blevet lavere efter reformen, men mod min forventning i stedet er steget. Hvis man tager udgangspunkt i, at de engelske domme også burde holdes inden for Domstolsstyrelsens anbefalede lix-værdi på mellem 40 og 45 for at undgå kompliceret sprog og derved lette kommunikationen, lever fire ud af ti resultater før Woolf-reformen op til kravet, mod bare et resultat efter reformen.

Hvis man sammenligner lix på tværs af landene, fremgår det, at lix var højere i de danske end i de engelske straffedomme før Domstolsstyrelsens sprogpolitik og Woolf-reformen blev indført.

Ved sammenligning af lix-resultaterne i de danske og engelske analysedomme efter indførelsen af Domstolsstyrelsens sprogpolitik og Woolf-reformen, fremgår det, at forskellen i sværhedsgraden er udlignet betydeligt siden reformerne blev til. Det skyldes et fald i de danske resultater siden indførelsen af Domstolsstyrelsens sprogreform og en stigning i de engelske resultater siden Woolf-reformen, som har bragt resultaterne på tværs af landene tættere på hinanden.

Det skal dog nævnes, at der også er visse usikkerhedsfaktorer ved brug af lix-metoden. Lix-udregningerne kan være upræcise ved brug på tekster, der er kortere end 200 sætninger og 2000 ord, hvilket er tilfældet med meget af mit empiriske materiale. Jeg har forsøgt at gardere mig derimod ved at bruge lix-metoden i samspil med de leksikalske og syntaktiske analyser af dommene.

Det kan på basis af ovenstående analyser konkluderes, at Domstolsstyrelsens sprogpolitik tilsyneladende har haft stor indvirkning på afkomplisering af dansk juridisk sprogbrug mellem domstol og borger. Derimod er sværhedsgraden i den engelske sprogbrug ikke er blevet lavere siden Woolf-reformen, hvilket er imod forventningen, og kunne tyde på, at reformen ikke haft effekt i nær samme grad som sprogreformen i de danske domstole. Men også før reformen lader det engelske juridiske sprog til at have været mindre kompliceret end det danske juridiske sprog var før Domstolsstyrelsens sprogreform i Danmark. Det har udlignet sværhedsgraden i de to lande imellem, så sprogbrugen i danske og engelske domme, efter at den danske sprogreform har haft effekt, nu er på samme niveau.

Inden reformerne blev indført, bestod de sproglige forskelle i det danske og juridiske sprog af en hyppigere brug af passivformer, initiale og mediale adverbialer, komplekse substantivsyntagmer, sammensatte præpositioner, fagterminologi og

nominalenheder i de analyserede engelske domme, end det var tilfældet i de analyserede danske. Selvom sværhedsgraden blev udlignet betydeligt efter indførelsen af reformerne, ses der stadig en tendens til at være nogle sproglige forskelle i dansk og engelsk juridisk sprog. Forekomsten af komplekse substantivsyntagmer og nominalkonstruktioner er ens i de to sprog. Passivkonstruktioner, initiale og mediale adverbialer samt sammensatte præpositioner bruges mere i dansk end i engelsk juridisk sprog. Derimod forekommer fagterminologi og juridiske kollokationer hyppigere i engelsk end i dansk juridisk sprog efter reformerne.

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Bilag
Danske domsanalyser før Domstolsstyrelsens
sprogpolitik
I 2003

Brand - Ventilation

Østre Landsrets dom afsagt den 15. februar 2000 af 11. afdeling i ankesag nr. S-3133-99

Udskrift af dombogen for Retten i Slagelse

Dom afsagt af Retten i Slagelse den 6. juli 1999 - SS 416/99.

Anklagemyndigheden mod T.

T er som ejer af virksomheden tiltalt for

1.
overtrædelse af arbejdsmiljølovens § 83, jf. § 38, jf. bekendtgørelse nr. 867 af 13. oktober 1994 om arbejdets udførelse § 34, stk. 2, jf. § 4 og § 13, nr. 2, ved den 27. marts 1998 at have været ansvarlig for, at de ansatte vidne 2 og vidne 1 på værkstedet arbejdede med at kontrollere trykket på benzintilførslen på en Fiat Uno, uden at arbejdet var planlagt og foregik sikkerhedsmæssigt forsvarligt, idet man ikke havde sikret sig mod faren for antændelse og eksplosion, hvorved der i forbindelse med en opstået gnist skete en antændelse af brændstof i et bæger, som vidne 1 holdt i hånden, hvorved denne blev alvorligt forbrændt,

2.
overtrædelse af arbejdsmiljølovens § 82, stk. 1, nr. 1, jf. § 42, jf. bekendtgørelse nr. 1163 af 16. december 1992 om faste arbejdssteders indretning § 68, stk. 1, nr. 1, jf. § 35, stk. 1, ved den 25. maj 1998 at have været ansvarlig for, at den ansatte, vidne 5, i klargøringshallen arbejdede med at afvokse en Peugeot varebil med midlet "ALT VÆK", hvorunder der opstod sundhedsskadelige luftarter og aerosoler, uden at arbejdet var tilrettelagt sundhedsmæssigt forsvarligt, idet pågældende ikke var iført nogen form for beskyttelse ligesom der ikke var etableret nogen form for mekanisk udsugning med samtidig erstatning med frisk luft i klargøringshallen selvom Arbejdstilsynet ved påbud af 26. februar 1998 havde påbudt dette.

Anklagemyndigheden har nedlagt påstand om bødestraf på 40.000 kr.

Tiltalte har nægtet sig skyldig.

Der er under sagen afgivet forklaring af tiltalte og vidneforklaring af mekanikerne vidne 1 og vidne 2, tilsynsførende hos Arbejdstilsynet vidne 3 og lægekonsulent hos Arbejdstilsynet vidne 4.

Forklaringerne er gengivet i retsbogen.

I det af Arbejdstilsynet den 26.2.1998 meddelte og ikke påklagede påbud til tiltalte står bl.a. følgende: "Der skal etableres et tilstrækkeligt luftskifte i klargøringshallen, så unødige påvirkninger fra stoffer og materialer undgås. Indtil der er etableret udsugning, skal arbejdet udføres under brug af åndedrætsværn. Påbuddet skal efterkommes senest den 1. maj 1998."

Retten's bemærkninger:

Ad forhold 1.

Det kan lægges til grund efter vidneforklaringerne og som ubestridt af tiltalte, at der 27.3. 1998 under arbejdet med en Fiat-bil og ved trykmåling af benzintilførselen skete antændelse fra en gnist eller mindre flamme fra motoren, da denne blev startet med en løs ledning, af et bæger med benzin, som mekaniker vidne 1 holdt i hånden, og at han derved fik alvorlige forbrændinger. Under disse omstændigheder, og da det efter bevisførelsen findes godtgjort, at der blev anvendt en ikke korrekt og uforsvarlig målemetode, som i øvrigt ikke længere anvendes i virksomheden, findes tiltalte som arbejdsgiver ansvarlig efter arbejdsmiljøloven. Det forhold, at der på virksomheden var det nødvendige måleudstyr, og at de ansatte var instrueret i, hvordan arbejdet sikkerhedsmæssigt forsvarligt skulle udføres, kan ikke fritage tiltalte for dette ansvar.

Efter det anførte er tiltalte skyldig i dette forhold.

Ad forhold 2.

Efter vidne 3's forklaring findes det bevist, at den ansatte vidne 5 den 25.5. 1998 arbejdede med opløsningsmidler uden beskyttelse, ligesom han ikke havde adgang til at anvende en rigtig masketype. Efter samme forklaring findes det endvidere bevist, at der på samme tidspunkt ikke var etableret ventilation med luftskifte i klargøringshallen. Herefter, og sådan som Arbejdstilsynets påbud er udformet, findes tiltalte skyldig i dette forhold.

Straffen fastsættes under hensyn til lovovertrædelsernes omfang og karakter efter de ovenfor under de 2 forhold nævnte bestemmelser i arbejdsmiljølovgivningen til en bøde på 15.000 kr. i forhold 1 og en bøde på 25.000 kr. i forhold 2, en samlet bøde på 40.000,00 kr.

For den del af bøden der angår forhold 2 er forvandlingsstraffen hæfte i 10 dage.

Thi kendes for ret:

Tiltalte T skal betale en bøde på 40.000,00 kr.

Forvandlingsstraffen er hæfte i 10 dage

Tiltalte skal betale sagens omkostninger.

Byretsdømme 6. juli 1999. Ventilation	
passiver:	
l. 2	dom afsagt af retten i Slagelse
l. 4	T er som ejer af virksomheden tiltalt for...
l. 9	Uden at arbejdet var planlagt
l. 10	man ikke havde sikret sig mod faren for antændelse
l. 18	uden at arbejdet var tilrettelagt sundhedsmæssigt forsvarligt

I. 20	der ikke var etableret nogen form for mekanisk udsugning
I. 25	der er under sagen afgivet forklaring af tiltalte
I. 28	forklaringerne er gengivet i retsbogen
I. 30	der skal etableres et tilstrækkeligt luftskifte i klargøringshallen
I. 30	så unødige påvirkninger fra stoffer og materialer undgås
I. 31	indtil der er etableret udsugning
I. 31	skal arbejdet udføres under brug af åndedrætsværn
I. 32	påbuddet skal efterkommes senest...
I. 35	det kan lægges til grund...
I. 37	da denne blev startet med en løs ledning
I. 39	det efter bevisførelsen findes godtgjort...
I. 40	der blev anvendt...
I. 40	som...ikke længere anvendes i virksomheden
I. 41	findes tiltalte...ansvarlig
I. 42	de ansatte var instruerede i, hvordan arbejdet sikkerhedsmæssigt forsvarligt skulle udføres
I. 47	findes det bevist...
I. 49	findes det endvidere bevist
I. 49	at der på samme tidspunkt ikke var etableret ventilation
I. 51	findes tiltalte skyldig
I. 52	straffen fastsættes...
I. 56	thi kendes for ret
Adverbialer:	
I. 4 (medial)	T er <i>som ejer af virksomheden</i> tiltalt for...
I. 7 (medial)	ved <i>den 27. marts 1998</i> at have været ansvarlig for...
I. 16 (medial)	ved <i>den 25. maj 1998</i> at have været ansvarlig for...
I. 21 (medial)	Selvom Arbejdstilsynet ved <i>påbud af 26. februar 1998</i> havde påbudt dette
I. 29 (initial)	<i>I det af Arbejdstilsynet den 26.2.1998 meddelte og ikke påklagede påbud til tiltalte</i> står bl.a. Følgende:
I. 31 (initial)	<i>indtil der er etableret udsugning</i> , skal arbejdet udføres under brug af åndedrætsværn
I. 35 (medial)	det kan lægges til grund <i>efter vidneforklaringerne og som ubestridt af tiltalte</i> , at der ...
I. 35(medial)	at der <i>27.3.1998 under arbejdet med en Fiat-bil og ved trykmåling af benzintilførselen</i> skete antændelse...
I. 36 (medial)	skete antændelse <i>fra en gnist eller mindre flamme fra motoren, da denne blev startet med en løs ledning</i> , af et bærger med benzin
I. 39 (initial)	<i>under disse omstændigheder, og da det efter bevisførelsen findes godtgjort, at der blev anvendt en ikke korrekt og uforsvarlig målemetode, som i øvrigt ikke længere anvendes i virksomheden</i> , findes tiltalte som arbejdsgiver ansvarlig
I. 45 (initial)	<i>efter det anførte</i> er tiltalte skyldig
I. 47 (initial)	<i>efter vidne 3's forklaring</i> findes det bevist, at...

l. 47 (medial)	at den ansatte, vidne 5 den 25.5. 1998 arbejdede med opløsningsmidler uden beskyttelse
l. 49 (initial)	<i>efter samme forklaring</i> findes det endvidere bevist, at...
l. 49 (medial)	at der <i>på samme tidspunkt</i> ikke var etableret ventilation
l. 50 (initial)	<i>herefter, og sådan som Arbejdstilsynets påbud er udformet</i> , findes tiltalte skyldig
l. 52 (medial)	Straffen fastsættes <i>under hensyn til lovovertrædelsernes omfang og karakter efter de ovenfor under de 2 forhold nævnte bestemmelser i arbejdsmiljølovgivningen</i> til en bøde på 15.000 kr.
Sammensatte præpositioner:	
l. 11	i forbindelse med
l. 52	under hensyn til
Komplekse substantivsyntagmer:	
l. 6	overtrædelse af arbejdsmiljølovens § 83, jf. § 38, jf. bekendtgørelse nr. 867 af 13. oktober 1994 om arbejdets udførelse § 34, stk. 2, jf. § 4 og § 13, nr. 2,
l. 14	overtrædelse af arbejdsmiljølovens § 82, stk. 1, nr. 1, jf. § 42, jf. bekendtgørelse nr. 1163 af 16. december 1992 om faste arbejdssteders indretning § 68, stk. 1, nr. 1, jf. § 35, stk. 1,
l. 20	nogen form for mekanisk udsugning med samtidig erstatning med frisk luft i klargøringshallen
l. 29	det af Arbejdstilsynet den 26.2.1998 meddelte og ikke påklagede påbud til tiltalte
l. 40	en ikke korrekt og uforsvarlig målemetode, som i øvrigt ikke længere anvendes i virksomheden,
l. 42	Det forhold, at der på virksomheden var det nødvendige måleudstyr, og at de ansatte var instrueret i, hvordan arbejdet sikkerhedsmæssigt forsvarligt skulle udføres
l. 52	de ovenfor under de 2 forhold nævnte bestemmelser i arbejdsmiljølovgivningen
Fagterminologi:	
l. 1	Dombog
l. 3	anklagemyndighed
l. 23	bødestraf
l. 45	Forhold
l. 46	Forhold
l. 55	forvandlingsstraf
l. 55	Hæfte
l. 58	forvandlingsstraf
l. 58	Hæfte
juridiske kollokationer:	
l. 4	tiltalt for
l. 23	nedlægge påstand

I. 24	nægte sig skyldig
I. 32	at efterkomme et påbud
I. 56	thi kendes for ret
Nominalkonstruktioner:	
I. 6	T er som ejer af virksomheden tiltalt for <i>overtrædelse</i> af arbejdsmiljølovens § 83 (T er som ejer af virksomheden tiltalt for at have overtrådt arbejdsmiljølovens § 83)
I. 7	bekendtgørelse nr. 867 af 13. oktober 1994 om arbejdets <i>udførelse</i> (bekendtgørelse nr. 867 af 13. oktober 1994 om hvordan arbejdet skal udføres)
I. 10	idet man ikke havde sikret sig mod faren for <i>antændelse</i> og <i>eksplosion</i> (idet man ikke havde sikret sig mod faren for at værkstedet kunne blive antændt eller eksplodere)
I. 11	hvorved der i forbindelse med en opstået gnist skete en <i>antændelse</i> (hvorved brændstoffet blev antændt i forbindelse med en opstået gnist)
I. 14	(T er som ejer af virksomheden tiltalt for) <i>overtrædelse</i> af arbejdsmiljølovens § 82, stk. 1, nr. 1 ((T er som ejer af virksomheden tiltalt for) at have overtrådt arbejdsmiljølovens § 82, stk. 1, nr. 1)
I. 14	bekendtgørelse nr. 1163 af 16. december 1992 om faste arbejdssteders <i>indretning</i> (bekendtgørelse nr. 1163 af 16. december 1992 om hvordan faste arbejdssteders skal være indrettet)
I. 21	der ikke var etableret nogen form for mekanisk udsugning med samtidig <i>erstatning</i> med frisk luft i klargøringshallen (der ikke var etableret nogen form for mekanisk udsugning hvor luften i klargøringshallen samtidig blev erstattet med frisk luft)
I. 31	Indtil der er etableret udsugning, skal <i>arbejdet</i> udføres under brug af åndedrætsværn (Indtil der er etableret udsugning, skal de ansatte være iført åndedrætsværn, når de arbejder)
I. 36	under <i>arbejdet</i> med en Fiat-bil og ved <i>trykmåling</i> af benzintilførselen (imens en ansat arbejdede på en Fiat-bil og var ved at måle trykket på benzintilførselen)
I. 35	der...skete antændelse fra en gnist eller mindre flamme fra motoren (en gnist eller mindre flamme fra motoren blev antændt)
I. 39	han derved fik alvorlige <i>forbrændinger</i> (han derved blev alvorligt forbrændt)
Lix:	
655 ord	
242 svære ord	
29 perioder	
A = 36,9	
B = 22,6	
Lix = (A+ B) = 59,5 (meget svær)	

Rundsav

Østre Landsrets dom afsagt den 30. marts 2000 af 6. afdeling i ankesag nr. S-0039-00

Udskrift af dombogen for Retten i Nykøbing Sjælland

Dom afsagt den 2. december 1999 - S 25174/99.

Anklagemyndigheden mod byggemarkedet T A/S, v/ direktør A.

Under denne sag tiltales T A/S, v/ direktør A ifølge anklageskrift af 11. oktober 1999 fra politimesteren i Holbæk til straf for overtrædelse af bekendtgørelse af lov om arbejdsmiljø nr. 497 af 29. juni 1998 § 86, jf. § 82, stk. 1, nr. 1, jf. stk. 3, nr. 1, jf. § 45, jf. arbejdstilsynets bekendtgørelse om anvendelse af tekniske hjælpemidler nr. 1109 af 15. december 1992, § 5, stk. 2, jf. § 23, stk. 3, jf. stk. 1, nr. 1 ved i ca. 3 u-ger frem til søndag den 25. juli 1999 kl. 09.40 på T A/S, i savrummet at have en elektrisk rundsav mrkt. Electrobeckum stående, uden at den kunne anvendes eller be-nyttes sikkerhedsmæssigt forsvarligt, idet savklingen var uafskærmet og ikke forsynet med hverken spaltekniv eller overdækning, således at der var fri adgang til klingen, hvilket medførte, at vidne 1 fik hånden i klingen og på-drog sig et alvorligt snitsår i højre hånd, hvor sener, kar og nerver til 2. 3. og 4. finger blev savet over.

Der er under sagen til retsbogen, hvortil henvises, afgivet forklaring af tiltalte, vidne 1 og sagkyndig vidne 2.

Retten bemærkninger:

Retten lægger på baggrund af direktør A's forklaring til grund, at den nævnte maskine stod

uafskærmet i en ca. 3 ugers periode frem til søndag d. 25. juli 1999. Det lægges endvidere til grund, at der i den nævnte periode dels er foretaget arbejde ved maskinen, der krævede afskærmning dels arbejde (f.eks. false og not arbejde) hvor den nævnte afskærmning ikke er påbudt. Det fremgår af AT-meddelelse nr. 2.06.1 1989 fra Arbejdstilsynet, at overdækningen på rundsaven efter endt arbejde (hvortil der ikke kræves af-skærmning) straks skal sættes på plads. At afskærmningen har været fjernet i en ca. 3 ugers periode er således en over-trædelse af arbejdsmiljølovens § 45 samt den nævnte bekendtgørelse og de i følge deraf udstedte instrukser. I forhold til den nævnte periode på 3 uger som tiltalen vedrører, findes det ikke at kunne tillægges betydning, at direktør A selv umiddelbart før ulykken indtraf havde anvendt maskinen til arbejde der ikke krævede afskærmning, og havde forladt maskinen for at ekspedere kunder.

Reglerne i § 45 finder i medfør af § 2 stk. 3 nr. 3 også anvendelse i forhold til personer der ikke er i ansættelses-forhold. Det forhold, at der sker skade på en person, der som kunde befinder sig i byggemarkedet og uden tilladelse anvender en maskine som han, efter eget udsagn var bekendt med ikke var til anvendelse for kunderne, findes dog ikke i sig selv at skulle betragtes som en strafskærpende omstændighed.

Straffen fastsættes herefter efter bekendtgørelse af lov om arbejdsmiljø nr. 497 af 29. juni 1998 § 86 jf. § 82 stk. 1 nr. 1 jf. § 45 jf. arbejdstilsynets bekendtgørelse om anvendelse af tekniske hjælpemidler nr. 1109 af 15. december 1992 med senere ændringer § 5 jf. § 23 stk. 3 jf. stk. 1 nr. 1 til en bøde på 15.000 kr.

Thi kendes for ret:

Tiltalte T A/S, c/o direktør A straffes med en bøde på 15.000 kr.

Tiltalte betaler sagens omkostninger.

Byretsdom 2. december 1999. Rundsav	
passiver:	
I. 2	Dom afsagt...
I. 4	tiltales T A/S

I. 9	at have en elektrisk rundsav....stående, uden at den kunne anvendes eller benyttes sikkerhedsmæssigt forsvarligt
I. 10	savklingen var uafskærmet og ikke forsynet med hverken spaltekniv eller overdækning
I. 14	Der er under sagen til retsbogen, hvortil henvises, afgivet forklaring af tiltalte
I. 19	der...dels er foretaget arbejde ved maskinen, der krævede afskærmning, dels arbejde...hvor den nævnte afskærmning ikke var påkrævet
I. 21	Det fremgår af AT-meddelelse nr. 2.06.1 1989 fra Arbejdstilsynet, at overdækningen på rundsaven efter endt arbejde (hvortil der ikke kræves afskærmning) straks skal sættes på plads.
I. 26	findes det ikke at kunne tillægges betydning, at...
I. 32	...findes dog ikke i sig selv at skulle betragtes som en strafskærpende omstændighed
I. 34	Straffen fastsættes
I. 38	thi kendes for ret
I. 39	Tiltalte T A/S, c/o direktør A straffes med en bøde
Adverbialer:	
I. 4 (initial)	<i>under denne sag</i> tiltales T A/S, v/ direktør A
I. 4 (medial)	tiltalte T A/S, c/o direktør A straffes <i>ifølge anklageskrift af 11. oktober 1999 fra politimesteren i Holbæk</i> til straf for overtrædelse af...
I. 8 (initial)	<i>ved i ca. 3 u-ger frem til søndag den 25. juli 1999 kl. 09.40 på T A/S, i savrummet at have en elektrisk</i>
I. 14 (medial)	der er <i>under sagen til retsbogen, hvortil henvises,</i> afgivet forklaring af tiltalte
I. 17 (medial)	retten lægger <i>på baggrund af direktør A's forklaring</i> til grund at,...
I. 19 (medial)	Det lægges endvidere til grund, at der <i>i den nævnte periode</i> dels er foretaget arbejde ved maskinen...
I. 22 (medial)	at overdækningen på rundsaven <i>efter endt arbejde (hvortil der ikke kræves afskærmning)</i> straks skal sættes på plads
I. 23 (medial)	at afskærmningen har været fjernet <i>i en ca. 3 ugers periode</i> er således en overtrædelse af arbejdsmiljølovens §...
I. 24 (medial)	er en overtrædelse af... <i>de i følge deraf</i> udstedte instrukser
I. 25 (initial)	<i>i forhold til den nævnte periode på 3 uger som tiltalen vedrører,</i> findes det ikke at kunne tillægges betydning, at...
I. 26 (medial)	at direktøren selv <i>umiddelbart før ulykken indtraf</i> havde anvendt maskinen
I. 29 (medial)	Reglerne i § 45 finder <i>i medfør af § 2 stk. 3 nr. 3</i> også anvendelse
I. 30 (medial)	at der sker skade på en person, der som kunde befinder sig i byggemarkedet og uden tilladelse anvender en maskine som han, <i>efter eget udsagn</i> var bekendt med ikke var til anvendelse for kunder...
I. 34 (medial)	straffen fastsættes <i>herefter efter bekendtgørelse af lov om arbejdsmiljø nr. 497 af 29. juni 1998 § 86 jf. § 82 stk. 1. nr. 1 jf. § 45 jf. Arbejdstilsynets bekendtgørelse om anvendelse af tekniske hjælpemidler nr. 1109 af 15. december 1992 med senere ændringer § 5 jf. § 23 dtk. 3 jf. Stk. 1 nr. 1</i> til en bøde på 15.000 kr.
Sammensatte præpositioner:	
I. 17	på baggrund af
I. 25	i forhold til
I. 25	i følge deraf
I. 29	i medfør af
I. 29	i forhold til
Komplekse substantivsyntagmer:	

I. 4	anklageskrift af 11. oktober 1999 fra politimesteren i Holbæk
I. 5	straf for overtrædelse af bekendtgørelse af lov om arbejdsmiljø nr. 497 af 29. juni 1998 § 86, jf. § 82, stk. 1, nr. 1, jf. stk. 3, nr. 1, jf. § 45, jf. arbejdstilsynets bekendtgørelse om anvendelse af tekniske hjælpemidler nr. 1109 af 15. december 1992, § 5, stk. 2, jf. § 23, stk. 3, jf. stk. 1, nr. 1
I. 21	AT-meddelelse nr. 2.06.1 1989 fra Arbejdstilsynet
I. 22	endt arbejde (hvortil der ikke kræves afskærmning)
I. 24	en overtrædelse af arbejdsmiljølovens § 45 samt den nævnte bekendtgørelse og de i følge deraf udstedte instrukser
I. 25	den nævnte periode på 3 uger som tiltalen ved-rører
I. 30	Det forhold, at der sker skade på en person, der som kunde befinder sig i byggemarkedet og uden tilladelse anvender en maskine som han, efter eget udsagn var bekendt med ikke var til anvendelse for kunderne
I. 34	bekendtgørelse af lov om arbejdsmiljø nr. 497 af 29. juni 1998 § 86 jf. § 82 stk. 1 nr. 1 jf. § 45 jf. arbejdstilsynets bekendtgørelse om anvendelse af tekniske hjælpemidler nr. 1109 af 15. december 1992 med senere ændringer § 5 jf. § 23 stk. 3 jf. stk. 1 nr. 1
Fagterminologi:	
I. 1	dombog
I. 3	anklagemyndighed
I. 4	tiltale
I. 4	anklageskrift
I. 14	retsbogen
I. 14	tiltalte
I. 25	Tiltale
I. 39	Tiltalte
I. 40	Tiltalte
juridiske kollokationer:	
I. 14	Afgive forklaring
I. 17	Lægge til grund
I. 18	Lægge til grund
I. 29	finde anvendelse
I. 33	strafskærpende omstændighed
I. 34	fastsætte straffen til
I. 38	thi kendes for ret
Nominalkonstruktioner:	
I. 5	Under denne sag tiltales T A/S, v/ direktør A ifølge anklageskrift af 11. oktober 1999 fra politimesteren i Holbæk til straf for <i>overtrædelse</i> af bekendtgørelse af lov om arbejdsmiljø nr. 497 (Under denne sag tiltales T A/S, v/ direktør A ifølge anklageskrift af 11. oktober 1999 fra politimesteren i Holbæk til straf for at have overtrådt bekendtgørelse af lov om arbejdsmiljø nr. 497)
I. 7	jf. arbejdstilsynets bekendtgørelse om <i>anvendelse</i> af tekniske hjælpemidler nr. 1109 af 15. december 1992 (jf. arbejdstilsynets bekendtgørelse om hvordan tekniske hjælpemidler bør anvendes nr. 1109 af 15. december 1992) -længere konstruktion, men lettere forståelig.
I. 11	savklingen var uafskærmet og ikke forsynet med hverken spalteknav eller <i>overdækning</i> (savklingen var uafskærmet og hverken var overdækket eller forsynet med spalteknav)
I. 20	der i den nævnte periode dels er foretaget arbejde ved maskinen, der krævede

	<i>afskærmning</i> dels arbejde (f.eks. false og not arbejde) hvor den nævnte <i>afskærmning</i> ikke er påbudt. (der i den nævnte periode dels er foretaget arbejde ved maskinen, hvor det var påkrævet at maskinen var afskærmet, dels arbejde (f.eks. false og not arbejde) hvor det ikke var påbudt at maskinen skulle være afskærmet)
I. 22	efter endt arbejde (hvortil der ikke kræves <i>afskærmning</i>) (efter endt arbejde (hvortil der ikke kræves at maskinen er afskærmet))
I. 23	At <i>afskærmningen</i> har været fjernet i en ca. 3 ugers periode er således en overtrædelse af arbejdsmiljølovens § 45 (At maskinen ikke har været afskærmet i en ca. 3 ugers periode er således en overtrædelse af arbejdsmiljølovens § 45)
I. 27	at direktør A selv umiddelbart før ulykken indtraf havde anvendt maskinen til arbejde der ikke krævede <i>afskærmning</i> (at direktør A selv umiddelbart før ulykken indtraf havde anvendt maskinen til arbejde der ikke krævede at maskinen var afskærmet)
I. 32	anvender en maskine som han, efter eget udsagn var bekendt med ikke var til <i>anvendelse</i> for kunderne (anvender en maskine som han, efter eget udsagn var bekendt med ikke måtte anvendes af kunderne)
I. 35	jf. arbejdstilsynets bekendtgørelse om <i>anvendelse</i> af tekniske hjælpemidler nr. 1109 (jf. arbejdstilsynets bekendtgørelse om hvordan tekniske hjælpemidler skal anvendes nr. 1109)
Lix:	
510 ord	
204 svære ord	
17 perioder	
A = 40	
B = 30	
Lix = (A+ B) = 70 (meget svær)	

Bilag 3

Alenearbejde

Østre Landsrets dom afsagt den 23. maj 2000 af 8. afdeling i ankesag nr. S-0734-00

Udskrift af dombogen for Retten i Nykøbing F.

Dom afsagt den 27. januar 2000 - PS nr. 25577/99.

Anklagemyndigheden mod T.

Ved politimesterens anklageskrift af 27. september 1999, som berigtiget under domsforhandlingen, tiltales T til straf for overtrædelse af arbejdsmiljølovens § 82, stk. 1, nr. 2, jf. stk. 2 og stk. 4, jf. § 60, stk. 1, og arbejdsministeriets bekendtgørelse nr. 516 af 14. juni 1996 om unges arbejde med ændringer senest ved arbejdsministeriets bekendtgørelse nr. 76 af 3. februar 1998, § 57, stk. 1, nr. 2, jf. § 13, stk. 2, ved som arbejdsgiver i virksomhed A (kiosk og videobutik) forsætligt eller groft uagtsomt

1.

den 25. marts 1999 kl. 18.55 at have ladet ansatte B, født den 1. januar 1983, arbejde alene i kiosken og videobutikken, selv om unge under 18 år ikke må arbejde alene mellem kl. 18.00

og kl. 06.00 på hverdage, hvilket fremkaldte fare for den ansatte,

2.

den 23. april 1999 kl. 19.25 at have ladet ansatte B, født den 1. januar 1983, og ansatte C, født den 26. juli 1983, arbejde alene i kiosken og videobutikken, selv om unge under 18 år mellem kl. 18.00 og kl. 06.00 på hverdage ikke må beskæftiges, medmindre de arbejder sammen med en person over 18 år, hvilket fremkaldte fare for den ansatte.

Tiltalte er ikke tidligere straffet af betydning for nærværende sag.

Tiltalte har nægtet sig skyldig, men har erkendt det faktiske i forhold 1.

Der er under sagen afgivet forklaring af tiltalte og vidneforklaring af vidne 1 og vidne 2.

Herom henvises til retsbogen.

Retten skal udtale:

Ad forhold 1.

Efter tiltaltes forklaring findes tiltalte skyldig som tiltalt, dog at det ikke efter bevisførelsen, herunder vidne 1's, forklaring findes godtgjort, at tiltalte har handlet forsætligt eller udvist grov uagtsomhed.

Ad forhold 2.

Retten lægger vidne 2's forklaring til grund ved sa-gens afgørelse. Det fremgår heraf, at han var væk fra forretningen i ti til femten minutter, og at han under arbejdet med at flytte en fryser fra en ejendom til en anden befandt sig indenfor en radius af lidt over tyve meter fra forretningsdøren, men også, at han ikke kunne observere forretningen under hele forløbet og blandt andet ikke bemærkede arbejdstilsynets ankomst. Vidne 2, der var den eneste voksne i forretningen, findes derfor ikke på trods af den korte afstand at have været i en sådan nær kontakt med forretningen, at hensynet bag bekendtgørelsens § 13, stk. 2, er tilgodeset, endsi-ge at kravet i bestemmelsen om, at de unge skulle arbejde sammen med en voksen, er opfyldt. Retten finder, at tiltalte har handlet groft uagtsomt ved ikke, efter arbejds-tilsynets første besøg, at have sikret sig, at arbejdet blev udført i overensstemmelse med reglerne.

Da bekendtgørelsens § 13, stk. 2 vedrører beskæftigelse af unge under 18 år, og hensynet bag bestemmelsen svarer til hensynet bag lovens § 82, stk. 4, ses der ikke behørigt grundlag for ved straffastsættelsen også at henvise til § 82, stk. 4.

Straffen fastsættes efter arbejdsmiljølovens § 82, stk. 1, nr. 2, til dels jf. stk. 2, jf. § 60, stk. 1 og arbejdsministeriets bekendtgørelse nr. 76 af 3. februar 1998, § 57, stk. 1, nr. 2, jf. § 13, stk. 2, til en bøde, der, uagtet forretningens - efter det oplyste - beskedne dækningsbidrag, henset til praksis, fastsættes til 45.000 kr. Forvandlingsstraffen er hæfte i 20 dage.

Thi kendes for ret:

Tiltalte T straffes med en bøde på 45.000 kr.

Forvandlingsstraffen er hæfte i 20 dage.

Tiltalte betaler sagens omkostninger.

Byretsdom 27. januar 2000. Alenearbejde	
passiver:	
I. 2	Østre Landsrets dom afsagt den 23. maj
I. 4	dom afsagt den 27. januar
I. 6	politimesterens anklageskrift af 27. september 1999, som berigtiget under domsforhandlingen,
I. 7	tiltales T til straf
I. 18	selvom unge under 18 år...ikke må beskæftiges
I. 23	der er... afgivet forklaring af tiltalte og vidneforklaring af vidne 1 og vidne 2
I. 24	herom henvises til retsbogen
I. 27	findes tiltalte skyldig
I. 28	findes godtgjort
I. 37	hensynet bag bekendtgørelsens § 13, stk. 2, er tilgodeset
I. 40	at arbejdet blev udført i overensstemmelse med reglerne
I. 42	ses der ikke behørigt grundlag for
I. 44	straffen fastsættes efter
I. 46	en bøde, der...fastsættes til 45.000 kr.
I. 49	thi kendes for ret
I. 50	tiltalte T straffes med en bøde på 45.000 kr.
Adverbialer:	
I. 6 (initial)	<i>Ved politimesterens anklageskrift af 27. september 1999, som berigtiget under domsforhandlingen tiltales T til straf for overtrædelse af arbejdsmiljølovens § 82, stk. 1, nr. 2</i>
I. 10 (medial)	<i>ved som arbejdsgiver i virksomhed A (kiosk og videobutik) forsætligt eller groft uagtsomt den 25. marts 1999 kl. 18.55 at have ladet ansatte B...</i>
I. 17 (medial)	<i>(ved som arbejdsgiver i virksomhed A forsætligt eller groft uagtsomt) den 23. april 1999 kl. 19.25 at have ladet ansatte B...</i>
I. 19 (medial)	<i>selv om unge under 18 år mellem kl. 18.00 og kl. 06.00 på hverdage ikke må beskæftiges</i>
I. 27 (initial)	<i>efter tiltaltes forklaring findes tiltalte skyldig som tiltalt</i>
I. 27 (medial)	<i>dog at det ikke efter bevisførelsen, herunder vidne 1's forklaring findes godtgjort, at...</i>
I. 32 (medial)	<i>at han under arbejdet med at flytte en fryser fra en ejendom til en anden befandt sig indenfor en radius af lidt over tyve meter fra forretningsdøren</i>
I. 36 (medial)	<i>findes derfor ikke på trods af den korte afstand at have været i en sådan nær kontakt med forretningen</i>
I. 39 (medial)	<i>ved ikke efter arbejdstilsynets første besøg, at have sikret sig, at...</i>
I. 41 (initial)	<i>da bekendtgørelsens § 13, stk. 2 vedrører beskæftigelse af unge under 18 år, og hensynet bag bestemmelsen svarer til hensynet bag lovens § 82, stk. 4, ses der ikke behørigt grundlag for ved straffastsættelsen også at henvise til § 82, stk. 4.</i>
I. 43 (medial)	<i>ses der ikke behørigt grundlag for ved straffastsættelsen også at henvise til § 82</i>
I. 44 (medial)	<i>straffen fastsættes efter arbejdsmiljølovens § 82, stk. 1, nr. 2 til dels jf. Stk. 2, jf. § 60, stk. 1 og arbejdsministeriets bekendtgørelse nr. 76 af 3. februar 1998, § 57, stk. 1, nr. 2, jf. § 13, stk. 2, til en bøde</i>
I. 46 (medial)	<i>en bøde, der, uagtet forretningens - efter det oplyste - beskedne</i>

	dækningsbidrag, henset til praksis, fastsættes til 45.000 kr.
Sammensatte præpositioner:	
I. 36	på trods af
I. 40	i overensstemmelse med
Komplekse substantivsyntagmer:	
I. 6	politimesterens anklageskrift af 27. september 1999, som berigtiget under domsforhandlingen
I. 9	straf for overtrædelse af arbejdsmiljølovens § 82, stk. 1, nr. 2, jf. stk. 2 og stk. 4, jf. § 60, stk. 1, og arbejdsministeriets bekendtgørelse nr. 516 af 14. juni 1996 om unges arbejde med ændringer senest ved arbejdsministeriets bekendtgørelse nr. 76 af 3. februar 1998, § 57, stk. 1, nr. 2, jf. § 13, stk. 2, ved som arbejdsgiver i virksomhed A (kiosk og videobutik) forsættigt eller groft uagtsomt den 25. marts 1999 kl. 18.55
I. 13	ansatte B, født den 1. januar 1983,
I. 17	ansatte B, født den 1. januar 1983
I. 17	ansatte C, født den 26. juli 1983
I. 31	arbejdet med at flytte en fryser fra en ejendom til en anden
I. 35	Vidne 2, der var den eneste voksne i forretningen,
I. 37	hensynet bag bekendtgørelses § 13, stk. 2
I. 38	kravet i bestemmelsen om, at de unge skulle arbejde sammen med en voksen
I. 44	arbejdsmiljølovens § 82, stk. 1, nr. 2, til dels jf. stk. 2, jf. § 60, stk. 1 og arbejdsministeriets bekendtgørelse nr. 76 af 3. februar 1998, § 57, stk. 1, nr. 2, jf. § 13, stk. 2,
I. 47	en bøde, der, uagtet forretningens - efter det oplyste - beskedne dækningsbidrag, henset til praksis, fastsættes til 45.000 kr.
Fagterminologi:	
I. 3	dombog
I. 5	anklagemyndigheden
I. 6	anklageskrift
I. 6	berigtiget
I. 7	domsforhandlingen
I. 7	til straf for overtrædelse af...
I. 11	forsættigt
I. 21	tiltalte
I. 22	tiltalte
I. 22	forhold
I. 23	tiltalte
I. 23	vidneforklaring
I. 26	forhold
I. 26	Ad
I. 27	tiltalte
I. 27	tiltalte
I. 27	bevisførelsen
I. 30	Ad
I. 39	tiltalte
I. 43	straffastsættelsen

I. 47	forvandlingsstraffen
I. 47	hæfte
I. 50	tiltalte
I. 51	forvandlingsstraffen
I. 51	hæfte
I. 52	tiltalte
juridiske kollokationer:	
I. 11	groft uagtsomt
I. 21	nærværende sag
I. 22	nægte sig skyldig
I. 23	afgive forklaring
I. 27	finde skyldig som tiltalt
I. 28	handle forsættigt
I. 28	udvise grov uagtsomhed
I. 31	lægge til grund
I. 39	at handle groft uagtsomt
I. 44	at fastsætte straf
I. 49	thi kendes for ret
Nominalkonstruktioner:	
I. 7	tiltales T til straf for <i>overtrædelse</i> af arbejdsmiljølovens § 82, stk. 1, nr. 2 (tiltales T til straf for at have overtrådt arbejdsmiljølovens § 82, stk. 1, nr. 2)
I. 9	arbejdsministeriets bekendtgørelse nr. 516 af 14. juni 1996 om unges arbejde med <i>ændringer</i> senest ved arbejdsministeriets bekendtgørelse nr. 76 af 3. februar 1998 (arbejdsministeriets bekendtgørelse nr. 516 af 14. juni 1996 om unges arbejde som senest er blevet ændret ved arbejdsministeriets bekendtgørelse nr. 76 af 3. februar 1998)
I. 21	Tiltalte er ikke tidligere straffet af <i>betydning</i> for nærværende sag (Tiltalte har ingen tidligere straffe, der betyder noget for nærværende sag)
I. 32	og at han under <i>arbejdet</i> med at flytte en fryser fra en ejendom til en anden (og at han imens han arbejdede med at flytte en fryser fra en ejendom til en anden)
I. 40	at tiltalte har handlet groft uagtsomt ved ikke, efter arbejdstilsynets første <i>besøg</i> , at have sikret sig, at arbejdet blev udført i overensstemmelse med reglerne (at tiltalte har handlet groft uagtsomt ved ikke, efter arbejdstilsynets havde besøgt butikke første gang, at have sikret sig, at arbejdet blev udført i overensstemmelse med reglerne)
I. 43	ses der ikke behørigt grundlag for ved <i>straffastsættelsen</i> også at henvise til § 82, stk. 4. (ses der ikke behørigt grundlag for også at henvise til § 82, stk. 4, når retten fastsætter straffen)
Lix:	
571 ord	
188 svære ord	
27 perioder	
A = 32,9	
B = 21,1	
Lix = (A+ B) = 54 (svær)	

Udskrift af Østre Landsrets dombog

Anklagemyndigheden mod T A/S

Nykøbing Sjælland Rets dom af 2. december 1999 (S 25174/99) er anket af anklagemyndigheden med påstand om skærpeelse.

T A/S har påstået stadfæstelse.

Tiltalte er et aktieselskab, og selskabets direktør, A, burde derfor for byretten have afgivet forklaring som vidne og ikke som tiltalt.

Der er for landsretten afgivet supplerende forklaring af direktør A. Vidnet har forklaret bl.a., at han på tids-punktet for ulykken stod ca. 60 meter fra døren til det loka-le, hvori saven var opstillet. Skadelidte havde selv medbragt det brædt, han skulle bearbejde.

Landsrettens bemærkninger:

Som anført i Højesterets dom gengivet i Ugeskrift for Retsvæsen 2000, side 295, bør udgangspunktet for en bøde i en sag som denne sættes til 20.000 kr., idet bøden dog forhøjes til 25.000 kr., såfremt forholdet tillige er omfattet af arbejdsmiljølovens § 82, stk. 3, nr. 1.

Efter de omstændigheder, hvorunder skaden skete, herunder at saven havde stået uafskærmet og uden opsyn ca. en halv time, at der var fri adgang til rummet, hvori saven var anbragt, og at direktør A efter sin egen forklaring opholdt sig ca. 60 meter fra indgangen til rummet, fastsættes straffen tillige under citering af arbejdsmiljølovens § 82, stk. 3, nr. 1.

Straffen fastsættes herefter efter arbejdsmiljølovens § 86, jf. § 82, stk. 1, nr. 1, jf. stk. 3, nr. 1, jf. § 45, jf. § 46, jf. bekendtgørelse nr. 1109 af 15. december 1992 med senere ændringer § 23, stk. 3, jf. stk. 1, nr. 1, jf. § 5, stk. 2, til en bøde på 25.000 kr.

I øvrigt stadfæstes dommen.

Thi kendes for ret:

Tiltalte, T A/S, straffes med en bøde på 25.000 kr.

Tiltalte skal betale sagens omkostninger for landsretten.

Landsretsdom 30. marts 2000. S-0507-00		

passiver:	
I. 8	der er for landsretten afgivet supplerende forklaring af direktør A
I. 9	han...stod ca. 60 meter fra døren til det lokale, hvor saven var opstillet
I. 12	som anført i Højesterets dom...
I. 12	bør udgangspunktet for en bøde i en sag som denne sættes til 20.000 kr.
I. 13	idet bøden dog forhøjes til 25.000 kr.
I. 17	rummet, hvori saven var anbragt
I. 19	fastsættes straffen tillige...
I. 20	straffen fastsættes...til en bøde på 25.000 kr.
I. 23	i øvrigt stadfæstes dommen
I. 24	thi kendes for ret
I. 25	tiltalte straffes med en bøde på 25.000 kr.
Adverbialer:	
I. 6 (medial)	A, burde <i>derfor for byretten</i> have afgivet forklaring som vidne
I. 9 (medial)	han <i>på tidspunktet for ulykken</i> stod ca. 60 meter fra døren
I. 12 (initial)	<i>som anført i Højesterets dom gengivet i Ugeskrift for Retsvæsen 2000, side 295</i> bør udgangspunktet for en bøde
I. 13 (medial)	bør udgangspunktet for en bøde <i>i en sag som denne</i> sættes til 20.000 kr.
I. 16 (initial)	<i>efter de omstændigheder, hvorunder skaden skete, herunder at saven havde stået uafskærmet og uden opsyn ca. En halv time, at der var fri adgang til rummet, hvori saven var anbragt, og at direktør A efter sin egen forklaring opholdt sig ca 60 meter fra indgangen til rummet, fastsættes straffen tillige under citering af arbejdsmiljølovens §...</i>
I. 20 (medial)	straffen fastsættes <i>herefter efter arbejdsmiljølovens § 86, jf. § 82, stk. 1, nr. 1, jf. Stk. 3, nr. 1, jf. § 45, jf. Bekendtgørelse nr. 1109 af 15. december 1992 med senere ændringer § 23, stk. 3, jf. Stk. 1, nr. 1, jf. § 5, stk. 2,</i> til en bøde på 25.000 kr
Sammensatte præpositioner:	
Komplekse substantivsyntagmer:	
I. 3	Nykøbing sjællands rets dom af 2. december 1999 (S 25174/99)
I. 12	højesterets dom, gengivet i Ugeskrift for Retsvæsen 200, side 295
I. 16	<i>efter de omstændigheder, hvorunder skaden skete, herunder at saven havde stået uafskærmet og uden opsyn ca. En halv time, at der var fri adgang til rummet, hvori saven var anbragt, og at direktør A efter sin egen forklaring opholdt sig ca 60 meter fra indgangen til rummet,</i>
I. 20	Arbejdsmiljølovens § 86, jf. § 82, stk. 1, nr. 1, jf. Stk. 3, nr. 1, jf. § 45, jf. § 46, jf. Bekendtgørelse nr. 1109 af 15. december 1992 med senere ændringer § 23, stk. 3, jf. Stk. 1, nr. 1, jf. § 5, stk. 2
Fagterminologi:	
I. 1	dombog
I. 2	anklagemyndighed
I. 4	anklagemyndighed
I. 4	påstand
I. 4	skærpelse
I. 6	tiltalte

I. 10	skadelidte
I. 25	tiltalte
I. 26	tiltalte
juridiske kollokationer:	
I. 5	påstå stadfæstelse
I. 6	afgive forklaring
I. 19	at fastsætte straf
I. 23	stadfæste en dom
I. 24	thi kendes for ret
Nominalkonstruktioner:	
I. 4	Dom af...er anket af anklagemyndigheden med <i>påstand</i> om <i>skærpelse</i> (Dom af...er anket af anklagemyndigheden, som har påstået, at dommen skal skærpes)
I. 5	T A/S har påstået <i>stadfæstelse</i> (T A/S har påstået at dommen bør stadfæstes)
Lix:	
	286 ord
	104 svære ord
	14 perioder
	A = 36,4
	B = 20,4
	Lix = (A+ B) = 56,8 (meget svær)

Bilag 5

Afskærmning

Østre Landsrets dom afsagt den 15. december 2000 af 3. afdeling i ankesag nr. S- 2539-00

Udskrift af dombogen for straffesager for kriminalretten i Hillerød

Dom afsagt den 7. juni 2000 - SS nr. 670/99.

Anklagemyndigheden mod T A/S, ved direktør A

Ved politimesterens anklageskrift af 6. januar 2000 tiltales T A/S ved direktør A, til straf for overtrædelse af

1.

lov om arbejdsmiljø, jf. Lovbekendtgørelse nr. 497 af 29.- juni 1998 § 83 og § 86 jf. § 82, stk. 1, nr. 1, og stk. 3, nr. 1, jf. § 45, stk. 1, jf. Arbejdstilsynets bekendtgørelse nr. 1109 af 15. december 1992 om anvendelse af tekniske hjælpemidler, som ændret ved bekendtgørelse nr. 670 af 7. august 1995 og bekendtgørelse nr. 832 af 27. november 1998, § 9, stk. 2 og § 6 jf. Arbejdstilsynets bekendtgørelse nr. 561 af 24. juni 1994 om indretning af tekniske

hjælpemidler, senest ændret ved bekendtgørelse nr. 831 af 27. november 1998, § 21, stk. 1, nr. 1 og nr. 2, jf. stk. 2, ved som arbejdsgiver den 18. september 1998 i virksomhedens produktionshal, at have anvendt en CNC-maskine, mrk. B, type C, af ældre årgang, uagtet den ikke var sikkerhedsmæssigt fuldt forsvarligt indrettet, idet en medarbejder betjente maskinen, som ikke ved afskærmning eller på anden måde var sikret imod, at personer kunne komme i berøring med farlige maskindele, og mod udslyngning af værktøj, emner eller dele heraf, alt hvorved der opstod risiko for tilskadekomst for operatøren under arbejdet ved maskinen.

2.

lov om arbejdsmiljø, jf. Lovbekendtgørelse nr. 497 af 29. juni 1998 § 83 og § 86, jf. § 82, stk. 1, nr. 1, jf. stk. 2, og stk. 3, nr. 1, og nr. 2, jf. § 45, stk. 1, jf. Arbejdstilsynets bekendtgørelse nr. 1109 af 15. december 1992 om anvendelse af tekniske hjælpemidler, som ændret ved bekendtgørelse nr. 670 af 7. august 1995 og bekendtgørelse nr. 832 af 27. november 1998 § 9, stk. 2, og § 6, jf. arbejdstilsynets bekendtgørelse nr. 561 af 24. juni 1994, senest ændret ved bekendtgørelsen nr. 831 af 27. november 1998 § 21, stk. 1, nr. 1, og nr. 2, jf. stk. 2, ved som arbejdsgiver den 9. april 1999 i virksomhedens produktionshal, at have anvendt den i forhold 1 anførte CNC-maskine, uagtet den ikke var sikkerhedsmæssigt fuldt forsvarligt indrettet, idet en ansat betjente maskinen, som ikke ved afskærmning eller på anden måde var sikret mod, at personer kunne komme i berøring med farlige maskindele, og mod udslyngning af værktøj, emner eller dele heraf, alt hvorved der opstod risiko for tilskadekomst for operatøren under arbejdet ved maskinen.

Anklagemyndigheden har nedlagt påstand om bødestraf på ikke under kr. 60.000,-

Endvidere er der nedlagt påstand om, at tiltalte i medfør af retsplejelovens § 997, stk. 3, under tvang af fortløbende bøder tilpligtes at efterkomme arbejdstilsynets påbud af 22. september 1998 om at montere beskyttelsesskærme på den anførte CNC-maskine, og overvågningsanordninger til sikring af betjening af maskinen med åben/aftaget beskyttelsesskærm skal bringes i funktionsdygtig stand.

Tiltalte er ikke tidligere straffet.

Tiltalte ved direktør A har principalt nedlagt påstand om frifindelse, subsidiært at sagen afgøres med en advarsel i medfør af retsplejelovens § 937, og mere subsidiært at tiltalte idømmes en bøde på 30.000 kr.

Der er under sagen afgivet forklaring af direktør i det tiltalte selskab, A, og vidneforklaring af vidne 1, hvorom henvises til retsbogen.

Retten har besigtiget den omhandlede CNC-maskine den 29. maj 2000.

Anklagemyndigheden har dokumenteret dele af arbejdstilsynets skrivelse af 10. december 1998 hvoraf blandt andet fremgår:

"...

Direktoratets vurdering

En CNC-maskine styres via en PES (programmerbar elektronisk styring). Værktøjer og emne

flyttes alt afhængigt af programmet rundt i et arbejdsområde, som er en del af maskinens bevægelsesområde.

Hvis hænder holdes inde i maskinens bevægelsesområde under drift er der overhængende fare for at blive ramt af, klemt af eller trukket med rundt af maskinens roterende dele. Herved kan der opstå alvorlig skade på fingre/hænder/arme. Da de roterende dele er elektronisk styrede er der risiko for programfejl og dermed utilsigtede bevægelser i maskinen. Under maskinens drift er der risiko for udslyngning af værktøj, emne eller dele heraf.

En CNC-maskine skal på baggrund af ovenstående have afskærmning af farezonerne. Heraf følger, at maskinen skal have afskærmning, som sikrer mod at række ind i maskinens bevægelsesområde samt, at afskærmningen skal sikre mod udslyngning af værktøj, emner eller dele heraf, samt køle/smøremiddel. Maskinen kan være forsynet med en eller flere bevægelige låger, som skal være overvåget med tvangsbrydende kontakter.

Disse kontakter og det tilhørende sikkerhedssystem skal være overordnet det programmerbare styreystem.

Virksomhedens påstand om, at den pågældende software ikke understøtter sikkerhedssystemet er derfor ikke et argument, om berettiger til at køre uden sikkerhed på maskinen.

Sikkerhedsstyresystemet skal stoppe alle farlige maskinbevægelser og skal sikre, at det programmerbare system ikke foretager utilsigtet start af farlige bevægelser. Det er tilladt at bibeholde spænding på det programmerbare system, således at maskinen kan fortsætte cyklus efter lukning af låger, reset og genstart.

..."

Retten skal udtale:

Efter bevisførelsen kan det lægges til grund, at arbejdstilsynet besigtigede virksomheden T A/S den 6. august 1998, og at ledelsen den 7. august 1998 fik tilsendt "Tilsynsrapport" vedlagt At-anvisning Nr. 2.2.0.3 November 1995 vedrørende Automatisk styrede maskinanlæg, inklusive industrirobotanlæg", med henblik på at bringe CNC-maskinens sikkerhedsanordninger i overensstemmelse med arbejdsmiljøloven.

Ved arbejdstilsynets besøg på virksomheden den 18. september 1998 blev det konstateret, at arbejdsmiljøloven stadig ikke blev overholdt, idet CNC-maskinens sikkerhedsanordninger fortsat ikke fungerede som tilsigtet, hvorfor ledelsen ved tilsynsrapport af 22. september 1998 blev meddelt påbud om, at bringe maskinens overvågningsanordninger i funktionsdygtig stand.

Tiltalte ved direktør A påklagede påbudet til direktøren for Arbejdstilsynet, der ved skrivelse af 10. december 1998 meddelte tiltalte, at påbudet fastholdes, og at afgørelsen skulle efterkommes straks.

Ved arbejdstilsynets kontrolbesøg den 9. april 1999, blev det konstateret, at CNC-maskinen "blev benyttet til spåntagende bearbejdning af plastemner med åbne sikkerhedsskærme og uden, at de elektriske overvågningsanordninger til sikring imod betjening af maskinen med åben/aftaget beskyttelsesskærm var bragt i funktionsduelig stand", hvorefter virksomheden

ikke har efterkommet Arbejdstilsynets påbud af 22. september 1998.

Tiltalte findes herefter skyldig i den rejste tiltale.

Da der ved overtrædelsen af arbejdsmiljøloven er fremkaldt fare for skade på liv eller helbred, jf. det i direktoratets skrivelse af 10. december 1998 anførte om CNC-maskinens funktion, og da arbejdstilsynets påbud af 22. september 1998 ikke er efterkommet, foreligger der skærpende omstændigheder.

Straffen fastsættes herefter i medfør af arbejdsmiljølovens § 83 og § 86, jf. § 82, stk. 1, nr. 1, jf. stk. 2 og stk. 3, nr. 1 og 2, jf. § 45, stk. 1, jf. arbejdstilsynets bekendtgørelse nr. 1109 af 15. december 1992 om anvendelse af tekniske hjælpemidler, som ændret ved bekendtgørelse nr. 670 af 7. august 1995 og bekendtgørelse nr. 832 af 27. november 1998, § 9, stk. 2 og § 6, jf. arbejdstilsynets bekendtgørelse nr. 561 af 24. juni 1994 om indretning af tekniske hjælpemidler, senest ændret ved bekendtgørelse nr. 831 af 27. november 1998, § 21, stk. 1, nr. 1 og nr. 2, jf. stk. 2 til en bøde på 30.000 kr.

At tiltalte ved direktør A først den 24. juni 1999 blev vejledt mundtligt om muligheden for at installere en "dødemandsknap", ændrer ikke ved, at det er tiltaltes ansvar, at sikkerhedsforskrifterne er overholdt, og det var de ikke ved kontrolbesøget den 9. april 1999, ligesom de ikke senere er efterkommet.

Påstanden om tvangsbøder tages i medfør af retsplejelovens § 997, stk. 3, til følge som nedenfor bestemt.

Thi kendes for ret:

Tiltalte T A/S straffes med en bøde på 30.000 kr.

Det pålægges tiltalte T A/S inden den 1. august 2000 at bringe det ulovlige forhold til ophør ved at efterkomme arbejdstilsynets påbud af 22. september 1998 om at montere beskyttelsesskærme på den anførte CNC-maskine, og overvågningsanordninger til sikring af betjening af maskinen med åben/aftaget beskyttelsesskærm skal bringes i funktionsdygtig stand.

Bliver påbudet ikke efterkommet inden nævnte frist, pålægges tiltalte at betale en tvangsbøde på 500 kr. for hver påbegyndt uge efter fristens udløb.

Tiltalte betaler sagens omkostninger

Kriminalretten i Hillerød 7. juni 2000. Afskærmning	
passiver:	
I. 2	dom afsagt den 7. juni
I. 4	tiltales T A/S ved direktør A
I. 16	maskinen, som ikke ved afskærmning eller på anden måde var sikret imod, at

	personer kunne komme i berøring med farlige maskindele
I. 29	maskinen, som ikke ved afskærmning eller på anden måde var sikret mod, at personer kunne komme i berøring med farlige maskindele
I. 34	tiltalte...forpligtes at efterkomme...
I. 37	overvågningsanordninger til sikring af betjening af maskinen med åben/aftaget beskyttelseskærm skal bringes i funktionsdygtig stand
I. 40	at sagen afgøres med en advarsel
I. 41	tiltalte idømmes en bøde
I. 43	der er under sagen afgivet forklaring af direktør...
I. 44	hvorom henvises til retsbogen
I. 50	en CNC-maskine styres via en PES
I. 50	værktøjer og emner flyttes...rundt i arbejdsområdet
I. 53	hvis hænder holdes inde i maskinens bevægelsesområde under drift er der overhængende fare for at blive ramt af, klemt af eller trukket med rundt
I. 62	låger, som skal være overvåget
I. 69	det er tilladt at bibeholde spænding på det programmerbare system
I. 74	kan det lægges til grund, at...
I. 75	ledelsen...fik tilsendt...
I. 80	arbejds miljøloven stadig ikke blev overholdt
I. 81	ledelsen...blev meddelt påbud om...
I. 84	At påbudet fastholdes og at afgørelsen skulle efterkommes straks
I. 86	blev det konstateret, at CNC-maskinen blev benyttet til spåntagende bearbejdning
I. 88	unden at de elektriske overvågningsanordninger...var bragt i funktionsduelig stand
I. 91	tiltalte findes herefter skyldig
I. 92	da der ved overtrædelse af arbejds miljøloven er fremkaldt fare for...
I. 94	da arbejdstilsynets påbud af 22. september 1998 ikke er efterkommet
I. 96	straffen fastsættes herefter
I. 103	at tiltalte først...blev vejledt
I. 104	Det er tiltaltes ansvar, at sikkerhedsforskrifterne er overholdt
I. 105	det var de ikke ved kontrolbesøg...
I. 106	ligesom de ikke senere er efterkommet
I. 107	påstanden om tvangsbøder tages...til følge
I. 109	thi kendes for ret
I. 110	tiltalte T A/S straffes med en bøde
I. 111	det pålægges tiltalte,...at...
I. 113	overvågningsanordninger til sikring af betjening af maskinen med åben/aftaget beskyttelseskærm skal bringes i funktionsdygtig stand.
I. 116	pålægges tiltalte at betale en tvangsbøde
Adverbialer:	
I. 4 (initial)	ved politimesterens anklageskrift af 6. januar 2000 tiltales T A/S ved direktør A, til straf
I. 13 (medial)	Tiltales T A/S ved direktør A, til straf for overtrædelse af...ved som arbejdsgiver den 18. september 1998 i virksomhedens produktionshal, at have...
I. 27 (medial)	Tiltales T A/S ved direktør A, til straf for overtrædelse af...ved som arbejdsgiver den 9. april 1999 i virksomhedens produktionshal, at have...
I. 29 (medial)	som ikke ved afskærmning eller på anden måde var sikret
I. 34 (medial)	Edvidere er der nedlagt påstand om, at tiltalte i medfør af retsplejelovens §

	997, stk. 3, under tvang af fortløbende bøder tilpligtes at efterkomme arbejdstilsynets påbud
I. 51 (medial)	værktøj og emner flyttes <i>alt afhængigt af programmet</i> rundt i arbejdsområdet
I. 53 (initial)	<i>hvis hænder holdes inde i maskinens bevægelsesområde under drift</i> er der overhængende fare for at blive ramt af, klemt af eller trukket med rundt
I. 55 (initial)	<i>da de roterende dele er elektronisk styrede</i> er der risiko for programfejl...
I. 56 (initial)	<i>Under maskinens drift</i> er der risiko for udslyngning
I. 58 (medial)	En CNC-maskine skal <i>på baggrund af ovenstående</i> have afskærmning
I. 75 (medial)	at ledelsen den 7. august 1998 fik tilsendt "Tilsynsrapport"
I. 79 (initial)	<i>Ved arbejdstilsynets besøg på virksomheden den 18. september 1998</i> blev det konstateret, at...
I. 81 (medial)	Hvorfor ledelsen <i>ved tilsynsrapport af 22. september 1998</i> blev meddelt påbud
I. 83 (medial)	der <i>ved skrivelse af 10. december 1998</i> meddelte tiltalte...
I. 86 (initial)	<i>Ved arbejdstilsynets kontrolbesøg den 9. april 1999</i> blev det konstateret, at...
I. 92 (initial)	<i>Da der ved overtrædelse af arbejdsmiljøloven er fremkaldt fare for skade på liv eller helbred, jf. Det i direktoratets skrivelse af 10. december 1998 anførte om CNC-maskinernes funktion, og da arbejdstilsynets påbud af 22. september 1998 ikke er efterkommet,</i> foreligger der skærpede omstændigheder
I. 96 (medial)	Straffen fastsættes herefter i medfør af arbejdsmiljølovens § 83 og § 86, jf. § 82, stk. 1, nr. 1, jf. Stk. 2 og stk. 3, nr. 1 og 2, jf. § 45, stk. 1, jf. Arbejdstilsynets bekendtgørelse nr. 1109 af 15. december 1992 om anvendelse af tekniske hjælpemidler, som ændret ved bekendtgørelse nr. 670 af 7. august 1995 og bekendtgørelse nr. 832 af 27. november 1998, § 9, stk. 2 og § 6, jf. Arbejdstilsynets bekendtgørelse nr. 561 af 24. juni 1994 om indretning af tekniske hjælpemidler, senest ændret ved bekendtgørelsen nr. 831 af 27. november 1998, § 21, stk. 1, nr. 1 og nr. 2, jf. Stk. 2 til en bøde på 30.000 kr.
I. 103 (medial)	at tiltalte <i>først den 24. juni 1999</i> blev vejledt
I. 107 (medial)	påstanden om tvangsbøder tages <i>i medfør af retsplejelovens § 997, stk. 3,</i> til følge
I. 111 (medial)	det pålægges tiltalte <i>inden den 1. august 2000</i> at bringe det ulovlige forhold til ophør
I. 116 (initial)	<i>bliver påbudet ikke efterkommet inden nævnte frist,</i> pålægges tiltalte at betale en tvangsbøde
Sammensatte præpositioner:	
I. 34	i medfør af
I. 41	i medfør af
I. 58	på baggrund af
I. 77	med henblik på
I. 78	i overensstemmelse med
I. 96	i medfør af
I. 107	i medfør af
Komplekse substantivsyntagme Komplekse substantivsyntagmer:	
I. 4	straf for overtrædelse af lov om arbejdsmiljø, jf. Lovbekendtgørelse nr. 497 af 29.- juni 1998 § 83 og § 86 jf. § 82, stk. 1, nr. 1, og stk. 3, nr. 1, jf. § 45, stk. 1,

	jf. Arbejdstilsynets bekendtgørelse nr. 1109 af 15. december 1992 om anvendelse af tekniske hjælpemidler, som ændret ved bekendtgørelse nr. 670 af 7. august 1995 og bekendtgørelse nr. 832 af 27. november 1998, § 9, stk. 2 og § 6 jf. Arbejdstilsynets bekendtgørelse nr. 561 af 24. juni 1994 om indretning af tekniske hjælpemidler, senest ændret ved bekendtgørelse nr. 831 af 27. november 1998, § 21, stk. 1, nr. 1 og nr. 2, jf. stk. 2,
I. 16	maskinen, som ikke ved afskærmning eller på anden måde var sikret imod, at personer kunne komme i berøring med farlige maskindele, og mod udslyngning af værktøj, emner eller dele heraf,
I. 21	straf for overtrædelse af lov om arbejdsmiljø, jf. Lovbekendtgørelse nr. 497 af 29. juni 1998 § 83 og § 86, jf. § 82, stk. 1, nr. 1, jf. stk. 2, og stk. 3, nr. 1, og nr. 2, jf. § 45, stk. 1, jf. Arbejdstilsynets bekendtgørelse nr. 1109 af 15. december 1992 om anvendelse af tekniske hjælpemidler, som ændret ved bekendtgørelse nr. 670 af 7. august 1995 og bekendtgørelse nr. 832 af 27. november 1998 § 9, stk. 2, og § 6, jf. arbejdstilsynets bekendtgørelse nr. 561 af 24. juni 1994, senest ændret ved bekendtgørelsen nr. 831 af 27. november 1998 § 21, stk. 1, nr. 1, og nr. 2, jf. Stk. 2,
I. 28	den i forhold 1 anførte CNC-maskine
I. 29	maskinen, som ikke ved afskærmning eller på anden måde var sikret mod, at personer kunne komme i berøring med farlige maskindele, og mod udslyngning af værktøj, emner eller dele heraf
I. 35	arbejdstilsynets påbud af 22. september 1998 om at montere beskyttelsesskærme på den anførte CNC-maskine
I. 37	overvågningsanordninger til sikring af betjening af maskinen med åben/aftaget beskyttelsesskærm
I. 46	dele af arbejdstilsynets skrivelse af 10. december 1998 hvoraf blandt andet fremgår:
I. 51	et arbejdsområde, som er en del af maskinens bevægelsesområde
I. 59	afskærmning, som sikrer mod at række ind i maskinens bevægelsesområde
I. 60	udslyngning af værktøj, emner eller dele heraf, samt køle/smøremiddel
I. 65	Virksomhedens påstand om, at den pågældende software ikke understøtter sikkerhedssystemet
I. 75	"Tilsynsrapport" vedlagt At-anvisning Nr. 2.2.0.3 November 1995 vedrørende Automatisk styrede maskinanlæg, inklusive industrirobotanlæg",
I. 87	spåntagende bearbejdning af plastemner med åbne sikkerhedsskærme
I. 88	de elektriske overvågningsanordninger til sikring imod betjening af maskinen med åben/aftaget beskyttelsesskærm
I. 93	det i direktoratets skrivelse af 10. december 1998 anførte om CNC-maskinens funktion
I. 94	arbejdstilsynets påbud af 22. september 1998
I. 96	arbejds miljølovens § 83 og § 86, jf. § 82, stk. 1, nr. 1, jf. stk. 2 og stk. 3, nr. 1 og 2, jf. § 45, stk. 1, jf. arbejdstilsynets bekendtgørelse nr. 1109 af 15. december 1992 om anvendelse af tekniske hjælpemidler, som ændret ved bekendtgørelse nr. 670 af 7. august 1995
I. 99	bekendtgørelse nr. 832 af 27. november 1998, § 9, stk. 2 og § 6, jf. arbejdstilsynets bekendtgørelse nr. 561 af 24. juni 1994 om indretning af tekniske hjælpemidler, senest ændret ved bekendtgørelse nr. 831 af 27. november 1998, § 21, stk. 1, nr. 1 og nr. 2, jf. Stk. 2
I. 112	arbejdstilsynets påbud af 22. september 1998 om at montere beskyttelsesskærme på den anførte CNC-maskine,
I. 113	overvågningsanordninger til sikring af betjening af maskinen med åben/aftaget beskyttelsesskærm
Fagterminologi:	
I. 1	dombog

I. 3	anklagemyndigheden
I. 4	anklageskrift
I. 4	tiltale
I. 33	anklagemyndigheden
I. 33	bødestraf
I. 35	påbud
I. 39	tiltalte
I. 40	principalt
I. 40	subsidiært
I. 40	frifindelse
I. 43	vidneforklaring
I. 44	retsbog
I. 46	anklagemyndigheden
I. 82	påbud
I. 83	påklage
I. 83	påbud
I. 91	tiltalte
I. 103	tiltalte
I. 104	tiltaltes
I. 107	påstand
I. 107	tvangsbøder
I. 110	tiltalte
I. 111	tiltalte
I. 112	påbud
I. 116	påbud
I. 116	pålægge
I. 116	tiltalte
I. 116	tvangsbøde
I. 118	tiltalte
juridiske kollokationer:	
I. 2	at afsige dom
I. 33	nedlægge påstand
I. 34	nedlægge påstand
I. 35	efterkomme påbud
I. 40	nedlægge påstand
I. 41	mere subsidiært
I. 43	afgive forklaring
I. 91	finde skyldig
I. 91	den rejste tiltale
I. 95	skærpede omstændigheder
I. 96	at fastsætte straf
I. 107	tage til følge
I. 109	thi kendes for ret
Nominalkonstruktioner:	
I. 5	til straf for <i>overtrædelse</i> af... (til straf for at have overtrådt...)
I. 9	Arbejdstilsynets bekendtgørelse nr. 1109 af 15. december 1992 om

	<i>anvendelse af tekniske hjælpemidler (Arbejdstilsynets bekendtgørelse nr. 1109 af 15. december 1992 om hvordan tekniske hjælpemidler skal/bør anvendes)</i>
I. 11	Arbejdstilsynets bekendtgørelse nr. 561 af 24. juni 1994 om <i>indretning af tekniske hjælpemidler (Arbejdstilsynets bekendtgørelse nr. 561 af 24. juni 1994 om hvordan tekniske hjælpemidler skal/bør indrettes)</i>
I. 16	maskinen, som ikke ved <i>afskærmning</i> eller på anden måde var sikret imod, at personer kunne komme i berøring med farlige maskindele (maskinen, som ikke var afskærmet eller på anden måde var sikret imod, at personer kunne komme i berøring med farlige maskindele)
I. 17	Maskinen ikke var sikret mod... <i>udslyngning af værktøj</i> , emner eller dele heraf (Maskinen ikke var sikret mod...,at værktøj, emner eller dele heraf kunne blive slynget ud)
I. 18	hvorved der opstod <i>risiko for tilskadekomst</i> for operatøren (hvorved operatøren risikerede at komme til skade)
I. 18	under arbejdet ved maskinen (imens han/hun arbejdede ved maskinen)
I. 23	Arbejdstilsynets bekendtgørelse nr. 1109 af 15. december 1992 om <i>anvendelse af tekniske hjælpemidler (Arbejdstilsynets bekendtgørelse nr. 1109 af 15. december 1992 om hvordan tekniske hjælpemidler skal/bør anvendes)</i>
I. 29	maskinen, som ikke ved <i>afskærmning</i> eller på anden måde var sikret mod, at personer kunne komme i berøring med farlige maskindele (maskinen, som ikke var afskærmet eller på anden måde var sikret mod, at personer kunne komme i berøring med farlige maskindele)
I. 31	Maskinen som ikke var sikret mod <i>udslyngning af værktøj</i> , emner eller dele heraf (Maskinen som ikke var sikret mod, at værktøj, emner eller dele heraf kunne blive slynget ud)
I. 31	hvorved der opstod risiko for <i>tilskadekomst</i> for operatøren under arbejdet ved maskinen (hvorved der opstod risiko for, at operatøren kunne komme til skade)
I. 32	under <i>arbejdet</i> ved maskinen (imens han/hun arbejdede ved maskinen)
I. 33	Anklagemyndigheden har nedlagt <i>påstand</i> om bødestraf på ikke under kr. 60.000,-. (Anklagemyndigheden har påstået bødestraf på ikke under kr. 60.000,-.)
I. 37	overvågningsanordninger til <i>sikring af betjening af maskinen med åben/aftaget beskyttelseskærm</i> (overvågningsanordninger til at sikre betjening af maskinen med åben/aftaget beskyttelseskærm)
I. 40	Tiltalte ved direktør A har principalt nedlagt <i>påstand</i> om frifindelse (Tiltalte ved direktør A har principalt påstået frifindelse)
I. 57	Under maskinens drift er der risiko for <i>udslyngning af værktøj</i> , emne eller dele heraf (Under drift er der risiko for, at værktøj, emne eller dele heraf kan blive slynget ud af maskinen)
I. 58	En CNC-maskine skal på baggrund af ovenstående have <i>afskærmning af farezonerne</i> (på baggrund af ovenstående skal farezonerne på en CNC-maskine være afskærmet)
I. 59	Heraf følger, at maskinen skal have <i>afskærmning</i> , som sikrer mod at række ind i maskinens bevægelsesområde (Heraf følger, at maskinen skal være afskærmet, så den sikret mod, at man kan række ind i maskinens bevægelsesområde)
I. 60	afskærmningen skal sikre mod <i>udslyngning af værktøj</i> , emner eller dele heraf, samt køle/smøremiddel (afskærmningen skal sikre mod, at værktøj, emner eller dele heraf, samt køle/smøremiddel skal kunne slynges ud af maskinen)
I. 71	således at maskinen kan fortsætte cyklus efter <i>lukning af låger</i> , reset og genstart (således at maskinen kan fortsætte cyklus efter, at låger er blevet lukket, og efter at maskinen er blevet nulstillet og genstartet)

I. 79	Ved arbejdstilsynets <i>besøg</i> på virksomheden den 18. september 1998 (da arbejdstilsynet besøgte virksomheden den 18. september 1998)
I. 82	ledelsen ved tilsynsrapport af 22. september 1998 blev meddelt <i>påbud</i> om, at bringe maskinens overvågningsanordninger i funktionsdygtig stand (ledelsen ved tilsynsrapport af 22. september 1998 blev påbudt at bringe maskinens overvågningsanordninger i funktionsdygtig stand)
I. 88	uden, at de elektriske overvågningsanordninger til <i>sikring</i> imod <i>betjening</i> af maskinen med åben/aftaget beskyttelseskærm var bragt i funktionsduelig stand (uden, at de elektriske overvågningsanordninger, som skulle sikre imod, at maskinen skulle kunne betjenes med åben/aftaget beskyttelseskærm var bragt i funktionsduelig stand)
I. 92	Da der ved <i>overtrædelsen</i> af arbejdsmiljøloven er fremkaldt fare for skade på liv eller helbred (Da der ved, at arbejdsmiljøloven er blevet overtrådt er fremkaldt fare for skade på liv eller helbred)
I. 98	arbejdstilsynets bekendtgørelse nr. 1109 af 15. december 1992 om <i>anvendelse</i> af tekniske hjælpemidler (Arbejdstilsynets bekendtgørelse nr. 1109 af 15. december 1992 om hvordan tekniske hjælpemidler skal/bør anvendes)
I. 100	arbejdstilsynets bekendtgørelse nr. 561 af 24. juni 1994 om indretning af tekniske hjælpemidler (Arbejdstilsynets bekendtgørelse nr. 561 af 24. juni 1994 om hvordan tekniske hjælpemidler skal/bør indrettes)
I. 113	overvågningsanordninger til <i>sikring</i> af betjening af maskinen med åben/aftaget beskyttelseskærm (overvågningsanordninger til at sikre betjening af maskinen med åben/aftaget beskyttelseskærm)
Lix:	
1192 ord	
547 svære ord	
42 perioder	
A = 45,9	
B = 28,4	
Lix = (A+ B) = 74,3 (meget svær)	

Bilag 6

Udskrift af dombogen for Vestre Landsret

Retten i Horsens, 2. afdeling, har den 8. februar 2000 afsagt dom i sagen i 1. instans (SS 97-409/99).

Anklagemyndigheden har påstået domfældelse efter anklageskriftet i forhold 1, således at det statueres, at der forelå stor fare ved arbejdet, samt skærpelse. Anklagemyndigheden har dog nedlagt påstand om, at det tiltalte selskab frifindes for tiltalen for at have undladt at sikre tilstrækkeligt mod nedstyrtningsfare langs tagkanten.

Tiltalte har påstået frifindelse i forhold 1, og som følge heraf en formildelse af bøden til 5.000 kr.

Anklagemyndigheden har med forsvarerens indforståelse berigtiget tiltalen i forhold 1, således at "jf. § 82, stk. 3, nr. 1," indsættes efter "Arbejdsmiljølovens § 82, stk. 1, nr. 1,".

Direktør B har supplerende forklaret, at de medarbejdere i det tiltalte selskab, der var beskæftiget med det pågældende arbejde, var i færd med at svejse tagpap på. Medarbejderne bevæger sig fremad, når de svejser tagpap på. Tagpaprullerne og gasflaskerne transporteres omkring ved hjælp af en sækkevogn.

Landsrettens begrundelse og resultat:

Ad forhold 1:

Kravet i § 23, stk. 1, nr. 1, i bekendtgørelse nr. 1017 af 15. december 1993 om, at der i tilfælde, hvor et rækværk eller anden lige så effektiv sikring ikke er nødvendig, i stedet kan opsættes en tydelig og holdbar markering af arbejdsstedet, må forstås som et krav om, at markeringen er umiddelbart erkendelig for de personer, der udfører arbejde på taget, og om, at markeringen vil være egnet til at bevare sin funktion i hele den periode, arbejdet udføres. De rød-hvide markeringsbånd, der er anvendt i det foreliggende tilfælde, findes ikke at opfylde kravene til tydelighed og holdbarhed i bekendtgørelsens § 23, stk. 1, nr. 1. Hertil kommer, at arbejdsstedet ikke var markeret langs i hvert fald en af de korte sider.

Der foreligger derfor en overtrædelse af § 38, stk. 1, i arbejdsmiljøloven, og af § 23, stk. 1, nr. 1, i bekendtgørelse nr. 1017 af 15. december 1993.

Under hensyn til, at den mangelfulde markering af arbejdsstedet trådte i stedet for et rækværk eller anden lige så effektiv sikring langs kanten, og til, at arbejdet foregik i ca. 7 meters højde, har der foreligget stor fare for nedstyrtning med en alvorlig ulykke til følge, hvorfor straffen tillige skal fastsættes efter arbejdsmiljølovens § 82, stk. 3, nr. 1. Det bemærkes i den forbindelse, at det findes at være uden betydning, at de pågældende medarbejdere var erfarne. Under hensyn til at straffen som nævnt tillige skal fastsættes efter arbejdsmiljølovens § 82, stk. 3, nr. 1, og til de tidligere idømte og vedtagne bødestraffe for tilsvarende overtrædelser, findes bødestraffen for de to forhold, der er til pådømmelse, passende at kunne fastsættes til 60.000 kr.

Thi kendes for ret:

Byrettens dom ændres, således at straffen forhøjes til en bøde på 60.000 kr.

Tiltalte skal betale sagens omkostninger for begge retter.

Landsretsdom 15. juni 2000. S-0507-00	
passiver:	
I. 4	det statueres, at der forelå stor fare ved arbejdet
I. 6	det tiltalte selskab frifindes
I. 11	“jf. § 82, stk. 3, nr. 1” indsættes efter “Arbejdsmiljølovens § 82”
I. 14	tagpaprullerne og gasflaskerne transporteres omkring ved hjælp af en sækkevogn
I. 19	i stedet kan opsættes en tydelig og holdbar markering

I. 22	arbejdet udføres
I. 23	De rød-hvide markeringsbånd, der er anvendt...
I. 23	findes ikke at opfylde kravene
I. 25	arbejdsstedet ikke var markeret
I. 31	hvorfor straffen tillige skal fastsættes
I. 32	det bemærkes i den forbindelse, at...
I. 32	det findes at være uden betydning, at de pågældende medarbejdere var er farne
I. 33	straffen som nævnt tillige skal fastsættes
I. 35	findes bødestrafen...passende..
I. 36	at kunne fastsættes til...
I. 37	thi kendes for ret
I. 38	Byrettens dom ændres
I. 38	straffen forhøjes
Adverbialer:	
I. 2 (medial)	retten i Horsens...har den 8. februar 2000 afsagt dom
I. 8 (medial)	tiltalte har påstået frifindelse i forhold 1, og som følge heraf en formildelse af bøden
I. 10 (medial)	anklagemyndigheden har med forsvarerens indforståelse berigtiget tiltalen at de medarbejdere i det tiltalte selskab, der var beskæftiget med det pågældende arbejde, var i færd med at svejse tagpap på
I. 12 (medial)	kravet i § 23, stk. 1, nr. 1, i bekendtgørelse nr. 1017 af 15. december 1993 om, at der i tilfælde, hvor et rækværk eller anden lige så effektiv sikring ikke er nødvendig, i stedet kan opsættes en tydelig og holdbar markering af arbejdsstedet
I. 19 (medial)	under hensyn til, at den mangelfulde markering af arbejdsstedet trådte i stedet for et rækværk eller anden lige så effektiv sikring langs kanten og til, at arbejdet foregik i ca. 7 meters højde, har der foreligget stor fare for nedstyrtning
I. 28 (initial)	det bemærkes i den forbindelse, at det findes at være uden betydning, at...
I. 32 (medial)	under hensyn til at straffen som nævnt tillige skal fastsættes efter arbejdsmiljølovens § 82, stk. 3, nr. 1, og til de tidligere eidømte og vedtagne bødestrafte for tilsvarende overtrædelser findes bødestrafen...passende at kunne fastsættes til 60.000 kr.
I. 33 (initial)	
Sammensatte præpositioner:	
I. 28	under hensyn til
I. 28	i stedet for
I. 33	under hensyn til
Komplekse substantivsyntagmer:	
I. 6	tiltalen for at have undladt at sikre tilstrækkeligt mod nedstyrtningssfare langs tagkanten
I. 12	de medarbejdere..., der var beskæftiget med det pågældende arbejde,
I. 18	kravet i § 23, stk. 1, nr. 1, i bekendtgørelse nr. 1017 af 15. december 1993 om, at der i tilfælde, hvor et rækværk eller anden lige så effektiv sikring ikke er nødvendig, i stedet kan opsættes en tydelig og holdbar markering af arbejdsstedet
I. 19	i tilfælde, hvor et rækværk eller anden lige så effektiv sikring ikke er

	nødvendig
I. 20	en tydelig og holdbar markering af arbejdsstedet
I. 20	et krav om, at markeringen er umiddelbart erkendelig for de personer, der udfører arbejde på taget, og om, at markeringen vil være egnet til at bevare sin funktion i hele den periode, arbejdet udføres
I. 23	de rød-hvide markeringsbånd, der er anvendt i de foreliggende tilfælde
I. 24	kravene til tydelighed og holdbarhed i bekendtgørelsens § 23, stk. 1, nr. 1.
I. 26	en overtrædelse af § 38, stk. 1, i arbejdsmiljøloven, og af § 23, stk. 1, nr. 1, i bekendtgørelse nr. 1017 af 15. december 1993
I. 28	den mangelfulde markering af arbejdsstedet
I. 29	et rækværk eller anden lige så effektiv sikring langs kanten
I. 30	stor fare for nedstyrtning med alvorlig ulykke til følge
I. 34	de tidligere idømte og vedtagne bødestrafte for tilsvarende overtrædelser
I. 35	bødestrafte for de to forhold, der er til pådømmelse
Fagterminologi:	
I. 1	dombog
I. 4	anklagemyndigheden
I. 4	anklageskrift
I. 4	forhold
I. 5	anklagemyndigheden
I. 7	tiltalte
I. 8	formildelse
I. 8	forhold
I. 10	anklagemyndigheden
I. 10	berigtige
I. 10	tiltalen
I. 10	Forhold
I. 12	Tiltalte
I. 17	Ad
I. 35	bødestrafte
Juridiske kollokationer:	
I. 2	afsigte dom
I. 2	1. instans
I. 4	påstå domfældelse
I. 6	nedlægge påstand
I. 8	påstå frifindelse
I. 37	thi kendes for ret
Nominalkonstruktioner:	
I. 2	Retten i Horsens, 2. afdeling, har den 8. februar 2000 afsagt <i>dom</i> i sagen i 1. instans (Retten i Horsens, 2. afdeling, har den 8. februar 2000 dømt sagen i 1. instans)
I. 8	Tiltalte har påstået frifindelse i forhold 1, og som følge heraf en <i>formildelse</i> af bøden til 5.000 kr. (Tiltalte har påstået frifindelse i forhold 1, og som følge heraf, at bøden formildes til 5.000 kr.)
I. 10	Anklagemyndigheden har med forsvarerens <i>indforståelse</i> berigtiget tiltalen i forhold 1, således at "jf. § 82, stk. 3, nr. 1," indsættes efter "Arbejdsmiljølovens § 82, stk. 1, nr. 1,." (Anklagemyndigheden har berigtiget

	tiltalen i forhold 1, således at "jf. § 82, stk. 3, nr. 1," indsættes efter "Arbejds miljølovens § 82, stk. 1, nr. 1", hvilket forsvareren var indforstået med.)
I. 21	de personer, der udfører <i>arbejde</i> på taget (de personer, der arbejder på taget)
I. 26	der foreligger derfor en <i>overtrædelse</i> af § 38, stk. 1 (dermed har tiltalte overtrådt § 38, stk. 1)
I. 29	<i>arbejdet</i> foregik i ca. 7 meters højde (de ansatte arbejdede i ca. 7 meters højde)
I. 30	har der foreligget stor fare for <i>nedstyrning</i> (har der foreligget stor fare for, at en medarbejder kunne styrte ned)
I. 32	det findes at være uden <i>betydning</i> , at de pågældende medarbejdere var erfarne (det findes ikke at betyde noget, at de pågældende medarbejdere var erfarne)
I. 35	findes bødestraffen for de to forhold, der er til <i>pådommelse</i> , passende at kunne fastsættes til 60.000 kr. (findes bødestraffen for de to forhold, som tiltalte skal dømmes for, passende at kunne fastsættes til 60.000 kr.)
Lix:	
487 ord	
174 svære ord	
21 perioder	
A = 35,7	
B = 23,2	
Lix = (A+ B) = 58,9 (meget svær)	

Bilag 7

Vestre Landsrets dom af 16. maj 2001, 9. afd., a.s. nr. S-3075-00

Retten i Esbjerg, 3. afdeling, har den 27. oktober 2000 afsagt dom i sagen i 1. instans (SS 3.00397/00).

Tiltalte har påstået formildelse, navnlig således at frihedsstraffen gøres betinget.

Anklagemyndigheden har påstået skærpelse således, at tillægsbøden forhøjes til 180.000 kr.

Om sagsforløbet er det blandt andet oplyst, at tiltaltes selvangivelse fra 1994 er dateret den 3. april 1995. Den 11. januar 1996 forelå der en revisionsrapport til brug for indkomstansættelser for 1993 - 1994. Inden revisionsrapporten var udarbejdet, havde der været afholdt møde i skatteforvaltningen med tiltalte og hans revisor. Tiltaltes selvangivelse for 1995 blev modtaget af skatteforvaltningen den 16. september 1996 og selvangivelsen for 1996 er dateret den 6. juni 1997. I forbindelse med revisionen af tiltaltes virksomhed for indkomstårene 1995 og 1996 blev tiltalte den 25. september 1997 bedt om at fremsende yderligere oplysninger til brug herfor. Revisionsrapporten for indkomstårene 1995 og 1996 forelå den 1. september 1998. I den mellemliggende periode havde der den 23. januar 1998 været afholdt møde i skatteforvaltningen med tiltalte og hans revisor. Den 15. september 1998 fremsendte tiltaltes revisor tiltaltes bemærkninger til denne revisionsrapport til skatteforvaltningen.

Bemærkningerne blev behandlet af skatteforvaltningen og resulterede i et tillæg af 13. oktober 1998 til revisionsrapporten af 1. september 1998. Sagen blev herefter sendt til Told- og Skatteregionen til ansvarsvurdering. Den 16. marts 1999 blev der i den forbindelse afholdt møde med tiltalte og hans revisor. Den 25. juni 1999 modtog Politimesteren i Esbjerg tiltalebegæring fra Told- og Skatteregionen. Tiltalte blev afhørt den 27. september 1999 og anklageskrift blev indleveret til retten den 7. marts 2000.

Tiltalte har supplerende forklaret, at han kom til Danmark i 1989. Han stammer fra Iran og havde inden indrejsen til Danmark boet 3 år i Tyrkiet. I 1993 blev han ansat i det pizzeria, som han efterfølgende købte. Han har haft nogle unge piger til at hjælpe sig i pizzeriaet om aftenen og i weekends. I 1998 flyttede han til N.N.-by, men han flyttede tilbage til A.A.-by, hvor han købte C.C. Pizzeria. Han skal nu i gang med en uddannelse som tandtekniker i København, og pizzeriaet skal sælges. Han bor alene. Han har to børn på 3 og 6 år med sin tidligere kæreste, der bor i A.A.-by. Børnene bor hos hende.

Landsrettens begrundelse og resultat:

Frihedsstraffen findes passende udmålt til hæfte i 20 dage.

Det tiltrædes, at der skal fastsættes en tillægsbøde i medfør af straffelovens § 50, stk. 2. under hensyn til de unddragne beløbsstørrelser og sædvanlig beregningspraksis fastsættes tillægsbøden til 175.000 kr.

Af de grunde, der er anført af byretten, tiltrædes det, at der ikke er grundlag for at gøre frihedsstraffen betinget.

Med den anførte ændring stadfæster landsretten dommen.

Thi kendes for ret:

Byrettens dom stadfæstes med den ændring, at tillægsbøden forhøjes til 175.000 kr.

Tiltalte skal betale sagens omkostninger for landsretten.

Vestre Landsret 16. maj 2001. Udeholdt omsætning pizzeria	
passiver:	
I. 4	frihedsstraffen gøres betinget
I. 6	tillægsbøden forhøjes til 180.000 kr.
I. 8	Om sagsforløbet er det blandt andet oplyst, at...
I. 8	tiltaltes selvangivelse fra 1994 er dateret den 3. april 1995.
I. 10	Inden revisionsrapporten var udarbejdet,
I. 11	havde der været afholdt møde i skatteforvaltningen med tiltalte og hans revisor
I. 12	tiltaltes selvangivelse...blev modtaget af skatteforvaltningen den 16. september..

I. 14	selvangivelsen for 1996 er dateret den 6. juni 1997
I. 15	...blev tiltalte...bedt om at fremsende yderligere oplysninger
I. 18	I den mellemliggende periode havde der den 23. januar 1998 været afholdt møde i skatteforvaltningen med tiltalte og hans revisor
I. 22	Bemærkningerne blev behandlet af skatteforvaltningen
I. 23	sagen blev herefter sendt til Told- og Skatteregionen
I. 24	Den 16. marts 1999 blev der i den forbindelse afholdt møde med tiltalte og hans revisor
I. 26	Den 25. juni 1999 modtog Politimesteren i Esbjerg tiltalebegæring fra Told- og Skatteregionen
I. 27	tiltalte blev afhørt den 27. september
I. 28	anklageskriftet blev indleveret til retten den 7. marts
I. 30	I 1993 blev han ansat
I. 35	pizzariaet skal sælges
I. 39	det tiltrædes, at der skal fastsættes en tillægsbøde
I. 41	...fastsættes tillægsbøden til...
I. 42	...tiltrædes det, at der ikke er grundlag for at gøre frihedsstraffen betinget
I. 45	thi kendes for ret
I. 46	byrettens dom stadfæstes
I. 46	tillægsbøden forhøjes til ...
Adverbialer:	
I. 2 (medial)	retten i Esbjerg...har den 27. oktober 2000 afsagt dom
I. 9 (initial)	den 11. januar 1996 forelå der en revisionsrapport
I. 10 (initial)	inden revisionsrapporten var udarbejdet, havde der været afholdt møde
I. 14 (initial)	i forbindelse med revisionen af tiltaltes virksomhed for indkomstårene 1995 og 1996 blev tiltalte... bedt om at...
I. 15 (medial)	blev tiltalte den 25. september 1997 bedt om...
I. 18 (initial)	I den mellemliggende periode havde der...været afholdt møde i skatteforvaltningen med tiltalte og hans revisor
I. 18 (medial)	havde der den 23. januar 1998 været afholdt møde i skatteforvaltningen med tiltalte og hans revisor
I. 20 (initial)	Den 15. september 1998 fremsendte tiltaltes revisor tiltaltes bemærkninger til denne revisionsrapport til skatteforvaltningen
I. 24 (initial)	den 16. marts 1999 blev der... afholdt møde med tiltalte og hans revisor
I. 25 (medial)	blev der i den forbindelse afholdt møde med tiltalte og hans revisor
I. 26 (initial)	Den 25. juni 1999 modtog Politimesteren i Esbjerg tiltalebegæring fra Told- og Skatteregionen
I. 30 (medial)	og (han) havde inden indrejsen til Danmark boet i Tyrkiet
I. 39 (initial)	Under hensyn til de undtagne beløbsstørrelser og sædvanlig beregningspraksis fastsættes tillægsbøden til 175.000 kr.
I. 42 (initial)	af de grunde, der er anført i byretten tiltrædes det, at der ikke er grundlag for at gøre frihedsstraffen betinget.
I. 44 (initial)	med den anførte ændring stadfæster landsretten dommen
Sammensatte præpositioner:	
I. 14	i forbindelse med
I. 39	i medfør af
I. 40	under hensyn til

Komplekse substantivsyntagmer:	
I. 1	Vestre Landsrets dom af 16. maj 2001, 9. afd., a.s. nr. S-3075-00
I. 2	revisionen af tiltaltes virksomhed for indkomstårene 1995 og 1996
I. 22	et tillæg af 13. oktober 1998 til revisionsrapporten af 1. september 1998
Fagterminologi:	
I. 4	tiltalte
I. 4	frihedsstraf
I. 5	betinget
I. 6	anklagemyndigheden
I. 6	tillægsbøde
I. 8	sagsforløbet
I. 28	anklageskriftet
I. 39	tiltræde
I. 39	tillægsbøde
I. 40	unddragne beløbsstørrelser
I. 41	sædvanlig beregningspraksis
I. 41	tillægsbøde
I. 42	At tiltræde
I. 43	frihedsstraf
I. 43	betinget
I. 46	tillægsbøde
juridiske kollokationer:	
I. 3	1. instans
I. 4	påstå formildelse
I. 6	påstå skærpelse
I. 43	gøre betinget
I. 44	stadfæste en dom
I. 45	thi kendes for ret
I. 46	stadfæste en dom
Nominalkonstruktioner:	
I. 8	Om <i>sagsforløbet</i> er det blandt andet oplyst (Om hvordan sagen er forløbet er det blandt andet oplyst)
I. 15	I forbindelse med <i>revisionen</i> af tiltaltes virksomhed for indkomstårene 1995 og 1996 (I forbindelse med at tiltaltes virksomhed blev revideret for indkomstårene 1995 og 1996)
I. 24	Sagen blev herefter sendt til Told- og Skatteregionen til <i>ansvarsvurdering</i> (Sagen blev herefter sendt til Told- og Skatteregionen så ansvaret kunne vurderes)
I. 30	Han stammer fra Iran og havde inden <i>indrejsen</i> til Danmark boet 3 år i Tyrkiet (Han stammer fra Iran og havde inden han flyttede til Danmark boet 3 år i Tyrkiet)
Lix:	
465 ord	
185 svære ord	

33 perioder	
A = 39,8	
B = 14,1	
Lix = (A+ B) = 53,9 (svær)	

Bilag 8

Vestre Landsrets dom af 25. juni 2001, 9. afdeling, S-0568-01

Ribe byrets dom af 16. februar 2001, 1.25035/00.

Anklagemyndigheden har påstået dom i overensstemmelse med tiltalen i 1. instans.

Tiltalte har påstået stadfæstelse.

For landsretten har tiltalte fremlagt nogle fakturaer, der indeholder forskellige rabatsatser på miljødiesel.

Tiltalte har for landsretten i det væsentlige forklaret. som i 1. instans.

Der er endvidere afgivet vidneforklaring af V.1, ...

Tiltalte har supplerende forklaret, at han startede som taxavognmand i 1991. Hans virksomhed brugte nok ca. 10.000 liter brændstof pr. måned. Der blev fyldt op ugentligt. Tanken blev stillet op omkring 1996. Han fik mere rabat ved at få fyringsolie, men han bad ikke om fyringsolie, men kun om mere rabat. Fyringsolie blev slet ikke drøftet. Han holdt op, da der kom kontrolbesøg. Han så først da, at der stod fyringsolie på fakturaerne. Han så ikke fakturaerne, da de kom ind. Han regnede med, at han fik den rabat, som han kunne få.

V.1 har forklaret, at han er distriktschef hos N.N. Man kan bruge fyringsolie som motorbrændstof. Han fik en forespørgsel fra tiltalte i 1997 om levering af fyringsolie. Han mener, at han blev spurgt under et besøg hos tiltalte. N.N. havde hidtil leveret miljødiesel til tiltalte. Man drøftede næsten altid priser og rabatter. Fra den dato blev leverancen ændret fra miljødiesel til fyringsolie. Som han husker det, blev han spurgt, om N.N. kunne levere fyringsolie, og det kunne man. Det er ikke tilsigtet, at fyringsolie skal anvendes som motorbrændstof, og det plejer han at sige. Der er mere svovl i fyringsolie. Han har nok sagt, at det ikke er den anvendelse, der er formålet med produktet oprindeligt. Man kunne tanke fyringsolie på visse benzintanke, vistnok kun C.C. og D.D., og påfyldningsstudsene kunne bruges på dieslbiler.

Landsrettens begrundelse og resultat:

Tiltaltes forklaring om, at han bad om yderligere rabat og derefter af benzinselskabet fik leveret fyringsolie uden at vide det, og uden, at han så fakturaerne, stemmer ikke med vidnet V.1's forklaring og findes i sig selv at være så usandsynlig, at der kan bortses fra den. Det lægges herefter i

overensstemmelse med vidnets forklaring til grund, at tiltalte selv har bedt om at få ændret leverancen til fyringsolie, og at han gjorde det for at spare penge, ligesom han, der drev erhvervsvirksomhed som taxavognmand, vidste eller bestemt formodede, at afgiften på fyringsolie var lavere end på diesel. Tiltalte findes herefter skyldig i tiltalen ved forsætligt at have overtrådt olieafgiftslovens § 25, stk. 1, nr. 2, jf. stk. 3, jf. § 1, oprindeligt stk. 5, nu stk. 7.

Straffen fastsættes efter de nævnte bestemmelser til en bøde på 90.000 kr. med en forvandlingsstraf på hæfte i 30 dage.

Thi kendes for ret:

T straffes med en bøde på 90.000 kr. Forvandlingsstraffen er hæfte i 30 dage.

Tiltalte skal betale sagens omkostninger for begge retter.

Landsretsdom 25. juni 2001. S-0568-01	
passiver:	
I. 9	der er afgivet vidneforklaring af V.1
I. 11	der blev fyldt op ugentligt
I. 12	tanken blev stillet op omkring 1996
I. 14	fyringsolie blev slet ikke drøftet
I. 14	der kom kontrolbesøg
I. 18	man kan bruge fyringsolie som motorbrændstof
I. 19	han fik en forespørgsel fra tiltalte
I. 20	han blev spurgt under et besøg hos tiltalte
I. 21	man drøftede næsten altid priser og rabatter
I. 22	blev leverancen ændret
I. 23	blev han spurgt
I. 24	det kunne man
I. 24	det er ikke tilsigtet, at fyringsolie skal anvendes som motorbrændstof
I. 28	man kunne tanke fyringsolie på visse benzintanke
I. 28	påfyldningsstudsene kunne bruges på dieslbiler
I. 31	og derefter af benzinselskabet fik leveret fyringsolie
I. 33	findes i sig selv at være så usandsynlig, at der kan bortses fra den
I. 34	det lægges herefter...til grund
I. 39	tiltalte findes herefter skyldig
I. 42	straffen fastsættes...til en bøde på 90.000 kr.
I. 44	thi kendes for ret
Adverbialer:	
I. 8 (medial)	tiltalte har <i>for landsretten i det væsentligste</i> forklaret...
I. 22 (initial)	<i>fra den dato</i> blev leverancen ændret
I. 23 (initial)	<i>som han husker det,</i> blev han spurgt om...
I. 34 (medial)	det lægges <i>herefter i overensstemmelse med vidnets forklaring</i> til grund...

I. 37 (medial)	ligesom han, <i>der drev erhvervsvirksomhed som taxavognmand</i> , vidste...at...
I. 42 (medial)	straffen fastsættes <i>efter de nævnte bestemmelser</i> til en bøde
Sammensatte præpositioner:	
I. 3	i overensstemmelse med
I. 34-35	i overensstemmelse med
Komplekse substantivsyntagmer:	
I. 6	nogle fakturaer, der indeholder forskellige rabatsatser på miljødiesel
I. 26	den anvendelse, der er formålet med produktet oprindeligt
I. 31	tiltaltes forklaring om, at han bad om yderligere rabat og derefter af benzinselskabet fik leveret fyringsolie uden at vide det, og uden, at han så fakturaerne
I. 37	han, der drev erhvervsvirksomhed som taxavognmand,
I. 40	Olieafgiftslovens § 25 stk. 1, nr. 2, jf. Stk. 3 jf. § 1, oprindeligt stk. 5, nu stk. 7
Fagterminologi:	
I. 3	anklagemyndigheden
I. 3	tiltale
I. 5	tiltalte
I. 6	tiltalte
I. 10	tiltalte
I. 20	tiltalte
I. 31	tiltalte
I. 35	tiltalte
I. 39	forsættligt
I. 43	forvandlingsstraf
I. 43	hæfte
I. 45	hæfte
I. 45	forvandlingsstraf
I. 47	tiltalte
juridiske kollokationer:	
I. 3	påstå dom
I. 5	påstå stadfæstelse
I. 8	1. instans
I. 9	afgive vidneforklaring
I. 34	lægge til grund
I. 39	finde skyldig i tiltalen
I. 44	thi kendes for ret
Nominalkonstruktioner:	
I. 19	Han fik en <i>forespørgsel</i> fra tiltalte i 1997(tiltalte spurgte ham i 1997)
I. 19	om <i>levering</i> af fyringsolie (om de kunne levere fyringsolie)
I. 20	Han mener, at han blev spurgt under et <i>besøg</i> hos tiltalte (Han mener, at han blev spurgt på et tidspunkt, hvor han besøgte tiltalte)
I. 26	Han har nok sagt, at det ikke er den <i>anvendelse</i> , der er formålet med produktet

	oprindeligt (Han har nok sagt, at det ikke er den måde det oprindeligt var formålet, at produktet skulle anvendes på)
I. 33	Tiltaltes forklaring om, at han bad om yderligere rabat og derefter af benzinselskabet fik leveret fyringsolie uden at vide det, og uden, at han så fakturaerne, stemmer ikke med vidnet V.1's <i>forklaring</i> (Tiltaltes forklaring om, at han bad om yderligere rabat og derefter af benzinselskabet fik leveret fyringsolie uden at vide det, og uden, at han så fakturaerne, stemmer ikke med det vidnet V.1 har forklaret)
Lix:	
462 ord	
139 svære ord	
38 perioder	
A = 30,1	
B = 12,2	
Lix = (A+ B) = 42,3 (middelsvær)	

Bilag 9

Vestre Landsrets dom af 17. august 2001, 11. afd., a.s. S-0656-01

Aalborg byrets dom af 19. december 2000, 10. afdeling, SS 10.25096/00

Tiltalte, T, har påstået frifindelse, subsidiært formildelse, navnlig således at straffen gøres betinget, eventuelt med vilkår om samfundstjeneste.

Anklagemyndigheden har påstået skærpende.

Anklagemyndigheden har for landsretten berigtiget tiltalens forhold 9, således at "1990" ændres til "1993".

Tiltalte og vidnerne S.O., A.V., O.O., H.L., C.L. og A.H. har for landsretten i det væsentlige forklaret som i 1. instans.

Tiltalte har supplerende forklaret, at han har drevet virksomheden OC-gården siden 1971. I 1989 købte han selskabet A-Udlejning, der i 1991 blev omdannet til et anpartsselskab med hans kone, H.H., som eneanpartshaver. A.H. var hans revisor frem til 1997. De arbejder, som han har udført for B.... & CO uden at foretage fakturering, vedrører i hovedsagen småbeløb. Tilbygningen til H.H.s villa blev opført i årene 1991 - 1996. Han påbegyndte selv byggeriet med udgravning og støbning, og senere udførte B.... & Co samt C... El-Teknik henholdsvis murer- og elarbejde. Det arbejde, der er anført i "tilbud" af 17. maj 1995 fra C... El-Teknik, har han fået udført. De var imidlertid uenige om regningens størrelse, og det kan godt passe, at han først modtog "tilbuddet" efter, at Told og Skat var kommet ind i billedet. Der var ikke uenighed om, at C... El-Teknik skyldte tiltalte et beløb på ca. 47.000 kr. plus moms, men han undlod at fremsende en faktura, fordi der var uenighed om størrelsen af C... El-Tekniks krav.

Tiltalte har endvidere forklaret, han ikke i 1995 drøftede med firmaet D... ApS, hvem D skulle sende regningen til vedrørende arbejde udført på en

værkstedbygning tilhørende A-Udlejning ApS. Hans firma OC-gården har i et vist omfang betalt regninger for A-Udlejning ApS. D var på et tidspunkt utilfreds med en bilreparation udført af tiltalte, men de blev ikke decideret uvenner herover, og det er ikke grunden til, at tiltalte ikke fremsendte regninger til D for skyldige beløb.

Tiltalte har yderligere forklaret, at han i nogle tilfælde måtte give gaver 3 - 4 gange om ugen til personer, der var ansat på virksomheder, som havde bestilt tiltaltes virksomhed til at udføre et stykke arbejde. Denne praksis er almindelig, og det er nødvendigt for at få arbejdet til at glide. Beløbene androg nok 30 - 50.000 kr. årligt.

Den nye campingvogn tilhører reelt hans firma, selvom det ikke fremgår af regnskabet. Hans nye revisor O.O. sagde, at de skulle holde campingvognen ude af regnskaberne, således som skattevæsenet havde sagt.

Tiltalte har om sine personlige forhold forklaret, at han fortsat er selvstændig erhvervsdrivende, og at han er den eneste, der kan lede firmaet. Han har normalt to personer ansat. De er begge ufaglærte.

S.O. har supplerende forklaret, at B... & Co ikke indkrævede fordringen på 115.580 kr. i 1993, dels fordi det var uafklaret, om tiltalte selv skulle færdiggøre nogle arbejder, dels fordi tiltalte manglede penge. Tiltalte har ikke på noget tidspunkt direkte sagt, at nu skulle de sætte sig ned og lave en samlet opgørelse. De har ikke aftalt at "glemme" regningerne.

A.V. har supplerende forklaret, at tiltalte oprindeligt fik et mundtligt overslag lydende på ca. 35.000 kr. "Tilbudet" af 17. maj 1995 blev sendt til tiltalte, da det var blevet udfærdiget. Det var udtryk for, hvad tiltalte skyldte ham. Først i 1998 fik tiltalte tilsendt en faktura.

O.O. har supplerende forklaret, at han er registreret revisor. OC-gården lejer en bygning hos A-Udlejning ApS for en årlig leje på 50.000 kr. I den anledning er der en mellemregningskonto. Denne konto bliver også anvendt i forbindelse med, at OC-gården betaler terminsydelser for A-Udlejning ApS. Da vidnet blev revisor for tiltalte, stemte mellemregningskontoen ikke, og den tidligere revisor havde ikke foretaget korrekt afstemning af kontoen i de foregående år. Da han overtog revisionsopgaven, var der ingen bilag for tiden forud for 1992. Når tiltalte sammen med Told og Skat har skønnet over udgifterne til byggeriet på H.H.s villa, kan en del af disse udgifter således godt vedrøre tiden forud for 1992.

D har supplerende forklaret, at han var klar over, at OC-gården og A-Udlejning ApS var to forskellige firmaer. Meningen var, at han og tiltalte hver skulle udfærdige en samlet faktura, og differencen skulle betales. Han gik ud fra, at tiltalte herefter ville foretage den relevante opdeling mellem OC-gården og A-Udlejning ApS.

Fuldmægtig C.L. har supplerende forklaret, at han deltog i ransagningen på tiltaltes bopæl. Tiltalte havde forud for ransagningen forklaret, at han på bopælen havde en mappe med kopier af bilag vedrørende byggeriet på N.N.-vej 2, herunder en faktura på 40.000 kr. udstedt til H.H. i 1991. Da de kom ud på bopælen, havde tiltalte imidlertid destrueret bilagene. Man fandt ikke de originale bilag - heller ikke på OC-gården for tiden forud for 1992.

Registreret revisor A.H. har supplerende forklaret, at OC-gården selv lavede momsregnskabet, efter at firmaet var gået over til at føre regnskab på EDB. Han mener, at han har foretaget afstemning af mellemregningskontoen.

Landsrettens begrundelse og resultat:

Vedrørende forhold 1, 3 og 4:

Af de grunde, som byretten har anført, tiltrædes det også efter bevisførelsen for landsretten, at tiltalte er fundet skyldig i forhold 1 i overtrædelse af skattekontrollovens § 13, stk. 1, ved at have udeholdt indtægter for i alt 409.014 kr., og at have undladt at indtægtsføre erstatninger for i alt 55.343 kr. Det bemærkes, at tiltalte ved igennem flere år at have undladt at viderefakturere udgifterne til byggeriet på hustruens villa tillige vedrørende dette forhold findes at have haft forsæt til skatteunddragelse.

Ved tiltaltes forklaring er det bevist, at tiltalte i 1986 købte en lejlighed i Spanien for 150.000 kr. Af de grunde, der er anført i byrettens afgørelse, tiltrædes det, at tiltalte er fundet skyldig som sket i overtrædelse af skattekontrollovens § 13, stk. 2, ved groft uagtsomt at have unddraget lejeværdien af lejligheden fra beskatning. Landsretten finder ikke grundlag for at tilsidesætte skønnet over lejlighedens værdi.

Som følge af domfældelsen for de forsætlige forhold i forhold 1 tiltrædes det, at tiltalte tillige er fundet skyldig som sket i forhold 3 og 4.

Vedrørende forhold 2 og 5:

Under hensyn til at tiltalte i årene 1994 - 1996 forsætligt har holdt en del af sin omsætning uden for regnskaberne med henblik på skatteunddragelse, og til at tiltalte i 1997 opretholdt den hidtidige bogføringspraksis, findes det bevist, at tiltalte også for året 1997 har haft forsæt til forsøg på skatteunddragelse. Med disse bemærkninger tiltrædes det, at tiltalte er fundet skyldig som sket.

Vedrørende forhold 6 - 8:

Af de grunde, som byretten har anført, tiltrædes det også efter bevisførelsen for landsretten, at tiltalte er fundet skyldig som sket i forhold 6.

Som følge af domfældelsen i forhold 6 tiltrædes det endvidere, at tiltalte er fundet skyldig som sket i forhold 7 og 8.

Vedrørende forhold 9:

Af de grunde, som byretten har anført, tiltrædes det også efter bevisførelsen for landsretten, at tiltalte er skyldig i henhold til anklageskriftet, således som det er berigtiget for landsretten.

5 voterende tiltræder, at fængselsstraffen er udmålt som sket.

1 voterende finder, at straffen under hensyn til varigheden og omfanget af de begåede forhold bør udmåles til fængsel i 3 måneder.

Der træffes afgørelse efter stemmeflertallet.

Samtlige voterende finder efter forholdenes karakter ikke grundlag for at gøre straffen betinget.

Tillæggsbøden findes passende fastsat.

I medfør af lov nr. 433 af 31. maj 2000 § 31, jf. § 33, stk. 1, fastsættes forvandlingsstraffen til fængsel.

Under hensyn til bødens størrelse udmåles forvandlingsstraffen til fængsel i 60 dage.

Med den anførte ændring stadfæster landsretten dommen.

T h i k e n d e s f o r r e t :

Byrettens dom stadfæstes med den ændring, at forvandlingsstraffen fastsættes til fængsel i 60 dage.

Tiltalte skal betale sagens omkostninger

Vestre Landsret 17. august 2001. Udeholdte indtægter	
passiver:	
I. 3	således at straffen gøres betinget
I. 7	således at "1990" ændres til "1993"
I. 11	I 1989 købte han selskabet A-Udlejning, der i 1991 blev omdannet til et anpartsselskab
I. 15	Tilbygningen til H.H.s villa blev opført i årene 1991 - 1996
I. 17	Det arbejde, der er anført i "tilbud" af 17. maj 1995 fra C... El-Teknik, har han fået udført
I. 26	hvem D skulle sende regningen til vedrørende arbejde udført på en værkstedsbygning
I. 27	D var på et tidspunkt utilfreds med en bilreparation udført af tiltalte
I. 48	"Tilbuddet" af 17. maj 1995 blev sendt til tiltalte, da det var blevet udfærdiget
I. 49	Først i 1998 fik tiltalte tilsendt en faktura
I. 53	Denne konto bliver også anvendt i forbindelse med, at OC-gården betaler terminsydelser for A-Udlejning ApS
I. 63	differencen skulle betales
I. 69	en faktura på 40.000 kr. udstedt til H.H. i 1991
I. 70	man fandt ikke de originale bilag
I. 77	Af de grunde, som byretten har anført, tiltrædes det...
I. 78	tiltalte er fundet skyldig
I. 81	det bemærkes, at...
I. 81	tiltalte findes at have haft forsæt til skatteunddragelse
I. 84	Ved tiltaltes forklaring er det bevist, at...
I. 85	af de grunde, der er anført i byrettens afgørelse, tiltrædes det...

I. 86	tiltalte er fundet skyldig som sket
I. 90	tiltrædes det, at tiltalte tillige er fundet skyldig som sket...
I. 95	findes det bevist, at...
I. 97	tiltrædes det, at tiltalte er fundet skyldig som sket
I. 100	tiltrædes det også...at, tiltalte er fundet skyldig som sket i forhold 6
I. 102	tiltrædes det endvidere, at tiltalte er fundet skyldig som sket i forhold 7 og 8
I. 105	tiltrædes det også...at tiltalte er skyldig i henhold til anklageskriftet, således som det er berigtiget for landsretten
I. 108	fængselsstraffen er udmålt som sket
I. 109	straffen...bør udmåles til...
I. 111	der træffes afgørelse efter stemmeflertal
I. 114	tillægsbøden findes passende fastsat
I. 115	fastsættes forvandlingsstraffen til...
I. 117	Udmåles forvandlingsstraffen til...
I. 120	thi kendes for ret
I. 121	byrettens dom stadfæstes
I. 121	forvandlingsstraffen fastsættes til fængsel
Adverbialer:	
I. 8 (medial)	tiltalte og vidnerne... har <i>for landsretten i det væsentligste</i> forklaret...
I. 26 (medial)	hans firma... har <i>i et vist omfang</i> betalt regninger for A-Udlejning
I. 27 (medial)	D var <i>på et tidspunkt</i> utilfreds med...
I. 31 (medial)	D har yderligere forklaret, at han <i>i nogle tilfælde</i> måtte give gaver <i>3-4 gange om ugen</i> til personer
I. 39 (medial)	tiltalte har <i>om sine personlige forhold</i> forklaret...
I. 44 (medial)	tiltalte har <i>ikke på noget tidspunkt direkte</i> sagt
I. 49 (initial)	<i>først i 1998</i> fik tiltalte tilsendt en faktura
I. 52 (initial)	<i>i den anledning</i> er der en mellemregningskonto
I. 55 (initial)	<i>da vidnet blev revisor for tiltalte</i> , stemte mellemregningskontoen ikke
I. 57 (initial)	<i>da han overtog revisionsopgaven</i> var der ingen bilag for tiden forud for 1992
I. 58 (initial)	<i>når tiltalte sammen med Told og Skat har skønnet over udgifterne til byggeriet på H.H.s villa</i> , kan en del af disse udgifter således godt vedrøre tiden forud for 1992
I. 67 (medial)	tiltalte havde <i>forud for ransagningen</i> forklaret, at...
I. 69 (initial)	<i>da de kom ud på bopælen</i> , havde tiltalte imidlertid destrueret bilagene
I. 77 (initial)	<i>af de grunde, som byretten har anført</i> , tiltrædes det...
I. 77 (medial)	tiltrædes det også <i>efter bevisførelsen for landsretten</i> , at...
I. 81 (medial)	At tiltalte <i>ved igennem flere år at have undladt at viderefakturere udgifterne til byggeriet på hustruens villa tillige vedrørende dette forhold</i> findes at have haft forsæt til skatteunddragelse
I. 84 (initial)	<i>ved tiltaltes forklaring</i> er det bevist, at...
I. 85 (initial)	<i>af de grunde, der er anført i byrettens afgørelse</i> , tiltrædes det...
I. 90 (initial)	<i>som følge af domfældelsen for de forsætlige forhold i forhold 1</i> , tiltrædes det,...
I. 93 (initial)	<i>Under hensyn til at tiltalte i årene 1994 - 1996 forsætligt har holdt en del af sin omsætning uden for regnskaberne med henblik på skatteunddragelse, og til at tiltalte i 1997 opretholdt den hidtidige bogføringspraksis</i> , findes det bevist, at...
I. 96 (medial)	at tiltalte <i>også for året 1997</i> har haft forsæt til forsøg på skatteunddragelse
I. 97 (initial)	med disse bemærkninger
I. 100 (initial)	<i>af de grunde, som byretten har anført</i> , tiltrædes det også...
I. 100 (medial)	tiltrædes det også <i>efter bevisførelsen for landsretten</i> , at...

I. 102 (initial)	<i>som følge af domfældelsen i forhold 6, tiltrædes det endvidere,...</i>
I. 105 (initial)	<i>af de grunde, som byretten har anført, tiltrædes det også...</i>
I. 109 (medial)	At straffen <i>under hensyn til varigheden og omfanget af de begående forhold</i> bør udmåles til fængsel...
I. 115 (initial)	i medfør af lov nr. 433 af 31. maj 2000 § 31, jf. § 33, stk. 1
I. 117 (initial)	<i>under hensyn til bødens størrelse</i> udmåles forvandlingsstraffen til fængsel i 60 dage
I. 119 (initial)	<i>med den anførte ændring</i> stadfæster landsretten dommen
Sammensatte præpositioner:	
I. 4	med vilkår om
I. 93	under hensyn til
I. 94	med henblik på
I. 106	i henhold til
I. 109	under hensyn til
I. 115	i medfør af
I. 117	under hensyn til
Komplekse substantivsyntagmer:	
I. 1	Vestre Landsrets dom af 17. august 2001, 11. afd., a.s. S-0656-01
I. 2	Aalborg byrets dom af 19. december 2000, 10. afdeling, SS 10.25096/00
I. 11	selskabet A-Udlejning, der i 1991 blev omdannet til et anpartsselskab med hans kone, H.H., som eneanpartshaver
I. 25	regningen vedrørende arbejde udført på en vækstedsbygning tilhørende A-Udlejning ApS
I. 28	en bilreparation udført af tiltalte
I. 32	personer, der var ansat på virksomheder, som havde bestilt tiltaltes virksomhed til at udføre et stykke arbejde.
I. 53	Denne konto bliver også anvendt i forbindelse med, at OC-gården betaler terminsydelser for A-Udlejning
I. 68	en mappe med kopier af bilag vedrørende byggeriet på N.N.-vej 2, herunder en faktura på 40.000 kr. udstedt til H.H. i 1991
I. 78	overtrædelse af skattekontrollovens § 13, stk. 1, ved at have udeholdt indtægter for i alt 409.014 kr., og at have undladt at indtægtsføre erstatninger for i alt 55.343 kr.
I. 86	overtrædelse af skattekontrollovens § 13, stk. 2, ved groft uagtsomt at have unddraget lejeværdien af lejligheden fra beskatning???
Fagterminologi:	
I. 3	subsidiært
I. 3	formildelse
I. 4	samfundstjeneste
I. 5	anklagemyndigheden
I. 6	berigtige
I. 6	forhold
I. 77	tiltræde
I. 78	forhold
I. 83	skatteunddragelse
I. 90	forsætlige

I. 90	forhold
I. 91	forhold
I. 92	forhold
I. 93	forsættigt
I. 97	skatteunddragelse
I. 99	forhold
I. 101	forhold
I. 102	tiltræde
I. 103	forhold
I. 104	forhold
I. 106	anklageskrift
I.107	berigtige
I. 108	voterende
I. 108	tiltræde
I. 112	voterende
I. 112	forholdene
I. 114	tillægsbøde
I. 116	forvandlingsstraf
I. 117	forvandlingsstraf
juridiske kollokationer:	
I. 3	påstå frifindelse
I. 5	påstå skærpeelse
I. 8	i det væsentligste
I. 9	1. instans
I. 42	indkræve en fordring
I. 78	finde skyldig
I. 86	finde skyldig
I. 88	finde grundlag for
I. 96	have forsæt til...
I. 97	finde skyldig som sket
I. 102	finde skyldig som sket
I. 103	finde skyldig som sket
I. 112	finde grundlag for
I. 113	betinget straf
I. 117	udmåle straf
I. 119	stadfæste dom
Nominakonstruktioner:	
I. 14	De arbejder, som han har udført for B... & CO uden at foretage <i>fakturering</i> (De arbejder, som han har udført for B... & CO uden at fakturere dem)
I. 16	Han påbegyndte selv byggeriet med <i>udgravning</i> og <i>støbning</i> (Han begyndte selv med at udgrave og støbe fundamentet til bygningen)
I. 20	Der var ikke <i>uenighed</i> om, at C... EI-Teknik skyldte tiltalte et beløb på... (Parterne var ikke uenige om, at C... EI-Teknik skyldte tiltalte et beløb på...)
I. 22	der var <i>uenighed</i> om størrelsen af C... EI-Tekniks krav (parterne var ikke uenig om størrelsen af C... EI-Tekniks krav)
I. 56	den tidligere revisor havde ikke foretaget korrekt <i>afstemning</i> af kontoen (den tidligere revisor havde ikke afstemt kontoen korrekt)

I. 64	Han gik ud fra, at tiltalte herefter ville foretage den relevante <i>opdeling</i> mellem OC-gården og A-Udlejning ApS (Han gik ud fra, at tiltalte herefter ville opdele de relevante udgifter mellem OC-gården og A-Udlejning ApS)
I. 66	Fuldmægtig C.L. har supplerende forklaret, at han deltog i <i>ransagningen</i> på tiltaltes bopæl (Fuldmægtig C.L. har supplerende forklaret, at han var med til at ransage tiltaltes bopæl)
I. 74	Han mener, at han har foretaget <i>afstemning</i> af mellemregningskontoen (Han mener, at han har afstemt mellemregningskontoen)
I. 78	tiltalte er fundet skyldig i forhold 1 i <i>overtrædelse</i> af skattekontrollovens § 13, stk. 1 (tiltalte er fundet skyldig i forhold 1 i at have overtrådt skattekontrollovens § 13, stk. 1)
I. 86	tiltalte er fundet skyldig som sket i <i>overtrædelse</i> af skattekontrollovens § 13, stk. 2 (tiltalte er fundet skyldig som sket i at have overtrådt skattekontrollovens § 13, stk. 2)
I. 87	ved groft uagtsomt at have unddraget lejeværdien af lejligheden fra <i>beskatning</i> (ved groft uagtsomt at have unddraget at betale skat af lejeværdien af lejligheden)
I. 97	tiltalte også for året 1997 har haft forsæt til forsøg på <i>skatteunddragelse</i> (tiltalte også for året 1997 har haft forsæt til forsøg på at unddrage at betale skat)
I. 102	Som følge af <i>domfældelsen</i> i forhold 6 tiltrædes det endvidere, at tiltalte er fundet skyldig som sket i forhold 7 og 8 (Som følge af, at retten har dømt tiltalte skyldig i forhold 6 tiltrædes det endvidere, at tiltalte er fundet skyldig som sket i forhold 7 og 8)
I. 111	Der træffes <i>afgørelse</i> efter stemmeflertallet (straffen afgøres efter stemmeflertallet)
Lix:	
1292 ord	
356 svære ord	
75 perioder	
A = 27,6	
B = 17,2	
Lix = (A+ B) = 44,8 (middelsvær)	

Bilag 10

København Byrets dom af 21. august 2000, 12. afdeling, 1042/2000

Politidirektøren i København har ved et anklageskrift af 14. januar 2000 rejst tiltale mod T til straf for

smugleri efter toldlovens § 73, stk. 2. jf. stk. 1, nr. 1,

ved den 1. september 1999 om eftermiddagen med forsæt til afgiftsunddragelse via Gedser som passager i en turistbus at have indført 200 gram tobak, 760 cigaretter, 1 fl whisky og 6 halve flasker anden spiritus uden angivelse for toldmyndighederne, hvorved han unddrog det offentlige ialt 1885 kr. i afgifter.

Anklagemyndigheden har nedlagt påstand om bødestraf.

Der er endvidere i medfør af toldlovens § 73, stk. 4, nedlagt påstand om, at tiltalte skal betale told og afgifter med 1885 kr.

Tiltalte har nægtet sig skyldig.

Tiltalte er tidligere straffet

ved udenretlig den 21. august 1998 at have vedtaget en bøde efter toldlovens § 73, stk. 2, jfr stk. 1, 1. pkt.

Der er til retsbogen, hvortil henvises, afgivet forklaring af tiltalte og vidneforklaring af S.H. og C.P.

Retten bemærkninger:

Tiltalte har erkendt, at han ved indrejsen medbragte de tiltalen omhandlede varer, der var indkøbt samme dag i Tyskland, uden indgivelse af angivelseskort, og at han var bekendt med, at de pågældende varer ikke afgiftfrit kunne indføres. Herefter samt ved den af vidnet S.H. afgivne forklaring findes tiltalen bevist.

Straffen fastsættes efter de ovennævnte bestemmelser til en bøde på 3500 kr., subsidiært hæfte i 6 dage.

Påstanden om betaling af told og afgifter tages i medfør af den påberåbte bestemmelse til følge som nedenfor bestemt.

Thi kendes for ret:

Tiltalte T straffes med en bøde på 3.500 kr.

Forvandlingsstraffen er hæfte i 6 dage.

Tiltalte skal betale sagens omkostninger.

Tiltalte skal endvidere betale 1885 kr. i told og gifter.

Københavns byret. 21. august 2000. Smugleri	
passiver:	
I. 11	der er...nedlagt påstand om...
I. 14	tiltalte er tidligere straffet
I. 17	der er til retsbogen, hvortil henvises, afgivet forklaring af tiltalte og vidneforklaring af S.H og C.P
I. 21	de pågældende varer ikke afgiftsfrit kunne indføres
I. 23	findes tiltalen bevist
I. 24	straffen fastsættes ...til en bøde på 3.500 kr.
I. 26	påstanden om betaling af told og afgifter tages...til følge
I. 28	thi kendes for ret
I. 29	tiltalte T straffes med en bøde på 3.500 kr.

Adverbialer:	
I. 2 (medial)	Politidirektøren i København har ved et anklageskrift af 14. januar 2000 rejst tiltale mod T
I. 5 (medial)	Rejst tiltale mod T til straf for smugleri efter toldlovens § 73, stk. 2. jf. Stk. 1. nr. 1 ved den 1. september 1999 om eftermiddagen med forsæt til afgiftsuddragelse via Gedser som passager i en turistbus at have indført 200 gram tobak,...
I. 11 (medial)	der er endvidere i medfør af toldlovens § 73, stk. 4, nedlagt påstand om, at...
I. 15 (medial)	Tiltalte er tidligere straffet ved udenretlig den 21. august 1998 at have vedtaget en bøde
I. 17 (medial)	der er til retsbogen, hvortil henvises, afgivet forklaring af tiltalte
I. 19 (medial)	tiltalte har erkendt, at han ved indrejsen medbragte de tiltalen omhandlende varer
I. 22 (initial)	herefter samt ved den af vidnet S.H. Angivne forklaring findes tiltalen bevist
I. 24 (medial)	straffen fastsættes efter de ovennævnte bestemmelser til en bøde
I. 26 (medial)	påstanden om betaling af told og afgifter tages i medfør af den påberåbte bestemmelse til følge
Sammensatte præpositioner:	
I. 11	i medfør af
I. 26	i medfør af
Komplekse substantivsyntagmer:	
I. 1	Københavns Byrets dom af 21. august 2000, 12. afdeling, 1042/2000
I. 2	et anklageskrift af 14. januar 2000
I. 16	straf for smugleri efter toldlovens § 73, stk. 2, jf. Stk. 1, nr. 1
I. 17	retsbogen, hvortil henvises
I. 19	de tiltalen omhandlende varer, der var indkøbt samme dag i Tyskland, uden indgivelse af angivelseskort
I. 22	den af vidnet S.H. Afgivne forklaring
Fagterminologi:	
I. 2	anklageskrift
I. 6	afgiftsuddragelse
I. 10	anklagemyndigheden
I. 10	bødestraf
I. 12	tiltalte
I. 13	tiltalte
I. 14	tiltalte
I. 15	udenretlig
I. 17	retsbog
I. 18	vidneforklaring
I. 19	tiltalte
I. 19	tiltalen
I. 25	subsidiært
I. 25	hæfte
I. 26	påberåbt
I. 29	tiltalte

I. 30	forvandlingsstraf
I. 30	hæfte
I. 31	tiltalte
I. 32	tiltalte
juridiske kollokationer:	
I. 3	rejse tiltale
I. 5	med forsæt
I. 10	nedlægge påstand
I. 11	nedlagt påstand
I. 13	nægte sig skyldig
I. 17	at afgive forklaring
I. 22	at afgive forklaring
I. 24	at fastsætte straf
I. 26	Tage til følge
I. 74	thi kendes for ret
Nominalkonstruktioner:	
I. 6	ved...med forsæt til <i>afgiftsunddragelse</i> via Gedser som passager i en turistbus at have indført 200 gram tobak (ved...med hensigt om at undgå at betale afgift via Gedser som passager i en turistbus at have indført 200 gram tobak)
I. 8	uden <i>angivelse</i> for toldmyndighederne (uden at angive varerne til toldmyndighederne)
I. 10	Anklagemyndigheden har nedlagt <i>påstand</i> om bødestraf (Anklagemyndigheden har påstået bødestraf)
I. 19	Tiltalte har erkendt, at han ved <i>indrejsen</i> medbragte de tiltalen omhandlede varer (Tiltalte har erkendt, at han, da han rejste ind i Danmark, medbragte de tiltalen omhandlede varer)
I. 20	varer, der var indkøbt samme dag i Tyskland, uden <i>indgivelse</i> af angivelseskort (varer, der var indkøbt samme dag i Tyskland, uden at indgive et angivelseskort til SKAT)
I. 21	Herefter samt ved den af vidnet S.H. afgivne <i>forklaring</i> findes tiltalen bevist (Herefter, samt ved det vidnet S.H.har forklaret, findes tiltalen bevist)
I. 26	Påstanden om <i>betaling</i> af told og afgifter tages i medfør af den påberåbte bestemmelse til følge (Påstanden om at tiltalte skal betale told og afgifter tages i medfør af den påberåbte bestemmelse til følge)
Lix:	
	289 ord
	116 svære ord
	16 perioder
	A = 40,1
	B = 18,1
	Lix = (A+ B) = 58,2 (meget svær)

**Danske analysedomme efter Domstolsstyrelsens
sprogpolitik
i 2003**

UDSKRIFT
AF
SØ- & HANDELSRETTENS DOMBOG

Afsagt den 18. januar 2007

Anklagemyndigheden

mod

T

(Advokat Thomas Markert)

D O M

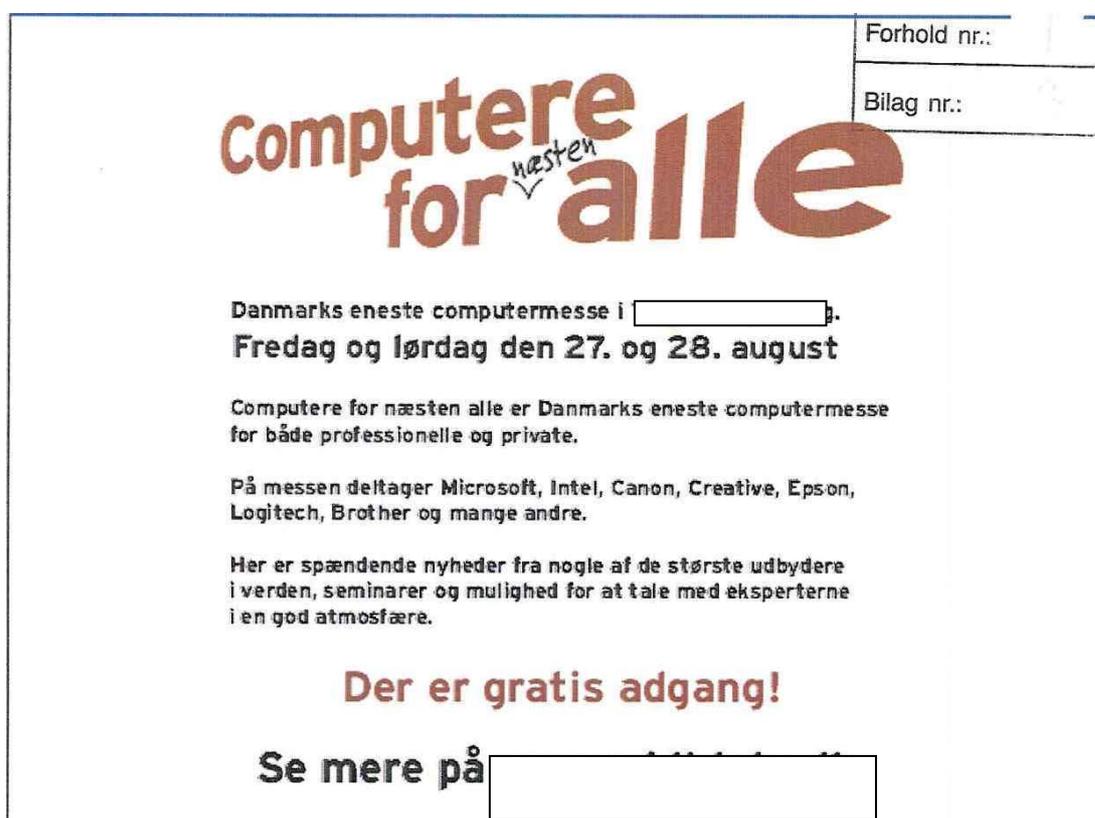
Under denne sag har anklagemyndigheden ved politimesteren i Viborg ved anklageskrift af 23. juni 2005, som berigtiget under domsforhandlingen, rejst tiltale mod T, for overtrædelse af lov nr. 1389 af 21. december 2005 om markedsføring § 30, stk. 6, jf. stk. 3, jf. § 6, stk. 1 og 2, jf. lovbekendtgørelse nr. 699 af 17. juli 2000 om markedsføring, som ændret ved lov nr. 428 af 6. juni 2002, lov nr. 450 af 10. juni 2003 og lov nr. 352 af 19. maj 2004, § 22, stk. 6, jf. stk. 3, jf. § 6a, stk. 1 og 2, ved omkring den 20. august 2004 som erhvervsdrivende fra selskabets adresse T, ved brug af elektronisk post at have sendt ca. 5.000 e-mails vedrørende en computermesse den 27. og 28. august 2004 i V, med henblik på afsætning af varer, arbejds- eller tjenesteydelser, selv om modtagerne ikke forudgående havde anmodet om det og ikke i forbindelse med køb hos tiltalte og

afgivelse af e-mail adresse var blevet informeret om, at de ville modtage sådanne henvendelser og givet en let adgang til at frabede sig det.

Anklagemyndigheden har nedlagt påstand om straf af bøde.

Tiltalte har nægtet sig skyldig under henvisning til, at de pågældende mails ikke er udsendt med henblik på afsætning af varer eller tjenesteydelser. Det bestrides ikke, at der er udsendt det angivne antal mails, og at det er sket uden samtykke fra modtagerne som angivet i Markedsføringslovens § 6a.

Den i anklageskriftet anførte mail så således ud:

	Forhold nr.: 1
	Bilag nr.: 2

Computere for næsten alle

Danmarks eneste computermesse i [redacted] p.
Fredag og lørdag den 27. og 28. august

Computere for næsten alle er Danmarks eneste computermesse for både professionelle og private.

På messen deltager Microsoft, Intel, Canon, Creative, Epson, Logitech, Brother og mange andre.

Her er spændende nyheder fra nogle af de største udbydere i verden, seminarer og mulighed for at tale med eksperterne i en god atmosfære.

Der er gratis adgang!

Se mere på [redacted]

Tilmeld nyhedsbrevet
Er du ikke selv tilmeldt vores nyhedsbrev i forvejen, kan du tilmelde dig på [www.\[redacted\].dk](http://www.[redacted].dk).

Afmeld nyhedsbrevet
Hvis du ikke ønsker at modtage nyhedsbreve, bedes du afmelde dem på [www.\[redacted\].dk](http://www.[redacted].dk) eller du kan ringe til os på telefon [redacted].

Forklaringer

Adm. direktør for T AA har forklaret, at han i 2004 var eneejer af selskabet, der sælger hardware og software. De er e-mærkede af e-handelsfonden, hvori Forbrugerrådet deltager aktivt. Der blev sendt 31.000 nyhedsmails til folk, som aktivt havde tilmeldt sig nyhedsbrevet, og derudover sendte de mailen til 5.000 kunder i deres kundedatabase, som ikke havde givet samtykke til at modtage e-mails. Ts interesse i projektet "Det digitale hjem" var at få folk til at udforske mulighederne heri, herunder mediecentre, som sluttes til fjernsynet, og som kan styre alt muligt. Der var også trådløse tilslutningsmuligheder, og det var livsstilsprodukter. På messen var der 38 udstillere, som hver havde fra 1-10 produkter på deres stande. Der er produkter, som de sælger, men også nogle, som indgår i helhedsløsningen, f.eks. at man fra køleskabet kan bestille sin middagsmad, men som de ikke selv sælger. T var selv arrangør og afholdt alle omkostninger mod at få betaling fra udstillerne, der betalte for standpladserne. De fik et underskud på ca. 200.000 kr. ud af de ca. 400.000, som de afholdt i forbindelse med arrangementet. Der blev solgt for ca. 60.000 kr. på udstillingen, idet T fra et hjørne solgte ca. 20 forskellige produkter. De andre udstillere måtte ikke sælge på messen. Han kan ikke sige, hvor mange nye kunder de har fået, og det ville også være useriøst at sige, at de ikke havde fået nye kunder. I 2004 omsatte de for 140 mio. kr. ex. moms, men bundlinjen viste et tab på 1½ mio. kr. I 2005 var omsætningen 160 mio. kr., og de oprettede i den forbindelse et datterselskab. E-mailen har ikke kostet mere end den tid, som deres grafiker brugte til designet heraf og til at afsende den på computeren. De havde gjort sig overvejelser om, hvilke regler der gjaldt, og de læste lovteksten således, at der ikke var noget til hinder for udsendelse af en indbydelse til et gratis arrangement. Det primære formål var ikke at afsætte varer på messen, så havde de jo nok haft nogle tilbud med på messen. Det var CC, der traf beslutningen, men han ville have nået til samme resultat og bakker det derfor op. Alle de 5.000 modtagere havde tidligere handlet hos T.

BB har forklaret, at DK-Cert, Computer Emergency Response Team, er en statslig virksomhed, fundet af undervisningsministeriet, og holder øje med it-sikkerhed i Danmark i samarbejde med internationale samarbejdspartnere. Han er formand for en arbejdsgruppe, der for Foreningen af Internetleverandører i Danmark holder øje med spam. Han arbejder

også for Teknologirådet. Spamproblematikken på verdensplan er stærkt stigende. 87 % af alle mails i verden var spam i 2006, og i år forventes 89 %. Har man ingen filtrering, har man et stort problem, idet det tager 10 sek. pr. mail at undersøge og slette spammails. I sidste uge drøftede han problemet med et forsikringselskab, og de havde trods filtre 50 % spam. Spamfiltrene, som 80 % af danske virksomheder anvender, frafiltrerer også mails, som ikke er spam, så der er herved gode mails, der ryger fløjten. En amerikansk undersøgelse viser, at 6 % af modtagerne reflekterer på spam, og toldvæsenet siger også, at mængden af varer, der sendes som følge af spam, er stigende. Spam bruges også til at formidle orme og virus og til at hvirvle folk ind i såkaldte dotnets på flere hundrede tusinde computere, som kan misbruges til at udsende spammails. Som filtre brugtes tidligere programmer, der ser på frasorteret mail, men spamudsenderne tilpasser sig sådanne filtre, og i dag har spams derfor et andet udseende, så de ikke filtreres fra af sortlister og grålister (over mails, der er sendt til mange modtagere, men som ikke behøver at være spam), men kommer ind på hvidlisten. En dansk virksomheds mails vil glide pænt igennem spamfiltre, fordi mailen ser pæn og ordentlig ud, også den konkrete, medmindre nogen har anmeldt afsenderen og mailen til sortlistning enten lokalt eller hos filterleverandøren. ISP'erne i Danmark har haft spamfiltre for private i de seneste 2 år, efter at det blev et almindeligt krav, men der vil til stadighed komme spam på trods af filtrene, idet det koster stor administration af køre listerne og opdatere dem. Virksomheder betaler ca. 92 kr. pr. måned pr. ansat for filtre, så de ansatte undgår spam. Hans egen organisation har spamfilter, men da det for nylig gik ned, fik han 192 spammails om dagen. Spamfiltrene har man nytte af, men det er en rullende proces, så de vil blive omgået.

Parternes synspunkter

Anklagemyndigheden har anført, at udsendelsen af den mail, som sagen angår, er omfattet af markedsføringslovens § 6 a, idet den har til formål at fremme afsætningen af varer eller tjenesteydelser. Det er i den forbindelse ikke afgørende, om en henvendelse angår konkrete varer eller tjenesteydelser, eller om den som den foreliggende angår markedsføringsforanstaltninger af mere generel karakter. T havde en direkte kommerciel interesse i at afholde messen "Computere for alle" og at få så mange besøgende på denne

som muligt. Afholdelsen skete endvidere ikke kun i mere langsigtet markedsføringsmæssigt øjemed, men også med henblik på salg, idet T ifølge direktør AAs forklaring også foretog salg på messen af 20 forskellige produkter.

Tiltalte har ikke bestridt, at de 5.000 e-mails, som tiltalen angår, er udsendt uden fornødent samtykke fra modtagerne. Nogle af modtagerne har købt inden ikrafttrædelsen af de nye regler i markedsføringslovens § 6 a, stk. 2, medens andre har købt efter ikrafttrædelsen af disse regler uden at have givet samtykke til modtagelse af e-mails som den foreliggende. Derfor skal begge stykker citeres, således som det også er sket i det berigtigede anklageskrift.

Udgangspunktet for udmålingen af bødestrafen er den opnåede eller tilsigtede fortjeneste. Udgifterne til udsendelse af spam er beskedne, og størrelsen af disse udgifter giver derfor ikke særlig hjælp for udmålingen af bøde i den foreliggende sag.

Retspraksis fastsætter bøden under hensyn til antallet af henvendelser, antallet af modtagere, den gene og økonomiske skade, som modtagelsen af de pågældende mails har påført modtagerne, og til sagens øvrige omstændigheder. Domstolene har tidligere tiltrådt de retningslinier, som Forbrugerombudsmanden har fastsat, dog med en afrunding i nedadgående retning ved et større antal mails. Folketingets Erhvervsudvalg har den 8. december 2005 i forbindelse med vedtagelsen af den nye markedsføringslov tilkendegivet, at straffen skal fastsættes i overensstemmelse med Forbrugerombudsmandens retningslinier uanset Højesterets dom af 22. september 2005 i sagen om et teleselskab.

I den foreliggende sag skal straffen imidlertid uanset denne tilkendegivelse efter anklagemyndighedens opfattelse udmåles efter den praksis, som gjaldt forud for vedtagelsen af den nye lov. Anklagemyndigheden mener, der må lægges afgørende vægt på, at tiltalte har tilsigtet fortjeneste gennem den branding, som afholdelsen af messen har medført. At der muligt ikke er tilsigtet nogen umiddelbar fortjeneste ved afholdelsen af messen, er ikke afgørende, idet afholdelsen af messen har medført en branding for tiltalte. Højesterets dom i teleselskabssagen lagde vægt på en helhedsvurdering, og man kan efter anklagemyndighedens opfattelse ikke blot dividere antallet af mails op i den bøde på 400.000 kr., som Højesteret udmålte, hvilket i denne sag ville føre til en bødesats pr. mail på 8-10 kr., svarende til 40.000 kr. – 50.000 kr.

Tiltaltes eventuelle vildfarelse om indholdet af markedsføringslovens § 6 a er i givet fald en egentlig retsvildfarelse, og der er efter anklagemyndighedens opfattelse ikke grundlag for at anse vildfarelsen for undskyldelig, idet tiltalte burde have undersøgt reglens indhold nærmere, herunder ved gennemsyn af Forbrugerstyrelsens hjemmeside. Der er hverken grundlag for strafbortfald eller strafnedsættelse.

Forsvareren har gjort gældende, at udsendelsen af mailen er ikke sket med henblik på afsætning af varer eller tjenesteydelser som anført i markedsføringslovens § 6 a, idet tiltalte alene har fremsendt en indbydelse til en non-profit messe. Det kan godt være, at invitationen på længere sigt tjener som god markedsføring af tiltalte. Markedsføring indgår imidlertid ikke i markedsføringslovens § 6 a's ordlyd, hvorfor invitationen ikke kan antages at være strafbar, jf. straffelovens § 1, hvorefter der alene kan straffes for et forhold, der er hjemlet ved lov.

Såfremt retten finder tiltalte skyldig, gøres det gældende, at tiltalte har været i en undskyldelig retsvildfarelse om forståelsen af markedsføringslovens § 6 a. Og da tiltalte ikke har opnået nogen fortjeneste ved at sende mailen, skal der ske strafbortfald, jf. straffelovens § 83.

Straffen skal nedsættes som følge af, at mailen er sendt til tiltaltes tidligere kunder, henvendelsens indhold og det forhold, at tiltalte ikke har opnået en fortjeneste ved at sende mailen. Det forhold, at e-handelsfonden ikke har fundet anledning til at påtale den sendte mail over for T, taler tillige for strafnedsættelse. En eventuel bøde bør højst udgøre 5 kr. pr. mail, svarende til 25.000 kr.

Sø- og Handelsrettens afgørelse

Det lægges ved afgørelsen til grund, at T som arrangør af messen "Computere for alle" den 27. og 28. august 2004 i V afholdt udgifterne på ca. 400.000 kr. hertil og modtog ca. 200.000 for leje af stande fra de øvrige udstillere, herunder Microsoft, Intel, Canon, Creative, Epson, Logitech og Brother, på, hvad T selv betegnede som "Danmarks eneste computermesse for både professionelle og private".

Herefter, og idet T efter AAs forklaring under messen solgte produkter for ca. 60.000 kr., findes det ubetænkeligt at anse den meddelelse om udstillingen, som T elektronisk sendte til 36.000 modtagere den 20. august 2004, som en "henvendelse ... ved brug af elektronisk post ... med henblik på afsætning af varer, ... og andre formuegoder samt arbejds- og tjenesteydelser", jf. markedsføringslovens § 6 a, stk. 1.

Idet det tiltalte selskab har erkendt, at der ikke forelå samtykke til at modtage henvendelsen fra de 5.000 modtagere, som anklageskriftet angår, findes tiltalte herefter skyldig i overensstemmelse med anklageskriftet.

Der findes ikke at foreligge nogen undskyldelig retsvildfarelse.

Straffen fastsættes efter lov nr. 1389 af 21. december 2005 om markedsføring § 30, stk. 6, jf. stk. 3, jf. § 6, stk. 1 og 2, jf. lovbekendtgørelse nr. 699 af 17. juli 2000 om markedsføring, som ændret ved lov nr. 428 af 6. juni 2002, lov nr. 450 af 10. juni 2003 og lov nr. 352 af 19. maj 2004, § 22, stk. 6, jf. stk. 3, jf. § 6a, stk. 1 og 2, til en bøde, på 25.000 kr. Retten har herved lagt vægt på antallet af henvendelser og på henvendelsernes karakter og indhold, der ikke reklamerede for konkrete produkter, men indbød de 5.000 modtagere, der tidligere havde købt produkter hos T, til computermessen.

Tiltalte skal endvidere betale sagens omkostninger. Det bemærkes herved, at forsvareren er valgt af det tiltalte selskab, der ikke har begæret forsvarer beskikket.

THI KENDES FOR RET

T straffes med en bøde på 25.000 kr. og betaler sagens omkostninger.

Claus Jepsen

Kirsten Nielsen

Michael B. Elmer

(retsformand)

Ole Lundsgaard Andersen

Peter Møgelvang-Hansen

(Sign.)

— — —

Udskriftens rigtighed bekræftes

P.j.v. Sø- og Handelsretten, den

Dom 18. januar 2007. Sø- og handelsretten	
passiver:	
l. 4	(dom) afsagt den 18. januar
l. 11	som berigtiget under domsforhandlingen
l. 13	som ændret ved lov
l. 19	modtagerne ikke var blevet informeret om...
l. 21	og var blevet givet en let adgang til at frabede sig det
l. 24	det bestrides ikke, at...
l. 24	der er udsendt det angivne antal mails
l. 30	de er e-mærkede af e-handelsfonden
l. 31	der blev sendt 31.000 nyhedsmails
l. 34	Mediecentre, som sluttes til fjernsynet
l. 41	der blev solgt for ca. 60.000 kr....
l. 58	i år forventes 89%
l. 64	Mængden af varer, der sendes som følge af spam
l. 64	spam bruges også til at formidle orme og virus
l. 65	dotnets..., som kan misbruges til at udsende spammails
l. 66	som filtre brugtes tidligere programmer
l. 68	så de ikke filtreres fra
l. 68	sortlister og grålister (over mails, der er sendt til mange modtagere...)
l. 77	men det er en rullende proces, så de vil blive omgået
l. 89	De 5.000 e-mails, som tiltalen angår, er udsendt
l. 93	Derfor skal begge stykker citeres
l. 104	straffen skal fastsættes i overensstemmelse med...
l. 106	straffen skal udmåles efter den praksis, som...
l. 108	der må lægges afgørende vægt på...
l. 125	invitationen ikke kan antages at være strafbar
l. 126	der alene kan straffes for et forhold, der...
l. 128	gøres det gældende, at tiltalte...
l. 132	straffen skal nedsættes...
l. 132	mailen er sendt
l. 138	det lægges ved afgørelsen til grund
l. 144	findes det ubetænkeligt
l. 149	findes tiltalte herefter skyldig
l. 151	der findes ikke at foreligge nogen undskyldelig retsvildfarelse
l. 152	straffen fastsættes
l. 159	det bemærkes
l. 160	forsvareren er valgt af det tiltalte selskab
l. 161	thi kendes for ret
l. 162	T straffes med en bøde
l. 169	udskriftens rigtighed bekræftes
Adverbialer:	
l. 10 (initial)	<i>Under denne sag har anklagemyndigheden...</i>
l. 10 (medial)	<i>Har anklagemyndigheden ved politimesteren i Viborg ved anklageskrift af 23. juni 2005 som berigtiget under domsforhandlingen rejst tiltale mod T</i>
l. 15 (medial)	<i>Ved omkring den 20. august 2004 som erhvervsdrivende fra selskabets adresse T, ved brug af elektronisk post at have sendt ca. 5.000 e-mails...</i>

I. 19 (medial)	Og ikke i forbindelse med køb hos tiltalte og afgivelse af e-mail adresse var blevet informeret om, at...
I. 42 (medial)	idet T fra et hjørne solgte ca. 20 forskellige produkter
I. 59 (initial)	i sidste uge drøftede han problemet med et forsikringselskab
I. 87 (medial)	Idet T ifølge direktør AAs forklaring også foretog salg på messen
I. 102 (medial)	Erhvervsudvalget har den 8. december 2005 i forbindelse med vedtagelsen af den nye markedsføringslov tilkendegivet, at...
I. 106 (initial)	i den foreliggende sag skal straffen...udmåles
I. 106 (medial)	Skal straffen imidlertid uanset denne tilkendegivelse efter anklagemyndighedens opfattelse udmåles efter den praksis...
I. 112 (medial)	Man kan efter anklagemyndighedens opfattelse ikke blot dividere antallet af mail op i den bøde
I. 117 (medial)	der er efter anklagemyndighedens opfattelse ikke grundlag for at anse vildfarelsen som undskyldelig
I. 123 (medial)	invitationen på længere sigt tjener som god markedsføring for tiltalte
I. 128 (initial)	såfremt retten finder tiltalte skyldig, gøres det gældende at...
I. 129 (initial)	da tiltalte ikke har opnået nogen fortjeneste ved at sende mailen, skal der ske strafbortfald
I. 138 (medial)	at T som arrangør af messen "Computere for alle" den 27. og 28. august 2007 i V afholdt udgifterne
I. 143 (initial)	herefter, og idet T efter AAs forklaring under messen solgte produkter for ca. 60.000 kr., findes det ubetænkeligt at...
I. 145 (medial)	findes det ubetænkeligt at anse den meddelelse om udstillingen, som T elektronisk sendte til 36.00 modtagere den 20. august 2004, som en "henvendelse...med henblik på afsætning af varer
I. 148 (initial)	Idet det tiltalte selskab har erkendt, at der ikke forelå samtykke til at modtage henvendelse fra de 5.000 modtagere, som anlageskriftet angår, findes tiltalte herefter skyldig
I. 152 (medial)	Straffen fastsættes efter lov nr. 1389 af 21. december 2005 om markedsføring § 30, stk. 6, jf. stk. 3, jf. § 6, stk. 1 og 2, jf. lovbekendtgørelse nr. 699 af 17. juli 2000 om markedsføring, som ændret ved lov nr. 428 af 6. juni 2002, lov nr. 450 af 10. juni 2003 og lov nr. 352 af 19. maj 2004, § 22, stk. 6, jf. stk. 3, jf. § 6a, stk. 1 og 2, til en bøde på 25.000 kr.
Sammensatte præpositioner:	
I. 17	med henblik på
I. 19	i forbindelse med
I. 23	under henvisning til
I. 24	med henblik på
I. 41	i forbindelse med
I. 87	med henblik på
I. 98	under hensyn til
I. 106	i overensstemmelse med
I. 121	med henblik på
I. 146	med henblik på
I. 150	i overensstemmelse med
Komplekse substantivsyntagmer:	
I. 10	anklageskrift af 23. juni 2005, som berigtiget under domsforhandlingen,
I. 11	tiltale mod T, for overtrædelse af lov nr. 1389 af 21. december 2005 om markedsføring § 30, stk. 6, jf. stk. 3, jf. § 6, stk. 1 og 2, jf. lovbekendtgørelse nr. 699 af 17. juli 2000 om markedsføring, som ændret ved lov nr. 428 af 6.

	juni 2002, lov nr. 450 af 10. juni 2003 og lov nr. 352 af 19. maj 2004, § 22, stk. 6, jf. stk. 3, jf. § 6a, stk. 1 og 2,
I. 16	Ca. 5000 e-mails vedrørende en computermesse den 27. og 28. august 2004 i V
I. 27	den i anklageskriftet anførte mail
I. 29	eneejer af selskabet, der sælger hardware og software
I. 30	E-handelsfonden, hvori Forbrugerrådet deltager aktivt
I. 31	folk, som aktivt havde tilmeldt sig nyhedsbrevet
I. 32	5.000 kunder i deres kundedatabase, som ikke havde givet samtykke til at modtage e-mails
I. 34	mediecentre, som sluttes til fjernsynet, og som kan styre alt muligt
I. 36	38 udstillere, som hver havde fra 1-10 produkter på deres stande
I. 37	produkter, som de sælger, men også nogle, som indgår i helhedsløsninger
I. 40	udstillerne, der betalte for standpladserne
I. 40	et underskud på ca. 20.000 kr. ud af de ca. 400.000, som de afholdt i forbindelse med arrangementet
I. 46	den tid, som deres grafiker brugte til designet heraf og til at afsende den på computeren
I. 48	overvejelser om, hvilke regler der gjaldt
I. 49	udsendelse af en indbydelse til et gratis arrangement
I. 51	CC, der traf beslutningen
I. 53	En statslig virksomhed, fundet af undervisningsministeriet
I. 55	arbejdsgruppe, der for Foreningen af Internetleverandører i Danmark holder øje med spam
I. 61	spamfiltre, som 80 % af danske virksomheder anvender,
I. 61	mails, som ikke er spam,
I. 62	gode mails, der ryger fløjten
I. 63	Mængden af varer, der sendes som spam
I. 65	såkaldte dotnets på flere hundrede tusinde computere, som kan misbruges til at udsende spammails
I. 66	programmer, der ser på frasorteret mail,
I. 68	Sortilister og gråilister (over mails, der er sendt til mange modtagere, men som ikke behøver at være spam)
I. 80	udsendelsen af den mail, som sagen angår
I. 89	De 5.000 e-mails, som tiltalen angår,
I. 90	ikrafttrædelsen af de nye regler i markedsføringslovens § 6 a, stk. 2
I. 92	samtykke til modtagelse af e-mails som den foreliggende
I. 95	Udgangspunktet for udmålingen af bødestrafen
I. 95	Den opnående eller tilsigtede fortjeneste
I. 99	den gene og økonomisk skade, som modtagelsen af de pågældende mails har påført modtagerne,
I. 101	De retningslinjer, som Forbrugerombudsmanden har fastsat
I. 104	Højesterets dom af 22. september 2005
I. 106	den praksis, som gjaldt forud for vedtagelsen af den nye lov
I. 109	den branding, som afholdelsen af messen har medført
I. 114	en bødesats pr. mail på 8-10 kr, svarende til 40.000 kr-50.000 kr.
I. 116	Tiltaltes eventuelle vildfarelse om indholdet af markedsføringslovens § 6 a
I. 122	afsætning af varer eller tjenesteydelser, som anført i markedsføringslovens § 6 a
I. 126	et forhold, der er hjemlet ved lov
I. 128	en undskyldelig retsvildfarelse om forståelsen af markedsføringslovens § 6 a
I. 133	det forhold, at tiltalte ikke har opnået en fortjeneste ved at sende mailen

I. 134	det forhold, at e-handelsfonden ikke har fundet anledning til at påtale den sendte mail over for T
I. 138	T, som arrangør af messen "Computere for alle"
I. 144	den meddelelse om udstillingen, som T elektronisk sendte til 36.000 modtagere
I. 145	en "henvendelse ... ved brug af elektronisk post ... med henblik på afsætning af varer, ... og andre formuegoder samt arbejds- og tjenesteydelser"
I. 148	samtykke til at modtage henvendelsen fra de 5.000 modtagere, som anklageskriftet angår
I. 152	lov nr. 1389 af 21. december 2005 om markedsføring § 30, stk. 6, jf. Stk. 3, jf. § 6, stk. 1 og 2 jf. Lovbekendtgørelse nr. 699 af 17. juli 2000 om markedsføring, som ændret ved lov nr. 428 af 6. juni 2002, lov nr. 450 af 10. juni 2003 og lov nr. 352 af 19. maj 2004, § 22, stk. 6, jf. Stk. 3, jf. § 6a, stk. 1 og 2
I. 156	henvendelsernes karakter og indhold, der ikke reklamerede for konkrete produkter, men indbød de 5.000 modtagere, der tidligere havde købt produkter hos T
I. 160	det tiltalte selskab, der ikke har begæret forsvarer beskikket
	Fagterminologi:
I. 5	Anklagemyndigheden
I. 10	Anklagemyndigheden
I. 10	anklageskrift
I. 11	At berigtige
I. 12	Domsforhandling
I. 19	tiltalte
I. 22	anklagemyndigheden
I. 23	tiltalte
I. 24	Bestride
I. 27	anklageskrift
I. 80	anklagemyndigheden
I. 89	tiltalte
I. 89	bestride
I. 89	tiltalen
I. 98	Retspraksis
I. 109	tiltalte
I. 111	tiltalte
I. 113	anklagemyndigheden
I. 116	tiltalte
I. 117	retsvildfarelse
I. 117	anklagemyndigheden
I. 118	tiltalte
I. 120	strafbortfald
I. 120	strafnedsættelse
I. 121	Forsvareren
I. 122	tiltalte
I. 124	tiltalte
I. 128	tiltalte
I. 128	tiltalte
I. 129	retsvildfarelse
I. 129	tiltalte

I. 130	strafbortfald
I. 132	tiltalte
I. 133	tiltalte
I. 135	strafnedsættelse
I. 148	tiltalte
I. 149	anklageskrift
I. 149	tiltalte
I. 150	anklageskriftet
I. 151	retsvildfarelse
I. 159	tiltalte
I. 160	Forsvareren
I. 160	tiltalte
juridiske kollokationer:	
I. 4	(dom) afsagt
I. 11	rejse tiltale mod
I. 22	At nedlægge påstand
I. 23	nægtet sig skyldig
I. 93	at berigtige anklageskrift
I. 95	udmåling af bødestraf
I. 106	at udmåle straf
I. 121	gøre gældende
I. 126	hjemlet ved lov
I. 127	finde skyldig
I. 130	ske bortfald
I. 132	nedsætte straffen
I. 138	lægge til grund
I. 149	at finde skyldig
I. 152	at fastsætte straf
I. 160	begære forsvarer beskikket
I. 161	thi kendes for ret
I. 170	p.j.v
Nominalkonstruktioner	
:	
I. 11	Anklagemyndigheden har...rejist tiltale mod T for <i>overtrædelse</i> af... (Anklagemyndigheden har...rejist tiltale mod T for at have overtrådt...)
I. 18	Med henblik på <i>afsætning</i> af varer (Med henblik på at afsætte varer)
I. 20	i forbindelse med <i>køb</i> hos tiltalte (i forbindelse med, at de har købt varer hos tiltalte)
I. 20	I forbindelse med <i>afgivelse</i> af e-mail adresse (I forbindelse med, at de har givet tiltalte deres e-mail adresse)
I. 22	Anklagemyndigheden har nedlagt <i>påstand</i> om straf af bøde (Anklagemyndigheden har påstået straf af bøde)
I. 23	Tiltalte har nægtet sig skyldig under <i>henvielse</i> til, at... (Tiltalte har nægtet sig skyldig, og han henviser til, at...)
I. 24	Med henblik på <i>afsætning</i> af varer eller tjenesteydelser (Med henblik på at afsætte varer eller tjenesteydelser)
I. 39	Mod at få <i>betaling</i> fra udstillerne (Mod at udstillerne betalte)
I. 45	I 2005 var <i>omsætningen</i> på 160 mio. (I 2005 omsatte virksomheden for 160 mio.)

I. 48	De havde gjort sig overvejelser om... (De havde overvejet om...)
I. 49	Der ikke var noget til hinder for <i>udsendelse</i> af en indbydelse (Der ikke var noget til hinder for at udsende en indbydelse)
I. 51	Det var CC, der traf <i>beslutningen</i> (Det var CC, der besluttede at sende indbydelsen ud)
I. 84	markedsføringsforanstaltninger
I. 86	<i>afholdelsen</i> skete endvidere ikke kun i mere langsigtet markedsføringsmæssigt øjemed (messen blev endvidere ikke kun afholdt i mere langsigtet markedsføringsmæssigt øjemed)
I. 90	Inden <i>ikrafttrædelse</i> af de nye regler (Inden de nye regler trådte i kraft)
I. 92	Efter <i>ikrafttrædelse</i> af disse regler (Efter, at disse regler trådte i kraft)
I. 92	Uden at give samtykke til <i>modtagelse</i> af e-mails (Uden at give samtykke til at modtage e-mails)
I. 96	Udgifterne til <i>udsendelse</i> af spam er beskedne (der er beskedne udgifter forbundet med at udsende spam)
I. 103	I forbindelse med <i>vedtagelsen</i> af den nye markedsføringslov (I forbindelse med, at den nye markedsføringslov er blevet vedtaget)
I. 108	Den praksis, som gjaldt forud for <i>vedtagelsen</i> af den nye lov (Den praksis, som gjaldt inden den nye lov blev vedtaget)
I. 109	Tiltalte har tilsigtet fortjeneste gennem den branding, som <i>afholdelsen</i> af messen har medført (Tiltalte har tilsigtet fortjeneste gennem den branding, som det har medført at afholde messen)
I. 121	Forsvareren har gjort gældende, at <i>udsendelsen</i> af mailen ikke er sket med henblik på <i>afsætning</i> af varer (Forsvareren har gjort gældende, at mailen ikke er blevet udsendt med henblik på at afsætte varer)
I. 129	Tiltalte har været i en undskyldelig retsvildfarelse om <i>forståelsen</i> af markedsføringslovens §... (Tiltalte har været i en undskyldelig retsvildfarelse, da han ikke har forstået markedsføringslovens §... rigtigt)
I. 130	Tiltalte ikke har opnået nogen <i>fortjeneste</i> ved at sende mailen (Tiltalte ikke har tjent på at sende mailen)
I. 130	Skal der ske <i>strafbortfald</i> jf. Straffelovens § 83 (Skal straffen bortfalde jf. Straffelovens § 83)
I. 133	Tiltalte ikke har opnået en <i>fortjeneste</i> ved at sende mailen (Tiltalte ikke har tjent på at sende mailen)
I. 135	...taler tillige for <i>strafnedsættelse</i> (...taler tillige for, at straffen bør sættes ned)
I. 146	Med henblik på <i>afsætning</i> af varer (Med henblik på at afsætte varer)
I. 148	At der ikke forelå <i>samtykke</i> til at modtage henvendelsen (At modtagerne ikke havde samtykket/takket ja til at modtage henvendelsen)
Lix:	
2043 ord	
768 svære ord	
82 perioder	
A = 37,6	
B = 24,9	
Lix = (A+ B) = 64,5 (meget svær)	

Vestre Landsrets dom afsagt den 5. juli 2007 af 2. afdeling i ankesag S-0329-07

Tiltalte T har påstået frifindelse, subsidiært formildelse.

Anklagemyndigheden har påstået stadfæstelse.

Tiltalte og Vidne 1 har for landsretten i det væsentlige forklaret som i 1. instans.

Tiltalte har supplerende forklaret, at han har drevet enkeltmandsvirksomhed siden 1996. Ved det omhandlede arbejde i 2004 havde han 2 medhjælpere, sin søn og en timelønnet, men han har ikke faste ansatte. De havde i ca. 14 dage været ved at udskifte et tag, da Arbejdstilsynet kom. Det var på arbejdets sidste dag. Der var en del tømmerarbejde i entreprisen. Arbejdet ved selve gavlen var kortvarigt, og derfor blev der ikke opstillet stillads. Det var hurtigere at bruge rendegraveraanordningen. Rendegravere bruges ellers mest til andre formål. Afspærringsventilen bevirker, at skovlen holdes i stilling. Ventilen har han selv monteret, men visse rendegravere leveres med afspærringsventil. Slangen kan ikke sprænges, når rendegravere som her ikke er særligt belastet, og skulle det alligevel ske, "går det lige så stille ned". At "rendegravere konstruktion er ændret" som forklaret i byretten, betyder kun, at han har monteret en færdigproduceret ventil, som andre typer rendegravere leveres med. Metalrækværket i ca. 80 cm højde forhindrede nedstyrtning. Der var også en træliste nederst i ca. 5 cm højde. Han brugte kun konstruktionen som stillads. Når han selv var med i arbejdet, var han er den eneste, der stod i kurven. Hvis hans søn var alene af sted, brugte han nok også konstruktionen. Når han gik til og fra kurven, benyttede han en skydestige, der stod op ad muren. Der stod en og holdt ved stigen imens. En ingeniør har efterfølgende lavet nogle beregninger, der viser, at konstruktionens bæreevne var ok. Disse beregninger har anklagemyndigheden også fået. Han er ikke længere selvstændig smed. Han havde ikke råd til at fortsætte, for han kender ikke alle de forskellige regler på området og er bange for at få bøder.

Vidne 1 har supplerende forklaret, at besøget hos tiltalte i december 2004 fandt sted uden forudgående anmeldelse. Han havde blot lagt mærke til byggeriet fra vejen. Arbejdsplatformen var meget usædvanlig. Den vil ikke under nogen omstændigheder kunne godkendes. En afspærringsventil sikrer ganske vist, at rendegravere ikke pludselig sænker sig, men opbygningen skal godkendes, og underlaget skal også være stabilt. Platformen i sig selv vil kunne bryde sammen, og rækværket, der skal bestå af en hånd-, en knæ- og en fodliste, er ikke tilstrækkeligt. Fodlisten skal sidde i en højde af 15 cm, håndlisten i en højde af 1 m, hverken mere eller mindre. Det er heller ikke lovligt, at der kun var adgang til kurven via en udvendig stige.

Landsrettens begrundelse og resultat:

Af de grunde, som byretten har anført, tiltrædes det også efter bevisførelsen for landsretten,

at tiltalte er fundet skyldig som sket. Det tiltrædes, at der ved overtrædelsen er fremkaldt fare for skade på liv eller helbred, og at straffen derfor med henvisning til arbejdsmiljølovens § 82, stk. 1, nr. 1, jf. stk. 3, nr. 1 (nu stk.4, nr. 1), og de i dommen nævnte bekendtgørelser er fastsat som sket.

Der er ikke grundlag for at nedsætte bøden med henvisning til straffelovens § 82, nr.13 og 14.

Landsretten stadfæster derfor dommen.

Thi kendes for ret:

Byrettens dom stadfæstes.

Tiltalte skal betale sagens omkostninger for landsretten

Dom 5. juli 2007. Ankesag S-0329-07	
passiver:	
I. 1	dom afsagt den 5. juli 2007
I. 9	derfor blev der ikke opstillet stillads
I. 10	rendegraveren bruges ellers mest til andre formål
I. 11	skovlen holdes i stilling
I. 12	visse rendegravere leveres med afspærringsventil
I. 12	slangen kan ikke sprænges
I. 13	rendegraveren ikke er særligt belastet
I. 14	rendegraverens konstruktion er ændret
I. 15	Som andre typer rendegravere leveres med
I. 27	den vil ikke under nogen omstændigheder kunne godkendes
I. 29	opbygningen skal godkendes
I. 35	tiltrædes det også efter bevisførelsen for landsretten...
I. 36	tiltalte er fundet skyldig
I. 36	det tiltrædes, at...
I. 36	der ved overtrædelser er fremkaldt fare for skade på liv eller helbred
I. 37	straffen er fastsat som sket
I. 43	byrettens dom stadfæstes
Adverbialer:	
I. 4 (medial)	Tiltalte og vidne 1 har <i>for landsretten i det væsentligste</i> forklaret som i 1. instans
I. 6 (initial)	<i>ved det omhandlende arbejde i 2004</i> havde han 2 medarbejdere
I. 7 (medial)	De havde <i>i ca. 14 dage</i> været ved at...
I. 19 (initial)	<i>når han gik til og fra kurven</i> benyttede han en skydestige
I. 25 (medial)	Besøget hos tiltalte <i>i december 2004</i> fandt sted
I. 35 (initial)	<i>af de grunde, som byretten har anført,</i> tiltrædes det...
I. 35 (medial)	tiltrædes det også efter bevisførelsen for landsretten, at tiltalte er fundet skyldig
I. 37 (medial)	Straffen derfor med henvisning til arbejdsmiljølovens § 82, stk. 1, nr. 1, jf. stk. 3, nr. 1 (nu stk. 4, nr. 1) og de i dommen nævnte bekendtgørelser er fastsat som sket
Sammensatte præpositioner:	
I. 37	med henvisning til
I. 40	med henvisning til
Komplekse substantivsyntagmer:	
I. 14	som forklaret i byretten
I. 15	en færdigproduceret ventil, som andre typer rendegravere leveres med
I. 16	metalrækkværket i ca. 80 cm. Højde
I. 19	En skydestige, der stod op ad muren
I. 20	nogle beregninger, der viser, at konstruktionens bæreevne var ok
I. 30	rækkværket, der skal bestå af en hånd-, en knæ- og en fodliste,
I. 35	de grunde, som byretten har anført,
I. 38	de i dommen nævnte bekendtgørelser

Fagterminologi:	
I. 2	tiltalte
I. 2	subsidiært
I. 2	formildelse
I. 35	bevisførelsen
I. 36	tiltalte
I. 44	tiltalte
juridiske kollokationer:	
I. 1	at afsige dom
I. 2	At påstå frifindelse
I. 3	At påstå stadfæstelse
I. 4	1. instans
I. 36	at blive fundet skyldig som sket
I. 37	at fastsætte straf som sket
I. 41	At stadfæste en dom
I. 42	thi kendes for ret
I. 43	At stadfæste en dom
Nominalkonstruktionerne:	
I. 16	metalrækkeværket i ca. 80 cm højde forhindrede <i>nedstyrning</i> (metalrækkeværket i ca. 80 cm højde forhindrede, at arbejderne skulle styrte ned)
I. 18	når han selv var med i <i>arbejdet</i> (når han selv var med til at arbejde)
I. 26	<i>Besøget</i> hos tiltalte fandt sted... (at arbejdstilsynet besøgte tiltalte...)
I. 26	Uden forudgående <i>anmeldelse</i> (Uden på forhånd at have anmeldt, at de kom)
Lix:	
547 ord	
160 svære ord	
43 perioder	
A = 29,3	
B = 12,7	
Lix = (A+ B) = 42 (svær)	

UDSKRIFT
AF
HØJESTERETS DOMBOG

HØJESTERETS DOM
afsagt mandag den 15. oktober 2007

Sag 169/2007

(2. afdeling)

Rigsadvokaten

mod


(advokat J. Korsø Jensen, e.o.)

I tidligere instans er afsagt dom af Sø- og Handelsretten den 22. marts 2007.

I pådømmelsen har deltaget fem dommere: Per Walsøe, Børge Dahl, Lene Pagter Kristensen, Niels Grubbe og Michael Reklings.

Påstande

Anklagemyndigheden har påstået domfældelse i overensstemmelse med endeligt anklageskrift i Sø- og Handelsretten samt påstået skærpeelse.

 har påstået stadfæstelse.

Lovgrundlaget

I den dagældende markedsføringslov, lovbekendtgørelse nr. 699 af 17. juli 2000 som ændret ved lov nr. 428 af 6. juni 2002 og lov nr. 450 af 10. juni 2003, havde § 8, stk. 1 og 2, følgende ordlyd:

”Rabatmærker

§ 8. Der må ikke gives rabat eller anden ydelse ved brug af mærker, kuponer eller lignende, der er stillet til rådighed af erhvervsdrivende forud for køb af en vare eller ved udførelse af en arbejds- eller tjenesteydelse.

Stk. 2. Erhvervsdrivende må dog ved salg af en vare eller ved udførelse af en arbejds- og tjenesteydelse give rabat eller anden ydelse i form af mærker, kuponer eller lignende til senere indløsning, såfremt hvert enkelt mærke på tydelig måde er forsynet med udstederens navn eller firma med angivelse af en værdi i dansk mønt. Rabatmærkeudstederen skal indløse mærket her i landet til den pålydende værdi, når mærker til et beløb, hvis størrelse fastsættes af erhvervsministeren, kræves indløst.”

I lovforslaget (L 211 af 2. marts 1994) hedder det i bemærkningerne til bestemmelsen bl.a. (Folketingstidende 1993-94, tillæg A, sp. 7267-68):

”Bestemmelsen i stk. 1, 1. pkt., indeholder et forbud mod rabat- og værdikuponer i reklamebrochurer, tilbudsaviser, dagblade mv.

Sådanne former for rabat er urimelige og tilfældigt tilgængelige for forbrugerne, når de for at opnå rabat på fx. en dagligvare skal købe et bestemt dagblad eller klippe kuponer ud af omdelte tilbudsaviser for derved at få den for rabatten nødvendige værdi- eller rabat kupon.

Det er endvidere urimeligt, at forbrugerne for at opnå rabatten skal samle reklamebrochurer og holde styr på diverse kuponer samt holde øje med, hvor disse kuponer kan/skal indløses.

Bestemmelsen omfatter såvel værdikuponer, der udstedes af detailhandlende, deres leverandører eller andre erhvervsdrivende.

...

Til forskel fra bestemmelsen i stk. 1 kan erhvervsdrivende ifølge stk. 2 fortsat benytte værdikuponer, mærker og lignende former for rabat, der udleveres ved eller følger med køb af en vare eller tjenesteydelse til senere indløsning. Dette kan fx. være kuponer, som er påtrykt emballagen, hvilket svarer til bestemmelsen i den gældende lovs § 7 og bekendtgørelse nr. 186 af 14. maj 1975.”

Om bødeudmåling hedder det i lovforslagets bemærkninger til § 22 bl.a. (sp. 7276-78):

”I Forbrugerkommissionens Betænkning II, Betænkning nr. 681/1973 Om Markedsføring, Forbrugerombudsmand og Forbrugerklagenævn udtaltes s. 25, at »de bøder, der hidtil har været anvendt efter konkurrenceloven, har i mange tilfælde været for små, og det må derfor skønnes påkrævet, at der foretages en betydelig skærpelse«. Kommissionen foreslog derfor følgende bestemmelse medtaget i markedsføringsloven: »Ved fastsættelsen af bøder i henhold til denne lov kan der tages hensyn til den fortjeneste, der må antages at være indvundet eller tilsigtet ved overtrædelse«. Kommissionen fandt en sådan bestemmelse »rimelig, navnlig fordi den gældende retspraksis med beskedne bødestørrelser ofte har forekommet urimelig lempelig over for virksomheder, der gentagne gange overtræder loven«.

Bestemmelsen medtoges ikke i lovforslaget, hvori anførtes, jf. FT 1973-74 (2. saml.): A 1165 f, at »det er en selvfølge, at dette moment indgår i domstolenes overvejelser, og den ønskede skærpelse af hidtidig praksis vil søges opnået gennem en cirkulæreskrivelse fra Rigsadvokaten til anklagemyndigheden«.

Rigsadvokaten har udsendt meddelelse (1975 nr. 7) om, at ønsket om skærpelse har skullet tages i betragtning ved anklagemyndighedens bødepåstand, og Højesteret har i sagen UfR 1977 s. 831 udtrykkeligt tiltrådt anklagemyndighedens generelle synspunkter om strafudmåling. Forbrugerombudsmanden har siden 1991 fulgt dette op ved efter aftale med Rigsadvokaten, at anlægge et antal prøvesager, hvor bødepåstanden gøres til genstand for særskilt behandling.

Forbrugerombudsmanden har især lagt vægt på at få fastlagt en ensartet og skærpet praksis for overtrædelse af lovens almindelige vildledningsforbud og bestemmelserne om tilgift og konkurrencer. Det har vist sig, at det som regel er umuligt at føre noget bevis for den indvundne eller tilsigtede fortjeneste ved en overtrædelse. Dette skyldes, at bedømmelsen af den faktiske økonomiske effekt af et markedsføringstiltag i almindelighed er særdeles usikker. Forbrugerombudsmanden har derfor i stedet taget udgangspunkt i størrelsen af markedsføringsomkostningerne og ved tilgift og præmiekonkurrencer størrelsen af tilgiftens eller præmiens værdi for forbrugeren, idet der er en formodning for, at den markedsføringsmæssige effekt har en direkte sammenhæng med disse værdier. Det er normalt forholdsvis enkelt at føre et bevis for størrelsen heraf.

...

Det er derfor fortsat hensigten at søge straffniveauet skærpet, navnlig hvor overtrædelser, bedømt efter markedsføringsindsatsens økonomiske størrelse, er af betydelig omfang. En sådan skærpelse bør dels være, at der også ved omfattende overtrædelser anvendes samme forhold mellem markedsføringens økonomiske omfang og bødens størrelse, som ved mindre overtrædelser, dels at strafudmålingen generelt skærpes, således at der ved førstegangsovertrædelser af § 2 gives bøder på det dobbelte af markedsføringsudgiften, og at der ved overtrædelser af specialforbudene sker en tilsvarende skærpelse.

Såfremt det kan sandsynliggøres, at en større fortjeneste har været tilstræbt, bør der tages hensyn hertil.”

Højesterets begrundelse og resultat

Af de grunde, der er anført af mindretallet i Sø- og Handelsretten, tager Højesteret anklagemyndighedens påstand om domfældelse i overensstemmelse med anlageskriftet til følge, således at [redacted] også i forhold 1 og 2 dømmes for at have overtrådt den dagældende markedsføringslovs § 8, stk. 1 (nu markedsføringslovens § 10, stk. 1).

Ved bødens fastsættelse må der tages udgangspunkt i, at der er tale om en overtrædelse af forbuddet mod værdikuponer og ikke overtrædelse af lovens vildledningsforbud eller forhold af tilsvarende karakter. Der må endvidere tages hensyn til, om der foreligger en bevidst, grov eller gentagen overtrædelse af markedsføringsloven. Ved vurderingen af lovovertrædelsens grovhed må ses på størrelsen af den tilsigtede fortjeneste og – hvis denne ikke kendes – på størrelsen af de afholdte markedsføringsudgifter, som i denne sag var på ca. 150.000 kr. eksklusive moms. Der må imidlertid også tages hensyn til, at [REDACTED] [REDACTED] straks efter Forbrugerstyrelsens henvendelse standsede kampagnen og herefter i resten af 2004 ydede rabat til alle kunder uden hensyn til, om de præsenterede en rabatkupon eller ej. Efter en samlet vurdering finder Højesteret, at bøden passende kan fastsættes til 100.000 kr.

Herefter fastsættes straffen efter § 30, stk. 6, jf. stk. 3, jf. § 10, stk. 1, i lov nr. 1389 af 21. december 2005 om markedsføring med senere ændringer, jf. § 22, stk. 6, jf. stk. 3, jf. § 8, stk. 1, i lovbekendtgørelse nr. 699 af 17. juli 2000 med senere ændringer, til en bøde på 100.000 kr.

Thi kendes for ret:

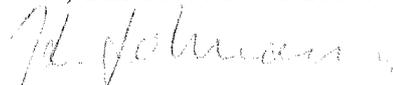
Tiltalte, [REDACTED], straffes med en bøde på 100.000 kr.

[REDACTED] skal betale alle sagens omkostninger for Sø- og Handelsretten. Statskassen skal betale sagens omkostninger for Højesteret.

--0000--

Udskriftens rigtighed bekræftes.

Højesteret, den 15. oktober 2007.


Kirsten Lohmann

overassistent

Dom 15. oktober 2007. Sag 169/2007	
passiver:	
I. 4	Højesterets dom afsagt mandag den 15. oktober 2007
I. 11	i tidligere instans er afsagt dom...
I. 23	der må ikke gives rabat eller anden ydelse...
I. 24	mærker, kuponer eller lignende, der er stillet til rådighed af erhvervsdrivende
I. 30	når mærker til et beløb,..., kræves indløst
I. 31	Mærker til et beløb, hvis størrelse fastsættes af erhvervsministeren
I. 41	hvor disse kuponer kan/skal indløses
I. 43	værdikuponer, der udstedes af detailhandlende
I. 47	værdikuponer...der udleveres ved eller følger med ved køb
I. 53	I Forbrugerombudsmandens betænkning...udtales s. 25, at...
I. 53	de bøder, der hidtil har været anvendt
I. 55	det må derfor skønnes påkrævet, at...
I. 55	der foretages en betydelig skærpelse
I. 57	kan der tages hensyn til den fortjeneste, der...
I. 57	Den fortjeneste, der må antages at være indvundet eller tilsigtet ved overtrædelse
I. 60	bestemmelsen medtoges ikke i lovforslaget
I. 60	lovforslaget, hvori anførtes...
I. 64	den ønskede skærpelse af hidtidig praksis vil søges opnået gennem..
I. 66	ønsket om skærpelse har skullet tages i betragtning
I. 70	bødepåstanden gøres til genstand for særskilt behandling
I. 85	der også ved omfattende overtrædelser anvendes samme forhold...
I. 87	dels at strafudmålingen skærpes
I. 88	der ved førstegangsovertrædelser af § 2 gives bøder på...
I. 91	såfremt det kan sandsynliggøres...
I. 91	bør der tages hensyn hertil
I. 96	således at x ...dømmes for at have overtrådt...
I. 99	Ved bødens fastsættelse må der tages udgangspunkt i , at...
I. 99	der er tale om en overtrædelse...
I. 101	der må endvidere tages hensyn til..
I. 102	ved vurderingen af lovovertrædelsens grovhed må ses på...
I. 103	hvis denne ikke kendes
I. 105	der må imidlertid også tages hensyn til
I. 108	bøden passende kan fastsættes til...
I. 110	herefter fastsættes straffen...
I. 113	thi kendes for ret
I. 114	tiltalte straffes med en bøde
I. 117	udskriftens rigtighed berettiges
Adverbialer:	
I. 11 (initial)	<i>i tidligere instans er afsagt dom...</i>
I. 19 (initial)	<i>I den dagældende markedsføringslov, lovbekendtgørelse nr. 699 af 17. juli</i>

	2000, som ændret ved lov nr. 428 af 6. juni 2002 og lov nr. 450 af 10. juni 2003, havde § 8 pågældende ordlyd
I. 26 (medial)	Erhvervsdrivende må dog ved salg af en vare eller ved udførelse af en arbejds- eller tjenesteydelse give rabat
I. 31 (medial)	Såfremt hver enkelt mærke på tydelig måde er forsynet med udstederens navn
I. 32 (initial)	i lovforslaget (L 211 af 2. marts 1994) hedder det i bemærkningerne til bestemmelserne...
I. 37 (medial)	når de for at opnå rabat på fx en dagligvare skal købe et bestemt dagblad
I. 40 (medial)	forbrugeren for at opnå rabatten skal samle reklamebrochurer
I. 46 (initial)	til forskel fra bestemmelsen i stk. 1 kan erhvervsdrivende...
I. 46 (medial)	kan erhvervsdrivende ifølge stk. 2 fortsat benytte...
I. 52 (initial)	I Forbrugerkommissionens Betænkning II, Betænkning nr. 681/1973 Om Markedsføring, Forbrugerombudsmand og Forbrugerklagenævn udtales s. 25 at,...
I. 56 (initial)	ved fastsættelse af bøder i henhold til denne lov kan der tages hensyn til den fortjeneste
I. 67 (medial)	højesteret har i sagen UfR 1977 s. 831 udtrykkeligt tiltrådt
I. 69 (medial)	ved efter aftale med Rigsadvokaten at anlægge et antal prøvesager
I. 78 (medial)	Og ved tilgift og præmiekonkurrencer størrelsen af tilgiftens eller præmiens værdi
I. 85 (medial)	at der også ved omfattende overtrædelser anvendes samme forhold
I. 91 (initial)	såfremt det kan sandsynliggøres, at en større fortjeneste har været tilstræbt, bør der tages hensyn hertil
I. 94 (initial)	af de grunde, der er anført af mindretallet i Sø- og Handelsretten, tager Højesteret anklagemyndighedens påstand...til følge
I. 95 (medial)	tager Højesteret anklagemyndighedens påstand om domfældelse i overensstemmelse med anklageskriftet til følge
I. 96 (medial)	således at x også i forhold 1 og 2 dømmes for...
I. 99 (initial)	ved bødens fastsættelse må der tages udgangspunkt i , at...
I. 102 (initial)	ved vurderingen af lovovertrædelsens grovhed må ses på...
I. 108 (initial)	efter en samlet vurdering finder Højesteret, at...
I. 110 (medial)	Herefter fastsættes straffen efter § 30, stk. 6, jf. Stk. 3, jf. § 10, stk. 1, i lov nr. 1389 af 21. december 2005 om markedsføring med senere ændringer, jf. § 22, stk. 6, jf. Stk. 3, jf. § 8, stk. 1, i lov bekendtgørelse nr. 699 af 17. juli 2000 med senere ændringer til en bøde på 100.000 kr.
Sammensatte præpositioner:	
I. 15	i overensstemmelse med
I. 27	i form af
I. 57	i henhold til
I. 95	i overensstemmelse med
I. 107	uden hensyn til
Komplekse substantivsyntagmer :	
I. 19	den dagældende markedsføringslov, lov bekendtgørelse nr. 699 af 17. juli 2000, som ændret ved lov nr. 428 af 6. juni 2002 og lov nr. 450 af 10. juni 2003
I. 23	Brug af mærker, kuponer eller lignende, der er stillet til rådighed af erhvervsdrivende forud for køb af en vare eller ved udførelse af en arbejds- eller tjenesteydelse
I. 27	anden ydelse i form af mærker, kuponer, eller lignende til senere indløsning

I. 38	Den for rabatten nødvendige værdi- eller rabatkupon
I. 43	værdikuponer, der udstedes af detailhandlende, deres leverandører eller andre erhvervsdrivende
I. 47	værdikuponer, mærker og lignende former for rabat, der udleveres ved eller følger med køb af varer eller tjenesteydelse til senere indløsning
I. 52	Forbrugerkommissionens Betænkning II, Betænkning nr. 681/1973 Om Markedsføring, Forbrugerombudsmand og Forbrugerklagenævn
I. 53	de bøder, der hidtil har været anvendt efter konkurrenceloven
I. 56	følgende bestemmelse medtaget i markedsføringsloven
I. 57	den fortjeneste, der må antages at være indvundet eller tilsigtet ved overtrædelse
I. 59	den gældende retspraksis med beskedne bødestørrelser
I. 62	lovforslaget, hvori anførtes, jf. FT 1973-74 (2. saml.):
I. 64	den ønskede skærpelse af hidtidig praksis
I. 68	anklagemyndighedens generelle synspunkter om strafudmåling
I. 70	et antal prøvesager, hvor bødestrafen gøres til genstand for særskilt behandling
I. 72	en ensartet og skærpet praksis for overtrædelse af lovens almindelige vildledningforbud og bestemmelser om tilgift og konkurrencer
I. 74	bevis for den indsvundne eller tilsigtede fortjeneste ved en overtrædelse
I. 76	bedømmelsen af den faktiske økonomiske effekt af et markedsføringstiltag i almindelighed
I. 83	overtrædelsen, bedømt efter markedsføringsindsatsens økonomiske størrelse
I. 94	de grunde, der er anført af mindretallet i Sø- og Handelsretten
I. 94	anklagemyndighedens påstand om domfældelse i overensstemmelse med anklageskriftet
I. 97	den dagældende markedsføringslovs § 8, stk. 1
I. 101	en bevidst, grov, eller gentagen overtrædelse af markedsføringsloven
I. 102	vurderingen af lovovertrædelsens grovhed
I. 103	størrelsen af den tilsigtede fortjeneste
I. 104	størrelsen af de afholdte markedsføringsudgifter
I. 110	§ 30, stk. 6, jf. Stk. 3, jf. § 10, stk. 1, i lov nr. 1389 af 21. december 2005 om markedsføring med senere ændringer, jf. § 22, stk. 6, jf. Stk. 3, jf. § 8, stk. 1, i lovebekendtgørelse nr. 699 af 17. juli 2000 med senere ændringer
Fagterminologi:	
I. 11	instans
I. 12	pådommelsen
I. 15	anklagemyndigheden
I. 15	anklageskrift
I. 18	lovgrundlaget
I. 34	påbud
I. 51	bødeudmåling
I. 59	retspraksis
I. 64	cirkulæreskrivelse
I. 65	anklagemyndigheden
I. 67	anklagemyndigheden
I. 67	bødepåstand
I. 68	anklagemyndigheden
I. 69	strafudmåling
I. 70	bødepåstand

I. 73	vildledningsforbud
I. 87	strafudmåling
I. 88	førstegangsovertrædelser
I. 94	anklagemyndigheden
I. 95	anklagemyndigheden
I. 95	domfældelse
I. 95	anklageskrift
I. 96	forhold
I. 100	vildledningsforbud
I. 114	tiltalte
juridiske kollokationer:	
I. 11	at afsige dom
I. 15	påstå domfældelse
I. 16	påstå skærpelse
I. 17	påstå stadfæstelse
I. 70	anlægge (prøve)sager
I. 81	at føre bevis for...
I. 94	tage til følge
I. 99	at fastsætte bøde
I. 108	at fastsætte bøde
I. 110	at fastsætte straf
I. 113	thi kendes for ret
Nominalkonstruktioner:	
I. 28	Erhvervsdrivende må dog...give rabat eller andre ydelser i form af mærker, kuponer eller lignende til senere <i>indløsning</i> (Erhvervsdrivende må dog...give rabat eller andre ydelser i form af mærker, kuponer eller lignende, som kan indløses senere)
I. 29	Såfremt hver enkelt mærke på tydelig måde er forsynet med udstederens navn eller firma med <i>angivelse</i> af en værdi i dansk mønt (Såfremt hver enkelt mærke på tydelig måde er forsynet med udstederens navn eller firma og angiver en værdi i dansk mønt)
I. 48	værdikuponer, mærker og lignende former for rabat, der udleveres ved eller følger med <i>køb</i> af varer eller tjenesteydelse til senere indløsning (værdikuponer, mærker og lignende former for rabat, der udleveres ved eller følger med, når kunden køber en vare eller tjenesteydelse og som kan indløses senere)
I. 55	Det må skønnes påkrævet, at der foretages en betydelig <i>skærpelse</i> (Det må skønnes påkrævet, at bøderne skærpes betydeligt)
I. 56	Ved <i>fastsættelsen</i> af bøder i henhold til denne lov (når bøder fastsættes i henhold til denne lov)
I. 66	Ønsket om skærpelse har skullet tages i betragtning (ønsket om at skærpe den hidtidige praksis skulle tages i betragtning)
I. 73	En ensartet og skærpet praksis for <i>overtrædelse af</i> lovens almindelige vildledningforbud og bestemmelser om tilgift og konkurrencer (En ensartet og skærpet praksis for at overtræde lovens almindelige vildledningforbud og bestemmelser om tilgift og konkurrencer)
I. 79	Idet der er en <i>formodning</i> for, at... (Idet det formodes, at...)
I. 89	Ved <i>overtrædelser</i> af specialforbudene sker en tilsvarende skærpelse (hvis

	specialforbudene overtrædes, sker en tilsvarende skærpelse)
I. 99	Ved bødens <i>fastsættelse</i> (når bøden fastsættes)
I. 102	Ved <i>vurderingen</i> af lovovertredelsens grovhed må ses på... (Når lovovertredelsens grovhed skal vurderes, må ses på...)
I. 106	Straks efter forbrugerstyrelses <i>henvendelse</i> (Straks efter forbrugerstyrelse havde henvendt sig)
Lix:	
1054 ord	
425 svære ord	
53 perioder	
A = 40,3	
B = 19,9	
Lix = (A+ B) = 60,2 (meget svær)	

Udskrift af dombogen for Vestre Landsret

Dom afsagt den 13. august 2008 af Vestre Landsrets 10. afdeling i ankesag S-1303-08

Anklagemyndigheden mod T

Retten i Esbjerg har den 8. april 2008 afsagt dom i 1. instans (SS 3189/2007).

Tiltalte har påstået frifindelse.

Anklagemyndigheden har påstået stadfæstelse.

Vidnerne Vidne 1 og Vidne 2 har for landsretten i det væsentlige forklaret som i 1. instans.

Vidne 1 har supplerende forklaret, at han havde været ansat siden januar måned. Det pågældende arbejde bestod i at fjerne facadeelementer af beton. Elementerne var ca. 1x2 meter. De var fastgjort i siderne. Før han savede, borede han to huller i elementet med henblik på senere at kunne montere en wire. Når han havde savet elementer bortset fra 5-10 cm i de øverste hjørner, fjernede man kurven på liften og monterede en wire for derefter at hejse elementet ned. Han ved ikke, om man kunne have monteret wiren, før han skar elementet. Vidne 3 var hans arbejdsleder, og det var ham, der havde instrueret ham i fremgangsmåden. Vidne 3 har aldrig sagt, at wiren skulle monteres, før han savede, og Vidne 3 var klar over, at det ikke blev gjort. De talte ikke om, at elementet kunne vælte. Han fik instruktion i betjening af saven, men ikke i øvrigt nogen vejledning om sikkerheden. Han mistede 4 fingre og har fortsat problemer med sin hofte.

Vidne 3 har supplerende forklaret, at han havde instrueret om, at de skulle bore huller og montere wirer i elementerne, før de begyndte at skære. Det øverste stykke af elementet skulle skæres indefra. Han og Vidne 1 havde tidligere fjernet ca. 10 elementer. Der blev normalt brugt to lifte, en med en kurv og en med en krog, hvortil wiren kunne monteres. Den pågældende dag brugte de dog kun én lift. Han styrede liften med kurven og var klar over, at Vidne 1 begyndte at skære i det pågældende element, selv om wiren ikke var fastgjort. Armeringsjernet på det pågældende stykke var skåret over. Det er formentlig det, man kan se på billede nr. 15 og 16. Han havde talt med Vidne 1 om, at armeringsjernet ikke måtte skæres over. Foreholdt afhøringsrapport af 15. april 2007 side 3, 2. afsnit, har han forklaret, at han ikke har fortalt dette til politiet. Han kunne ikke fra kurven se, om wiren var monteret i betonelementet, og han mente ikke, at det var nødvendigt at kontrollere dette.

Landsrettens begrundelse og resultat:

Det lægges i overensstemmelse med Vidne 1 forklaring til grund, at han skar elementet frit bortset fra den øverste kant i hver side på et tidspunkt, hvor elementet ikke var sikret med en fastgjort wire, og at elementet herefter væltede ned over ham. Det tiltrædes, at skæring uden sikring ved hjælp af

en wire i det konkrete tilfælde ikke var sikkerhedsmæssigt fuldt forsvarligt.

Efter Vidne 1's forklaring, der til dels støttes af Vidne 3's forklaring for landsretten, lægges det endvidere til grund, at Vidne 3 var klar over, hvilken fremgangsmåde Vidne 1 fulgte, og at han ikke gjorde nogen for at standse det. Det tiltrædes derfor tillige, at arbejdet ikke var tilrettelagt og udført sikkerhedsmæssigt fuldt forsvarligt, og at tiltalte er fundet skyldig som sket.

Straffen er passende udmålt, idet der dog ikke skal fastsættes bestemmelse om forvandlingsstraf, jf. arbejdsmiljølovens § 83, stk. 1, sidste punktum.

Landsretten stadfæster derfor dommen.

Thi kendes for ret:

Byrettens dom stadfæstes med den ændring, at bestemmelsen om forvandlingsstraf udgår.

Tiltalte skal betale sagens omkostninger for landsretten.

Dom 13. august 2008. S-1303-08	
passiver:	
I. 2	dom afsagt... af Vestre Landsret
I. 11	fjernede man kurven på liften
I. 12	om man kunne have monteret wiren
I. 14	wiren skulle monteres
I. 19	det øverste stykke af elementet skulle skæres indefra
I. 20	der blev normalt brugt to lifte
I. 21	hvortil wiren kunne monteres
I. 23	armeringsjernet...var skåret over
I. 23	wiren ikke var fastgjort
I. 24	Det er det, man kan se på billede...
I. 25	armeringsjernet ikke måtte skæres over
I. 30	det lægges...til grund, at...
I. 31	På et tidspunkt hvor elementet ikke var sikret
I. 32	det tiltrædes at...
I. 34	lægges det endvidere til grund
I. 36	det tiltrædes derfor tillige
I. 36	arbejdet ikke var tilrettelagt og udført sikkerhedsmæssigt
I. 37	tiltalte er fundet skyldig som sket
I. 38	straffen er passende udmålt
I. 38	der dog ikke skal fastsættes bestemmelse om forvandlingsstraf
I. 41	thi kendes for ret
I. 42	byrettens dom stadfæstes
Adverbialer:	
I. 4 (medial)	Retten i Esbjerg har <i>den 8. april 2008</i> afsagt dom
I. 7 (medial)	vidnerne... <i>har for landsretten i det væsentligste</i> forklaret som i 1. instans
I. 11 (initial)	<i>når han havde savet elementer bortset fra 5-10 cm i de øverste hjørner,</i> fjernede man kurven på liften
I. 21 (initial)	<i>den pågældende dag</i> brugte de dog kun én lift
I. 25 (initial)	<i>foreholdt afhøringsrapport af 15. april 2007 side 3, 2. afsnit,</i> har han forklaret, at...
I. 30 (medial)	Det lægges <i>i overensstemmelse med Vidne 1 forklaring</i> til grund
I. 33 (medial)	Sikring ved hjælp af en wire <i>i det konkrete tilfælde</i> ikke var sikkerhedsmæssigt fuldt forsvarligt
I. 34 (initial)	<i>efter Vidne 1's forklaring, der til dels støttes af Vidne 3's forklaring for landsretten</i> lægges det endvidere til grund, at...
Sammensatte præpositioner:	
I. 10	med henblik på
I. 30	i overensstemmelse med
I. 32	ved hjælp af
Komplekse substantivsyntagmer:	

I. 2	dom afsagt den 13. august 2008 af Vestre Landsrets 10. afdeling i ankesag S-1303-08
I. 12	ham, der havde instrueret ham i fremgangsmåden
I. 16	instruktion i betjening af saven
I. 20	to lifte, en med en kurv og en med en krog, hvortil wiren kunne monteres
I. 23	armeringsjernet på det pågældende stykke
I. 25	afhøringsrapport af 15. april 2007 side 3, 2. afsnit
I. 31	et tidspunkt, hvor elementet ikke var sikret med en fastgjort wire
I. 32	skæring uden sikring ved hjælp af en wire
I. 34	Vidne 1's forklaring, der til dels støttes af Vidne 3's forklaring til Landsretten
I. 38	bestemmelse om forvandlingsstraf, jf. Arbejds miljølovens § 83, stk. 1, sidste punktum.
Fagterminologi:	
I. 1	dombog
I. 2	ankesag
I. 3	anklagemyndigheden
I. 5	tiltalte
I. 6	anklagemyndigheden
I. 25	afhøringsrapport
I. 38	forvandlingsstraf
I. 43	tiltalte
juridiske kollokationer:	
I. 2	At afsige dom
I. 4	at afsige dom
I. 4	1. instans
I. 5	At påstå frifindelse
I. 7	1. instans
I. 17	At påstå stadfæstelse
I. 30	lægge til grund
I. 34	lægge til grund
I. 37	finde skyldig
I. 38	at udmåle straf
I. 40	at stadfæste en dom
I. 41	thi kendes for ret
I. 42	At stadfæste en dom
Nominalkonstruktionerne:	
I. 16	Han fik ikke <i>instruktion</i> i... (Han blev ikke instrueret i...)
I. 16	i <i>betjening</i> af saven (i hvordan han skulle betjene saven)
I. 16	Men (fik) i øvrigt ingen <i>vejledning</i> om sikkerhed (Men blev i øvrigt ikke vejledt om sikkerhed)
I. 32	Det tiltrædes, at <i>skæring</i> uden <i>sikring</i> ...ikke var sikkerhedsmæssigt fuldt forsvarligt (Det tiltrædes, at det ikke var sikkerhedsmæssigt fuldt forsvarligt at skære uden at sikre elementet først)
Lix:	

579 ord	
150 svære ord	
40 perioder	
A = 25,9	
B = 14,5	
Lix = (A+ B) = 40,4 (middelsvær)	

Udskrift af Østre Landsrets domsbog

Odense Rets dom af 16. juni 2008 (SS 2-1662/2008) er anket af T A/S med endelig påstand om frifindelse i forhold 2, subsidiært formildelse. Tiltalte har således for landsretten tillige erkendt sig skyldig i forhold 1.

Anklagemyndigheden har påstået stadfæstelse.

Der er i landsretten afgivet supplerende forklaring af Direktør B, og af Vidne 1, Arbejdstilsynet.

Direktør B har forklaret blandt andet, at der ved kontrolbesøget den 2. maj 2007 ikke stod tømte papkasser eller andet i vejen på adgangsvejene. Der bliver ikke ompakket varer på lageret, idet varerne, der ankommer i containere, bliver videresolgt i hele kulli. Den ansatte har ikke klaget over arbejdsforholdene på stedet. Der er altid 2 tilstede, når der ankommer varer til lageret. Møblerne bliver altid kørt på palleløfter eller lign. Kun en mindre del af de øvrige varer - vel omkring 10 % er tunge. Hvis der undtagelsesvist er tomme papkasser, bliver de straks smidt ud i affaldscontaineren udenfor lageret. Der er efter kontrolbesøget opbygget reoler til varerne og firmaet har fået et supplerende fjernlager uden for byen.

Vidne 1, Arbejdstilsynet har forklaret blandt andet, at der foretages kontrolbesøg indenfor 2 år, når en virksomhed har fået et påbud. Ved kontrolbesøget den 2. maj 2007 var forholdene stort set uændrede i forhold til besøget i 2005. Der var rodet, fordi der ikke var tydelige gangarealer mellem varerne. Det modtageområde, hvor medarbejderne netop havde været i gang med at pakke ud, var særligt rodet med strips. Hun fik på forespørgsel oplyst af Direktør B, at der først ville blive ryddet op når aflæsningen af varerne var færdig. Hun så ikke tomme papkasser. Det hun bed mærke i, var papkasser, der forekom at være tilfældigt placeret bl.a. ved gangarealer. Hun så også strips på gulvet ved kontrolbesøget. Som det fremgår af et foto, var der varer, som stod i vejen for varerne bagved. Hun spurgte ikke om, hvor tit der blev ryddet op på lageret. Hun mener, at besøget varede ca. 1 time. Hun fik oplyst, at papkassernes vægt varierede meget. Der var også helt lette kasser med eksempelvis puder. Hun undersøgte ikke selv kassernes vægt. Baggrunden for, at hun i 2005 afgav 2 påbud henholdsvis vedrørende forhold 1 og forhold 2 var, at der var tale om 2 forskellige skadesrisici. Det første påbud angik risikoen for ved uforsvarlige løft af få en erhvervsbetinget lidelse, men det andet påbud angik risikoen for snuble- og faldulykker.

Det tiltrædes af de grunde byretten har anført at tiltalte er skyldig i forhold 2, dog findes det ikke godtgjort, at der på gangarealerne lå pap eller tømte papkasser. Under hensyn til, at overtrædelserne i forhold 1 og 2 fandt sted på samme tidspunkt og lokalitet, og til overtrædelsens karakter finder landsretten., at der passende kan udmåles en samlet bøde på 40.000,- kr.

Thi kendes for ret:

Byrettens dom stadfæstes med den ændring, at beden nedsættes til 40.000 kr.

Statskassen skal betale sagens omkostninger for landsretten.

Landsretsdom 27. november 2008. SS 2-1662/2008	
passiver:	
I. 2	dom er anket af T A/S
I. 6	der er i landsretten afgivet supplerende forklaring af Direktør B, og...
I. 8	der bliver ikke ompakket varer på lageret
I. 9	varer, der ankommer i containere, bliver videresolgt i hele kolli
I. 10	møblerne bliver altid kørt på palleløftere
I. 12	Hvis der...er tomme papkasser, bliver de straks smidt ud i affaldscontaineren
I. 13	der er efter kontrolbesøget opbygget reoler
I. 15	der foretages kontrolbesøg
I. 19	der først ville blive ryddet op, når aflæsningen af varer var færdig
I. 21	papkasser, der forekom at være tilfældigt placeret
I. 23	hvor tit, der blev ryddet op
I. 29	det tiltrædes af de grunde..., at tiltalte er skyldig
I. 29	dog findes det ikke godtgjort, at...
I. 32	der passende kan udmåles en samlet bøde...
I. 33	thi kendes for ret
I. 34	byrettens dom stadfæstes
I. 34	bøden nedsættes til 40.000 kr
Adverbialer:	
I. 7 (medial)	der ved kontrolbesøget den 2. maj 2007 ikke stod tomte papkasser eller andet i vejen på adgangsvejene
I. 11 (medial)	kun en mindre del af de øvrige varer -vel omkring 10 % er tunge
I. 12 (initial)	hvis der undtagelsesvis er tomme papkasser, bliver de straks smidt ud i affaldscontaineren
I. 16 (initial)	ved kontrolbesøget den 2. maj var forholdene stort set uændrede
I. 27 (medial)	første påbud angik risikoen for ved uforsvarlige løft at få en erhvervsbetinget lidelse
I. 29 (medial)	det tiltrædes af de grunde byretten har anført at tiltalte er skyldig
I. 30 (initial)	under hensyn til, at ovdtrædelserne i forhold 1 og 2 fandt sted på samme tidspunkt og lokalitet, og til overtrædelsens karakter finder landsretten, at...
Sammensatte præpositioner:	
I. 30	under hensyn til
Komplekse substantivsyntagmer:	
I. 2	odense rets dom af 16. juni 2008 (SS 2-1662/2008)
I. 2	endelig påstand om frifindelse i forhold 2, subsidiært formildelse
I. 9	varer, der ankommer i containere
I. 17	det modtagelsesområde, hvor medarbejderne netop havde været i gang med at pakke ud
I. 21	papkasser, der forekom at være tilfældigt placeret bl.a ved gangarealer
I. 22	varer, som stod i vejen for varerne bagved
I. 25	2 påbud henholdsvis vedrørende forhold 1 og forhold 2

I. 27	risikoen for ved uforsvarlige løft at få en erhvervsbetinget lidelse
I. 29	de grunde byretten har anført
Fagterminologi:	
I. 1	domsbog
I. 3	frifindelse
I. 3	subsidiært
I. 3	formildelse
I. 4	forhold
I. 5	anklagemyndigheden
I. 29	tiltræde
I. 29	tiltalte
I. 29	forhold
I. 31	forhold
juridiske kollokationer:	
I. 2	anke en dom
I. 2	endelig påstand
I. 3	erkende sig skyldig
I. 5	påstå stadfæstelse
I. 6	afgive forklaring
I. 29	finde godtgjort
I. 32	udmåle en bøde
I. 33	thi kendes for ret
I. 34	stadfæste en dom
I. 34	at nedsætte bøde
Nominalkonstruktioner:	
I. 19	Hun fik på <i>forespørgsel</i> oplyst... (Hun fik, da hun spurgte, oplyst...)
I. 20	Der først blev ryddet op, når <i>aflæsningen</i> af varerne var færdig (Der først blev ryddet op, når alle varerne var blevet læsset af)
I. 23	Hun mener, at <i>besøget</i> varede ca 1 time (Hun mener, at hun besøgte T A/S i 1 time)
Lix:	
472 ord	
139 svære ord	
34 perioder	
A = 29,4	
B = 13,9	
Lix = (A+ B) = 43,3 (middelsvær)	



D O M

afsagt den 16. december 2008

SS 30-1059/2008

Anklagemyndigheden

mod

Anklageskrift er modtaget den 7. maj 2008.

[redacted] tiltalt for overtrædelse af

forbrugeraftalelovens § 29, stk. 1, nr. 1, jf. § 11, stk. 1, nr. 5, ved i tiden fra den 1. oktober 2004 til den 8. juni 2007 som erhvervsdrivende på hjemmesiden [redacted] at have givet urigtig oplysning om, hvorvidt der ifølge forbrugeraftaleloven var fortrydelsesret i forbindelse med køb af bøger via [redacted] idet der på hjemmesiden stod "Bøger tages ikke retur", hvilket var i strid med det i forbrugeraftalelovens § 17, stk. 1, og § 18, stk. 1, anførte.

Anklagemyndigheden har nedlagt påstand om en bøde på 50.000 kr.

Tiltalte har nægtet sig skyldig.

[redacted] er eneindehaver af virksomheden [redacted] der består af en butik og en hjemmeside. Der er ingen ansatte i butikken, og den samlede årlige omsætning var ifølge afhøringsrapport af 14. august 2007 ca. 110.000 kr., hvoraf omsætningen på hjemmesiden udgjorde 30.000 - 40.000 kr. om året. Det fremgår ikke af rapporten, hvilket år der er tale om. Butikken var startet i 1997, og hjemmesiden har eksisteret siden 2000. Hjemmesiden, der var udarbejdet af [redacted] enbo, indeholdt oprindeligt ingen oplysninger om fortrydelsesret.

Ved e-mail af 28. marts 2007 meddelte Forbrugerombudsmanden tiltalte, at man havde konstateret, at hjemmesiden ikke overholdt reglerne om oplysning om fortrydelsesret, idet der intet var oplyst om fortrydelsesret. Tiltalte blev gjort opmærksom på, at Forbrugerombudsmanden efter den 1. maj 2007 på ny ville gennemgå hjemmesiden i forhold til reglerne om oplysning om fortrydelsesret, og at der var risiko for at få administrative påbud eller blive meldt til politiet, hvis hjemmesidens indhold fortsat ikke overholdt reglerne om oplysning om fortrydelsesret.

Tiltalte ændrede herefter sin hjemmeside, således at der den 7. april 2007 blev indsat oplysning om fortrydelsesret, hvoraf fremgik, at bøger ikke tages

retur. Samtidig fremsendte [redacted] en e-mail til Forbrugerombudsmanden med følgende indhold:

"Har nu tilføjet tekst ang fortrydelsesret under 'betaling/forsendelse'. Vil I checke om det er OK?"

Forbrugerombudsmanden besvarede forespørgslen ved e-mail af 23. april 2007, hvoraf fremgår:

"...
Jeg glemte i nedenstående mail at skrive, at fortrydelsesretten ikke kan begrænses ved salg af bøger, som I gør.

Bøger er ikke undtaget fra reglerne om fortrydelsesret

Senere den 23. april 2007 fremsendte [redacted] endnu en forespørgsel til Forbrugerombudsmanden. Af forespørgslen fremgår:

"...
Mht til bøger, som i mit tilfælde er opskriftsbøger, vil man kunne bestille en bog, kopiere de opskrifter der har interesse, og så returnere bogen. Hvordan skal jeg gardere mig mod det?
..."

Forbrugerombudsmanden besvarede denne henvendelse ved e-mail af 30. april 2007, hvoraf fremgår:

"...
Også i forhold til bøger, vil det være afgørende, om der kan ske tilbagelevering i væsentlig samme stand og mængde. Jeg kan godt se, at der kan være risiko for misbrug, men hvis bogen fremstår i væsentlig samme stand, kan jeg ikke se, der er mulighed for at nægte fortrydelse af et køb.
..."

Den 6. juni 2007 skrev Forbrugerombudsmanden til tiltalte. Af brevet fremgår:

"...
I vores første henvendelse til Dem, blev De orienteret om, at Deres hjemmeside, [redacted] ikke overholdt reglerne om fortrydelsesret. De blev samtidig henvist til kampagneparternes fælles vejledning om reglerne og fik frist til den 1. maj 2007 til at foretage evt. justeringer. Vi gjorde Dem opmærksom på, at De risikerede at få administrative påbud eller blive meldt til politiet, hvis Deres hjemmeside efter den 1. maj 2007 fortsat ikke overholdt reglerne om fortrydelsesret.

Vi har ved gennemgang af Deres hjemmeside den 3. maj 2007 i forhold til reglerne om fortrydelsesret konstateret, at De fortsat giver ukorrekte oplysninger om omfanget af fortrydelsesretten, idet De oplyser, at der ikke er fortrydelsesret for bøger.

Der er i § 17, stk. 2, i forbrugeraftaleloven en udtømmende angivelse af, hvilke e-handelsaftaler der er undtaget fra reglerne om fortrydelsesret.

Bøger er ikke omfattet af undtagelsesbestemmelsen, og Deres vilkår om, at forbrugerne ikke kan fortryde køb heraf er således i strid med forbrugeraftaleloven.

..."

Ved e-mail af 8. juni 2007 meddelte [redacted] at bøger nu ikke længere var undtaget fortrydelsesretten, og at hun regnede med, at Forbrugerrådet nu kunne acceptere teksten på hjemmesiden.

Forsvareren oplyste, at [redacted] kun har haft én bog i ét eksemplar til salg på hjemmesiden. Bogen er i øvrigt ikke blevet solgt.

Rettens bemærkninger:

Den rejste tiltale vedrører efter formuleringen af anklageskriftet alene den omstændighed, at der på tiltaltes hjemmeside i en periode stod "Bøger tages ikke retur".

Der er efter formuleringen af anklageskriftet ikke rejst tiltale i anledning af, at tiltaltes hjemmeside frem til 2007 generelt ikke indeholdt oplysning om fortrydelsesret.

Oplysningen om, at bøger ikke tages retur, var på hjemmesiden i perioden fra 7. april 2007 til 8. juni 2007. Denne oplysning var en tilsidesættelse af oplysningspligten i forbrugeraftalelovens § 11, stk. 1, nr. 5. Da oplysningen har befundet sig på tiltaltes hjemmeside i en - omend kort - periode, må overtrædelsen betegnes som "oftere gentaget", hvilket, da overtrædelsen ikke kan betegnes som grov, er en strafbetingelse, jf. herved forbrugeraftalelovens § 29, stk. 1. Tiltalte er derfor i dette omfang skyldig i den rejste tiltale.

Tiltalte har i anledning af den skete overtrædelse forskyldt en bøde.

Der er ikke fast praksis for, hvorledes en bøde for overtrædelse af forbruger-
aftalelovens § 11, stk. 1, nr. 5, skal udmåles.

Bøden skal derfor fastsættes efter en konkret vurdering af sagens omstændigheder, jf. herved straffelovens kap. 10.

Retten har ved fastsættelsen af bøden lagt vægt på, at der er tale om en lille, enkeltmandsdrevet virksomhed med en meget begrænset omsætning. Retten har endvidere lagt vægt på karakteren af overtrædelsen, at tiltalte ikke tidligere er straffet, at tiltalte alene må anses at have handlet uagtsomt, at tiltalte har korresponderet med Forbrugerrådet om sagen og vist vilje til at rette for sig, og at overtrædelsen alene strakte sig over en ganske kort periode.

En bøde på 50.000 kr., som anklagemyndigheden har nedlagt påstand om,

må herefter betegnes som helt uforholdsmæssig.

Bøden fastsættes i stedet til 1.000 kr., jf. forbrugeraftalelovens § 29, stk. 1, nr. 1, jf. § 11, stk. 1, nr. 5.

Forvandlingsstraffen er fængsel i 6 dage.

Med hensyn til sagens omkostninger bemærkes, at retten ved afgørelse af 17. november 2008 har afslået en begæring fra tiltalte om at få beskikket en forsvarer, jf. herved retsplejelovens § 731, stk. 1, litra e. Tiltalte har derfor haft en valgt forsvarer, hvis vederlag som udgangspunkt ifølge retsplejelovens § 1007, stk. 2, ikke vedkommer det offentlige.

Det fremgår imidlertid af afhøringsrapport af 14. august 2007, at tiltalte erkendte sig skyldig i sigtelsen, der på det tidspunkt alene angik perioden 7. april 2007 til 24. maj 2007. Forholdet kunne derfor på dette tidspunkt have været søgt afgjort uden retssag og dermed uden forsvarerudgift ved forelæg af en - passende - bøde.

Den tiltale, der blev rejst ved anklageskrift af 6. maj 2008, vedrørte imidlertid en meget længere periode end angivet i den oprindelige sigtelse, herunder - indtil anklageskriftet blev berigtiget under hovedforhandlingen - en periode forud for 2004, hvor forholdet ifølge anklagemyndighedens oplysning ikke engang var kriminaliseret. Selv efter berigtigelsen var tidsangivelsen i anklageskriftet imidlertid som anført ovenfor særdeles misvisende.

Den bødepåstand, som Forbrugerombudsmanden ved skrivelse af 28. august 2007 anmodede anklagemyndigheden om at nedlægge, må endvidere som anført ovenfor betegnes som helt uforholdsmæssig.

Tiltalte har på den anførte baggrund haft særlig anledning til at søge bistand af en forsvarer.

Retten bestemmer derfor i medfør af retsplejelovens § 1007, stk. 2, at statskassen skal betale 3.500 kr. med tillæg af moms til forsvareren svarende til det beløb, der ville være blevet tilkendt en beskikket forsvarer.

Thi kendes for ret:

Tiltalte, [REDACTED] skal straffes med en bøde på 1.000 kr.

Forvandlingsstraffen er fængsel i 6 dage.

Statskassen skal til delvis dækning af tiltaltes udgifter til valgt forsvarer betale 3.500 kr. plus moms.

Anne-Vibeke Dolleris

ibb/1059-08d.dtd

Udskriftens rigtighed bekræftes.

Retten i Randers, den 22. december 2008

P.d.v.



Iben Busk

Overass.

Dom 16. december 2008. Retten i Randers	
passiver:	
I. 1	dom afsagt den 16. december 2008
I. 6	anklageskrift er modtaget
I. 7	x er tiltalt for overtrædelse af...
I. 21	butikken var startet i 1997
I. 23	hjemmesiden, der var udarbejdet af x
I. 26	man havde konstateret
I. 27	der intet var oplyst om fortrydelsesret
I. 27	tiltalte blev gjort opmærksom på, at ...
I. 33	der den 7. april 2007 blev indsat oplysninger om fortrydelsesret
I. 34	at bøger ikke tages retur
I. 42	fortrydelsesretten ikke kan begrænses
I. 63	I vores første henvendelse til Dem, blev De orienteret om...
I. 64	De blev samtidig henvist til...
I. 66	at De risikerede at få administrative påbud eller blive meldt til politiet
I. 89	oplysningen om, at bøger ikke tages retur
I. 92	må overtrædelsen betegnes som "oftere gentaget"
I. 93	da overtrædelsen ikke kan betegnes som grov
I. 97	hvorledes en bøde...skal udmåles
I. 99	bøden skal derfor fastsættes efter en konkret vurdering af sagens omstændigheder
I. 104	tiltalte alene må anses at have handlet uagtsomt
I. 108	En bøde på 50.000 kr,...,må herefter betegnes som helt uforholdsmæssig
I. 110	bøden fastsættes i stedet til 1.000 kr.
I. 113	Med hensyn til sagens omkostninger bemærkes, ...
I. 120	forholdet kunne derfor..have været søgt afgjort uden retssag
I. 123	den tiltale, der blev rejst ved anklageskrift af 6. maj 2008
I. 125	anklageskriftet blev berigtiget
I. 129	Den bødestraf,..., må endvidere som anført ovenfor betegnes som helt uforholdsmæssig
I. 136	det beløb, der ville være blevet tilkendt en beskikket forsvarer
I. 137	thi kendes for ret
I. 138	Tiltalte x skal straffes med en bøde
I. 144	Udskriftens rigtighed bekræftes
Adverbialer:	
I. 8 (medial)	X er tiltalt for overtrædelse af forbrugeraftalelovens §..., ved <i>i tiden fra den 1. oktober 2004 til den 8. juni 2007 som erhvervsdrivende på hjemmesiden</i> at have givet urigtige oplysning
I. 19 (medial)	den samlede årlige omsætning var <i>ifølge afhøringsrapport af 14. august 2007</i> ca. 110.000 kr.
I. 25 (initial)	<i>ved e-mail af 28. marts 2007</i> meddelte Forbrugerombudsmanden tiltalte, at...
I. 28 (medial)	at Forbrugerombudsmanden <i>efter den 1. maj 2007 på ny</i> ville gennemgå hjemmesiden
I. 33 (medial)	således at der <i>den 7. april 2007</i> blev indsat oplysninger om fortrydelsesret
I. 42 (medial)	jeg glemte <i>i nedenstående mail</i> at skrive, at...
I. 46 (initial)	<i>senere den 23. april 2007</i> fremsendte X endnu en forespørgsel
I. 55 (initial)	<i>også i forhold til bøger</i> , vil det være afgørende, om der kan ske tilbagelevering

I. 56 (initial)	<i>men hvis bogen fremstår i væsentlig samme stand, kan jeg ikke se, der er mulighed for at nægte fortrydelse af købet</i>
I. 60 (initial)	<i>Den 6. juni 2007 skrev Forbrugerombudsmanden til tiltalte</i>
I. 63 (initial)	<i>i vores første henvendelse til Dem, blev de orienteret om, at...</i>
I. 67 (medial)	<i>hvis Deres hjemmeside efter den 1. maj 2007 fortsat ikke overholdt reglerne vi har ved gennemgang af Deres hjemmeside den 3. maj 2007 i forhold til reglerne om fortrydelsesret konstateret...</i>
I. 69 (medial)	<i>Der er i § 17, stk. 2, i forbrugeraftaleloven en udtømmende angivelse af, hvilke e-handelsaftaler der er undtaget fra reglerne</i>
I. 72 (medial)	<i>ved e-mail af 8. juni 2007 meddelte x, at bøger nu ikke længere var undtaget fortrydelsesretten</i>
I. 77 (initial)	<i>den rejste tiltale vedrører efter formuleringen af anklageskriftet alene den omstændighed...</i>
I. 83 (medial)	<i>at der på tiltaltes hjemmeside i en periode stod "bøger tages ikke retur"</i>
I. 84 (medial)	<i>Der er efter formuleringen af anklageskriftet ikke rejst tiltale...</i>
I. 86 (medial)	<i>tiltaltes hjemmesiden frem til 2007 generelt ikke indeholdt oplysninger om fortrydelsesret</i>
I. 87 (medial)	<i>da oplysningen har befundet sig på tiltaltes hjemmeside i en – omend kort- periode,</i>
I. 91 (initial)	<i>hvilket, da overtrædelsen ikke kan betegnes som grov, er en strafbetingelse.</i>
I. 93 (medial)	<i>tiltalte er derfor i dette omfang skyldig</i>
I. 95 (medial)	<i>tiltalte har i anledning af den skete overtrædelse forskyldt en bøde</i>
I. 96 (medial)	<i>retten har ved fastsættelsen af bøden lagt vægt på...</i>
I. 101 (medial)	<i>med hensyn til sagens omkostninger bemærkes, at...</i>
I. 113 (initial)	<i>Retten ved afgørelse af 17. november 2008 har afslået en begæring fra tiltalte</i>
I. 113 (medial)	<i>hvis vederlag som udgangspunkt ifølge retsplejelovens § 1007, stk. 2, ikke vedkommer det offentlige.</i>
I. 116 (medial)	<i>der på det tidspunkt alene angik perioden 7. april</i>
I. 119 (medial)	<i>forholdene kunne derfor på det tidspunkt have været søgt afgjort</i>
I. 120 (medial)	<i>– indtil anklageskriftet blev berigtiget under hovedforhandlingen -</i>
I. 125 (initial)	<i>selv efter berigtigelsen var tidsangivelsen i anklageskriftet...særdeles misvisende</i>
I. 127 (initial)	<i>Var tidsangivelsen i anklageskriftet imidlertid som anført ovenfor særdeles misvisende</i>
I. 128 (medial)	<i>Den bødepåstand, som Forbrugerombudsmanden ved skrivelse af 28. august 2007 anmodede anklagemyndigheden om at nedlægge</i>
I. 129 (medial)	<i>Den bødepåstand...må endvidere som anført ovenfor betegnes som helt uforholdsmæssig</i>
I. 130 (medial)	<i>Tiltalte har på den anførte baggrund haft særlig anledning til...</i>
I. 132 (medial)	<i>Retten bestemmer derfor i medfør af retsplejelovens § 1007, stk. 2, at...</i>
I. 134 (medial)	<i>Statskassen skal til delvis dækning af tiltaltes udgifter til valgt forsvarer betale 3.500 kr.</i>
I. 140 (medial)	
Sammensatte præpositioner:	
I. 11	<i>i forbindelse med</i>
I. 13	<i>i strid med</i>
I. 29	<i>i forhold til</i>
I. 69	<i>i forhold til</i>
I. 86	<i>i anledning af</i>
I. 96	<i>i anledning af</i>
I. 113	<i>med hensyn til</i>

I. 134	i medfør af
Komplekse substantivsyntagmer:	
I. 8	overtrædelse af forbrugeraftalelovens § 29, stk. 1, nr. 1. jf. § 11, stk. 1, nr. 5
I. 11	fortrydelsesret i forbindelse med køb af bøger via...
I. 12	“bøger tages ikke retur”, hvilket var i strid med det i forbrugeraftalelovens § 17, stk. 1, og § 18, stk. 1, anførte
I. 17	virksomheden, der består af en butik og en hjemmeside
I. 19	ca. 110.000 kr., hvoraf omsætningen på hjemmesiden udgjorde 30.000-40.000 kr om året
I. 22	hjemmesiden, der var udarbejdet af x
I. 25	e-mail af 28. marts 2007
I. 29	reglerne om oplysning om fortrydelsesret
I. 32	reglerne om oplysning om fortrydelsesret
I. 34	oplysning om fortrydelsesret, hvoraf fremgik, at bøger ikke tages retur
I. 35	en e-mail til Forbrugerombudsmanden med følgende indhold:
I. 52	e-mail af 30. april 2007
I. 65	kampagneparterernes fælles vejledning om reglerne
I. 70	ukorrekte oplysninger om omfanget af fortrydelsesretten
I. 72	en udtømmende angivelse af, hvilke e-handelsaftaler der er undtaget fra reglerne om fortrydelsesret
I. 74	Deres vilkår om, at forbrugerne ikke kan fortryde købet heraf
I. 77	e-mail af 8. juni 2007
I. 89	oplysningen om, at bøger ikke tages retur
I. 90	en tilsidesættelse af oplysningspligten i forbrugeraftalelovens § 11, stk. 1, nr. 5
I. 97	en bøde for overtrædelse af forbrugeraftalelovens § 11, stk. 1, nr. 5
I. 101	en lille enkeltmandsvirksomhed med en meget begrænset omsætning
I. 108	en bøde på 50.000 kr, som anklagemyndigheden har nedlagt påstand om
I. 113	afgørelse af 17. november 2008
I. 114	en begæring fra tiltalte om at få beskikket en forsvarer
I. 116	en valgt forsvarer, hvis vederlag som udgangspunkt (ifølge retsplejelovens § 1007, stk. 2), ikke vedkommer det offentlige
I. 118	afhøringsrapport af 14. august 2007
I. 119	sigtelsen, der (på det tidspunkt) alene angik perioden 7. april 2007 til 24. maj 2007
I. 123	den tiltale, der blev rejst ved anklageskrift af 6. maj 2008,
I. 124	en meget længere periode end angivet i den oprindelige sigtelse, herunder - ...- en periode forud for 2004, hvor forholdet ifølge anklagemyndighedens oplysninger ikke engang var kriminaliseret
I. 129	den bødestraf, som Forbrugerombudsmanden ved skrivelse af 28. august 2007 anmodede anklagemyndigheden om at nedlægge,
I. 136	3.500 kr. med tillæg af moms (til forsvareren) svarende til det beløb, der ville være blevet tilkendt en beskikket forsvarer
I. 140	dækning af tiltaltes udgifter til valgt forsvarer
Fagterminologi:	
I. 4	anklagemyndigheden
I. 6	anklageskrift
I. 7	tiltale
I. 16	tiltalte

I. 25	tiltalte
I. 27	tiltalte
I. 33	tiltalte
I. 60	tiltalte
I. 80	forsvareren
I. 83	anklageskrift
I. 84	tiltaltes
I. 86	anklageskrift
I. 87	tiltaltes
I. 94	strafbetingelse
I. 95	tiltalte
I. 96	tiltalte
I. 108	anklagemyndigheden
I. 112	forvandlingsstraf
I. 114	begæring
I. 114	tiltalte
I. 121	forsvarerudgifter
I. 121	forelæg
I. 123	anklageskrift
I. 124	sigtelse
I. 125	hovedforhandlingen
I. 126	anklagemyndigheden
I. 127	kriminaliseret
I. 127	berigtigelsen
I. 128	anklageskrift
I. 129	bødepåstand
I. 132	tiltalte
I. 132	bistand
I. 133	forsvarer
I. 135	forsvarer
I. 138	tiltalte
I. 139	forvandlingsstraf
I. 140	tiltalte
I. 140	forsvarer
juridiske kollokationer:	
I. 15	nedlægge påstand
I. 16	nægtet sig skyldig
I. 30	administrative påbud
I. 66	administrative påbud
I. 83	den rejste tiltale
I. 86	at rejse tiltale
I. 90	Tiilsidesætte oplysningspligt
I. 95	Den rejste tiltale
I. 99	at fastsætte en bøde
I. 101	at fastsætte en bøde
I. 104	handle uagtsomt

I. 108	nedlægge påstand
I. 110	at fastsætte en bøde
I. 114	at beskikke en forsvarer
I. 119	kende sig skyldig i sigtelsen
I. 120	søge forholdet afgjort
I. 123	at rejse tiltale
I. 125	at berigtige et anklageskrift
I. 129	at nedlægge (bøde-)påstand
I. 136	en beskikket forsvarer
I. 137	thi kendes for ret
I. 146	p.d.v.
Nominalkonstruktionerne:	
I. 7	X er tiltalt for <i>overtrædelse</i> af forbrugeraftalelovens §... (X er tiltalt for at have overtrådt forbrugeraftalelovens §...)
I. 32	Reglerne om <i>oplysning</i> om fortrydelsesret (Reglerne om at man skal oplyse om fortrydelsesret)
I. 55	Også i forhold til bøger, vil det være væsentligt, om der kan ske <i>tilbagelevering</i> i væsentlig stand (Også i forhold til bøger, vil det være væsentligt, om varen kan tilbageleveres i væsentlig stand)
I. 57	Kan jeg ikke se, der er mulighed for at nægte <i>fortrydelse</i> af et køb (Kan jeg ikke se, der er mulighed for at nægte køberen at fortryde et køb)
I. 65	Og fik frist til den 1. maj 2007 til at foretage evt <i>justeringer</i> (Og fik frist til den 1. maj 2007 til evt at justere)
I. 87	Tiltaltes hjemmeside frem til 2007 generelt ikke indeholdt <i>oplysning</i> om fortrydelsesret (Tiltaltes hjemmeside frem til 2007 generelt ikke oplyste om fortrydelsesret)
I. 90	Denne oplysning var en <i>tilsidesættelse</i> af oplysningspligten i forbrugeraftalelovens § 11...(Denne oplysning tilsidesatte oplysningspligten i forbrugeraftalelovens § 11...)
I. 96	tiltalte har i anledning af den skete <i>overtrædelse</i> forskyldt en bøde (tiltalte har i anledning af, at han/hun overtrådte forbrugeraftalelovens § 11... forskyldt en bøde)
I. 97	der er ikke fast praksis for, hvorledes en bøde for <i>overtrædelse</i> af forbrugeraftalelovens § 11...skal udmåles (der er ikke fast praksis for, hvorledes en bøde for at have overtrådt forbrugeraftalelovens § 11...skal udmåles)
I. 99	Retten har ved <i>fastsættelsen</i> af bøden lagt vægt på... (Retten har, da den fastsatte bøden, lagt vægt på...)
I. 106	En bøde på 50.000 kr som anklagemyndigheden har nedlagt <i>påstand</i> om... (En bøde på 50.000 kr som anklagemyndigheden har påstået...)
I. 126	Ifølge anklagemyndighedens <i>oplysning</i> (Ifølge hvad anklagemyndigheden har oplyst)
I. 127	Selv efter <i>berigtigelsen</i> var tidsangivelsen i anklageskriftet...særdeles misvisende (Selv efter, at anklageskriftet/det var blevet berigtiget, var tidsangivelsen i anklageskriftet...særdeles misvisende)
I. 140	Statskassen skal til delvis <i>dækning</i> af tiltaltes udgifter til valgt forsvarer betale 3.500 kr plus moms (Statskassen skal betale 3.500 kr plus moms, som delvist skal dække tiltaltes udgifter til valgt forsvarer)
Lix:	
1280 ord	

452 svære ord	
68 perioder	
A = 35,3	
B = 18,8	
Lix = (A+ B) = 54,1 (svær)	

Københavns Byret



Adv. AS 0100-91990-00005-07

Udskrift af dombogen

DOM

afsagt den 30. januar 2009 i sag

SS 2-14205/2008

Anklagemyndigheden
mod

[Redacted names]

Sagens baggrund og parternes påstande.

Anklageskrift er modtaget den 8. juli 2008.

[Redacted] tiltalt for overtrædelse af

forbrugeraffæjlelovens § 11, stk. 1, nr. 5, if. § 29, stk. 1, nr. 1,
ved i tidsrummet fra omkring den 1. oktober 2004 til den 27. juni 2007 på
sitt firme [Redacted] som et-
hvervsdrivende ikke at have oplyst, hvorvidt der var fortrydelsesret i forbin-
delse med aftaler indgået ved fjernsalg om køb af varer og visse tjenestey-
delser.

Anklagemyndigheden har nedlagt påstand om bødestraf på 50.000 kr.

Tiltalte har erkendt sig skyldig men påstået retens mildeste dom.

Forklaringer.

Der er afgivet forklaring af tiltalte.

Tiltalte har til retsbogen afgivet følgende forklaring:

"Tiltalte erkendte sig skyldig og forklarede, at han samme dag, som han modtog mailen af 4. april 2007, blev ringet op af [Redacted] fra forbrugerombudsmanden. De aftalte, at han i løbet af sommeren skulle rette hjemmesiden op, således at der blev vejledt om fortrydelsesretten. Han skulle først rette op på den i løbet af sommeren, fordi han skulle have en ny udbyder og flytte sin hjemmeside. Han har selv lavet hjemmesiden. Hjemmeside-

den har været der i mange år og har været uden oplysninger om fortrydelsesret. Han har aldrig haft problemer med returret. Han fik herefter brev af 6. juni 2007 fra forbrugerombudsmanden. Han var nu klar over, at han havde misforstået noget under samtalen. Han rettede hjemmesiden op, og fik [redacted] fra forbrugerombudsmanden til at kigge på den. De korrigerede frem og tilbage. På hjemmesiden havde han tilføjet, at der ikke var nogen fortrydelsesret ved butiksalg. Han har en fysisk butik, så derefter fokuserede de han ikke på internethandlen. [redacted] sagde, at der stadig var mangler ved hjemmesiden. Det er rigtig, at hjemmesiden endnu ikke var rettet endeligt op inden den 27 juni 2007, hvor han talte med [redacted]. Han rettede den endeligt op samme dag eller måske dagen efter. Hans omsætning er på ca. 1 million kr. om året. Hans forjenneste er på mellem 150.000 og 250.000 kr. Det er butiksalg, som er det primære område og ikke internethandlen. Internethandlen udgør ca. 5 procent af omsætningen."

Retens begrundelse og afgørelse.

Ved mail af 4. april 2007 blev tiltalte af forbrugerombudsmanden gjort opmærksom på, at han på sin hjemmeside ikke havde oplyst om fortrydelsesretten. I mailen var det oplyst, at tiltalte kunne finde vejledning på området på Forbrugerombudsmandens hjemmeside, som der var et link til. Det var endvidere oplyst, at hans hjemmeside igen ville blive gennemgået efter den 1. maj 2007, og at han risikerede politanmeldelse, såfremt hans hjemmeside ikke overholdt reglerne om fortrydelsesret.

Tiltalte har forklaret, at han samme dag, som han modtog mailen af 4. april 2007, blev ringet op af [redacted] fra forbrugerombudsmanden, og de aftalte, at han i løbet af sommeren skulle rette hjemmesiden op med hensyn til fortrydelsesretten. Da han fik brev af 6. juni 2007 fra forbrugerombudsmanden blev han klar over, at han havde misforstået noget under samtalen.

I brevet af 6. juni 2007 blev tiltalte oplyst om, at tiltalte hjemmeside fortsat ikke indeholdt oplysninger om fortrydelsesret, og at Forbrugerombudsmanden var indstillet på at politanmelde forholdet. Tiltalte blev dog meddelt en frist til den 21. juni 2007 til hans eventuelle bemærkninger hertil.

Den 8. juni 2007 reagerede tiltalte på brevet ved at ringe til Forbrugerombudsmanden. Det fremgår af et telefornotat fra Forbrugerombudsmanden, at tiltalte under telefonsamtalen oplyste, at han havde overset, at hjemmesiden ville blive gennemgået igen efter den 1. maj 2007, og at han risikerede politanmeldelse.

Efter bevisførelsen, herunder tiltaltes forklaring, lægges det til grund, at der herefter var korrespondance mellem ham og Forbrugerombudsmanden med hensyn til tilrettningen af hjemmesiden, at tiltalte i første omgang tilrettede hjemmesiden, men ikke med hensyn til fortrydelsesretten for internethandel, og at han senere, formentlig en eller få dage efter den 27. juni 2009, hvor

han havde haft en telefonsamtale med Forbrugeroverbudsmanden vedrørende tilrettelse af hjemmesiden, tilrettede hjemmesiden således, at den var i overensstemmelse med lovens krav til oplysninger om fortrydelsesret.

På baggrund af dette forløb finder retten ikke, at overtrædelsen kan anses for grov.

Retten finder derimod henset til, at overtrædelsen har strakt sig over et meget langt tidsrum, at der er tale om en offere gentaget overtrædelse, hvorfor tiltale i dette omfang er skyldig i den rejste tiltale.

Der foreligger ikke retningslinier eller fast praksis for bødevurderingen.

Efter en samlet vurdering af sagens forhold, herunder det af tiltalte oplyste om hans omsetning vedrørende internethandel, at tiltalte ikke tidligere er straffet, og at tiltalte har korresponderet med Forbrugeroverbudsmanden og vist en vis vilje til at rette for sig, findes bøden passende at kunne fastsættes til 25.000 kr., jf. forbrugeraftalelovens § 29, stk. 1, nr. 1, jf. 11, stk. 1, nr. 5.

Forvandlingsstraffen er fængsel i 14 dage.

Thi kendes for ret:

 straffes med en bøde på 25.000 kr.

Forvandlingsstraffen er fængsel i 14 dage.

Tiltalte skal betale sagens omkostninger.

Lene Jensen

Udskriftens rigtighed bekræftes.

Københavns Byret, den 3. februar 2009


Lene Jensen
Kilde: Afsandel

Dom 30. januar 2009. SS 2-14205/2008	
passiver:	
I. 4	dom afsagt den 30. januar
I. 10	anklageskrift er modtaget
I. 11	X er tiltalt for...
I. 21	der er afgivet forklaring af tiltalte
I. 24	han...blev ringet op af x fra forbrugerombudsmanden
I. 44	...blev tiltalte af Forbrugerombudsmanden gjort opmærksom på
I. 46	i mailen var det oplyst
I. 47	det var endvidere oplyst
I. 48	hans hjemmeside igen ville blive gennemgået
I. 52	tiltalte blev ringet op af X
I. 56	I brev af 6. juni 2007 blev tiltalte oplyst om...
I. 58	tiltalte blev dog meddelt en frist
I. 62	hjemmesiden ville blive gennemgået igen
I. 65	lægges det til grund, at...
I. 73	overtrædelsen kan anses for grov
I. 82	findes bøden passende at kunne fastsættes til
I. 86	thi kendes for ret
I. 87	X straffes med en bøde
I. 91	udskriftens rigtighed bekræftes
Adverbialer:	
I. 13 (medial)	ved i tidsrummet fra omkring den 1. oktober 2004 til den 27. juni 2007 på sit firma... som erhvervsdrivende ikke at have oplyst
I. 23 (medial)	han samme dag, som han modtog mailen af 4. april 2007, blev ringet op af x
I. 25 (medial)	de aftalte, at han i løbet af sommeren skulle rette hjemmesiden op
I. 44 (initial)	ved mail af 4. april 2007 blev tiltalte af forbrugerombudsmanden gjort opmærksom på...
I. 45 (medial)	at han på sin hjemmeside ikke havde oplyst om fortrydelsesret
I. 51 (medial)	han samme dag, som han modtog mailen af 4. april 2007, blev ringet op
I. 53 (medial)	han i løbet af sommeren skulle rette hjemmesiden op
I. 54 (initial)	da han fik brev af 6. juni 2007 fra forbrugerombudsmanden blev han klar over, at...
I. 56 (initial)	I brevet af 6. juni 2007 blev tiltalte oplyst om...
I. 60 (initial)	Den 8. juni 2007 reagerede tiltalte på brevet
I. 65 (initial)	Efter bevisførelsen, herunder tiltaltes forklaring lægges det til grund, at...
I. 67 (medial)	at tiltalte i første omgang tilrettede hjemmesiden
I. 69 (medial)	han senere, formegentlig en eller få dage efter den 27. juni 2009, hvor han havde haft en telefonsamtale med Forbrugerombudsmanden vedrørende tilretning af hjemmesiden, tilrettede hjemmesiden
I. 73 (initial)	på baggrund af dette forløb finder retten ikke, at...
I. 79 (initial)	Efter en samlet vurdering af sagens forhold, herunder det af tiltalte oplyste om hans omsætning vedrørende internethandel, at tiltalte ikke tidligere er straffet, og at tiltalte har korresponderet med Forbrugerombudsmanden og vist en vis vilje til at rette for sig, findes bøden passende at kunne fastsættes til 25.000 kr.
Sammensatte	

præpositioner:	
I. 15	i forbindelse med
I. 53	med hensyn til
I. 66	med hensyn til
I. 68	med hensyn til
I. 71	i overensstemmelse med
Komplekse substantivsyntagmer :	
I. 11	overtrædelse af forbrugeraftalelovens § 11, stk. 1, nr. 5, jf. § 29, stk. 1, nr. 1
I. 16	Fortrydelsesret i forbindelse med aftaler indgået ved fjernsalg om køb af varer og visse tjenesteydelser
I. 23	samme dag, som han modtog mailen af 4. april 2007
I. 24	mail af 4. april 2007
I. 30	brev af 6. juni 2007 fra forbrugerombudsmanden
I. 38	Den 27. juni 2007, hvor han talte med x
I. 45	mail af 4. april 2007
I. 46	vejledning på området på forbrugerombudsmandens hjemmeside, som der var et link til
I. 51	samme dag, som han modtog mailen af 4. april 2007
I. 54	brevet af 6. juni 2007 fra forbrugerombudsmanden
I. 56	brevet af 6. juni 2007
I. 65	bevisførelsen, herunder tiltaltes forklaring
I. 70	en telefonsamtale med Forbrugerombudsmanden vedrørende tilretning af hjemmesiden
I. 72	lovens krav til oplysning om fortrydelsesret
I. 79	en samlet vurdering af sagens forhold
I. 79	det af tiltalte oplyste om hans omsætning vedrørende internethandel
Fagterminologi:	
I. 3	dombogen
I. 7	anklagemyndighed
I. 10	anklageskrift
I. 11	tiltalt
I. 18	anklagemyndighed
I. 18	bødestraf
I. 19	tiltalte
I. 21	tiltalte
I. 22	tiltalte
I. 22	retsbog
I. 23	tiltalte
I. 44	tiltalte
I. 46	tiltalte
I. 51	tiltalte
I. 56	tiltalte
I. 58	tiltalte
I. 60	tiltalte
I. 65	bevisførelse

I. 67	tiltalte
I. 73	overtrædelse
I. 77	tiltalte
I. 78	bødeudmåling
I. 79	tiltalte
I. 80	tiltalte
I. 81	tiltalte
I. 85	forvandlingsstraf
I. 87	forvandlingsstraf
I. 89	tiltalte
juridiske kollokationer:	
I. 18	nedlægge påstand
I. 19	erkende sig skyldig
I. 19	påstå rettens mildeste dom
I. 21	afgive forklaring
I. 23	erkende sig skyldig
I. 65	lægge til grund
I. 73	retten finder ikke at ...
I. 75	retten finder henset til
I. 76	en oftere gentaget overtrædelse
I. 77	den rejste tiltalte
I. 82	at fastsætte bøde
I. 86	thi kendes for ret
Nominalkonstruktioner:	
I. 11	X er tiltalt for <i>overtrædelse</i> af... (X er tiltalt for at have overtrådt...)
I. 18	Anklagemyndigheden har <i>nedlagt påstand</i> om bødestraf (Anklagemyndigheden har påstået bødestraf)
I. 22	Tiltalte har til retsbogen afgivet følgende <i>forklaring</i> : (Tiltalte har til retsbogen forklaret følgende:)
I. 29	og har været uden <i>oplysninger</i> om fortrydelsesret (og har ikke oplyst om fortrydelsesret)
I. 46	Tiltalte kunne finde <i>vejledning</i> på området på forbrugerombudsmandens hjemmeside (Tiltalte kunne blive vejledt på området på forbrugerombudsmandens hjemmeside)
I. 49	Han risikerede <i>politianmeldelse</i> (Han risikerede at blive anmeldt til politiet)
I. 57	tiltaltes hjemmeside fortsat ikke indeholdt <i>oplysninger</i> om fortrydelsesret (tiltaltes hjemmeside fortsat ikke oplyste om fortrydelsesret)
I. 63	Han risikerede <i>politianmeldelse</i> (Han risikerede at blive meldt til politiet)
I. 70	Han havde haft en <i>telefonsamtale</i> med forbrugerombudsmanden vedrørende tilretning af hjemmesiden (Han havde talt i telefon med forbrugerombudsmanden vedrørende tilretning af hjemmesiden)
I. 71	Den var i <i>overensstemmelse</i> med lovens krav (Den stemte overens med lovens krav)
Lix:	
809 ord	
250 svære ord	

50 perioder	
A = 30,9	
B = 16,2	
Lix = (A+ B) = 47,1 (svær)	



D O M

afsagt den 11. marts 2009 ved Retten i Århus, 6. afdeling.

SS 6-2515/2008

Anklagemyndigheden
mod

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Tiltalen og parternes påstande

[REDACTED] er tiltalt for overtrædelse af

forbrugeraftalelovens § 29 stk. 1, nr. 1, jf. § 11, stk. 1, nr. 5, ved som indehaver af [REDACTED] perioden 2004 - primo juni 2007 på sin hjemmeside [REDACTED] ikke at have afgivet korrekte oplysninger om fortrydelsesretten, idet køb af reservedele blev undtaget fra fortrydelsesretten.

Anklagemyndigheden har påstået tiltalte straffet med en bøde på 50.000 kr.

Tiltalte har påstået frifindelse.

Tiltalte har erkendt have afgivet forkerte oplysninger om fortrydelsesretten på sin hjemmeside, men ikke, at denne overtrædelse af forbrugeraftalelovens § 11, stk. 1, nr. 5 er "grov eller oftere gentagen", jf. § 29, stk. 1, nr. 1.

Oplysninger i sagen

Bødeforlægget er modtaget den 2. juli 2008.

Af et print fra hjemmesiden [REDACTED] pr. 24. maj 2007 fremgår blandt andet følgende under overskriften Handelsbetingelser:

"Tryghedsgaranti

Du har altid god tid til at vurdere købet. Indenfor 15 dage kan du nemlig fortryde et køb og sende eller levere varen tilbage - ubrugt og i originalemballage. Du betaler returporto. Husk blot at vedlægge fakturaen eller en fotokopi af denne, så kan du få alle pengene tilbage (minus fragt) eller du kan bytte til noget andet - lige som du vil. Der gives dog ikke returret på reservedele.

..."

Af mail af 23. marts 2007 fra Forbrugerombudsmanden til [redacted] fremgår, at Forbrugerombudsmanden den 29. januar 2007 har konstateret at hjemmesiden [redacted] ikke overholdt reglerne om fortrydelsesret. Tiltalte blev i mailen henvist til nærmere vejledning via et link til Forbrugerombudsmandens hjemmeside og blev gjort bekendt med, at Forbrugerombudsmanden efter den 1. maj 2007 ville gennemgå hjemmesiden i forhold til reglerne om fortrydelsesret samt at tiltalte blandt andet risikerede at blive medtalt til politiet, hvis hjemmesidens indhold fortsat ikke overholdt reglerne om fortrydelsesret.

Ved skrivelse af 6. juni 2007 gjorde Forbrugerombudsmanden tiltalte bekendt med, at man agtede at anmelde tiltalte til politiet for, at han på hjemmesiden oplyser, at der ikke er fortrydelsesret for reservedele.

[redacted] har blandt andet forklaret, at hans far driver forretningen [redacted]. Tiltalte er ansat i farens forretning og fik den idé, at han kunne starte en internetforretning med salg af små el-artikler, [redacted]. Han købte domænet og hjemmesiden samlet i 2003/2004. Det var en ansat, der etablerede hjemmesiden, og den er ikke siden blevet ændret eller holdt ved lige. Handelsbetingelserne ændrede han således overhovedet ikke. Han var ikke opmærksom på formuleringen, hvorefter, der ikke gives returret på reservedele. Tiltalte har rent faktisk taget reservedele retur. Den 23. marts 2007 fik han en henvendelse fra Forbrugerombudsmanden via mail. Han læste ikke mailen nærmere blandt andet fordi han er ordblind. Senere - i begyndelsen af juni - fik han yderligere en henvendelse fra Forbrugerombudsmanden. Denne henvendelse blev både sendt pr. mail og pr. brev. Straks herefter ringede han til Forbrugerombudsmanden og sagde, at han nu ville lukke hjemmesiden. Senere i juni lukkede han hjemmesiden. Han havde ikke på det tidspunkt noget salg via hjemmesiden. Hjemmesiden har ikke siden været oppe at køre igen. Han har pt. ingen omsætning i firmaet, der har været i drift fra 2004 til 2007. I 2007 var omsætningen cirka 80.000 kr., mens den i 2006 var cirka 200.000 kr.

Retten's begrundelse og afgørelse

Tiltalte har erkendt, at han på sin hjemmeside i perioden 2004 til primo juni 2007 ikke afgav korrekte oplysninger om fortrydelsesretten, idet køb af reservedele blev undtaget herfra. Herefter og når henses til udskriften fra tiltaltes hjemmeside, er det godtgjort, at tiltalte har overtrådt forbrugeraftalelovens § 11, stk. 1, nr. 5, som beskrevet i anklageskriftet. Overtrædelsen har på den ene side fundet sted igennem en længere periode, også efter den første henvendelse fra Forbrugerombudsmanden. Der er på den anden side tale om en lille enmandsvirksomhed med begrænset omsætning, og den fejlagtige oplysning angik alene salg af reservedele, der efter det oplyste alene var en mindre del af tiltaltes internetforretning. Endvidere kan tiltaltes overtrædelse alene anses for uagtsom. På den baggrund finder retten ikke, at der er tilstrækkeligt grundlag for at anse overtrædelsen for "grov". Henset til perio-

den, hvor overtrædelsen har fundet sted, må den betegnes som "oftere gentaget", jf. forbrugeraftalelovens § 29, stk. 1 nr. 1.

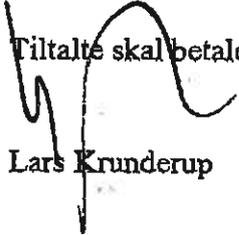
Straffen fastsættes efter en samlet vurdering af de nævnte omstændigheder i medfør af forbrugeraftalelovens § 29, stk. 1, nr. 1, jf. § 11, stk. 1, nr. 5 til en bøde på 20.000 kr.

Thi kendes for ret:

Tiltalte, [REDACTED], skal straffes med en bøde på 20.000 kr.

Forvandlingsstraffen er fængsel i 14 dage.

Tiltalte skal betale sagens omkostninger.


Lars Krunderup

s82515d.dtd
/hls

Dom 11. marts 2009. SS 6-2515/2008	
passiver:	
I. 1	dom afsagt den 11. marts
I. 7	x er tiltalt for overtrædelse af...
I. 18	bødeforlægget er modtaget
I. 27	der gives dog ikke returret på reservedele
I. 32	tiltalte blev i mailen henvist til...
I. 33	Og (tiltalte) blev gjort bekendt med...
I. 35	tiltalte blandt andet risikerede at blive meldt til politiet
I. 39	man agtede at anmelde tiltalte til politiet
I. 45	den er ikke siden blevet ændret
I. 48	der ikke gives returret på reservedele
I. 52	denne henvendelse blev både sendt pr email og pr brev
I. 61	køb af reservedele blev undtaget
I. 62	Når henses til til udskriften fra tiltaltes hjemmeside
I. 63	er det godt gjort, at tiltalte har overtrådt forbrugeraftalelovens §...
I. 69	Endvidere kan tiltaltes overtrædelse alene anses for uagtsom
I. 72	må den betegnes som "ofte gentaget"
I. 74	straffen fastsættes efter en samlet vurdering
I. 77	thi kendes for ret
I. 78	tiltalte skal straffes med en bøde på 20.000 kr.
Adverbialer:	
I. 8 (medial)	ved som indehaver af xx i perioden 2004. primo juni 2007 på sin hjemmeside ikke at have afgivet korrekt oplysning om fortrydelsesret
I. 19 (initial)	af print af hjemmesiden x pr. 24. maj 2007 fremgår blandt andet følgende...
I. 29 (initial)	af mail af 23. marts 2007 fra Forbrugerombudsmanden til x fremgår, at Forbrugerombudsmanden...har konstateret, at hjemmesiden ikke overholdt reglerne
I. 30 (medial)	At forbrugerombudsmanden den 29. januar 2007 har konstateret, at hjemmesiden ikke overholdt reglerne
I. 32 (medial)	at forbrugerombudsmanden efter den 1. maj 2007 ville gennemgå hjemmesiden
I. 38 (initial)	ved skrivelse af 6. juni 2007 gjorde Forbrugerombudsmanden tiltalte bekendt med...
I. 49 (initial)	Den 23. marts 2007 fik han en henvendelse fra Forbrugerombudsmanden
I. 51 (initial)	Senere – i begyndelsen af juni – fik han yderligere en henvendelse fra Forbrugerombudsmanden
I. 54 (initial)	senere i juni lukkede han hjemmesiden
I. 60 (medial)	at han på sin hjemmeside i perioden 2004 til primo juni 2007 ikke afgav korrekte oplysninger
I. 62 (initial)	herefter og når henses til udskriften fra tiltaltes hjemmeside,
I. 65 (medial)	overtrædelsen har på den ene side fundet sted igennem en længere periode
I. 66 (medial)	Der er på den anden side tale om en lille enmandsvirksomhed
I. 71 (initial)	henset til periden , hvor overtrædelsen har fundet sted, må den betegnes som "oftere gentaget"
I. 76 (medial)	Straffen fastsættes efter en samlet vurdering af de nævnte omstændigheder i medfør af forbrugeraftaleloves § 29, stk. 1, nr. 1, jf. § 11, stk. 1, nr. 5 til en bøde

Sammensatte præpositioner:	
I. 34	i forhold til
I. 75	i medfør af
Komplekse substantivsyntagmer:	
I. 7	overtrædelse af forbrugeraftalelovens § 29, stk. 1, nr. 1, jf. § 11, stk. 1, nr. 5
I. 15	overtrædelse af forbrugeraftalelovens § 11, stk. 1, nr. 5
I. 19	print fra hjemmesiden xx pr. 24 maj 2007
I. 29	mail af 23. marts 2007 fra Forbrugerombudsmanden til x
I. 38	skrivelse af 6. juni 2007
I. 45	en ansat, der etblerede hjemmesiden
I. 47	formuleringen hvorefter, der ikke gives returret på reservedele
I. 57	Ingen omsætning i firmaet, der har været i drift fra 2004 til 2007
I. 67	en lille enmandsvirksomhed med begrænset omsætning
I. 68	salg af reservedele, der efter det oplyste alene var en mindre del af tiltaltes internetforretning
I. 71	perioden, hvor overtrædelsen har fundet sted,
I. 75	En samlet vurdering af de nævnte omstændigheder i medfør af forbrugeraftalelovens § 29, stk. 1, nr. 1, jf. § 11, stk. 1, nr. 5
Fagterminologi:	
I. 4	anklagemyndigheden
I. 6	tiltalen
I. 12	anklagemyndigheden
I. 18	bødeforlægget
I. 32	tiltalte
I. 34	tiltalte
I. 38	tiltalte
I. 39	tiltalte
I. 42	tiltalte
I. 60	tiltalte
I. 62	tiltalte
I. 64	anklageskriftet
I. 69	tiltalte
I. 69	tiltalte
I. 70	uagtsom
I. 77	tiltalte
I. 78	forvandlingsstraffen
I. 79	tiltalte
juridiske kollokationer:	
I. 1	at afsige dom
I. 7	være tiltalt for
I. 13	påstå frifindelse
I. 74	at fastsætte straf

I. 77	thi kendes for ret
Nominalkonstruktionerne:	
I. 7	X er tiltalt for <i>overtrædelse</i> af... (X er tiltalt for at have overtrådt...)
I. 10	ved...ikke at have afgivet korrekte <i>oplysninger</i> om fortrydelsesret (ved...ikke på korrekt vis at have oplyst om fortrydelsesret)
I. 32	Tiltalte blev ...henvist til nærmere <i>vejledning</i> via et link til Forbrugerombudsmandens hjemmeside (Tiltalte blev ...henvist til, at han kunne blive nærmere vejledt via et link til Forbrugerombudsmandens hjemmeside)
I. 40	der ikke er <i>fortrydelsesret</i> for reservedele (køb af reservedele ikke kan fortrydes)
I. 47	Han var ikke opmærksom på <i>formuleringen</i> (Han var ikke opmærksom på, hvordan teksten var formuleret)
I. 49	fik han en <i>henvendelse</i> fra Forbrugerombudsmanden (henvendte Forbrugerombudsmanden sig til ham)
I. 51	fik han yderligere en <i>henvendelse</i> fra Forbrugerombudsmanden (henvendte Forbrugerombudsmanden sig endnu engang til ham)
I. 66	Også efter den første <i>henvendelse</i> fra Forbrugerombudsmanden (Også efter, at Forbrugerombudsmanden havde henvendt sig til ham første gang)
Lix:	
744 ord	
245 svære ord	
48 perioder	
A = 32,9	
B = 15, 5	
Lix = (A+ B) = 48,4 (svær)	

Vestre Landsrets dom af 30. april 2009, 4. afdeling S-0208-09

Byretten har den 12. januar 2009 afsagt dom i 1. instans (2728/2008).

Tiltalte T har påstået frifindelse, subsidiært formildelse.

Anklagemyndigheden har påstået stadfæstelse.

Tiltalte og vidnet V1 har for landsretten i det væsentlige forklaret som i 1. instans.

Forklaringer

Tiltalte har supplerende forklaret, at han købte aktierne, da der var tale om en god investering. Han fik en brochure. Han lånte penge i banken til at købe aktier for. Han fik vejledning i banken. Han fik senere et købstilbud, men det var en uoverskuelig brochure, som han ikke læste. Af brochuren fremgik, at aktierne blev tvangsindløst. Aktierne var i et depot i Danske Bank. Han læste ikke notatet fra G2 af 19. april 2005. Han forestillede sig, at SKAT selv registrerede salget og beregnede fortjenesten. I foråret 2006 indberettede han befodringsfradraget med hjælp fra sin mor. Han har aldrig haft andre aktier, og han interesserer sig i øvrigt ikke for aktier.

V1 har supplerende forklaret, at køberkursen i 2004 rettelig var 101. SKAT har undersøgt G1's regnskaber og har via internettet fået oplysninger om notatet til G1's medarbejdere. SKAT har begrænsede resurser, og derfor skal borgerne selv angive relevante forhold. SKAT skrev "eventuelt" i forbindelse med printselvangivelsen, da småaktionærer, som har ejet aktier i mere end 3 år, kan afhænde aktierne skattefrit. Først fik aktionærene købstilbuddet, herefter G2 notatet, så fik de brevet fra Danske Bank, og endelig printselvangivelsen. Her er tale om, at aktionærene har fået flere oplysninger end normalt. Siden 1. juli 2004 har arbejdsgiveren haft en særlig pligt til at give vejledning til de medarbejdere, der er i besiddelse af medarbejderaktier. SKAT får kun meddelelse om salg, når der er tale om aktier, der handles på børsen, hvilket ikke er tilfældet ved tvangsindløsning. Der har været mange sager i forbindelse med salget af G1, og SKAT har af resurse-mæssige grunde givet et generelt nedslag på bøden. Indenfor en bestemt kategori af besiddelser af medarbejderaktier er der 1215 medarbejdere i G1, som har selvangivet korrekt, og 866 som ikke har selvangivet salget ifølge hendes optælling. Langt de fleste af de sidstnævnte sager er afgjort ved betaling af bøde. Det er omkring 10 sager, der er endt med retssager.

Landsrettens begrundelse og resultat

Af de grunde, som byretten har anført, tiltrædes det også efter bevisførelsen for landsretten, at tiltalte er fundet skyldig som sket.

Da der ikke er grundlag for at nedsætte bøden, tiltrædes det, at bødestraffen og forvandlingsstraffen er fastsat som sket.

Landsretten stadfæster derfor dommen.

T h i k e n d e s f o r r e t

Byrettens dom stadfæstes.

Tiltalte skal betale sagens omkostninger for landsretten.

Landsretsdom 30. april 2009. S-0208-09	
passiver:	
I. 9	han fik en brochure
I. 10	han fik vejledning i banken
I. 10	han fik senere et købstilbud
I. 22	først fik aktionærerne købstilbuddet, ...,
I. 22	så fik de brevet fra Danske Bank...
I. 24	aktionærerne har fået flere oplysninger...
I. 27	SKAT får kun meddelelse om...
I. 27	når der er tale om aktier, der handles på børsen
I. 32	langt de fleste af sidstnævnte sager er afgjort ved betaling af bøde
I. 37	tiltrædes det..., at...
I. 38	tiltalte er fundet skyldig
I. 39	da der ikke er grundlag for at nedsætte bøden, tiltrædes det, at...
I. 40	forvandlingsstraffen er fastsat som sket
I. 42	thi kendes for ret
I. 43	byrettens dom stadfæstes
Adverbialer:	
I. 2 (medial)	byretten har <i>den 12. januar 2009</i> afsagt dom
I. 5 (medial)	Tiltalte og vidnet V1 har <i>for landsretten i det væsentligste</i> forklaret som i 1. instans
I. 14 (initial)	<i>I foråret 2006</i> indberettede han befodringsfradraget
I. 25 (initial)	<i>Siden 1. juli 2004</i> har arbejdsgiveren haft en særlig pligt til...
I. 29 (medial)	SKAT har <i>af resurse-mæssige grunde</i> givet et generelt nedslag på bøden
I. 30 (initial)	<i>indenfor en bestemt kategori af besiddelser af medarbejderaktier</i> er der 1215 medarbejdere i G1, som har selvangivet korrekt
I. 37 (initial)	<i>af de grunde, som byretten har anført,</i> tiltrædes det...
I. 39 (initial)	<i>da der ikke er grundlag for at nedsætte bøden,</i> tiltrædes det, at...
Sammensatte præpositioner:	
I. 20	i forbindelse med
I. 29	i forbindelse med
Komplekse substantivsyntagmer:	
I. 1	vestre landsrets dom af 30. april 2009, 4. afdeling S-0208-09
I. 11	en overskuelig brochure, som han ikke læste
I. 13	notatet fra G2 af 19. april 2005
I. 18	oplysninger om notatet til G1's medarbejdere
I. 21	småaktionærer, som har ejet aktier i mere end 3 år
I. 25	en særlig pligt til at give vejledning til de medarbejdere, der er i besiddelse af medarbejderaktier
I. 28	aktier, der handles på Børsen, hvilket ikke er tilfældet ved tvangsindløsning
I. 30	en bestemt kategori af besiddelser af medarbejderaktier
I. 31	1215 medarbejdere i G1, som har selvangivet korrekt
I. 32	866 som ikke har selvangivet salget

I. 33	langt de fleste af sidstnævnte sager
I. 34	10 sager, der er endt med retssager
I. 37	de grunde, som byretten har anført
Fagterminologi:	
I. 3	tiltalte
I. 3	subsidiært
I. 3	formildelse
I. 4	anklagemyndigheden
I. 5	tiltalte
I. 7	tiltalte
I. 37	tiltræde
I. 39	bødestraf
I. 40	forvandlingsstraf
I. 44	tiltalte
juridiske kollokationer:	
I. 2	at afsige dom
I. 3	påstå frifindelse
I. 4	påstå stadfæstelse
I. 5	1. instans
I. 38	finde skyldig
I. 40	at fastsætte straf som sket
I. 41	at stadfæste en dom
I. 42	thi kendes for ret
Nominalkonstruktioner:	
I. 10	Han fik <i>vejledning</i> i banken (Han blev vejledt i banken)
I. 18	SKAT...har fået <i>oplysninger</i> om notatet til G1's medarbejdere (SKAT...er blevet oplyst om notatet til G1's medarbejdere)
I. 26	Arbejdsgiveren har haft en særlig pligt til at give <i>vejledning</i> til de medarbejdere, der er i besiddelse af medarbejderaktier (Arbejdsgiveren har haft en særlig pligt til at vejlede de medarbejdere, der er i besiddelse af medarbejderaktier)
I. 27	SKAT får kun <i>meddelelse</i> om salget, når der er tale om aktier, der handles på børsen (SKAT bliver kun meddelt salget, når der er tale om aktier, der handles på børsen)
Lix:	
433 ord	
135 svære ord	
36 perioder	
A = 31,2	
B = 12,0	
Lix = (A+ B) = 43,2, (middelsvær)	

Parter

A
(advokat Torben Bagge ved advokat Rene Bjerre)

mod

Skatteministeriet
(Kammeradvokaten ved advokat Mette Rovsing Koch)

Afsagt af landsdommerne

Lars E. Andersen, Peter Buhl og Søren Ejrum (kst.)

Byretten har den 26. august 2008 afsagt dom i 1. instans (BS 150-1818/07).

For landsretten har appellanten, A, nedlagt påstand om, at indstævnte, Skatteministeriet, skal anerkende, at hans skatteansættelse for indkomståret 2003 skal nedsættes med 325.000 kr.

Skatteministeriet har påstået frifindelse.

Forklaringer

A har supplerende forklaret, at hvis han havde sat pengene på en bankbog, ville enhver kunne foretage udlæg i dem. Han skyldte penge til banken og til et andet firma, i alt ca. 200.000 kr., ligesom han skyldte ToldSkat ca. 150.000 kr. Han har lavet en ordning med kreditorerne, således at de fik en del af deres tilgodehavende. Han fortalte ikke kreditorerne, at han havde pengene i bankboksen. Han havde heller ikke fortalt sin kone, at han lånte pengene til NN, og hun blev meget vred, da hun opdagede det. Der var den 31. december 2002 190.000 kr. i bankboksen. Året efter var der ikke de angivne 176.000 kr. i bankboksen, idet han havde lånt dem ud. De optrådte stadig i regnskabet, fordi han ikke havde fortalt revisoren, pengene var lånt ud. Han håbede stadig, at han ville få pengene tilbage. Han oplyste hvert år revisoren om kontantbeholdningen i bankboksen.

NN har supplerende forklaret, at han har kendt A siden før 1981. De kender hinanden gennem sejlklubben og har handlet meget sammen. Dr. JJ ønskede at købe to både til henholdsvis ca. 3 og ca. 5 mio. kr. I forbindelse med handlen i Holland skulle de selv aflevere ca. 750.000 kr. til de hollandske mæglere og have et lidt større beløb i schweizerfranc med tilbage. Sidstnævnte var imidlertid falske, og de mistede de ca. 750.000 kr., de havde betalt. Han var med i banken for at hente de 200.000 kr. De lå i bundter med 1000-kr.-sedler, og der var stadig nogle sedler tilbage, da han havde fået sine penge. Oversigten "Provision JJ" er lavet for at kunne vise banken og TK, som ejede den ene af bådene og som derfor bidrog til finansieringen. Han ønskede at overtrække kassekreditte med 25.000 kr. og ændrede derfor bilaget til banken, således at det fremgik, at A bidrog med i alt 350.000 kr. Banken skulle ikke vide, at interessentskabet havde en likvid beholdning på 150.000 kr. Den lå i kasseapparatet. Han fortalte politiet, at A havde lånt 350.000 kr. til interessentskabet, men det passede ikke. Han har også fortalt kurator, at lånet kun udgjorde 200.000. Kurator oplyste, at det

ikke betød noget. Der er kun en mindre dividende til simple kreditorer. Han har heller ikke efterfølgende drøftet bogføringen af 125.000 kr. under "Rest dr. JJ" med revisoren. Bogføringen kan have været for at få kassen til at stemme efter tabet i Holland. Med hensyn til overdragelsen af fordringen til G2 ApS havde SM købt interessentskabets bygninger og ville som et led i en rekonstruktion opkøbe kreditorer for at undgå interessentskabets konkurs. Det endte dog med et konkursdekret, idet banken ikke ville medvirke. SM var klar over, at fordringen var bogført med 334.928,30 kr., selv om den reelt kun udgjorde 200.000 kr. Han måtte betale 6-8 % for fordringerne. Han har selv udfyldt aftalen om overdragelse bortset fra angivelsen firmaet H1 og As underskrift. Han har aldrig set oversigten i ekstraktens side 67 før.

Registreret revisor PL har forklaret, at han har været revisor for A fra ca. 1998 til 2005. Regnskabet for 2003 angiver en kontantbeholdning på 176.000 kr. Dette beløb består dels af en kontantbeholdning på 8.000 kr., dels en restgæld på 168.000 kr. A ønskede ikke, at det skulle fremgå, hvem der var debitor for fordringen, og derfor valgte han at anføre det hele som kontantbeholdning. Han var ikke bekendt med, at der var lavet et gældsbeholdning. Hvis han havde vidst det, ville han have anført det som et tilgodehavende. Regnskaberne angivelse af kontantbeholdningen går helt tilbage til den tidligere revisor, idet der i 1997 er angivet en beholdning på 90.000 kr. As hustru havde foretaget en låneomlægning, og pengene blev bl.a. brugt til at opnå en ordning med banken. De yderligere midler blev gemt for at opnå en ordning med ToldSkat, hvilket skete i 2002. Han var ikke involveret i forhandlingerne herom. ToldSkat fik dengang regnskaberne tilsendt og var således bekendt med kontantbeholdningen. Han mener, at kontantbeholdningen har været til stede. Han har dog ikke selv set pengene.

Landsrettens begrundelse og resultat

Det fremgår af erklæringen af 2. marts 2003, at lånet udgjorde 200.000 kr., hvilket støttes af brevet af 19. marts 2003 fra BAs advokat. Det tiltrædes på den baggrund, at det i overensstemmelse med As og NNs forklaring for retten er lagt til grund, at lånet udgjorde 200.000 kr. Landsretten har således ikke tillagt bogføringen den 31. december 2003 af yderligere 125.000 kr. afgørende betydning.

As ægtefælle, BA, har i 1995, 1997 og 1999 fået udbetalt mere end 500.000 kr. i arv og provenu fra låneomlægninger. As og BAs forklaringer om anvendelsen af disse midler, herunder at en del af pengene blev anbragt i bankboksen og fortsat var i behold i 2003, er ikke støttet af andre skriftlige oplysninger end regnskaberne løbende angivelse af en kontantbeholdning. Det må lægges til grund, at disse angivelser er baseret på As egne oplysninger, og at revisoren ikke selv løbende har konstateret tilstedeværelsen af midlerne. Den angivne kontantbeholdning ultimo 2002 er endvidere mindre end det beløb, A har udlånt primo 2003, ligesom det som anført af byretten fremgår af regnskabet, at kontantbeholdningen ultimo 2003 udgjorde 176.000 kr. Der kan ikke lægges afgørende vægt på As og revisor PLs forklaring om, at regnskabet på dette punkt er misvisende. Det tiltrædes derfor, at det ikke er bevist, at A i 2003 fortsat har haft frie beskattede midler, der har muliggjort ydelsen af lånet.

Herefter, og da der ikke er grundlag for at tilsidesætte skattemyndighedernes skøn, hvorefter indkomsten i 2003 er forhøjet med et beløb svarende til det udlånte beløb, stadfæster landsretten byrettens dom.

A skal betale delvise sagsomkostninger for landsretten til Skatteministeriet med 10.000 kr. Beløbet omfatter udgifter til advokatbistand. Landsretten har lagt vægt på sagens udfald sammenholdt med de nedlagte påstande.

T h i k e n d e s f o r r e t

Byrettens dom stadfæstes.

A skal inden 14 dage betale sagens omkostninger for landsretten til Skatteministeriet med 10.000 kr.

Sagsomkostningerne forrentes efter rentelovens § 8 a.

Dom 23. juni 2009. B-1693-08	
passiver:	
I. 7	(dom) afsagt af landsdommerne
I. 11	skatteansættelse skal nedsættes
I. 24	pengene var lånt ud
I. 25	at han ville få pengene tilbage
I. 59	der var lavet et gældsbrev
I. 62	er angivet en beholdning på 90.000 kr.
I. 63	pengene blev brugt til at opnå en ordning
I. 64	de yderligere midler blev gemt
I. 66	toldogskat fik regnskaberne tilsendt
I. 71	hvilket støttes af brevet...fra BAs advokat
I. 71	det tiltrædes..., at...
I. 76	BA har... fået udbetalt...
I. 78	pengene blev anbragt i bankboks
I. 81	det må lægges til grund, at...
I. 81	disse angivelser er baseret på As egne oplysninger
I. 86	der kan ikke lægges afgørende vægt på As og revisor Pls forklaring
I. 87	det tiltrædes
I. 88	det ikke er bevist, at...
I. 91	hvorefter indkomsten i 2003 er forhøjet med...
I. 96	thi kendes for ret
I. 97	byrettens dom stadfæstes
I. 100	sagsomkostningerne forrentes efter rentelovens § 8 a
Adverbialer:	
I. 21 (medial)	Der var <i>den 31. december 2002</i> 190.000 kr i bankboksen
I. 29 (initial)	<i>i forbindelse med handlen i Holland</i> skulle de selv aflevere ca.5 mio. kr. <i>med hensyn til overdragelsen af fordringen til G2 ApS</i> havde SM købt interessentskabets bygninger
I. 46 (initial)	ville <i>som et led i en rekonstruktion</i> opkøbe kreditorer
I. 72 (medial)	Det <i>i overensstemmelse med As og NNs forklaring for retten</i> er lagt til grund...
I. 74 (medial)	Landsretten har ikke tillagt bogføringen <i>den 31. december 2003 af yderligere 125.000 kr.</i> afgørende betydning
I. 76 (medial)	As ægtefælle BA har <i>i 1995, 1997 og 1999</i> fået udbetalt mere end 500.000 kr.
I. 78 (medial)	As og Bas forklaringer om anvendelsen af disse midler, <i>herunder at en del af pengene blev anbragt i bankboksen og fortsat var i behold i 2003</i> , er ikke støttet af andre skriftlige oplysninger
I. 87 (medial)	Regnskabet <i>på dette punkt</i> er misvisende
I. 90 (initial)	<i>Herefter, og da der ikke er grundlag for at tilsidesætte skattemyndighedernes skøn, hvorefter indkomsten i 2003 er forhøjet med et beløb svarende til det udlånte beløb,</i> stadfæster landsretten byrettens dom.
I. 98 (medial)	A skal <i>inden 14 dage</i> betale sagens omkostninger
Sammensatte præpositioner:	
I. 29	i forbindelse med
I. 46	med hensyn til

I. 72	i overensstemmelse med
Komplekse substantivsyntagmer:	
I. 10	Påstand om, at indstævnte, Skatteministeriet, skal anerkende, at hans skatteansættelse for indkomståret 2003 skal nedsættes med 325.000 kr.
I. 29	to både til henholdsvis ca. 3 og ca. 5 mio. kr.
I. 36	TK, som ejede den ene af bådene og som derfor bidrog til finansieringen
I. 44	bogføringen af 125.000 kr. under "Rest dr. JJ"
I. 46	overdragelsen af fordringen til G2 ApS
I. 61	regnskabernes angivelse af kontantbeholdningen
I. 70	erklæring af 2. marts 2003
I. 71	brevet af 19. marts 2003 fra BAs advokat
I. 74	bogføringen...af yderligere 125.000 kr.
I. 77	As og BAs forklaring om anvendelsen af disse midler
I. 80	Andre skriftlige oplysninger end regnskabernes løbende angivelse af en kontantbeholdning
I. 83	den angivne kontantbeholdning ultimo 2002
I. 84	det beløb, A har udlånt primo 2003
I. 87	As og revisor PIs forklaring om, at regnskabet på dette tidspunkt er misvisende
I. 88	frie beskattede midler, der har muliggjort ydelsen af lånet
I. 90	skattemyndighedernes skøn, hvorefter indkomsten i 2003 er forhøjet med et beløb svarende til det udlånte beløb
I. 93	delvise sagsomkostninger for landsretten til Skatteministeriet med 10.000 kr.
I. 95	sagens udfald sammenholdt med de nedlagte påstande
I. 98	Sagens omkostninger for landsretten til Skatteministeriet med 10.000 kr.
Fagterminologi:	
I. 10	appellanten
I. 10	indstævnte
I. 42	kurator
I. 49	konkursdekret
I. 93	sagsomkostninger
I. 94	advokatbistand
juridiske kollokationer:	
I. 7	at afsige (dom)
I. 9	at afsige dom
I. 10	At nedlægge påstand
I. 13	At påstå frifindelse
I. 92	At stadfæste dom
I. 95	nedlagte påstande
I. 96	thi kendes for ret
I. 97	At stadfæste dom
Nominalkonstruktioner:	
I. 19	Således at de fik en del af deres <i>tilgodehavende</i> (Således at de fik en del af de penge, de havde til gode)

I. 36	TK, som ejede en af bådene og derfor bidrog til <i>finansieringen</i> (TK, som ejede en af bådene og derfor var med til at finansiere købet)
I. 48	For at undgå interessentskabets <i>konkurs</i> (For at undgå, at interessentskabet gik konkurs)
I. 61	regnskabernes <i>angivelse</i> af kontantbeholdningen går helt tilbage til den tidligere revisor (kontantbeholdningen, som er angivet i regnskaberne, går helt tilbage til den tidligere revisor)
I. 63	As hustru havde fået foretaget en <i>lånemlægning</i> (As hustru havde fået omlagt lånene)
I. 72	Det i overensstemmelse med As og NNs <i>forklaring</i> for retten er lagt til grund (Det i overensstemmelse med, hvad A og NN forklarede for retten er lagt til grund)
I. 78	As og Bas forklaring om <i>anvendelsen</i> af disse midler (As og Bas forklaring om, hvordan disse midler blev anvendt)
I. 83	revisoren ikke selv har konstateret <i>tilstedeværelsen</i> af midlerne (revisoren ikke selv har konstateret, at midlerne har været tilstede)
Lix:	
1048 ord	
321 svære ord	
69 perioder	
A = 30,6	
B = 15,2	
Lix = (A+ B) = 45,8 (svær)	

**Engelske analysedomme før Woolf-reformen
i 1999**



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NIGEL MONTY BAILEY, R v. [1996] EWCA Crim 22 (1st April, 1996)

No: 95/3572/X3

IN THE COURT OF APPEAL
CRIMINAL DIVISION
Royal Courts of Justice
The Strand
London WC2

Monday 1st April 1996

B E F O R E :

LORD JUSTICE KENNEDY

MR JUSTICE MANTELL

and

HIS HONOUR JUDGE GRIGSON
(Sitting as a Judge of the CACD)

R E G I N A

- v -

NIGEL MONTY BAILEY

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(Official Shorthand Writers to the Court)

MR P GRIFFITHS QC appeared on behalf of the Applicant

JUDGMENT
(As Approved by the Court)

CROWN COPYRIGHT
Monday 1st April 1996

MR JUSTICE MANTELL: On 28th March 1995 this applicant was convicted following a trial of a single count of rape by a majority of 10 to 2.

His application for leave to appeal having been refused by the Single Judge, he now renews it before this Court.

On 8th October 1994 some young girls, including the complainant, Jolene Matthews, were standing talking in the village of Rimley when the applicant, aged 29, stopped his jeep close by and engaged them in conversation. It is accepted by Mr. Griffiths QC, who appears for the applicant on this renewed application, that he was, for a man of his age, quite improperly, chatting them up. He offered to give them rides. Two of the girls, Clare and Emma, (it is not necessary to mention their second names) agreed to go with him for taking a short ride round the village, but the complainant, Jolene, accepted an invitation to go as far as Merthyr.

In the course of that journey the applicant pulled into a parking place, in a relatively isolated spot, not far from Merthyr, and there it is common ground that sexual intercourse took place between them. Jolene said that she did not consent; the defendant said that it was with her consent. That was the sole issue for the jury.

Jolene gave evidence that she struggled, that she was subdued, that her clothes were pulled from her, intercourse took place by force and that after it was over the applicant had slapped her across the face and then eventually dropped her back at her own village, some little distance from where she had been picked up.

She had not wanted to let what had happened be known to her parents or indeed to any adult but having met up with her friends who had gone to baby-sit for a Mrs. Meade told them. It was apparent to them, or so they were to say, that Jolene was greatly distressed. Indeed both those girls noted the mark of a hand across Jolene's face.

The defendant said that far from it being the case that she was resentful of what had happened in the motor car, she was content to accept another date on the following Wednesday, and that was a matter much relied upon by Mr. Griffiths before us on the renewed application.

Following his arrest, the applicant, who was a man of previous good character and in employment, admitted that intercourse had taken place between himself and Jolene but contended, as he did

throughout, that what had happened had happened with Jolene's full consent.

The medical evidence revealed nothing of consequence so far as Jolene's private parts were concerned, but there were marks to the breasts, which showed at the very least that there had been rough handling. This Court has had the advantage of seeing the photographs and it would seem to us, at any rate, that the handling must have been very rough indeed to produce the kind of bruises or abrasions which those photographs disclose. Other than that, all that there was to support the evidence of Jolene, was what Emma and Clare, said about Jolene's condition when they were to see her later in the evening, notably her considerable distress and upset, and the hand mark across the face. Against that background, it is suggested that the conviction suffered by the applicant was unsafe and unsatisfactory.

A number of grounds are taken. Rightly, in the view of this Court, Mr. Griffiths concentrated on three. In the first place he says that this was one of those exceptional cases as disclosed in R v. Makanjuola (1995) 2 Cr.App.R. 469, when it would have been appropriate for the trial judge to have given some kind of warning, if not on the lines of the former corroboration direction, at least indicating that the jury should proceed with caution where, as in this case, a young girl was making a complaint of sexual assault or rape.

Mr. Griffiths confesses that the point had not occurred to him at the time of the trial. He had assumed that the 1994 Criminal Justice and Public Order Act, section 32(1) was effective to dispose of any such requirement in any class of case. However, in Makanjuola the Lord Chief Justice, giving the judgment of the Court, did indicate there might be some cases in which it would be appropriate for the judge to warn the jury of the need to caution before acting upon the unsupported evidence of a witness. It was there made perfectly plain that such occasions would be rare indeed and some kind of evidential basis would be necessary before the question could even arise. That such a basis existed in this case is not really suggested. However, it was the case, so the Lord Chief Justice said, that should such a case arise then it would be appropriate for the trial judge to discuss the position with counsel before giving any such direction.

What the Court in Makanjuola was at pains to point out was, first of all, that the occasions when it would be necessary, appropriate or desirable for such a direction to be given would be infrequent, and secondly, that this Court would be disinclined to interfere with a trial judge's exercise of his discretion, save in the case where that exercise is unreasonable in the Wednesbury sense.

Here, but for the fact that at page 8 of the transcript the trial judge told the jury that it would be important in resolving the clear conflict of evidence between Jolene and the applicant to see what support, if any, existed for Jolene's account and to look for any evidence which might point in the other direction, there was no warning which counselled the exercise of caution in terms.

In the view of this Court, even had the trial judge and counsel had the advantage of knowing in advance what this Court was going to say in the case of Makanjuola, this would not have been a case which called for a direction in those terms and, as it seems to us, that which the learned judge said in the passage just recited was more than efficient in all the circumstances.

The second ground which Mr. Griffiths relied upon (and we take the points in the order of which they were advanced) is that there was, so it appears, an interview with Jolene after the trial was over, as a result of which an article appeared in a local newspaper from which it might have seemed that Jolene was then saying that having been brought back to the village, she had been deposited at a spot some distance from where she had told the jury she had been dropped.

Mr. Griffiths submits that if it be the case that such was said to the newspaper reporter, then it is an indication of Jolene's unreliability as a witness, supporting of the submission which he made to the jury and to us that she may have been lying.

There is no witness statement from the newspaper reporter in front of us. If this Court were to act upon any such submission made by Mr. Griffiths a statement would be necessary. But in any event, the Court takes the view that the point which Mr. Griffiths seeks to make is so peripheral to the central issue before the jury that, even if it were the case that something inconsistent of that sort had been said after the trial, it would not be such as to make this Court think that the conviction was in

any way unsafe or unsatisfactory.

Then, and this would appear to be the matter upon which Mr. Griffiths lays the greatest emphasis, it is said that Mrs. Victoria Meade is a witness who is now available to give evidence which would contradict that of the two young girls, Emma and Clare, as to the condition in which they saw Jolene once she returned from her trip with the applicant.

Mrs. Meade is a mature lady who had invited Emma and Clare to baby-sit for her. It was to her house that Jolene returned following her experiences with the applicant. She, in a statement which has now been put before the Court, was to say that although Jolene had said in terms that she had been hit by the applicant, she denied that any intercourse had taken place and, so far as Mrs. Meade was able to see, Jolene was not obviously distressed and her clothing was not obviously disturbed. It is said by Mr. Griffiths that had that evidence been available at trial it would have cast doubt not only upon the evidence of Jolene but the so-called supportive evidence offered by Emma and Clare. That is as may be. It is the view of this Court that it would be a bold advocate who saw fit to put the evidence of Mrs. Meade before the Court, having regard to the fact that Jolene was, according to that witness, complaining of being struck by the applicant shortly after the event. Moreover, in saying that sexual intercourse had not taken place it is accepted that she was not speaking the truth.

But in any event, here was a witness who was available at the time of trial. She had been referred to in the statements of the other witnesses, including those of Emma and Clare. There is no reasonable explanation put forward to this Court as to why she was not interviewed and, if it were thought appropriate, called as a witness. Nor does this Court think that the interests of justice now require that her evidence should be received by the Court in support of the application or, if leave were to be granted, in support of the appeal. In any event, as we have said, it seems to this Court that the evidence which Mrs. Meade would be able to give, could not make any difference to the outcome. The third ground is rejected also.

Then there are a number of complaints which are encapsulated in the first of the written grounds, namely that the prosecution case was weak, in that it relied upon the evidence of the complainant alone that her evidence was given wholly through video and indeed with her evidence-in-chief had been a video-taped interview, that she had not complained to anyone in authority until after some 48 hours had elapsed and that the applicant was a man of previous good character. Then, as a separate point, it is said there was a long delay between speeches and the summing up.

Dealing with that last matter first, it is the case that the speeches in the trial finished on a Thursday. For good reason, so it seems, the court was unable to sit on Friday and again on the Monday, and consequently the summing-up did not begin until the following Tuesday. In the ordinary way such a delay is to be avoided; in this case it could not be. It is not something which, in the view of this Court, amounts to a material irregularity and certainly not something which gives this Court reason to think that the verdict might be unsafe or unsatisfactory.

So far as the other matters are concerned, they were all put before the jury by Mr. Griffiths, no doubt persuasively and no doubt forcefully. They were, however, all matters for the jury and were no doubt taken into account on the road to reaching a verdict.

In summary, therefore, this Court is of the view that this verdict cannot be said to have been unsafe or unsatisfactory, and the application for leave to appeal is refused.

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1 April 1996 Bailey	
passiver:	
I. 30	this applicant was convicted
I. 32	His application for leave to appeal having been refused by the Single Judge
I. 36	It is accepted by Mr. Griffiths QC, who appears for the applicant
I. 45	her clothes were pulled from her,
I. 54	that was a matter much relied upon by Mr. Griffiths
I. 66	it is suggested that...
I. 66	the conviction suffered by the applicant was unsafe
I. 68	A number of grounds are taken
I. 69	this was one of those exceptional cases as disclosed in <u>R v. Makanjuola</u>
I. 80	That such a basis existed in this case is not really suggested
I. 84	the occasions when it would be necessary, appropriate or desirable for such a direction to be given would be infrequent
I. 94	in the passage just recited
I. 96	we take the points in the order of which they were advanced
I. 99	having been brought back to the village
I. 99	she had been deposited
I. 100	she had been dropped
I. 101	if it be the case that such was said to the newspaper reporter
I. 105	any such submission made by Mr. Griffiths
I. 107	something inconsistent of that sort had been said
I. 110	it is said that Mrs. Victoria Meade is a witness who is now available to give evidence
I. 115	in a statement which has now been put before the Court
I. 116	she had been hit by the applicant
I. 119	It is said by Mr. Griffiths
I. 120	the so-called supportive evidence offered by Emma and Clare
I. 123	Jolene was...complaining of being struck by the applicant
I. 124	it is accepted that she was not speaking the truth
I. 125	She had been referred to in the statements of the other witnesses
I. 127	she was not interviewed
I. 129	her evidence should be received by the Court
I. 129	if leave were to be granted
I. 132	The third ground is rejected also
I. 133	there are a number of complaints which are encapsulated in the first of the written grounds
I. 135	her evidence was given wholly through video
I. 138	it is said there was a long delay between speeches and the summing up
I. 141	such a delay is to be avoided
I. 142	in this case it could not be
I. 145	they were all put before the jury by Mr. Griffiths
I. 149	this verdict cannot be said to have been unsafe or unsatisfactory
I. 150	the application for leave to appeal is refused
Adverbialer:	
I. 30 (initial)	<i>On 28th March 1995</i> this applicant was convicted
I. 30 (medial)	this applicant was convicted <i>following a trial</i> of a single count of rape
I. 32 (initial)	<i>His application for leave to appeal having been refused by the Single Judge</i> , he now renews it before this Court
I. 34 (initial)	<i>On 8th October 1994</i> some young girls, including the complainant, Jolene Matthews,

	were standing talking in the village of Rimley
I. 37 (medial)	he was, <i>for a man of his age, quite improperly</i> , chatting them up
I. 41 (initial)	<i>In the course of that journey</i> the applicant pulled into a parking place
I. 46 (initial)	<i>after it was over</i> the applicant had slapped her across the face
I. 56 (initial)	<i>Following his arrest</i> , the applicant, who was a man of previous good character and in employment, admitted that intercourse had taken place
I. 57 (medial)	but contended, <i>as he did throughout</i> , that what had happened had happened with Jolene's full consent
I. 60 (medial)	there were marks to the breasts, which showed <i>at the very least</i> that there had been rough handling
I. 63 (initial)	<i>Other than that</i> , all that there was to support the evidence of Jolene, was what Emma and Clare, said about Jolene's condition
I. 65 (initial)	<i>Against that background</i> , it is suggested that the conviction suffered by the applicant was unsafe and unsatisfactory
I. 68 (initial)	<i>Rightly, in the view of this Court</i> , Mr. Griffiths concentrated on three
I. 69 (initial)	<i>In the first place</i> he says that this was one of those exceptional cases as disclosed in <u>R v. Makanjuola</u>
I. 71 (medial)	it would have been appropriate for the trial judge to have given some kind of warning, <i>if not on the lines of the former corroboration direction</i> , at least indicating that the jury should proceed with caution
I. 72 (initial)	the jury should proceed with caution where, <i>as in this case</i> , a young girl was making a complaint of sexual assault or rape
I. 76 (initial)	<i>However, in Makanjuola</i> the Lord Chief Justice...did indicate there might be some cases in which it would be appropriate for the judge to warn the jury
I. 76 (medial)	the Lord Chief Justice, <i>giving the judgment of the Court</i> , did indicate there might be some cases in which it would be appropriate for the judge to warn the jury
I. 81 (initial)	<i>should such a case arise</i> then it would be appropriate for the trial judge to discuss the position with counsel
I. 84 (medial)	What the Court in <u>Makanjuola</u> was at pains to point out was, <i>first of all</i> , that the occasions when it would be necessary, appropriate or desirable for such a direction to be given would be infrequent
I. 88 (initial)	<i>Here, but for the fact that at page 8 of the transcript the trial judge told the jury that it would be important in resolving the clear conflict of evidence between Jolene and the applicant to see what support, if any, existed for Jolene's account and to look for any evidence which might point in the other direction</i> , there was no warning which counselled the exercise of caution in terms
I. 92 (initial)	<i>In the view of this Court, even had the trial judge and counsel had the advantage of knowing in advance what this Court was going to say in the case of Makanjuola</i> , this would not have been a case which called for a direction in those terms
I. 94 (initial)	<i>as it seems to us</i> , that which the learned judge said in the passage just recited was more than efficient in all the circumstances
I. 94 (medial)	that which the learned judge said <i>in the passage just recited</i> was more than efficient in all the circumstances
I. 96 (medial)	The second ground which Mr. Griffiths relied upon (<i>and we take the points in the order of which they were advanced</i>) is that there was,...,an interview with Jolene after the trial was over
I. 97 (medial)	there was, <i>so it appears</i> , an interview with Jolene after the trial was over
I. 101 (initial)	<i>if it be the case that such was said to the newspaper reporter</i> , then it is an indication of Jolene's unreliability as a witness
I. 104 (initial)	<i>If this Court were to act upon any such submission made by Mr. Griffiths</i> a statement would be necessary
I. 105 (initial)	<i>But in any event</i> , the Court takes the view that the point which Mr. Griffiths seeks to make is so peripheral
I. 107 (initial)	<i>even if it were the case that something inconsistent of that sort had been said after the trial</i> , it would not be such as to make this Court think that the conviction was in any way unsafe or unsatisfactory

I. 110 (initial)	<i>Then, and this would appear to be the matter upon which Mr. Griffiths lays the greatest emphasis, it is said that Mrs. Victoria Meade is a witness who is now available to give evidence</i>
I. 115 (medial)	<i>She, in a statement which has now been put before the Court, was to say that...</i>
I. 116 (initial)	<i>although Jolene had said in terms that she had been hit by the applicant, she denied that any intercourse had taken place</i>
I. 117 (initial)	<i>so far as Mrs. Meade was able to see, Jolene was not obviously distressed</i>
I. 119 (initial)	<i>had that evidence been available at trial it would have cast doubt not only upon the evidence of Jolene but the so-called supportive evidence</i>
I. 122 (medial)	<i>having regard to the fact that Jolene was, according to that witness, complaining of being struck by the applicant</i>
I. 123 (initial)	<i>Moreover, in saying that sexual intercourse had not taken place it is accepted that she was not speaking the truth</i>
I. 125 (initial)	<i>But in any event, here was a witness who was available at the time of trial</i>
I. 127 (medial)	<i>why she was not interviewed and, if it were thought appropriate, called as a witness</i>
I. 129 (medial)	<i>her evidence should be received by the Court in support of the application or, if leave were to be granted, in support of the appeal</i>
I. 130 (initial)	<i>In any event, as we have said, it seems to this Court that the evidence which Mrs. Meade would be able to give, could not make any difference to the outcome</i>
I. 137 (initial)	<i>Then, as a separate point, it is said there was a long delay between speeches and the summing up</i>
I. 139 (initial)	<i>Dealing with that last matter first, it is the case that the speeches in the trial finished on a Thursday</i>
I. 140 (initial)	<i>For good reason, so it seems, the court was unable to sit on Friday and again on the Monday</i>
I. 141 (initial)	<i>In the ordinary way such a delay is to be avoided</i>
I. 142 (initial)	<i>It is not something which, in the view of this Court, amounts to a material irregularity</i>
I. 145 (initial)	<i>So far as the other matters are concerned, they were all put before the jury by Mr. Griffiths</i>
I. 148 (initial)	<i>In summary, therefore, this Court is of the view that this verdict cannot be said to have been unsafe</i>
Sammensatte præpositioner:	
I. 25	on behalf of
Komplekse substantivsyntagmer:	
I. 36	Mr. Griffiths QC, who appears for the applicant
I. 56	the applicant, who was a man of previous good character and in employment,
I. 60	marks to the breasts, which showed at the very least that there had been rough handling
I. 62	the kind of bruises or abrasions which those photographs disclose
I. 66	the conviction suffered by the applicant
I. 69	one of those exceptional cases as disclosed in <i>R v. Makanjuola</i> (1995) 2 Cr.App.R. 469, when it would have been appropriate for the trial judge to have given some kind of warning, if not on the lines of the former corroboration direction, at least indicating that the jury should proceed with caution where, as in this case, a young girl was making a complaint of sexual assault or rape
I. 84	the occasions when it would be necessary, appropriate or desirable for such a direction to be given
I. 86	a trial judge's exercise of his discretion
I. 90	any evidence which might point in the other direction
I. 91	no warning which counselled the exercise of caution in terms

I. 93	a case which called for a direction in those terms
I. 94	that which the learned judge said
I. 94	in the passage just recited
I. 96	The second ground which Mr. Griffiths relied upon
I. 96	the order of which they were advanced
I. 98	a result of which an article appeared in a local newspaper from which it might have seemed that Jolene was then saying that having been brought back to the village, she had been deposited at a spot some distance from where she had told the jury she had been dropped.
I. 102	the submission which he made to the jury and to us that she may have been lying
I. 105	any such submission made by Mr. Griffiths
I. 106	the point which Mr. Griffiths seeks to make
I. 110	the matter upon which Mr. Griffiths lays the greatest emphasis,
I. 111	a witness who is now available to give evidence which would contradict that of the two young girls, Emma and Clare, as to the condition in which they saw Jolene
I. 114	a mature lady who had invited Emma and Clare to baby-sit for her
I. 115	a statement which has now been put before the Court
I. 120	the so-called supportive evidence offered by Emma and Clare
I. 121	a bold advocate who saw fit to put the evidence of Mrs. Meade before the Court
I. 125	a witness who was available at the time of trial
I. 126	no reasonable explanation put forward to this Court as to why she was not interviewed and, if it were thought appropriate, called as a witness
I. 130	the evidence which Mrs. Meade would be able to give
I. 133	a number of complaints which are encapsulated in the first of the written grounds
I. 137	a man of previous good character
I. 142	something which, in the view of this Court, amounts to a material irregularity
I. 143	something which gives this Court reason to think that the verdict might be unsafe or unsatisfactory
Fagterminologi:	
I. 16	regina
I. 30	trial
I. 31	count
I. 44	jury
I. 66	conviction
I. 72	jury
I. 74	trial
I. 78	jury
I. 82	counsel
I. 92	counsel
I. 97	trial
I. 107	jury
I. 108	trial
I. 108	conviction
I. 119	trial
I. 125	trial
I. 130	Appeal
I. 135	evidence-in-chief
I. 139	Trial
I. 144	Verdict
I. 145	Jury

I. 146	Jury
I. 147	Verdict
I. 148	Verdict
juridiske kollokationer:	
I. 4	the court of appeal
I. 5	criminal division
I. 30	to be convicted of...
I. 32	apply for leave to appeal
I. 32	the single judge
I. 45	to give evidence
I. 70	trial judge
I. 82	trial judge
I. 86	trial judge's
I. 86	exercise of discretion
I. 87	the Wednesbury sense
I. 92	trial judge
I. 104	witness statement
I. 111	give evidence
I. 129	to call a witness
I. 129	to grant leave to appeal
I. 134	prosecution case
I. 149	leave to appeal
Nominalkonstruktioner:	
I. 36	the applicant, aged 29, stopped his jeep close by and engaged them in <i>conversation</i> (the applicant, aged 29, stopped his jeep close by and started talking to them)
I. 61	there were marks to the breasts, which showed at the very least that there had been rough <i>handling</i> (there were marks to the breasts, which showed at the very least that he had handled her roughly)
I. 62	it would seem to us, at any rate, that the handling must have been very rough indeed to produce the kind of bruises or abrasions (it would seem to us, at any rate, that he must have handled her very roughly indeed to produce the kind of bruises or abrasions)
I. 83	it would be appropriate for the trial judge to discuss the position with counsel before giving any such <i>direction</i> (it would be appropriate for the trial judge to discuss the position with counsel before directing in any such way)
I. 85	the occasions when it would be necessary, appropriate or desirable for such a <i>direction</i> to be given would be infrequent (the occasions when it would be necessary, appropriate or desirable to direct in such a way would be infrequent)
I. 91	there was no warning which counselled the exercise of caution in terms (he did not warn or counsel the jury to exercise caution in terms)
I. 97	there was, so it appears, an <i>interview</i> with Jolene after the trial was over (it appears that Jolene was interviewed after the trial was over)
I. 101	it is an <i>indication</i> of Jolene's <i>unreliability</i> as a witness (it indicates that Jolene is unreliable as a witness)
I. 127	There is no reasonable <i>explanation</i> put forward to this Court as to why she was not interviewed (it has not been explained to this Court why she was not interviewed)
Lix:	
2166 ord	
419 svære ord	
78 perioder	

A = 19,3		
B = 27,8		
Lix = (A+ B) = 47,1 (svær)		



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STEPHEN MICHAEL BROOM, R v. [1996] EWCA Crim 443 (14th May, 1996)

No: 95/7125/X5

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2

Tuesday 14th May 1996

B E F O R E :

LORD JUSTICE SWINTON THOMAS

MR JUSTICE LONGMORE

and

HIS HONOUR JUDGE BEAUMONT QC
(acting as a judge of the CACD.)

R E G I N A

- v -

STEPHEN MICHAEL BROOM

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Tel No: 0171 404 1400 Fax No: 0171 404 1424
(Official Shorthand Writers to the Court)

MISS Z MARTIN appeared on behalf of the Appellant
MR LAVERS appeared on behalf of the Crown

JUDGMENT
(As Approved by the Court)

Crown Copyright
Tuesday 14th May 1996

JUDGMENT

LORD JUSTICE SWINTON THOMAS: On 16th October 1995, at the Crown Court at Croydon before his Honour Judge McHale, the appellant was convicted on one count of burglary and one count of dangerous driving. Sentence was adjourned for reports, and on 13th November 1995 he was sentenced in all to serve 15 months' imprisonment. He now appeals against conviction by leave of the Single Judge.

There can be no doubt that the case was, as Mr Lavers has submitted, a very strong one. On the evening of 17th March 1995 the premises of estate agents in Croydon were burgled and a quantity of computer equipment was stolen. The equipment was loaded into a Ford Granada which had been owned by the appellant's former wife. About 15 minutes later the car was seen by police officers driving along Beckenham Hill Road. The police officers stopped the car and attempted to speak to the occupants. However, it was driven off at a very high speed. There is no doubt, and this is not contested, that the car was driven very dangerously. It was the appellant's case that he was not the driver. The car eventually came to a stop and the two occupants ran off up a muddy alleyway. One of them fell over. The stolen computer equipment was found in the boot of the car.

Later on the appellant was seen in the vicinity with mud on his trousers, and he was limping. He was stopped by police officers. The evidence of the police officers was that when the appellant was arrested, and was told that he had been arrested as being suspected of participating in a burglary, he said, "I admit to being the driver of the car". In evidence he denied that he had said that. His evidence was that he was a passenger and had jumped out of the car. He said the driver was a man called Nick. He denied having been in the muddy lane and said that he had got muddy as a result of jumping out of the car. He told the police officers that he had hurt his leg playing football, but he admitted in evidence that that was not true.

At the police station the appellant declined to answer any of the questions put to him, having what is known colloquially as a "no comment" interview.

The first of the police officers to give evidence was WPC Thomas, who saw the car when it was

stopped in Beckenham Hill Road. She identified the appellant as the driver of the car. It was put to her that she was wrong and that her evidence was either untruthful or mistaken.

Police Constable Hill said that he did not think that the appellant could have got out of the car without being seen by him.

The appellant's case, as we have related, was that he was a passenger in the car, that he was not involved in the burglary, but that the others in the car must have been involved, and they picked him up at the public house. He admitted that he had told lies to the police.

As we have said, the evidence against the appellant was extremely strong, and it is hardly surprising that the jury convicted him. Be that as it may, he was entitled to have proper directions in relation to the law given to the jury in relation to the defence put forward by him.

The first point taken by Miss Martin, for the appellant, is that the judge did not give the jury an appropriate direction in accordance with the case of Lucas (1981) 73 Cr.App.R. 159, in relation to lies told by the appellant. It was, clearly, a part of the prosecution case that the appellant told lies to the police and told lies in the witness box. Credibility, inevitably, was at the very centre of this case, and it was the Crown's case that the appellant's statements to the police and his evidence at the trial were incredible. Indeed, Mr Lavers, on behalf of the Crown, has said precisely that in his submissions today.

Further, the defence alleged that the evidence of WPC Thomas was untruthful, and the jury had to make an assessment of where the truth lay.

It is necessary to make reference to just a few passages in the learned judge's summing-up. The judge reminded the jury of the evidence given by WPC Thomas, and then said, on page nine:

"The defence counsel suggest that her evidence was not honest, not truthful."

Then, perhaps the most important passages on this aspect of the appeal are to be found on page 10.

The judge said:

"If I can stick for a moment to the offence of dangerous driving, the Count 3 offence. Nobody seems, do they, in this case to have questioned whether Mr Broom's wife's car was driven dangerously, so dangerously that Mr Broom tells you he jumped out, which of course accounts for the injured leg which on the prosecution account was damaged when he fell in the lane. Mr Broom denied that he ever was in the muddy lane. He jumped out of the car and said he got muddy that way. He admits though he told the officers who were with him in the petrol station in Bromley Road, Catford that he hurt his leg playing football and he admits that was untrue. You may wonder why, if he injured his leg jumping from a car which he was not driving, he should lie about what happened - to avoid trouble is what he told you."

It is clear, reading that passage, that that alleged lie told by the appellant was of considerable importance so far as the Crown case went. The learned judge is, in that passage, asking the jury to consider why it was that the defendant lied - and inviting them to come to the conclusion that if they, the jury, thought right to do so - that he told that lie because he knew that he was, in fact, the driver of the car. That, in turn, of course, is directly relevant to the question as to whether WPC Thomas correctly identified him as being the driver.

The judge then continued:

"You may also wonder why he told you he had been drinking, if you came to the conclusion that he had not been drinking - but it is a matter for you. But the officer's evidence was that his breath did not smell. Did he say he had been drinking to account for his time when he had been out burgling? Did he tell you an untrue story about staying behind in the Railway Tavern at West Wickham to account for his car with the stolen equipment on board, having been to the estate agents whilst he himself did not go? Or, on the other hand, is what he tells you about that true, or may it be true? If he did not go to the estate agents he is of course not guilty of burglary."

Again, the learned judge, in that passage, is quite properly inviting the jury to consider whether or not the appellant had told lies in relation to his movements. That, as we have indicated, is, of course, a perfectly proper approach for the learned judge to take. However, the question remains outstanding as to whether, having taken that approach, he is required to give the jury the Lucas direction in relation

to lies.

Then, on page 11, the learned judge said:

"The defendant's evidence caters to his being with his car before and after but not at the time of the burglary. The prosecution suggests this evidence is a fabrication."

Then, on page 13G, the learned judge made reference to the appellant having altered his account in relation to his movements.

At page 17 the learned judge said:

"Without suggesting to you that Mr Broom is guilty of either Count 1, burglary, or Count 2, the handling of stolen goods, I do suggest that if you disbelieve - I am not suggesting you should but if you disbelieve his account and if you accept the facts proved by the prosecution, if you draw an inference adverse to Mr Broom from those facts, the more likely inference is burglary rather than that of handling stolen goods and you will consider this count of burglary, the first count."

Once again that highlights the importance of the issue as to credibility in this case.

Then, finally, at page 24, the judge said:

"I think it was Police Constable Bennett who said: 'He says that he had been down the pub. He had fallen over round the corner into some mud because he is a bit pissed.' But Police Constable Thomas said: 'I could smell no alcohol.' The officer said: 'He says he hurt his leg playing football and I said to Mr Broom: "I think you have been involved in a burglary tonight so I am arresting you on suspicion of burglary"'."

Again, the alleged lies, in relation to having hurt his leg playing football and as to whether he had been drinking, being placed before the jury again.

It is in those circumstances that Miss Martin submits that it was essential in this case for the judge to give the jury a direction as to how they should approach the question of lies.

It is not necessary for us to refer to authorities in detail. In the recent case of Goodway (1994) 98 Cr.App.R. 11, Lord Taylor CJ said, at page 17:

".....we consider...that a Lucas direction should be given, save where it is otiose as indicated in Dehar, whenever lies are, or may be, relied upon as supporting evidence of the defendant's guilt."

It is abundantly plain to our minds that in this case lies were, indeed, relied upon as supporting evidence of the defendant's guilt.

Mr Lavers, in his very full and very helpful skeleton argument and in his able submissions to us, has submitted that the lies which were told by the appellant were not central to the case and did not, in any event, go to the issue as to identification.

He invited our attention to Keeton (1995) 2 Cr.App.R. 241, where this Court held that a Lucas direction was not required in that particular case because the question of lies was, at best, peripheral. Mr Lavers submits that the lies told in this case were, likewise, peripheral. For the reasons already given, we do not accept that submission. We have no doubt that in this case the judge should have given the jury a direction as to the other reasons why the defendant may have lied apart from being guilty.

The second ground of appeal relates to the judge's failure to give a direction as to how the jury should approach the fact that when interviewed by the police the appellant chose, as was then his right, to make no comment. The judge did not give the jury any direction as to how they should approach that aspect of the case. It would seem that either Mr Lavers or Miss Martin, or probably both, did themselves address the jury in relation to that. Mr Lavers, very properly, at the conclusion of the summing-up, drew the judge's attention to that failure and politely asked him to consider whether he ought to give such a direction. The judge indicated that the jury had already been told that they should not draw any adverse inference against the appellant by counsel, and he did not consider it necessary for him to give any further direction.

This point was considered by this Court in the case of Pugsley, transcript of 21st January 1994. At page seven of the transcript McCowan LJ said:

"[Counsel] drew attention to the fact that the trial judge in his summing-up had failed to give the jury the necessary direction that the jury should not hold the appellant's silence or his refusal to answer

questions against him when he was interviewed. Judge Pullinger listened to what Mr Waller said but refused to make any amendment to his summing-up, and so he gave no direction on that other point which is the other ground of appeal which is relied on by the appellant today.

Guidance is given to judges in the Judicial Studies Board Crown Court Bench Book and the relevant one at page 33 sets out clearly:

'Any person suspected of a criminal offence is entitled to say nothing when he is asked questions about it. You must not hold his silence or refusal to answer questions against him.'

Below that a note is attached saying:

'This direction must always be given when a defendant has exercised his right to silence.'

Unfortunately it was not given in this case, although the matter was most clearly and properly brought to the trial judge's attention."

The position is almost exactly the same in the instant appeal.

McCowan LJ then continued a little later in the transcript:

"The failure to do so was clearly a material irregularity."

It was, likewise, in our judgment, a material irregularity in the present case. If, on the facts of this case, that ground stood alone, it might well be that we would not consider it necessary to quash this conviction, but we have to consider that failure to give the jury an appropriate direction in conjunction with the learned judge's failure to direct the jury as to how they should approach the appellant's lies.

When he granted leave the appeal the Single Judge said:

"The proviso is not my affair, but in view of the rest of the evidence, not least that your client admitted that he was the driver, you will have been fortunate (or persuasive) indeed in if Court does not apply it."

At the time when the Single Judge gave leave, the proviso, as it was then known, was still in force. In our judgment there is very great strength in the Single Judge's comment, as there is in Mr Lavers's submission that this case was so strong evidentially that we should not find that the verdict of the jury was unsafe.

The difficulty about that approach, in our judgment, is that the very strength of the evidence led by the Crown lay in the challenged evidence from the police officer as to identification and the statement made by the defendant himself and his own evidence.

As we said more than once, the issue was one of credibility. Accordingly, alleged lies were very relevant. So also was the fact that he made no comment when he was interviewed. This was not a case which depended on, for example, strong circumstantial evidence.

The appellant in this appeal may count himself fortunate, but we cannot say, for the reasons that we have given, with that degree of certainty which would be required, that the jury would necessarily have come to the same conclusion if they had been given the directions that were required in this case. Consequently, and with very considerable reluctance, we have come to the conclusion that this conviction must be quashed.

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14 May 1996 Broom	
passiver:	
I. 32	the appellant was convicted on one count of burglary and one count of dangerous driving
I. 33	Sentence was adjourned for reports
I. 33	he was sentenced in all to serve 15 months' imprisonment
I. 37	the premises of estate agents in Croydon were burgled
I. 37	a quantity of computer equipment was stolen
I. 38	The equipment was loaded into a Ford Granada
I. 38	a Ford Granada which had been owned by the appellant's former wife
I. 39	the car was seen by police officers driving along Beckenham Hill Road
I. 41	it was driven off at a very high speed
I. 41	this is not contested
I. 42	the car was driven very dangerously
I. 44	The stolen computer equipment was found in the boot of the car
I. 45	Later on the appellant was seen in the vicinity with mud on his trousers
I. 45	He was stopped by police officers
I. 46	when the appellant was arrested and was told that...
I. 47	he had been arrested as being suspected of participating in a burglary
I. 53	the appellant declined to answer any of the questions put to him
I. 55	WPC Thomas, who saw the car when it was stopped in Beckenham Hill Road
I. 56	It was put to her that she was wrong
I. 64	he was entitled to have proper directions
I. 65	in relation to the defence put forward by him
I. 66	The first point taken by Miss Martin
I. 68	in relation to lies told by the appellant
I. 78	perhaps the most important passages on this aspect of the appeal are to be found on page 10
I. 81	Mr Broom's wife's car was driven dangerously
I. 83	the injured leg which on the prosecution account was damaged when he fell in the lane
I. 89	that alleged lie told by the appellant
I. 106	he is required to give the jury the <u>Lucas</u> direction
I. 117	the facts proved by the prosecution
I. 132	a <u>Lucas</u> direction should be given
I. 132	where it is otiose as indicated in <u>Dehar</u>
I. 133	whenever lies are, or may be, relied upon as supporting evidence
I. 134	lies were, indeed, relied upon as supporting evidence
I. 137	the lies which were told by the appellant
I. 139	a <u>Lucas</u> direction was not required
I. 141	the lies told in this case
I. 141	For the reasons already given,
I. 146	when interviewed by the police
I. 151	the jury had already been told that they should not draw any adverse inference
I. 154	This point was considered by this Court
I. 158	when he was interviewed
I. 160	The ground of appeal which is relied on by the appellant today
I. 161	Guidance is given to judges

I. 163	Any person suspected of a criminal offence
I. 165	a note is attached
I. 166	This direction must always be given
I. 167	it was not given in this case
I. 167	the matter was most clearly and properly brought to the trial judge's attention
I. 186	the challenged evidence from the police officer
I. 187	the statement made by the defendant himself
I. 189	when he was interviewed.
I. 192	that degree of certainty which would be required
I. 193	if they had been given the directions
I. 193	the directions that were required in this case
I. 195	this conviction must be quashed
Adverbial:	
I. 31 (initial)	<i>On 16th October 1995, at the Crown Court at Croydon before his Honour Judge McHale, the appellant was convicted on one count of burglary</i>
I. 33 (initial)	<i>on 13th November 1995 he was sentenced in all to serve 15 months' imprisonment</i>
I. 36 (medial)	the case was, <i>as Mr Lavers has submitted</i> , a very strong one
I. 36 (initial)	<i>On the evening of 17th March 1995 the premises of estate agents in Croydon were burgled</i>
I. 39 (initial)	<i>About 15 minutes later the car was seen by police officers</i>
I. 41 (medial)	There is no doubt, <i>and this is not contested</i> , that the car was driven very dangerously
I. 46 (initial)	<i>when the appellant was arrested, and was told that he had been arrested as being suspected of participating in a burglary, he said, "I admit to being the driver of the car".</i>
I. 53 (initial)	<i>At the police station the appellant declined to answer any of the questions put to him</i>
I. 63 (initial)?	<i>As we have said</i> , the evidence against the appellant was extremely strong
I. 64 (initial)	<i>Be that as it may</i> , he was entitled to have proper directions
I. 70 (medial)	his evidence <i>at the trial</i> were incredible
I. 81 (medial)	Nobody seems, do they, <i>in this case</i> to have questioned whether Mr Broom's wife's car was driven dangerously
I. 86 (medial)	You may wonder why, <i>if he injured his leg jumping from a car which he was not driving</i> , he should lie about what happened
I. 89 (medial)	It is clear, <i>reading that passage</i> , that that alleged lie told by the appellant was of considerable importance
I. 90 (medial)	The learned judge is, <i>in that passage</i> , asking the jury to consider why it was that the defendant lied
I. 93 (medial)	That, <i>in turn, of course</i> , is directly relevant to the question as to whether WPC Thomas correctly identified him as being the driver
I. 101 (initial)	<i>Or, on the other hand</i> , is what he tells you about that true, or may it be true?
I. 101 (initial)	<i>If he did not go to the estate agents</i> he is of course not guilty of burglary.
I. 103 (medial)	the learned judge, <i>in that passage</i> , is quite properly inviting the jury to consider whether or not the appellant had told lies
I. 104 (medial)	That, <i>as we have indicated</i> , is, of course, a perfectly proper approach for the learned judge to take
I. 106 (medial)	the question remains outstanding as to whether, <i>having taken that approach</i> , he is required to give the jury the <u>Lucas</u> direction in relation to lies
I. 108 (initial)	<i>Then, on page 11</i> , the learned judge said:
I. 111 (initial)	<i>Then, on page 13G</i> , the learned judge made reference to the appellant having altered his account
I. 113 (initial)	<i>At page 17</i> the learned judge said:

I. 114 (initial)	<i>Without suggesting to you that Mr Broom is guilty of either Count 1, burglary, or Count 2, the handling of stolen goods, I do suggest that...</i>
I. 115 (initial)	<i>if you disbelieve - I am not suggesting you should</i>
I. 116 (initial)	<i>but if you disbelieve his account and if you accept the facts proved by the prosecution, if you draw an inference adverse to Mr Broom from those facts, the more likely inference is burglary rather than that of handling stolen goods</i>
I. 120 (initial)	<i>Then, finally, at page 24, the judge said:</i>
I. 126 (medial)	<i>the alleged lies, in relation to having hurt his leg playing football and as to whether he had been drinking, being placed before the jury again</i>
I. 127 (medial)	<i>it was essential in this case for the judge to give the jury a direction</i>
I. 130 (initial)	<i>In the recent case of <u>Goodway</u> (1994) 98 Cr.App.R. 11, Lord Taylor CJ said...</i>
I. 131 (medial)	<i>Lord Taylor CJ said, at page 17:</i>
I. 134 (initial)	<i>in this case lies were, indeed, relied upon as supporting evidence</i>
I. 136 (medial)	<i>Mr Lavers, in his very full and very helpful skeleton argument and in his able submissions to us, has submitted that the lies which were told by the appellant were not central to the case</i>
I. 137 (medial)	<i>and (the lies) did not, in any event, go to the issue as to identification</i>
I. 141 (initial)	<i>For the reasons already given, we do not accept that submission</i>
I. 146 (initial)	<i>when interviewed by the police the appellant chose,...., to make no comment</i>
I. 146 (medial)	<i>the appellant chose, as was then his right, to make no comment</i>
I. 149 (medial)	<i>Mr Lavers, very properly, at the conclusion of the summing-up, drew the judge's attention to that failure</i>
I. 154 (initial)	<i>At page seven of the transcript McCowan LJ said:</i>
I. 172 (medial)	<i>It was, likewise, in our judgment, a material irregularity in the present case</i>
I. 172 (initial)	<i>If, on the facts of this case, that ground stood alone, it might well be that we would not consider it necessary to quash this conviction</i>
I. 177 (initial)	<i>When he granted leave the appeal the Single Judge said:</i>
I. 178 (initial)	<i>but in view of the rest of the evidence, not least that your client admitted that he was the driver, you will have been fortunate (or persuasive) indeed if Court does not apply it.</i>
I. 181 (initial)	<i>At the time when the Single Judge gave leave, the proviso, as it was then known, was still in force</i>
I. 181 (initial)	<i>In our judgment there is very great strength in the Single Judge's comment</i>
I. 185 (medial)	<i>The difficulty about that approach, in our judgment, is that the very strength of the evidence led by the Crown lay in the challenged evidence from the police officer</i>
I. 191 (medial)	<i>but we cannot say, for the reasons that we have given, with that degree of certainty which would be required, that the jury would necessarily have come to the same conclusion</i>
I. 194 (initial)	<i>Consequently, and with very considerable reluctance, we have come to the conclusion that this conviction must be quashed</i>
Sammensatte præpositioner:	
I. 24	on behalf of
I. 25	on behalf of
I. 34	By leave of
I. 64	in relation to
I. 65	in relation to
I. 67	in accordance with
I. 67	in relation to
I. 71	on behalf of
I. 104	in relation to

I. 106	in relation to
I. 126	in relation to
I. 149	in relation to
I. 178	in view of
Komplekse substantivsyntagmer:	
I. 38	a Ford Granada which had been owned by the appellant's former wife
I. 53	any of the questions put to him
I. 55	WPC Thomas, who saw the car
I. 56	the appellant as the driver of the car
I. 65	the law given to the jury
I. 65	the defence put forward by him
I. 66	The first point taken by Miss Martin, for the appellant,
I. 74	an assessment of where the truth lay
I. 76	the evidence given by WPC Thomas
I. 82	the injured leg which (on the prosecution account) was damaged when he fell in the lane
I. 85	the officers who were with him
I. 87	a car which he was not driving
I. 89	that alleged lie told by the appellant
I. 93	the question as to whether WPC Thomas correctly identified him as being the driver
I. 99	an untrue story about staying behind in the Railway Tavern at West Wickham
I. 100	his car with the stolen equipment on board, having been to the estate agents
I. 116	an inference adverse to Mr Broom
I. 119	the importance of the issue as to credibility
I. 129	a direction as to how they should approach the question of lies
I. 137	the lies which were told by the appellant
I. 139	<u>Keeton</u> (1995) 2 Cr.App.R. 241, where this Court held that a <u>Lucas</u> direction was not required in that particular case because the question of lies was, at best, peripheral.
I. 141	the reasons already given
I. 160	the other ground of appeal which is relied on by the appellant today
I. 174	that failure to give the jury an appropriate direction
I. 175	the learned judge's failure to direct the jury
I. 185	the very strength of the evidence led by the Crown
I. 186	the challenged evidence from the police officer
I. 186	the statement made by the defendant himself
I. 189	a case which depended on, (for example), strong circumstantial evidence.
I. 192	that degree of certainty which would be required
I. 193	the directions that were required
Fagterminologi:	
I. 16	regina
I. 24	appellant
I. 25	the Crown
I. 32	appellant
I. 32	to be convicted
I. 32	count
I. 33	count

I. 39	appellant's
I. 42	appellant's
I. 46	appellant
I. 53	appellant
I. 56	appellant
I. 58	appellant
I. 60	appellant's
I. 63	appellant
I. 64	jury
I. 64	to convict
I. 66	appellant
I. 66	jury
I. 68	appellant
I. 68	appellant
I. 70	the Crown
I. 70	appellant's
I. 71	the Crown
I. 73	to allege
I. 73	jury
I. 76	jury
I. 78	appeal
I. 83	prosecution
I. 89	alleged
I. 89	appellant
I. 90	jury
I. 92	jury
I. 104	appellant
I. 106	jury
I. 110	prosecution
I. 111	appellant
I. 114	count
I. 114	count
I. 116	prosecution
I. 118	count
I. 118	count
I. 126	alleged
I. 127	jury
I. 129	jury
I. 137	appellant
I. 143	jury
I. 145	jury
I. 146	appellant
I. 147	jury
I. 151	jury
I. 152	appellant
I. 152	counsel
I. 157	jury
I. 157	appellant's
I. 160	appellant
I. 169	appeal

I. 174	jury
I. 175	jury
I. 176	appellant's
I. 178	proviso
I. 181	proviso
I. 183	verdict
I. 183	jury
I. 186	the Crown
I. 188	alleged
I. 191	appellant
I. 191	appeal
I. 192	jury
juridiske kollokationer:	
I. 4	court of appeal
I. 5	criminal division
I. 33	to adjourn a sentence
I. 34	to appeal against conviction
I. 54	a "no comment" interview
I. 55	to give evidence
I. 68	the prosecution case
I. 90	the crown case
I. 90	the learned judge
I. 105	the learned judge
I. 106	the Lucas direction
I. 108	the learned judge
I. 111	the learned judge
I. 132	a lucas direction
I. 133	supporting evidence
I. 134	supporting evidence
I. 139	a lucas direction
I. 145	ground of appeal
I. 156	trial judge
I. 160	ground of appeal
I. 163	criminal offence
I. 168	the trial judge
I. 173	to quash a conviction
I. 175	the learned judge
I. 177	leave to appeal
I. 177	the single judge
I. 181	the single judge
I. 182	the single judge
I. 190	circumstantial evidence
I. 195	to quash a conviction
Nominalkonstruktioner	
:	
I. 62	He admitted that he had told <i>lies</i> to the police (He admitted that he had lied to the police)
I. 67	The first point taken by Miss Martin, for the appellant, is that the judge did not give the jury an appropriate <i>direction</i> in accordance with the case of <u>Lucas</u>

	(The first point taken by Miss Martin, for the appellant, is that the judge did not direct the jury appropriately in accordance with the case of <i>Lucas</i>)
I. 68	It was, clearly, a part of the prosecution case that the appellant told <i>lies</i> to the police and told <i>lies</i> in the witness box (It was, clearly, a part of the prosecution case that the appellant lied to the police and lied in the witness box)
I. 71	Mr Lavers, on behalf of the Crown, has said precisely that in his <i>submissions</i> today (Mr Lavers, on behalf of the Crown, has submitted precisely that today)
I. 73	the jury had to make an <i>assessment</i> of where the truth lay (the jury had to assess where the truth lay)
I. 75	It is necessary to make <i>reference</i> to just a few passages in the learned judge's summing-up (It is necessary to refer to just a few passages in the learned judge's summing-up)
I. 90	that alleged lie told by the appellant was of considerable <i>importance</i> so far as the Crown case went (that alleged lie told by the appellant was considerably important so far as the Crown case went)
I. 91	and inviting them to come to the <i>conclusion</i> that... (and inviting them to conclude that...)
I. 92	he told that <i>lie</i> because he knew that he was, in fact, the driver of the car (he lied because he knew that he was, in fact, the driver of the car)
I. 96	if you came to the <i>conclusion</i> that he had not been drinking (if you concluded that he had not been drinking)
I. 104	whether or not the appellant had told <i>lies</i> in relation to his movements (whether or not the appellant had lied in relation to his movements)
I. 111	the learned judge made <i>reference</i> to the appellant having altered his account (the learned judge referred to the appellant having altered his account)
I. 129	it was essential in this case for the judge to give the jury a <i>direction</i> as to how they should approach the question of lies (it was essential in this case for the judge to direct the jury as to how they should approach the question of lies)
I. 143	the judge should have given the jury a <i>direction</i> as to the other reasons why the defendant may have lied apart from being guilty (the judge should have directed the jury as to the other reasons why the defendant may have lied apart from being guilty)
I. 145	the judge's failure to give a <i>direction</i> as to how the jury should approach the fact that when interviewed by the police the appellant chose, as was then his right, to make no comment (the judge's failure to give direct the jury as to how they should approach the fact that when interviewed by the police the appellant chose, as was then his right, to make no comment)
I. 147	The judge did not give the jury any <i>direction</i> as to how they should approach that aspect of the case (The judge did not direct the jury as to how they should approach that aspect of the case)
I. 159	Judge Pullinger listened to what Mr Waller said but refused to make any <i>amendment</i> to his summing-up (Judge Pullinger listened to what Mr Waller said but refused to amend his summing-up)
I. 174	we have to consider that failure to give the jury an appropriate <i>direction</i> (we have to consider that failure to direct the jury appropriately)
I. 193	but we cannot say,..., ..., that the jury would necessarily have come to the same <i>conclusion</i> if they had been given the directions that were required in this case (but we cannot say,..., ..., that the jury would necessarily have concluded the same if they had been given the directions that were required in this case)
I. 194	we have come to the <i>conclusion</i> that this conviction must be quashed (we have concluded that this conviction must be quashed)
Lix:	
2750 ord	

681 svære ord		
138 perioder		
A = 24,9		
B = 19,9		
Lix = (A+ B) = 44,8 (middelsvær)-lige under svær, 45		



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England and Wales Court of Appeal (Criminal Division) Decisions

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LESLIE CHINN, R v. [1996] EWCA Crim 496 (21st May, 1996)

No: 96/1448/Z4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2

Tuesday 21st May 1996

B E F O R E :

LORD JUSTICE STUART SMITH

MR JUSTICE NELSON

and

HIS HONOUR JUDGE CAPSTICK QC
(Acting as a Judge of the CACD)

R E G I N A

- v -

LESLIE CHINN

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(Official Shorthand Writers to the Court)

MISS K NEVILLE appeared on behalf of the Appellant
MISS C JOHNSTON appeared on behalf of the Crown

JUDGMENT
(As Approved by the Court)

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Tuesday 21st May 1996

LORD JUSTICE STUART SMITH: On 19th January 1996, in the Crown Court at Wood Green, the appellant was convicted of assault occasioning actual bodily harm and sentenced to 9 months' imprisonment.

He now appeals against conviction by leave of the Single Judge.

Mr. John Harvey was the licensee of a public house in Enfield. He was 55 years old, 5 foot 5 inches tall and weighed 10 stones 4lb. He had no criminal convictions. On the evening of 5th May 1995 Mr. Harvey was in the forecourt of his public house, collecting glasses, when he saw the appellant and a man call Lee Clarke. The appellant was 23 years old and 6 foot 2 inches tall. He had numerous convictions (eight in all) for offences including theft, being drunk and disorderly and using threatening behaviour.

The appellant was sitting on a low boundary wall at the end of the forecourt. Mr. Harvey previously had barred the appellant and Mr. Clarke from the premises and he asked them to leave. According to Mr. Harvey, at this point the appellant rose to his feet and punched him very hard in the face. Mr. Harvey fell to the ground. He suffered a damaged nose, bruising under the eye and a cut to his face. Mr. Harvey's wife was inside the house and she witnessed the incident. She gave evidence confirming that the appellant was the aggressor.

The appellant, however, on being arrested four days later, told the police he had acted in self-defence. In interview he said that having been told by Mr. Harvey to leave he moved very slowly and Mr. Harvey's response was to say, "Get off or I'll clump you". Mr. Harvey then punched him on the jaw. The appellant took a step backwards but Mr. Harvey came towards him so he punched him three times.

The appellant gave evidence broadly in line with what he said in interview. He told the jury that after striking Mr. Harvey once he had to strike him twice more because he was advancing towards him with his clenched fist. The appellant also called Lee Clarke, who supported his account.

The appellant's version of the events was put to Mr. Harvey in cross-examination. The learned judge warned defence counsel, after she embarked on this line of questioning, that this "could have certain consequences" for her client. He was plainly referring to section 1(f)(ii) of the Criminal Evidence Act 1898.

Before the appellant was called to give evidence defence counsel received an indication from prosecuting counsel that she did not then intend to apply for leave to cross-examine him on his previous convictions. Accordingly Crown counsel concluded her cross-examination of the appellant without making such an application.

In the absence of the jury the learned judge then told prosecuting counsel that in his view it was her duty to put the appellant's record to him. Counsel indicated that she would defer to the judge's view. At this point defence counsel submitted that it was not an appropriate case for the appellant's convictions to be put. Her argument mainly was that the nature of the defence necessitated the cross-examination being put, and she cited a number of old authorities to that effect.

The judge was not sympathetic with that argument and continued to say that in his view it was an ordinary case where an imputation had been made on the character of the complainant and that the

convictions could be put. He then said this, at page 5 of the discussion:

"In this particular case in my view the record should be put. It is still a matter for Miss Johnston's decision but in my view it should be put, and it should be put for a very good reason. Without it being put the trial is not fair. It is not fair to the victim, emphatically not and it is not fair to the witnesses, emphatically not, and there has to be an even balance of fairness."

The next morning Miss Johnston, who had been reluctant on the previous day to cross-examine on these lines, changed her mind. She said this:

"Your honour, I am concerned that the jury having gone out in the way that they did may now be speculating as to why they have gone out, and, your Honour, it may be that if some of them have sat on juries before, they may be speculating in the right direction.

[THE JUDGE]: Anything may be the case. I do not know.

MISS JOHNSTON: I do not know, your Honour, but it may be that if they are, things would be worse if they do not know the actual position than if they guess at it, and, your Honour, in those circumstances I would apply to put the previous convictions in.

[THE JUDGE]: Yes, certainly."

Then at that point Miss Neville referred the judge to the case of R v. Goodwin, to which we will have to refer shortly, and suggested to the judge that it was not for him to initiate an application of this sort. The judge said that it was his responsibility to see that the trial was conducted fairly. The convictions were put in cross-examination.

The first ground of the appeal is that the judge should not have intervened to initiate the application under the 1898 Act. It is said that that was a wrong thing for him to do and that therefore there was a material irregularity in the trial. Reliance was placed on the decision of this Court in R v. Goodwin (Tuesday 9th November 1993). We have a transcript of that case. That was a case where the appellant was charged with being in possession of an offensive weapon. The police had stopped his car. They were searching for drugs. They found a seven-and-a-half inch long carving knife in the car. According to a police officer, who found it, the appellant admitted putting it in the car and said it was for self-defence. The appellant gave evidence, the effect of which was that he had never seen the knife before; he did not see it inside the car; when the police officer bent down he came out with the knife.

The Recorder trying that case clearly thought that that was an allegation of plant. In the course of the argument the appellant intervened to say that he was not suggesting that the police had put it there, it might have been there all the time. The Recorder thought that that was a fanciful suggestion and the appellant was cross-examined on his character.

This Court held that the defence had not involved an imputation on the character of the police officers. At page 4 Farquharson L.J., giving the judgment of the Court, said this:

"But in this case, on the facts as they appear from the documents, not only was no imputation made on the character of the prosecution witnesses, but the appellant went out of his way to avoid making such an imputation, as the learned Recorder recognised in the ruling which we have cited. He was anxious that his evidence did not involve any imputation upon the character of the two police officers. That may, of course, have left him in a position where the evidence against him was overwhelming because, having regard to the matters that the learned Recorder adumbrated on the facts, it was clear that the evidence against him was very strong indeed."

That then is the basis of the decision, namely that no imputation had been cast upon the prosecutor's witnesses. However, at page 3, in the course of giving the judgment, Farquharson L.J. said this:

"However, in the judgment of this court, it is not for the presiding judge to initiate applications of this kind. It is a matter for the prosecution to decide whether when they have heard the evidence."

It is not clear what authority was cited to the Court in Goodwin for that proposition. Although it is the experience of all the members of this Court, as it obviously was in Goodwin, that applications of this sort are commonly initiated by prosecuting counsel, we do not see why, as a matter of principle, the trial judge should not raise the matter if prosecuting counsel does not do so.

As the judge said in this case, it is his duty to see that the trial is conducted fairly both to the prosecution and defence and that may involve seeing that prosecuting counsel takes proper steps to

protect prosecution witnesses from attacks or imputations on their honesty and their conduct. It is apparent that in the case of Selvey v. DPP [1970] A.C. 304, which is the leading authority on this aspect of the law, the trial judge himself in that case initiated the discussion in the absence of the jury which resulted in the prosecution making the application. The circumstances were very similar to those in this case (see, for example, at page 330, in the speech of Viscount Dilhorne and at page 361, in the speech of Lord Pearce). Lord Dilhorne, at page 341, said this:

"Apart from this there is not, I think any general rule as to the exercise of discretion. It must depend on the circumstances of each case and the overriding duty of the judge to ensure that the trial is fair." The judge must, of course, take care not to descend into the arena, but there is no question of that in this case. Also, if he initiates the discussion, he must get it right. In Goodwin the Recorder did not get it right. But it is accepted by Miss Neville in this case, that the nature and conduct of the defence was such as to involve an imputation on the character of Mr. Harvey. The allegation was that Mr. Harvey was the aggressor, and he had initiated this attack and that the appellant was merely acting in self-defence. In our judgment there is nothing in the first ground of the appeal.

The second ground of the appeal is that the application to cross-examine was not based upon the provision of the statute but on the basis that the jury had been kept waiting and might be speculating as to what was happening. That submission is based on the interchange between Miss Johnston and the judge, to which we have referred, which occurred on the morning of 18th January.

But, with all respect to Miss Neville, it is perfectly plain that the application could only be made, and was made, under the relevant section of the Act. That is what the discussion had been about the day before, and although Miss Johnston may have put forward some excuse for making the application at that stage, that does not alter the fact that the application was made by her; as indeed the judge had indicated, it had to be made by her.

It is plain that the judge himself regarded it as an application under the section. He did not pay any regard to the matters which Miss Johnston referred to. It may be that Miss Johnston was feeling that she needed some excuse for not having raised the point herself the day before but, be that as it may, we are quite satisfied that the application was made under the statute, the judge exercised his discretion in a perfectly normal and ordinary way and, in our judgment, there is nothing in that point at all.

The third ground of appeal, which has not been adumbrated by Miss Neville, is that the conviction was unsafe. We cannot accept that. This was a strong case. It would have been astonishing if any jury had concluded that a respectable licensee of 11 years standing, of good character, who was 55 years old and of the height and the size that we have indicated, should have chosen to attack this man, half his age, in front of his customers. In the circumstances it is not in the least surprising that the jury convicted. There is nothing whatever unsafe about the conviction and the appeal is dismissed.

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21 May 1996 Chinn	
passiver:	
I. 30	the appellant was convicted of assault
I. 30	and sentenced to 9 months' imprisonment
I. 45	The appellant, however, on being arrested four days later,...
I. 46	having been told by Mr. Harvey to leave
I. 53	The appellant's version of the events was put to Mr. Harvey in cross-examination
I. 57	Before the appellant was called to give evidence
I. 57	defence counsel received an indication from prosecuting counsel that she did not then intend to apply for leave to cross-examine him
I. 63	it was not an appropriate case for the appellant's convictions to be put
I. 64	the nature of the defence necessitated the cross-examination being put
I. 67	an imputation had been made on the character of the complainant
I. 68	the convictions could be put
I. 69	the record should be put
I. 70	in my view it should be put
I. 70	it should be put for a very good reason
I. 70	Without it being put...
I. 85	the trial was conducted fairly
I. 86	The convictions were put in cross-examination
I. 89	Reliance was placed on the decision of this Court in <u>R v. Goodwin</u>
I. 91	the appellant was charged with being in possession of an offensive weapon
I. 99	the appellant was cross-examined on his character
I. 103	not only was no imputation made on the character of the prosecution witnesses
I. 110	no imputation had been cast upon the prosecutor's witnesses
I. 114	It is not clear what authority was cited to the Court in <u>Goodwin</u>
I. 115	applications of this sort are commonly initiated by prosecuting counsel
I. 118	the trial is conducted fairly
I. 130	it is accepted by Miss Neville in this case
I. 134	the application to cross-examine was not based upon the provision of the statute
I. 136	That submission is based on the interchange between Miss Johnston and the judge
I. 138	the application could only be made, and was made, under the relevant section of the Act
I. 139	That is what the discussion had been about the day before
I. 141	the application was made by her
I. 142	it had to be made by her
I. 146	the application was made under the statute
I. 149	The third ground of appeal, which has not been adumbrated by Miss Neville
I. 154	the appeal is dismissed
Adverbialer:	
I. 29 (initial)	<i>On 19th January 1996, in the Crown Court at Wood Green, the appellant was convicted of assault occasioning actual bodily harm</i>
I. 34 (initial)	<i>On the evening of 5th May 1995 Mr. Harvey was in the forecourt of his public house, collecting glasses,</i>
I. 40 (initial)	<i>According to Mr. Harvey, at this point the appellant rose to his feet</i>
I. 45 (medial)	<i>The appellant, however, on being arrested four days later, told the police he</i>

	had acted in self-defence
I. 46 (initial)	<i>having been told by Mr. Harvey to leave</i> he moved very slowly
I. 50 (initial)	<i>after striking Mr. Harvey once</i> he had to strike him twice more
I. 54 (medial)	The learned judge warned defence counsel, <i>after she embarked on this line of questioning</i> , that this "could have certain consequences"
I. 57 (initial)	<i>Before the appellant was called to give evidence</i> defence counsel received an indication from prosecuting counsel that she did not then intend to apply for leave to cross-examine him
I. 61 (initial)	<i>In the absence of the jury</i> the learned judge then told prosecuting counsel that...it was her duty to put the appellant's record to him
I. 61 (initial)	the learned judge then told prosecuting counsel that <i>in his view</i> it was her duty to put the appellant's record to him
I. 63 (initial)	<i>At this point</i> defence counsel submitted that it was not an appropriate case for the appellant's convictions to be put
I. 66 (initial)	The judge was not sympathetic with that argument and continued to say that <i>in his view</i> it was an ordinary case where an imputation had been made on the character of the complainant
I. 69 (initial)	<i>In this particular case in my view</i> the record should be put.
I. 70 (initial)	<i>Without it being put</i> the trial is not fair
I. 73 (initial)	<i>The next morning</i> Miss Johnston, who had been reluctant...to cross-examine on these lines, changed her mind.
I. 73 (medial)	Miss Johnston, who had been reluctant <i>on the previous day</i> to cross-examine on these lines, changed her mind
I. 75 (medial)	the jury <i>having gone out in the way that they did</i> may now be speculating as to why they have gone out
I. 76 (initial)	it may be that <i>if some of them have sat on juries before</i> , they may be speculating in the right direction
I. 79 (initial)	<i>if they are</i> , things would be worse if they do not know the actual position than if they guess at it
I. 80 (initial)	<i>in those circumstances</i> I would apply to put the previous convictions in
I. 83 (initial)	<i>Then at that point</i> Miss Neville referred the judge to the case of <u>R v. Goodwin</u>
I. 93 (initial)	<i>According to a police officer, who found it</i> , the appellant admitted putting it in the car and said it was for self-defence
I. 95 (initial)	<i>when the police officer bent down</i> he came out with the knife
I. 97 (initial)	<i>In the course of the argument</i> the appellant intervened to say that he was not suggesting that the police had put it there
I. 103 (initial)	<i>But in this case, on the facts as they appear from the documents</i> , not only was no imputation made on the character of the prosecution witnesses, but the appellant went out of his way to avoid making such an imputation
I. 108 (initial)	That may, of course, have left him in a position where the evidence against him was overwhelming because, <i>having regard to the matters that the learned Recorder adumbrated on the facts</i> , it was clear that the evidence against him was very strong indeed
I. 111 (initial)	<i>However, at page 3, in the course of giving the judgment</i> , Farquharson L.J. said this:
I. 112 (initial)	<i>However, in the judgment of this court</i> , it is not for the presiding judge to initiate applications of this kind
I. 116 (medial)	we do not see why, <i>as a matter of principle</i> , the trial judge should not raise the matter
I. 118 (initial)	<i>As the judge said in this case</i> , it is his duty to see that the trial is conducted fairly
I. 121 (initial)	<i>in the case of Selvey v. DPP [1970] A.C. 304, which is the leading authority on this aspect of the law</i> , the trial judge himself...initiated the discussion
I. 122 (medial)	the trial judge himself <i>in that case</i> initiated the discussion in the absence of the jury which resulted in the prosecution making the application.
I. 125 (medial)	Lord Dilhorne, <i>at page 341</i> , said this:

I. 126 (initial)	<i>Apart from this</i> there is not, I think any general rule as to the exercise of discretion.
I. 129 (initial)	Also, <i>if he initiates the discussion</i> , he must get it right
I. 130 (medial)	But it is accepted by Miss Neville <i>in this case</i> , that the nature and conduct of the defence was such as to involve an imputation on the character of Mr. Harvey
I. 133 (initial)	<i>In our judgment</i> there is nothing in the first ground of the appeal
I. 140 (initial)	<i>although Miss Johnston may have put forward some excuse for making the application at that stage</i> , that does not alter the fact that the application was made by her
I. 145 (initial)	but, <i>be that as it may</i> , we are quite satisfied that the application was made under the statute, the judge exercised his discretion in a perfectly normal and ordinary way and,...., there is nothing in that point at all.
I. 147 (initial)	<i>in our judgment</i> , there is nothing in that point at all.
I. 153 (initial)	<i>In the circumstances</i> it is not in the least surprising that the jury convicted
Sammensatte præpositioner:	
I. 23	on behalf of
I. 24	on behalf of
I. 32	By leave of
Komplekse substantivsyntagmer:	
I. 50	evidence broadly in line with what he said in interview
I. 57	Lee Clarke, who supported his account
I. 66	an ordinary case where an imputation had been made on the character of the complainant
I. 74	Miss Johnston, who had been reluctant on the previous day to cross-examine on these lines,
I. 83	the case of <i>R v. Goodwin</i> , to which we will have to refer shortly,
I. 90	a case where the appellant was charged with being in possession of an offensive weapon
I. 97	The Recorder trying that case
I. 101	an imputation on the character of the police officers
I. 103	the facts as they appear from the documents
I. 105	the ruling which we have cited.
I. 106	any imputation upon the character of the two police officers
I. 107	a position where the evidence against him was overwhelming
I. 108	the matters that the learned Recorder adumbrated on the facts
I. 115	the experience of all the members of this Court
I. 121	the case of <i>Selvey v. DPP</i> [1970] A.C. 304, which is the leading authority on this aspect of the law
I. 126	any general rule as to the exercise of discretion
I. 136	the interchange between Miss Johnston and the judge, to which we have referred, which occurred on the morning of 18th January
I. 144	any regard to the matters which Miss Johnston referred to
I. 149	The third ground of appeal, which has not been adumbrated by Miss Neville,
I. 151	a respectable licensee of 11 years standing, of good character, who was 55 years old and of the height and the size that we have indicated,
I. 152	this man, half his age
Fagterminologi:	

I. 15	regina
I. 23	appellant
I. 24	the Crown
I. 30	appellant
I. 35	appellant
I. 36	appellant
I. 37	convictions
I. 37	offences
I. 39	appellant
I. 40	appellant
I. 41	appellant
I. 44	appellant
I. 44	aggressor
I. 45	appellant
I. 48	appellant
I. 50	appellant
I. 50	jury
I. 52	appellant
I. 53	appellant's
I. 53	Cross-examination
I. 57	appellant
I. 58	To cross-examine
I. 59	convictions
I. 59	counsel
I. 59	Cross-examination
I. 59	appellant
I. 61	jury
I. 62	appellant's
I. 62	counsel
I. 63	appellant's
I. 64	convictions
I. 64	Cross-examination
I. 68	convictions
I. 73	To cross-examine
I. 75	jury
I. 81	convictions
I. 85	trial
I. 86	convictions
I. 86	Cross-examination
I. 89	trial
I. 91	appellant
I. 93	appellant
I. 94	appellant
I. 97	the recorder
I. 97	allegation
I. 98	appellant
I. 99	The Recorder
I. 100	appellant
I. 100	be cross-examined
I. 104	appellant

I. 105	ruling
I. 110	prosecutor's
I. 113	prosecution
I. 118	trial
I. 119	prosecution
I. 122	jury
I. 123	prosecution
I. 126	trial
I. 130	allegation
I. 132	aggressor
I. 132	appellant
I. 134	To cross-examine
I. 135	jury
I. 149	conviction
I. 150	jury
I. 153	jury
I. 110	conviction
juridiske kollokationer:	
I. 3	court of appeal
I. 4	criminal division
I. 29	the Crown Court
I. 30	be convicted of...
I. 30	actual bodily harm
I. 30	be sentenced to...
I. 32	to appeal against conviction
I. 32	the Single Judge
I. 34	criminal convictions
I. 43	to give evidence
I. 50	to give evidence
I. 53	the learned judge
I. 54	defence counsel
I. 57	to give evidence
I. 57	defence counsel
I. 58	prosecuting counsel
I. 61	the learned judge
I. 61	prosecuting counsel
I. 63	defence counsel
I. 87	grounds of appeal
I. 91	be charged with...
I. 94	to give evidence
I. 104	prosecution witnesses
I. 105	the learned recorder
I. 108	the learned recorder
I. 112	the presiding judge
I. 116	prosecuting counsel
I. 117	trial judge
I. 117	prosecuting counsel
I. 119	prosecuting counsel

I. 120	prosecution witnesses
I. 122	trial judge
I. 126	the exercise of discretion
I. 133	grounds of appeal
I. 134	grounds of appeal
I. 146	to exercise his discretion
I. 149	ground of appeal
I. 154	to dismiss an appeal
Nominalkonstruktionerne:	
I. 37	He had numerous <i>convictions</i> (eight in all) for offences including theft, being drunk and disorderly and using threatening behaviour. (He had been convicted a number of times (eight in all) for offences including theft, being drunk and disorderly and using threatening behaviour.) (obs: samme konstruktion i l. 34- <i>he had no criminal convictions</i> -, men ikke lang nok sætning til, at nominaliseringen hæmmer forståelsen.
I. 50	The appellant gave evidence broadly in line with what he said in <i>interview</i> (The appellant gave evidence broadly in line with what he said when the police interviewed him) -længere konstruktion, men lettere forståelig!
I. 57	defence counsel received an <i>indication</i> from prosecuting counsel that she did not then intend to apply for leave to cross-examine him on his previous convictions. (the prosecuting counsel indicated to the defence counsel that she did not then intend to apply for leave to cross-examine him on his previous convictions.)
I. 61	In the <i>absence</i> of the jury the learned judge then told prosecuting counsel that in his view it was her duty to put the appellant's record to him. (while the jury was absent, the learned judge then told prosecuting counsel that in his view it was her duty to put the appellant's record to him.)
I. 64	Her <i>argument</i> mainly was that the nature of the defence necessitated the cross-examination being put, (She mainly argued that the nature of the defence necessitated the cross-examination being put,)
I. 70	It is still a matter for Miss Johnston's <i>decision</i> but in my view it should be put (It is still a matter for Miss Johnston to decide but in my view it should be put)
I. 89	<i>Reliance</i> was placed on the decision of this Court in R v. Goodwin (the counsel for the defence relied on the decision of this Court in R v. Goodwin)
I. 91	That was a case where the appellant was charged with being in <i>possession</i> of an offensive weapon (That was a case where the appellant was charged with possessing an offensive weapon)
I. 97	The Recorder trying that case clearly thought that that was an <i>allegation</i> of plant (The Recorder trying that case clearly thought that the appellant was alleging that the police officer had planted the weapon (in the car)) -længere, men lettere forståeligt.
I. 101	This Court held that the defence had not involved an <i>imputation</i> on the character of the police officers (This Court held that the defence had not involved imputing the character of the police officers)
I. 102	Farquharson L.J., giving the <i>judgment</i> of the Court (Farquharson L.J., judging on behalf of the Court)
I. 111	in the course of giving the <i>judgment</i> , Farquharson L.J. said this: (when he was judging, Farquharson L.J. said this:)
I. 131	The <i>allegation</i> was that Mr. Harvey was the aggressor (The appellant alleged that Mr. Harvey was the aggressor)
I. 132	he had initiated this <i>attack</i> (he had attacked the appellant)
I. 139	That is what the <i>discussion</i> had been about the day before (That is what the parties discussed in court the day before)

Lix:		
2238 ord		
442 svære ord		
113 perioder		
A = 19,7		
B = 19,8		
Lix = (A+ B) = 39,5 (middelsvær)		



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PAUL BURN, R v. [1996] EWCA Crim 550 (4th June, 1996)

No: 96/0797/Z5

IN THE COURT OF APPEAL
CRIMINAL DIVISION
Royal Courts of Justice
The Strand
London WC2

Tuesday 4th June 1996

B E F O R E :

LORD JUSTICE SWINTON THOMAS

MR JUSTICE LONGMORE

and

HIS HONOUR JUDGE BEAUMONT QC
(acting as a judge of the CACD.)

R E G I N A

- v -

PAUL BURN

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(Official Shorthand Writers to the Court)

MR J LOWE appeared on behalf of the Appellant

JUDGMENT
(As Approved by the Court)

Crown Copyright
Tuesday 4th June 1996

JUDGMENT

LORD JUSTICE SWINTON THOMAS: Mr Justice Longmore will give the judgment of the Court.

MR JUSTICE LONGMORE: On 8th January 1996, in the Crown Court at Newcastle before his Honour Judge Harkins, the appellant pleaded guilty to causing grievous bodily harm with intent and was sentenced to six and a half years' imprisonment. He now appeals against sentence by leave of the Single Judge.

The facts are these. On 15th September 1995 John Wilkinson had spent the day drinking in various public houses in the North Shields area. By about 11.00pm that night he, Mr Wilkinson, decided that he was very drunk and should get a taxi to take him home. He went to the office at the taxi rank, and as he was leaving that office to get into a taxi he became aware of the appellant coming towards him. The appellant pushed Mr Wilkinson who fell to the ground. The appellant then assaulted Mr Wilkinson while he was on the ground. After that the appellant walked a few paces away but then returned, bent over Mr Wilkinson, and bit off a substantial part of Mr Wilkinson's right ear. The incident was recorded on a video tape from a video machine at the taxi rank, and the Court has seen that video.

When the appellant was interviewed he said he remembered kicking and punching Mr Wilkinson, and thought that he had bitten his face. It had all occurred on the spur of the moment according to the appellant because he had been drinking. He attended the police station voluntarily because he had been told that the police were looking for him.

The appellant is now aged 28. He is unemployed and in receipt of benefit. He has ten previous convictions for offences which include theft, deception, actual bodily harm and criminal damage. His counsel, Mr Lowe, says that those were mainly petty offences dealt with by fines and conditional discharge.

The learned judge, in his sentencing remarks, said that this was an offence of "extreme gravity". The court had never seen a video which was so clear and so horrifying, showing a persistent and deliberate attack on an innocent and weak victim in the streets. The learned judge said that a non-

custodial sentence could not be justified, and further said that if he had been convicted by a jury after a plea of not guilty the sentence would have been one of nine years. His plea of guilty was the only mitigation and had to be viewed in the light of the video recording.

The learned Single Judge, when granting the appellant leave to appeal, said:

"A very substantial sentence of custody was inevitable for this vile and unprovoked attack, but I am granting leave in order that the Full Court might consider whether nine years would have been appropriate after trial (as the sentencing judge indicated) and whether six and a half years was appropriate after a plea."

In a concise and cogent submission Mr Lowe has accepted the vileness of this offence, but submits that the sentence was manifestly excessive, and relies upon the fact that the appellant did turn himself in to the police, did commit no offences while he was on bail, and did plead guilty. He submits that a sentence, after a not guilty plea, of nine years as indicated by the judge would be too much for this offence and would put it in the bracket of the most serious of section 18 offences or even attempted killings.

To an extremely limited extent we accept the submission of Mr Lowe in as much as we do consider that a sentence of nine years after a not guilty plea would be a somewhat too high, and it may well be that the right sentence after a trial would be in the region of about eight years. No doubt some discount must be given for the guilty plea but, as the learned judge indicated in this case, it is difficult, in the light of the video recording, to think what any defence could be.

In all the circumstances we cannot conclude that the sentence of six and a half years was in any way manifestly excessive, and this appeal must be dismissed.

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4 June 1996 Burn	
passiver:	
I. 31	the appellant...was sentenced to six and a half years' imprisonment
I. 43	When the appellant was interviewed he said he remembered kicking and punching Mr Wilkinson
I. 54	a non-custodial sentence could not be justified
I. 54	if he had been convicted by a jury after a plea of not guilty the sentence would have been one of nine years
I. 55	His plea of guilty was the only mitigation and had to be viewed in the light of the video recording
I. 65	a sentence, after a not guilty plea, of nine years as indicated by the judge would be too much for this offence
I. 70	some discount must be given for the guilty plea
I. 74	this appeal must be dismissed
Adverbialer:	
I. 30 (initial)	<i>On 8th January 1996, in the Crown Court at Newcastle before his Honour Judge Harkins, the appellant pleaded guilty to causing grievous bodily harm with intent</i>
I. 34 (initial)	<i>On 15th September 1995 John Wilkinson had spent the day drinking</i>
I. 35 (initial)	<i>By about 11.00pm that night he, Mr Wilkinson, decided that he was very drunk and should get a taxi to take him home</i>
I. 37 (initial)	<i>as he was leaving that office to get into a taxi he became aware of the appellant coming towards him</i>
I. 43 (initial)	<i>When the appellant was interviewed he said he remembered kicking and punching Mr Wilkinson</i>
I. 51 (medial)	The learned judge, <i>in his sentencing remarks</i> , said that this was an offence of "extreme gravity"
I. 54 (initial)	<i>if he had been convicted by a jury after a plea of not guilty the sentence would have been one of nine years</i>
I. 57 (medial)	The learned Single Judge, <i>when granting the appellant leave to appeal</i> , said:
I. 62 (initial)	<i>In a concise and cogent submission Mr Lowe has accepted the vileness of this offence</i>
I. 65 (medial)	a sentence, <i>after a not guilty plea</i> , of nine years as indicated by the judge would be too much for this offence
I. 68 (initial)	<i>To an extremely limited extent we accept the submission of Mr Lowe</i>
I. 69 (medial)	a sentence of nine years <i>after a not guilty plea</i> would be a somewhat too high
I. 71 (initial)	<i>as the learned judge indicated in this case, it is difficult,...</i> , to think what any defence could be
I. 72 (medial)	it is difficult, <i>in the light of the video recording</i> , to think what any defence could be
I. 73 (initial)	<i>In all the circumstances we cannot conclude that the sentence of six and a half years was...manifestly excessive</i>
I. 73 (medial)	we cannot conclude that the sentence of six and a half years was <i>in any way</i> manifestly excessive
Sammensatte præpositioner:	
I. 23	on behalf of
I. 32	By leave of
Komplekse substantivsyntagmer:	

I. 38	Mr Wilkinson who fell to the ground
I. 47	ten previous convictions for offences which include theft, deception, actual bodily harm and criminal damage.
I. 49	petty offences dealt with by fines and conditional discharge
I. 52	a video which was so clear and so horrifying, showing a persistent and deliberate attack on an innocent and weak victim in the streets
I. 66	the bracket of the most serious of section 18 offences or even attempted killings
	Fagterminologi:
I. 15	Regina
I. 23	Appellant
I. 31	appellant
I. 37	appellant
I. 38	appellant
I. 38	appellant
I. 39	appellant
I. 43	appellant
I. 45	appellant
I. 48	convictions
I. 48	offences
I. 49	counsel
I. 51	offence
I. 54	to be convicted
I. 54	jury
I. 56	mitigation
I. 57	appellant
I. 60	trial
I. 61	a plea
I. 62	offence
I. 63	appellant
I. 64	bail
I. 66	offence
I. 70	trial
	juridiske kollokationer:
I. 3	court of appeal
I. 4	criminal division
I. 30	the Crown Court
I. 31	to plead guilty to...
I. 31	grievous bodily harm
I. 32	be sentenced to...
I. 32	to appeal against sentence
I. 33	the Single Judge
I. 48	actual bodily harm
I. 48	criminal damage
I. 49	petty offences
I. 49	conditional discharge
I. 51	the learned judge
I. 51	sentencing remarks
I. 53	the learned judge

I. 54	a non-custodial sentence
I. 55	a plea of not guilty
I. 55	a plea of guilty
I. 57	the learned Single Judge
I. 58	a sentence of custody
I. 60	the sentencing judge
I. 64	to plead guilty
I. 66	section 18 offences
I. 66	attempted killing
I. 69	a not guilty plea
I. 71	a guilty plea
I. 71	the learned judge
I. 74	to dismiss an appeal
Nominalkonstruktioner :	
I. 47	He is unemployed and in <i>receipt</i> of benefit (He is unemployed and receives benefit)
I. 47	He has ten previous <i>convictions</i> for offences which include theft, deception, actual bodily harm and criminal damage (He has previously been convicted ten times for offences which include theft, deception, actual bodily harm and criminal damage)
I. 55	if he had been convicted by a jury after a plea of not guilty the <i>sentence</i> would have been one of nine years (if he had been convicted by a jury after a plea of not guilty, he would have been sentenced to nine years)
I. 62	Mr Lowe has accepted the <i>vileness</i> of this offence (Mr Lowe has accepted that this offence was vile)
I. 64	did commit no <i>offences</i> while he was on bail (did not offend while he was on bail)
I. 65	He submits that a sentence, after a not guilty <i>plea</i> , of nine years as indicated by the judge would be too much for this offence (He submits that after the appellant has pleaded guilty, a sentence of nine years as indicated by the judge would be too much for this offence)
Lix:	
918 ord	
192 svære ord	
49 perioder	
A = 20,9	
B = 18,7	
Lix = (A+ B) = 39,6 (middelsvær)	



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Cite as: [1996] EWCA Crim 652

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DARREN JOHN JOHNSTON, R v. [1996] EWCA Crim 652 (17th June, 1996)

No. 96/1280/X5

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2

Monday 17 June 1996

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND
(Lord Bingham of Cornhill)

MR JUSTICE OGNALL

and

MR JUSTICE ASTILL

R E G I N A

- v -

DARREN JOHN JOHNSTON

Computer Aided Transcription by
Smith Bernal, 180 Fleet Street, London EC4
Telephone 0171-831 3183
(Official Shorthand Writers to the Court)

MR ANIJAD NAWAZ appeared on behalf of THE APPELLANT

J U D G M E N T
(As Approved by the Court)

CROWN COPYRIGHT
Monday 17 June 1996

THE LORD CHIEF JUSTICE: Mr Justice Ognall will give the judgment of the court.

MR JUSTICE OGNALL: Darren Johnston is 26 years of age. Ultimately, on 18 January 1996, he was sentenced in respect of offences set out in no less than five indictments. On the first indictment he was sentenced as follows: for handling stolen goods, to 15 months imprisonment; on counts 3 and 4 (burglary), to 15 months imprisonment on each concurrent inter se and with the sentence on the first count; and to a further concurrent term of 15 months for an offence of attempted burglary. Thus on the first indictment he was sentenced to 15 months imprisonment in all. On the second indictment, for an offence of dangerous driving he was sentenced to six months imprisonment consecutive to the sentences passed on the first indictment, and disqualified from holding or obtaining a licence to drive a motor vehicle for a period of two years. For possessing a Class B drug he was sentenced to one month's imprisonment concurrent to the sentences already passed. The sentences on the second indictment were ordered to run consecutively to the first indictment, making 21 months imprisonment. On a third indictment, for handling stolen goods (count 2), he was sentenced to 15 months imprisonment; for burglary (count 3), he was sentenced to a further term of 15 months imprisonment concurrent; for aggravated vehicle taking (count 4) he was sentenced to a further concurrent term of 15 months imprisonment, and disqualified for two years concurrent to the earlier order of disqualification.

It is appropriate to deal with that particular sentence for aggravated vehicle-taking at this stage. Having regard to the fact, first, that the damage which gave rise to the charge of aggravated vehicle-taking was of the order of £200, and having regard to the maximum sentence available to the Justices in respect of an offence involving that amount, and having regard to the terms of section 40 of the Criminal Justice Act 1988, the learned judge there exceeded his powers. The maximum sentence

available to him was that available to the Justices, namely six months imprisonment. Accordingly the sentence he purported to pass was an unlawful sentence. We quash it and substitute a sentence of six months imprisonment to be concurrent with the earlier sentences. Thus it makes no effective difference to the totality. In respect of that indictment, therefore, having regard to the consecutive term of 15 months imprisonment passed for the offence of handling stolen goods, the running subtotal became 36 months imprisonment.

On the fourth indictment, for escaping from lawful custody (count 1), the appellant was sentenced to six months imprisonment. On another count of burglary, on the second half of the fourth indictment, he was sentenced to 15 months imprisonment expressed to be consecutive to count 1. For taking a conveyance without authority (count 3), he was sentenced to 15 months imprisonment concurrent. Here again the learned Recorder in passing sentence exceeded his lawful powers. This was an offence committed to the Crown Court for sentence, pursuant to the provisions of section 40 of the Criminal Justice Act 1988. Accordingly the court was fastened with the sentencing powers which were available to the Justices. The maximum sentence available to them was six months. Accordingly the maximum sentence open to the learned Recorder was likewise six months imprisonment. In passing a sentence of 15 months therefore he passed an unlawful sentence. We quash it. We substitute a sentence of six months imprisonment which will run concurrently with the other sentences so as to make no effective difference to the total sentence passed. Thus on the fourth indictment the appellant was sentenced to a total of 21 months imprisonment, being six months for escape and 15 months consecutive for the burglary. The running subtotal became 57 months imprisonment.

On the fifth indictment he pleaded guilty to an offence of burglary and was sentenced to 15 months imprisonment. On a second, for escaping from lawful custody again, he was sentenced to six months imprisonment consecutive to the 15 months for the offence of burglary. Thus there was a total of 21 months imprisonment to be served in respect of that indictment and consecutive to the sentences passed on the first, second, third and fourth indictments. The total sentence therefore passed upon the appellant was one of six-and-a-half years imprisonment, together with the consequential order of two years disqualification. It is to be noted that in passing sentence the learned judge took into consideration, as he was asked to do, no less than 18 other offences of residential burglaries committed by the appellant during the period he was committing the offences set out in the five indictments.

Against that total sentence he now appeals with the leave of the single judge.

The facts giving rise to his appearance and to those pleas may be shortly summarised. So far as the first indictment is concerned the appellant, on 11 July 1994, was found to be in possession of a stolen motor car. On 4 August of that year he burgled two separate addresses; he stole electrical equipment and attempted to enter a third address with attempt to steal. He was surprised in that endeavour and arrested. He was charged and bailed.

Whilst on bail, on 30 December 1994, he committed the offences set out in the second indictment. The appellant was stopped by the police for a routine check. He gave a false name. He drove off at high speed, and drove in such manner and over such period of time as fully to warrant the charge of dangerous driving in respect of which he was sentenced to six months imprisonment. He was driving at 60 mph over a distance of seven miles on roads governed by a 30 mph limit. Upon his arrest he was found to be in possession of a small quantity of herbal cannabis. He explained to the officers that he was withdrawing from heroin at the time of that offence. The concept of somebody under the influence of heroin, or suffering withdrawal symptoms, driving a motor car in those circumstances needs no underlining by this court. He was bailed again.

We come to the third indictment. He was concerned with a Vauxhall Astra motor car stolen from a car park in Tamworth in February 1995. It was being driven by him on his arrest on 2 March of that year. The third count concerned a domestic burglary. The fourth count concerned his driving of the Vauxhall motor car, and in particular an accident which occurred when officers attempted to apprehend him. He reversed his car into a police car. In interview so far as those offences were concerned, and illuminatingly so far as the mitigation is concerned, the appellant admitted the

burglary and said he intended to sell the stolen goods to obtain money to buy heroin.

The fourth indictment concerned, first, a domestic burglary carried out on 9 July 1995. At that time the appellant was unlawfully at large in circumstances we will deal with shortly hereafter. The owners of the property returned to find the appellant in the process of loading items from the house into his car. The appellant fought with the owner of the property who sought courageously to restrain him. He escaped on foot. He stole a car from a nearby street, which was the subject of another count in the indictment. The first count in the fourth indictment concerned his escape from the dock in Sutton Coldfield Magistrates' Court on 2 May 1995. He was arrested at his home address on 3 August. In interview he admitted the offences and showed the police other property he had burgled.

On the fifth indictment, count 2 concerned his escape from the magistrates' Court at Sutton Coldfield on 7 September 1995. On the same day, whilst unlawfully at large, he carried out a further domestic burglary. He stole a video recorder and some jewellery. He called a taxi which took him to another part of the town, and he left the taxi driver with the stolen video recorder as security for payment. Public spiritedly the taxi driver took the video recorder to the police station. The appellant was arrested on 4 October and admitted the offences in interview.

The fact that it has taken some time to recite the circumstances of the offences is of itself a sufficient indication of the extent of the appellant's criminality which he had indulged in for a period of over one year.

As we have indicated, he is 26 years of age. He is a registered heroin addict. He has a substantial criminal record dating back to his youth, principally for offences of dishonesty including domestic burglaries, the last of which was in 1993 for which he was sentenced to nine months imprisonment. His longest previous sentence, imposed in 1987, was 30 months imprisonment.

The learned Recorder of Birmingham passing sentence upon him observed, in our estimation with total justification, that the offences represented a full year of sustained criminality. In the opinion of the learned Recorder, the appellant was a professional criminal using the proceeds of crime to finance his drug addiction. He concluded with words which, in the view of this court, are extremely relevant. He said that the sentence he passed was one which would serve to keep the appellant away from crime for some time. There was before him a pre-sentence report which confirmed the appellant's addiction to crack cocaine and his girlfriend's addiction to heroin. As will be apparent from what we have already said, the appellant was, at least in substantial part, committed to feeding his own and his girlfriend's depressing addiction.

Before this court, in an attractive argument, Mr Nawaz takes the following points. First, he submits that the offending was committed out of the most pressing circumstances of the appellant's own addiction to cocaine and out of his girlfriend's addiction to heroin, and in an effort to dissuade her from resorting to crime the appellant took it upon himself to commit enough crime to feed both their addictions. Second, Mr Nawaz reminds the court of the burden that any sentence of the order of four years imprisonment or more deprives the appellant of his right to automatic release at the halfway stage. His sentence is such that it is a matter for the discretion of the authorities that at what point, subject to good behaviour, he is to be released between the halfway and the two-thirds stage. Thirdly, we are reminded that the appellant not only pleaded guilty to this catalogue of criminality, but thereafter, whilst in police custody, he fully co-operated with the police to such extent that he has imperilled his own physical well-being and that of his girlfriend in the eyes of the outside criminal fraternity. In those circumstances, whilst acknowledging that a substantial sentence of imprisonment was inevitable, Mr Nawaz submits that a sentence of six-and-a-half years imprisonment was too long.

We have given those submissions careful consideration. We cannot accept them. The learned Recorder of Birmingham was as best placed as anybody could be to assess the appropriate level of sentence for this catalogue of crime, bearing in mind that day after day he is painfully reminded of the affliction of domestic burglary and its effect upon society. He was no doubt mindful, as we are, that the courts must do their best to deter others from committing this sort of crime on this scale by marking such offending with severe sentences. Severe this total sentence undoubtedly was, but in the

view of this court it cannot in all the circumstances properly be characterised as in any way excessive, still less manifestly so.

Before we part from this case we would add this. It has been necessary in two instances to quash unlawful sentences passed because they exceeded the powers of the court. On a number of occasions now other divisions of this court have been at pains to remind both prosecuting and defending counsel of their duty carefully to monitor sentences expressed by the court at first instance so that in the profusion of legislation which now affects sentencing judges, the judge is kept on the rails. No judge is to be criticised, confronted with a catalogue of offending of this kind, if from time to time he loses sight of the technical nuances of his sentencing powers. But it is profoundly to be hoped that, assisted by counsel on both sides, that he will be put back on track and spare this court from the necessity to interfere on a sometimes academic, but nonetheless important basis when dealing with unlawful sentences.

In all the circumstances, subject to the quashing of the unlawful sentences, this appeal must be dismissed.

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17 June 1996 Johnston	
passiver:	
I. 29	he was sentenced in respect of offences...
I. 30	offences set out in no less than five indictments
I. 30	he was sentenced as follows:
I. 34	he was sentenced to 15 months imprisonment
I. 35	he was sentenced to six months imprisonment
I. 35	the sentences passed on the first indictment
I. 36	and disqualified from holding or obtaining a licence to drive a motor vehicle
I. 37	he was sentenced to one month's imprisonment
I. 38	The sentences on the second indictment were ordered to run consecutively to the first indictment
I. 40	he was sentenced to 15 months imprisonment
I. 41	he was sentenced to a further term of 15 months imprisonment concurrent
I. 42	he was sentenced to a further concurrent term of 15 months imprisonment
I. 43	and disqualified for two years concurrent
I. 53	the consecutive term of 15 months imprisonment passed for the offence of handling stolen good
I. 56	the appellant was sentenced to six months imprisonment
I. 58	he was sentenced to 15 months imprisonment
I. 58	15 months imprisonment expressed to be consecutive to count 1.
I. 59	he was sentenced to 15 months imprisonment concurrent
I. 60	This was an offence committed to the Crown Court for sentence
I. 62	the court was fastened with the sentencing powers which were available to the Justices
I. 67	as to make no effective difference to the total sentence passed
I. 67	the appellant was sentenced to a total of 21 months imprisonment
I. 70	(he) was sentenced to 15 months imprisonment
I. 71	he was sentenced to six months imprisonment
I. 73	consecutive to the sentences passed on the first, second, third and fourth indictments
I. 74	The total sentence therefore passed upon the appellant was one of six-and-a-half years imprisonment
I. 76	It is to be noted that...
I. 77	18 other offences of residential burglaries committed by the appellant
I. 81	The facts giving rise to his appearance and to those pleas may be shortly summarised
I. 82	the appellant,..., was found to be in possession of a stolen motor car
I. 84	He was surprised in that endeavour and arrested
I. 85	He was charged and bailed
I. 87	The appellant was stopped by the police
I. 89	he was sentenced to six months imprisonment.
I. 90	he was found to be in possession of a small quantity of herbal cannabis
I. 95	a Vauxhall Astra motor car stolen from a car park
I. 96	It was being driven by him on his arrest

I. 102	a domestic burglary carried out on 9 July 1995
I. 108	He was arrested at his home address
I. 114	The appellant was arrested on 4 October
I. 121	he was sentenced to nine months imprisonment
I. 122	His longest previous sentence, imposed in 1987
I. 133	the offending was committed out of the most pressing circumstances of the appellant's own addiction to cocaine
I. 139	he is to be released between the halfway and the two-thirds stage
I. 148	he is painfully reminded of the affliction of domestic burglary and its effect upon society
I. 152	it cannot...be characterised as in any way excessive
I. 155	unlawful sentences passed
I. 157	sentences expressed by the court
I. 158	No judge is to be criticised, confronted with a catalogue of offending of this kind
I. 160	But it is profoundly to be hoped that...
I. 161	he will be put back on track
I. 164	this appeal must be dismissed
Adverbialer:	
I. 29 (initial)	<i>Ultimately, on 18 January 1996, he was sentenced in respect of offences set out in no less than five indictments</i>
I. 30 (initial)	<i>On the first indictment he was sentenced as follows:</i>
I. 31 (initial)	<i>for handling stolen goods, to 15 months imprisonment;</i>
I. 33 (initial)	<i>Thus on the first indictment he was sentenced to 15 months imprisonment in all</i>
I. 34 (initial)	<i>On the second indictment, for an offence of dangerous driving he was sentenced to six months imprisonment</i>
I. 37 (initial)	<i>For possessing a Class B drug he was sentenced to one month's imprisonment</i>
I. 40 (initial)	<i>On a third indictment, for handling stolen goods (count 2), he was sentenced to 15 months imprisonment</i>
I. 41 (initial)	<i>for burglary (count 3), he was sentenced to a further term of 15 months imprisonment concurrent</i>
I. 42 (initial)	<i>for aggravated vehicle taking (count 4) he was sentenced to a further concurrent term of 15 months imprisonment</i>
I. 46 (initial)	<i>Having regard to the fact, first, that the damage which gave rise to the charge of aggravated vehicle-taking was of the order of £200, and having regard to the maximum sentence available to the Justices in respect of an offence involving that amount, and having regard to the terms of section 40 of the Criminal Justice Act 1988, the learned judge there exceeded his powers</i>
I. 54 (initial)	<i>In respect of that indictment, therefore, having regard to the consecutive term of 15 months imprisonment passed for the offence of handling stolen good, the running subtotal became 36 months imprisonment</i>
I. 56 (initial)	<i>On the fourth indictment, for escaping from lawful custody (count 1), the appellant was sentenced to six months imprisonment</i>
I. 57 (initial)	<i>On another count of burglary, on the second half of the fourth indictment, he was sentenced to 15 months imprisonment</i>
I. 58 (initial)	<i>For taking a conveyance without authority (count 3), he was sentenced to 15 months imprisonment concurrent</i>
I. 60 (medial)	the learned Recorder <i>in passing sentence</i> exceeded his lawful powers

I. 64 (initial)	<i>In passing a sentence of 15 months therefore he passed an unlawful sentence</i>
I. 67 (initial)	<i>On the fifth indictment he pleaded guilty to an offence of burglary</i>
I. 71 (initial)	<i>On a second, for escaping from lawful custody again, he was sentenced to six months imprisonment</i>
I. 76 (initial)	<i>in passing sentence the learned judge took into consideration, as he was asked to do, no less than 18 other offences</i>
I. 80 (initial)	<i>Against that total sentence he now appeals with the leave of the single judge</i>
I. 81 (initial)	<i>So far as the first indictment is concerned the appellant,..., was found to be in possession of a stolen motor car.</i>
I. 81 (medial)	<i>the appellant, on 11 July 1994, was found to be in possession of a stolen motor car.</i>
I. 83 (initial)	<i>On 4 August of that year he burgled two separate addresses</i>
I. 86 (initial)	<i>Whilst on bail, on 30 December 1994, he committed the offences set out in the second indictment</i>
I. 90 (initial)	<i>Upon his arrest he was found to be in possession of a small quantity of herbal cannabis</i>
I. 99 (initial)	<i>In interview so far as those offences were concerned, and illuminatingly so far as the mitigation is concerned, the appellant admitted the burglary</i>
I. 103 (initial)	<i>At that time the appellant was unlawfully at large</i>
I. 110 (initial)	<i>On the fifth indictment, count 2 concerned his escape from the magistrates' Court</i>
I. 111 (initial)	<i>On the same day, whilst unlawfully at large, he carried out a further domestic burglary</i>
I. 119 (initial)	<i>As we have indicated, he is 26 years of age</i>
I. 123 (medial)	<i>The learned Recorder of Birmingham passing sentence upon him observed, in our estimation with total justification, that the offences represented a full year of sustained criminality</i>
I. 124 (initial)	<i>In the opinion of the learned Recorder, the appellant was a professional criminal using the proceeds of crime to finance his drug addiction</i>
I. 126 (medial)	<i>He concluded with words which, in the view of this court, are extremely relevant</i>
I. 129 (initial)	<i>As will be apparent from what we have already said, the appellant was,..., committed to feeding his own and his girlfriend's depressing addiction</i>
I. 129 (medial)	<i>the appellant was, at least in substantial part, committed to feeding his own and his girlfriend's depressing addiction</i>
I. 132 (initial)	<i>Before this court, in an attractive argument, Mr Nawaz takes the following points</i>
I. 134 (initial)	<i>in an effort to dissuade her from resorting to crime the appellant took it upon himself to commit enough crime to feed both their addictions</i>
I. 139 (medial)	<i>it is a matter for the discretion of the authorities that at what point, subject to good behaviour, he is to be released between the halfway and the two-thirds stage</i>
I. 141 (initial)	<i>but thereafter, whilst in police custody, he fully co-operated with the police</i>
I. 143 (initial)	<i>In those circumstances, whilst acknowledging that a substantial sentence of imprisonment was inevitable, Mr Nawaz submits that a sentence of six-and-a-half years imprisonment was too long</i>
I. 151 (initial)	<i>in the view of this court it cannot in all the circumstances properly be characterised as...excessive</i>
I. 152 (medial)	<i>it cannot in all the circumstances properly be characterised as in any way excessive</i>
I. 154 (initial)	<i>Before we part from this case we would add this</i>
I. 155 (initial)	<i>On a number of occasions now other divisions of this court have been at pains to remind both prosecuting and defending counsel of their duty</i>
I. 157 (initial)	<i>so that in the profusion of legislation which now affects sentencing judges, the</i>

	judge is kept on the rails
I. 161 (medial)	But it is profoundly to be hoped that, <i>assisted by counsel on both sides</i> , that he will be put back on track
I. 164 (initial)	<i>In all the circumstances, subject to the quashing of the unlawful sentences</i> , this appeal must be dismissed
Sammensatte præpositioner:	
I. 23	on behalf of
I. 30	in respect of
I. 48	in respect of
I. 53	in respect of
I. 73	in respect of
I. 80	With leave of
I. 89	in respect of
Komplekse substantivsyntagmer:	
I. 30	offences set out in no less than five indictments
I. 35	six months imprisonment consecutive to the sentences passed on the first indictment,
I. 37	one month's imprisonment concurrent to the sentences already passed
I. 46	the damage which gave rise to the charge of aggravated vehicle-taking
I. 47	the maximum sentence available to the Justices
I. 48	an offence involving that amount
I. 50	the sentence he purported to pass
I. 51	a sentence of six months imprisonment to be concurrent with the earlier sentences
I. 54	the consecutive term of 15 months imprisonment passed for the offence of handling stolen good
I. 58	15 months imprisonment expressed to be consecutive to count 1
I. 60	an offence committed to the Crown Court for sentence
I. 62	the sentencing powers which were available to the Justices
I. 63	The maximum sentence available to them
I. 63	the maximum sentence open to the learned Recorder
I. 65	a sentence of six months imprisonment which will run concurrently with the other sentences
I. 68	a total of 21 months imprisonment, being six months for escape and 15 months consecutive for the burglary
I. 72	a total of 21 months imprisonment to be served in respect of that indictment and consecutive to the sentences passed on the first, second, third and fourth indictments
I. 75	the consequential order of two years disqualification
I. 77	no less than 18 other offences of residential burglaries committed by the appellant
I. 78	the offences set out in the five indictments
I. 81	The facts giving rise to his appearance and to those pleas
I. 86	the offences set out in the second indictment
I. 88	the charge of dangerous driving in respect of which he was sentenced to six months imprisonment

I. 90	roads governed by a 30 mph limit
I. 92	The concept of somebody under the influence of heroin, or suffering withdrawal symptoms, driving a motor car in those circumstances
I. 95	a Vauxhall Astra motor car stolen from a car park
I. 98	an accident which occurred when officers attempted to apprehend him
I. 102	a domestic burglary carried out on 9 July 1995
I. 105	the owner of the property who sought courageously to restrain him
I. 109	other property he had burgled
I. 110	his escape from the magistrates' Court at Sutton Coldfield
I. 112	a taxi which took him to another part of the town
I. 113	the stolen video recorder as security for payment
I. 116	a sufficient indication of the extent of the appellant's criminality which he had indulged in for a period of over one year
I. 119	a substantial criminal record dating back to his youth, principally for offences of dishonesty including domestic burglaries, the last of which was in 1993 for which he was sentenced to nine months imprisonment
I. 122	His longest previous sentence, imposed in 1987,
I. 123	The learned Recorder of Birmingham passing sentence upon him
I. 126	words which,(in the view of this court), are extremely relevant
I. 127	one which would serve to keep the appellant away from crime for some time
I. 128	a pre-sentence report which confirmed the appellant's addiction to crack cocaine and his girlfriend's addiction to heroin
I. 136	the burden that any sentence of the order of four years imprisonment or more deprives the appellant of his right to automatic release at the halfway stage
I. 155	unlawful sentences passed
I. 157	sentences expressed by the court at first instance
I. 158	the profusion of legislation which now affects sentencing judges
	Fagterminologi:
I. 16	regina
I. 23	appellant
I. 30	offences
I. 30	indictments
I. 32	inter se
I. 33	count
I. 33	offence
I. 34	indictment
I. 34	indictment
I. 35	offence
I. 36	indictment
I. 39	indictment
I. 39	indictment
I. 40	indictment
I. 40	count
I. 46	charge
I. 48	offence
I. 53	indictment
I. 54	offence
I. 56	indictment

I. 56	count
I. 56	appellant
I. 57	count
I. 57	indictment
I. 58	count
I. 59	count
I. 60	offence
I. 61	provisions
I. 67	indictment
I. 67	appellant
I. 70	indictment
I. 70	offence
I. 72	offence
I. 73	indictment
I. 74	indictment
I. 75	appellant
I. 77	offences
I. 78	appellant
I. 79	indictments
I. 81	pleas
I. 82	indictment
I. 82	appellant
I. 85	to be charged
I. 85	to be bailed
I. 86	bail
I. 86	indictment
I. 87	appellant
I. 87	charge
I. 92	offence
I. 94	to be bailed
I. 95	indictment
I. 97	count
I. 99	offences
I. 100	mitigation
I. 100	appellant
I. 102	indictment
I. 103	appellant
I. 104	appellant
I. 105	appellant
I. 106	count
I. 107	indictment
I. 107	count
I. 109	offences
I. 110	indictment
I. 110	count
I. 114	appellant
I. 115	offences
I. 116	offences
I. 117	appellant's
I. 120	offences

I. 124	offences
I. 125	appellant
I. 127	appellant
I. 128	appellant's
I. 130	appellant
I. 133	appellant's
I. 135	appellant
I. 137	appellant
I. 140	appellant
I. 161	counsel
juridiske kollokationer:	
I. 4	court of appeal
I. 5	criminal division
I. 33	concurrent term
I. 34	to be sentenced to...
I. 35	to be sentenced to...
I. 35	to pass a sentence
I. 37	a Class B drug
I. 37	to be sentenced to...
I. 38	to pass sentences
I. 40	to be sentenced to...
I. 41	to be sentenced to...
I. 42	to be sentenced to...
I. 43	concurrent term
I. 46	aggravated vehicle-taking
I. 47	the maximum sentence
I. 49	the learned judge
I. 49	the maximum sentence
I. 51	to pass a sentence
I. 53	a consecutive term
I. 56	lawful custody
I. 56	to be sentenced to...
I. 58	to be sentenced to...
I. 59	to be sentenced to...
I. 60	the Learned Recorder
I. 60	to pass sentence
I. 60	to commit an offence
I. 61	the Crown Court
I. 62	sentencing powers
I. 63	the maximum sentence
I. 64	the Learned Recorder
I. 64	to pass sentence
I. 67	to pass sentence
I. 68	to be sentenced to...
I. 70	to plead guilty
I. 70	to be sentenced to...
I. 71	lawful custody
I. 71	to be sentenced to...

I. 73	to pass sentences
I. 74	to pass a sentence
I. 75	a consequential order
I. 76	to pass sentence
I. 76	the learned judge
I. 78	to commit offences
I. 80	to appeal against sentence
I. 80	the single judge
I. 86	to commit offences
I. 89	to be sentenced to...
I. 97	domestic burglary
I. 102	domestic burglary
I. 111	domestic burglary
I. 120	criminal record
I. 120	domestic burglaries
I. 121	to be sentenced to...
I. 122	to impose a sentence
I. 123	the Learned Recorder
I. 123	to pass sentence
I. 128	a pre-sentence report
I. 133	to commit an offending
I. 135	to commit crime
I. 140	to plead guilty
I. 146	the learned recorder
I. 149	domestic burglaries
I. 155	to pass an unlawful sentence
I. 156	prosecuting counsel
I. 156	defending counsel
I. 158	the sentencing judge
I. 160	sentencing powers
I. 163	an unlawful sentence
I. 164	an unlawful sentence
I. 164	to dismiss an appeal
Nominalkonstruktionen:	
I. 60	Here again the learned Recorder in passing <i>sentence</i> exceeded his lawful powers (Here again the learned Recorder exceeded his lawful powers when he sentenced the defendant)
I. 76	It is to be noted that in passing <i>sentence</i> the learned judge took into <i>consideration</i> , as he was asked to do, no less than 18 other offences of residential burglaries committed by the appellant (It is to be noted that, when the learned judge sentenced the defendant, he considered, as he was asked to do, no less than 18 other offences of residential burglaries committed by the appellant)
I. 78	18 other offences of residential burglaries committed by the appellant during the period he was committing the <i>offences</i> (18 other offences of residential burglaries committed by the appellant during the period he was offending)
I. 82	the appellant, on 11 July 1994, was found to be in <i>possession</i> of a stolen motor car (the appellant, on 11 July 1994, was found to possess a stolen motor car)
I. 91	he was found to be in <i>possession</i> of a small quantity of herbal cannabis (he

	was found to possess a small quantity of herbal cannabis)
I. 108	In <i>interview</i> he admitted the offences and showed the police other property he had burgled (when the police interviewed him he admitted the offences and showed the police other property he had burgled)
I. 115	The appellant was arrested on 4 October and admitted the offences in <i>interview</i> (The appellant was arrested on 4 October and admitted the offences when the police interviewed him)
I. 123	The learned Recorder of Birmingham passing sentence upon him observed, in our <i>estimation</i> with total <i>justification</i> , that the offences represented a full year of sustained criminality The learned Recorder of Birmingham passing sentence upon him observed that the offences represented a full year of sustained criminality which we estimate to be totally justified)
I. 128	There was before him a pre-sentence report which confirmed the appellant's <i>addiction</i> to crack cocaine and his girlfriend's <i>addiction</i> to heroin (There was before him a pre-sentence report which confirmed that the appellant was addicted to crack cocaine and that his girlfriend was addicted to heroin)
I. 133	he submits that the <i>offending</i> was committed out of the most pressing circumstances of the appellant's own addiction to cocaine (he submits that the appellant offended out of the most pressing circumstances of the appellant's own addiction to cocaine)
I. 146	We have given those submissions careful <i>consideration</i> (We have considered those submissions carefully)
Lix:	
2279 ord	
644 svære ord	
124 perioder	
A = 28,3	
B = 18,4	
Lix = (A+ B) = 46,7 (svær)	



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GERALD MICHAEL BRIERLY, R v. [1996] EWCA Crim 1210 (25th October, 1996)

No: 9602110 Y5

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2

Friday 25th October 1996

B E F O R E :

LORD JUSTICE ROCH

MR JUSTICE JOWITT

and

HER HONOUR JUDGE ANN GODDARD QC
(acting as a judge of the CACD.)

R E G I N A

- v -

GERALD MICHAEL BRIERLY

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(Official Shorthand Writers to the Court)

MR D WALDEN-SMITH appeared on behalf of the Appellant
MR CAREY-HUGHES appeared on behalf of the Crown

JUDGMENT
(As Approved by the Court)

Crown Copyright
Friday 25th October 1996

JUDGMENT

LORD JUSTICE ROCH: I will ask Mr Justice Jowitt to give the judgment of the Court.

MR JUSTICE JOWITT: On 7th March 1996, at Canterbury Crown Court before his Honour Judge Balston, the appellant was convicted of drug smuggling, the drug being 94 kilograms of cannabis resin with an estimated street value of £329,000. He was sentenced to eight years' imprisonment and appeals against conviction and sentence by leave of the Single Judge.

The appellant and his business partner, a Mr Hunt, owned and ran a haulage business in Lancashire, Olympic Freight UK Ltd. They had a number of lorries and hauled goods between this country and the continent.

On 25th June 1994 the appellant drove his lorry off the ferry at Eastern Docks in Dover. Customs officers were alerted by irregularities in the vehicle's tachograph records, and when the vehicle was searched four cardboard boxes were found containing the cannabis resin. The appellant received an old style caution and, when interviewed, made no comment.

At trial the appellant's evidence supported by that of his business partner, Hunt, was to this effect. The business owned a DAF tractor unit, and they received an approach from a man who was never named and to whom we will refer to as Mr X. He was interested in buying the tractor unit and was prepared to pay more than Olympic Freight paid for it in the first place. It was in the business's interest to raise money on this vehicle in order to make other purchases which would be of greater assistance to the business.

However, after Mr X had paid for and taken delivery of the tractor unit, he found its performance did not meet his expectations. He demanded the return of his money, but that had been spent on the other purchases. Both the appellant and Hunt had formed the view that Mr X was a belligerent individual, not lightly to be crossed. His reaction when his money could not be repaid to him more than justified this early assessment. He made threats of violence against both men and against their families if he should not receive his money. Then, on a subsequent occasion, he offered the appellant and Hunt a way of extricating themselves from their difficulty. There was a large sum of money in Spain, £2 million or more, whose owner wished to smuggle it into England in order to invest it in offshore

banks. The appellant said he thought in the Isle of Wight or on the Isle of Mann. This was money on which the owner was liable to pay tax, and he wanted to put it beyond the reach of the Spanish authorities. If the appellant and Hunt were willing to do this, then the debt in respect of the tractor unit would be remitted, but if they were not prepared to perform this service, then the threats that had been made would be put into effect. There was more aggressive behaviour, which put both men in fear for themselves and for their families.

The appellant enquired what would happen if the money was found by English customs officers, and was told it would be confiscated and fines would be imposed, but that these would be paid by those in Spain. The appellant was reluctant to become involved but, on the other hand, he did not see the act of smuggling sterling into this country as a gravely serious matter, and such was the fear engendered in him by Mr X's threats that he agreed to do what was asked. For his part, Hunt was also fearful, and he also, because he was so frightened, agreed to do what was asked.

It was to have been Hunt who would be the driver when one of the firm's lorries, in the course of bringing goods back from the continent, was to have the money loaded onto it. In the event, for reasons which do not matter so far as this appeal is concerned, it was the appellant who drove the lorry.

The appellant gave evidence about the journey to Spain and the toings and froings that there were on the continent. He was accompanied by Mr X who did some of the driving, and whose driving damaged the tyres, which had to be replaced. The tachograph discs which were with the lorry, when it returned to Dover, did not correspond with the route which the appellant said in evidence he had taken. Nor was there a single piece of paper produced in evidence, despite the references to sending faxes, concerning the replacement of the tyres.

The plan was that Mr X should leave the lorry at Dover and meet the appellant later at a rendezvous when the four cardboard boxes containing, as the appellant maintained he believed, the smuggled money would be handed over.

It is right to say that cogent criticism can be made of the defence evidence which was offered at the trial. The defence raised was that the appellant did not know that it was drugs he was smuggling into the country, and that he believed it was money. If the jury thought this was, or might, be true, then he was entitled to be acquitted. He said, further, that what he had done had been done because he was in fear and a defence of duress was advanced.

The judge, in the course of the very brief summing-up, did not refer to the defence of duress or to the evidence upon which it was based. At the conclusion of the summing-up defending counsel submitted that the defence of duress had been raised on the evidence and ought to have been left to the jury.

The judge did not agree. He said:

"It would be a defence available to him if he knew that he was bringing in cannabis, but he did it only because he was acting under duress, but here he says he did not know it was cannabis and he thought it was money."

Mr Walden-Smith countered by saying there was evidence of threats, and there was the real possibility that the jury would conclude the appellant knew or believed that what he was smuggling was cannabis, but they might conclude he did so only because of the threats. The judge pointed out that this had not been suggested in the evidence or in the closing speech. Counsel for the prosecution, Mr Carey-Hughes, submitted that duress should not be left to the jury primarily because the defence case was that the appellant did not know he was smuggling drugs, but also because in cross-examination he had said that the degree of threat he was under would not have led him to bring drugs into this country.

We have studied the evidence given by the appellant when cross-examined about whether he would have acceded to Mr X's demands had he thought that he was dealing with drugs. While it is true to say that he did not commit himself 100 per cent to the proposition that he would not have acceded to the demands had he thought drugs were involved, the clear effect of his evidence was that he was saying he would not have done so.

In our view the effect of the series of questions and answers addressed to the appellant on that

subject removed any evidential basis for the defence that had he known he was smuggling drugs he would have done so by reason of duress.

Even if the defence should have been left to the jury, it would not have come into play unless the jury concluded the appellant knew he was engaged in drug smuggling, and the effect of such a finding must have had such an adverse effect on his credibility that we do not see how a defence of duress could have met with any fate other than rejection.

There is, however, a further and more substantial criticism of the summing-up. The evidence of the appellant and his witness occupied 119 pages of transcript. The bulk of this evidence dealt with the defence account and the cross-examination directed to it. The case began on a Tuesday and the judge summed up on the Thursday. The defence evidence had taken a part of both Wednesday and Thursday. The judge summed up the whole of the evidence in the space of two and a half pages, concluding his review of the evidence by posing the issue for the jury in this way:

"You will consider all the evidence, I am sure, but the point really is this. If you think that this defendant was or may have been telling the truth about the state of his mind when he brought that lorry into the country, and if you think that he believed that there was nothing more than money in it, or if you think that that may be what he believed, then he is entitled to be acquitted."

That was indeed the issue for the jury, and the judge had earlier said that most of the prosecution's evidence was agreed so that the case really revolved around whether or not the jury accepted what the appellant had said in evidence. He added that it was not for the defendant to prove anything.

We point out, however, that it was not simply what the jury made of the appellant's evidence, but whether they were assisted also by the evidence of his witness, Hunt. Nowhere in the summing-up is there even the briefest outline of the defence account which we have set out in this judgment. The fact that the judge did not leave the defence of duress to the jury did not mean that the evidence about Mr X and his threats was irrelevant to the issues which the jury did have to consider. The evidence of the appellant and Hunt about this was capable of going to the credibility of the appellant's account that he did not believe he was smuggling into the country anything other than money.

This was a man of good character behaving unlawfully. The jury had to consider what they had made of the evidence about Mr X, and whether it might have led the appellant to fall into the scheme which he believed to involve money and in which he was prepared to take part out of fear and because he did not regard smuggling money as anything so very serious, whereas he would have taken a very different view of smuggling drugs into the country.

A defendant is entitled to have his defence placed before the jury. This the judge singly failed to do. Does this render the verdict unsafe?

We have said that there are cogent criticisms which can be made of the defence evidence.

Nonetheless, we have not had the advantage of seeing the witnesses. The jury did and, of course, they rejected the evidence that the appellant believed he was smuggling money. Whether this would necessarily have been their view had the case been properly summed up, we are not in a position to judge.

In these circumstances we are forced to the conclusion that this verdict is unsafe and that the conviction must be quashed.

A criticism was also made of the direction on good character. The judge gave a direction which was correct so far as it went, but apparently there were character witnesses called and no mention was made of them as it should have been, albeit a brief reference would have sufficed.

We have to consider whether it would be right, in the present circumstances, having quashed the conviction, to order that there should be a re-trial.

We bear in mind that these are events which happened as long ago as June 1994. On the other hand, this was a very substantial amount of cannabis resin which came into this country. This is a serious charge, and we do not think this is a case in which a jury would be hampered in arriving at a knowledge of the truth by difficulty in recollection.

For those reasons we think it right to direct that this should be a new trial.

Having said that there was not evidence fit to be left to the jury on the defence of duress, that is a

matter which will have to be considered afresh at any re-trial in the light of any evidence which may be called then, if there is evidence upon that issue.

We direct, therefore, a new trial. There will have to be a new indictment preferred. Is Canterbury Crown Court the appropriate venue?

MR WALDEN-SMITH: My Lord, yes.

MR JUSTICE JOWITT: Very well. The re-trial will be at Canterbury Crown Court, and we remind the parties that arraignment must take place within two months of today.

LORD JUSTICE ROCH: Do you have any applications?

MR WALDEN-SMITH: My Lord, before his conviction the appellant was on bail. Not wishing to excite what might have been a false hope, I have not conferred with him and have not reminded myself of the conditions, although I know Mr Hunt was a surety. It may well be that the appropriate course would be either to invite this Court to grant him bail on the same conditions as applied before, if the Court is prepared to do that.

LORD JUSTICE ROCH: Is there an address for him to go to?

MR WALDEN-SMITH: I have not taken instructions. Would the Court allow me a moment to approach him and speak to him?

LORD JUSTICE ROCH: Yes, certainly (slight pause).

MR WALDEN-SMITH: My Lord, the position is that he would, if granted his liberty, return to live with his sister at an address that he has given me, in Manchester.

LORD JUSTICE ROCH: I see. That is not the address on the antecedent history though?

MR WALDEN-SMITH: I think not. It is an address that he says he has given to the probation service.

LORD JUSTICE ROCH: Is there any reason why he wants that address kept secret?

MR WALDEN-SMITH: Not at all. 10 Ardale Avenue, Moston, in Manchester.

LORD JUSTICE ROCH: Do you remember the other terms of his bail?

MR WALDEN-SMITH: I do not. I am told there was a surety in the sum of £30,000. There may well be difficulties in the arranging of that. I am told by Mr Brierly that, in fact, Mr Hunt's whereabouts, and he of course was the witness and also the surety, are no longer known. Perhaps it is a matter that I ought to have known to have put before the Court in relation to his application. I only mention that at this stage. But certainly I have no instructions to say that he will be able to satisfy a surety at this moment (slight pause).

LORD JUSTICE ROCH: Mr Walden-Smith, we will grant bail, and the conditions will be that he lives at 10 Ardale Avenue, Moston, Manchester, that he provides a surety in the sum of £10,000, acceptable to the prosecuting authority. I see there was a reporting condition in his previous bail.

MR WALDEN-SMITH: I do not know the local police station. Certainly I am in no position ----

LORD JUSTICE ROCH: On the previous occasion he was living at an address in Blackpool. He was reporting to Blackpool Police Station. We will content ourselves with those two conditions, the address and the surety.

MR WALDEN-SMITH: I am grateful. Thank you.

LORD JUSTICE ROCH: Do you have any other applications? Was he legally aided?

MR WALDEN-SMITH: He was. If I require to make that application to this Court, may I do so? Certainly he was legally aided throughout those proceedings.

LORD JUSTICE ROCH: Yes. It is probably easier to deal with as many matters as possible. We will grant legal aid for the re-trial, for one counsel and a solicitor,

MR WALDEN-SMITH: Thank you very much.

LORD JUSTICE ROCH: The fresh indictment is to be in the same terms as the indictment on which he was tried.

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25 October 1996 Brierly	
passiver:	
I. 33	the appellant was convicted of drug smuggling
I. 34	He was sentenced to eight years' imprisonment
I. 39	Customs officers were alerted by irregularities in the vehicle's tachograph records
I. 40	when the vehicle was searched
I. 41	four cardboard boxes were found containing the cannabis resin
I. 42	when interviewed
I. 43	the appellant's evidence supported by that of his business partner
I. 44	a man who was never named
I. 50	that had been spent on the other purchases
I. 52	when his money could not be repaid
I. 59	the debt in respect of the tractor unit would be remitted
I. 60	the threats that had been made would be put into effect
I. 64	(he) was told that...
I. 64	it would be confiscated
I. 64	fines would be imposed
I. 64	these would be paid by those in Spain
I. 66	such was the fear engendered in him by Mr X's threats
I. 67	he agreed to do what was asked
I. 68	(he) agreed to do what was asked
I. 70	(the lorry) was to have the money loaded onto it
I. 74	He was accompanied by Mr X
I. 75	whose driving damaged the tyres, which had to be replaced
I. 77	Nor was there a single piece of paper produced in evidence
I. 81	the smuggled money would be handed over
I. 82	cogent criticism can be made of the defence evidence
I. 82	the defence evidence which was offered at the trial
I. 84	he was entitled to be acquitted
I. 86	a defence of duress was advanced
I. 87	the evidence upon which it was based
I. 89	the defence of duress had been raised
I. 89	and ought to have been left to the jury
I. 96	this had not been suggested in the evidence
I. 102	the evidence given by the appellant when cross-examined
I. 107	the series of questions and answers addressed to the appellant
I. 110	Even if the defence should have been left to the jury
I. 123	he is entitled to be acquitted
I. 124	most of the prosecution's evidence was agreed
I. 139	A defendant is entitled to have his defence placed before the jury
I. 141	there are cogent criticisms which can be made of the defence evidence
I. 144	had the case been properly summed up
I. 146	we are forced to the conclusion that...
I. 146	this verdict is unsafe and that the conviction must be quashed
I. 148	A criticism was also made of the direction on good character
I. 149	there were character witnesses called
I. 149	no mention was made of them
I. 150	as it should have been

I. 150	albeit a brief reference would have sufficed
I. 158	that is a matter which will have to be considered afresh
I. 159	in the light of any evidence which may be called then
I. 176	if granted his liberty,
I. 185	I am told by Mr Brierly that...
I. 198	Was he legally aided?
I. 200	he was legally aided throughout those proceedings
I. 204	as the indictment on which he was tried
Adverbialer:	
I. 32 (initial)	<i>On 7th March 1996, at Canterbury Crown Court before his Honour Judge Balston, the appellant was convicted of drug smuggling</i>
I. 39 (initial)	<i>On 25th June 1994 the appellant drove his lorry off the ferry at Eastern Docks in Dover</i>
I. 52 (medial)	His reaction <i>when his money could not be repaid to him</i> more than justified this early assessment
I. 54 (initial)	<i>Then, on a subsequent occasion, he offered the appellant and Hunt a way of extricating themselves</i>
I. 59 (initial)	<i>If the appellant and Hunt were willing to do this, then the debt in respect of the tractor unit would be remitted</i>
I. 60 (initial)	<i>if they were not prepared to perform this service, then the threats that had been made would be put into effect</i>
I. 65 (initial)	but, <i>on the other hand</i> , he did not see the act of smuggling sterling into this country as a gravely serious matter
I. 67 (initial)	<i>For his part, Hunt was also fearful,</i>
I. 68 (medial)	he also, <i>because he was so frightened</i> , agreed to do what was asked
I. 69 (medial)	when one of the firm's lorries, <i>in the course of bringing goods back from the continent</i> , was to have the money loaded onto it
I. 70 (initial)	<i>In the event, for reasons which do not matter so far as this appeal is concerned, it was the appellant who drove the lorry</i>
I. 75 (medial)	The tachograph discs which were with the lorry, <i>when it returned to Dover</i> , did not correspond with the route which the appellant said in evidence he had taken
I. 80 (medial)	when the four cardboard boxes containing, <i>as the appellant maintained he believed</i> , the smuggled money would be handed over
I. 84 (initial)	<i>If the jury thought this was, or might, be true, then he was entitled to be acquitted</i>
I. 87 (medial)	The judge, <i>in the course of the very brief summing-up</i> , did not refer to the defence of duress
I. 88 (initial)	<i>At the conclusion of the summing-up</i> defending counsel submitted that...
I. 103 (initial)	<i>While it is true to say that he did not commit himself 100 per cent to the proposition that he would not have acceded to the demands had he thought drugs were involved, the clear effect of his evidence was that he was saying he would not have done so</i>
I. 107 (initial)	<i>In our view</i> the effect of the series of questions and answers addressed to the appellant on that subject removed any evidential basis for the defence
I. 108 (initial)	<i>had he known he was smuggling drugs</i> he would have done so by reason of duress
I. 110 (initial)	<i>Even if the defence should have been left to the jury, it would not have come into play</i>
I. 120 (initial)	<i>If you think that this defendant was or may have been telling the truth about the state of his mind when he brought that lorry into the country, and if you think that he believed that there was nothing more than money in it, or if you think that that may be what he believed, then he is entitled to be acquitted</i>
I. 133 (medial)	he did not believe he was smuggling <i>into the country</i> anything other than

	money
I. 143 (initial)	<i>Whether this would necessarily have been their view had the case been properly summed up, we are not in a position to judge</i>
I. 146 (initial)	<i>In these circumstances we are forced to the conclusion that...</i>
I. 151 (medial)	<i>it would be right, in the present circumstances, having quashed the conviction, to order that there should be a re-trial.</i>
I. 153 (initial)	<i>On the other hand, this was a very substantial amount of cannabis resin</i>
I. 157 (initial)	<i>For those reasons we think it right to direct that this should be a new trial</i>
I. 158 (initial)	<i>Having said that there was not evidence fit to be left to the jury on the defence of duress, that is a matter which will have to be considered afresh at any re-trial</i>
I. 167 (initial)	<i>Not wishing to excite what might have been a false hope, I have not conferred with him</i>
I. 176 (medial)	<i>he would, if granted his liberty, return to live with his sister</i>
I. 194 (initial)	<i>On the previous occasion he was living at an address in Blackpool</i>
I. 199 (initial)	<i>If I require to make that application to this Court, may I do so?</i>
Sammensatte præpositioner:	
I. 24	on behalf of
I. 25	on behalf of
I. 35	By leave of
I. 47	in order to
I. 56	in order to
I. 59	in respect of
I. 187	in relation to
Komplekse substantivsyntagmer:	
I. 33	94 kilograms of cannabis resin with an estimated street value of £ 329,000
I. 40?	irregularities in the vehicle's tachograph records
I. 43	the appellant's evidence supported by that of his business partner, Hunt,
I. 44	a man who was never named and to whom we will refer to as Mr X
I. 57	money on which the owner was liable to pay tax
I. 61	more aggressive behaviour, which put both men in fear for themselves and for their families
I. 66	the fear engendered in him by Mr X's threats
I. 69	Hunt who would be the driver
I. 71	reasons which do not matter so far as this appeal is concerned
I. 71	the appellant who drove the lorry
I. 74	Mr X who did some of the driving and whose driving damaged the tyres, which had to be replaced
I. 75	The tachograph discs which were with the lorry
I. 76	the route which the appellant said (in evidence) he had taken
I. 77	a single piece of paper produced in evidence
I. 78	faxes, concerning the replacement of the tyres
I. 80	the four cardboard boxes containing, (as the appellant maintained he believed), the smuggled money
I. 82	the defence evidence which was offered at the trial
I. 87	the evidence upon which it was based
I. 91	a defence available to him
I. 100	the degree of threat he was under

I. 102	the evidence given by the appellant
I. 107	the effect of the series of questions and answers addressed to the appellant on that subject
I. 108	any evidential basis for the defence that had he known he was smuggling drugs he would have done so by reason of duress
I. 112	such an adverse effect on his credibility
I. 114	a further and more substantial criticism of the summing-up
I. 129	the defence account which we have set out in this judgment
I. 131	the issues which the jury did have to consider
I. 135	the scheme which he believed to involve money and in which he was prepared to take part out of fear
I. 137	a very different view of smuggling drugs into the country
I. 141	cogent criticisms which can be made of the defence evidence
I. 143	the evidence that the appellant believed he was smuggling money
I. 148	a direction which was correct so far as it went
I. 153	events which happened as long ago as June 1994
I. 154	a very substantial amount of cannabis resin which came into this country
I. 155	a case in which a jury would be hampered in arriving at a knowledge of the truth by difficulty in recollection
I. 158	evidence fit to be left to the jury on the defence of duress
I. 159	a matter which will have to be considered afresh
I. 159	any evidence which may be called
I. 177	an address that he has given me,
I. 179	an address that he says he has given to the probation service
I. 191	a surety in the sum of £ 10,000, acceptable to the prosecuting authority
I. 204	the indictment on which he was tried
Fagterminologi:	
I. 16	regina
I. 24	appellant
I. 25	the Crown
I. 33	appellant
I. 39	appellant
I. 41	appellant
I. 43	trial
I. 43	appellant
I. 51	appellant
I. 54	appellant
I. 57	appellant
I. 59	appellant
I. 63	appellant
I. 65	appellant
I. 71	appeal
I. 71	appellant
I. 73	appellant
I. 76	appellant
I. 79	appellant
I. 83	trial
I. 85	to be acquitted
I. 89	jury
I. 95	jury

I. 95	appellant
I. 98	jury
I. 99	appellant
I. 99	Cross-examination
I. 102	appellant
I. 102	to be cross-examined
I. 107	appellant
I. 110	jury
I. 111	appellant
I. 115	appellant
I. 116	Cross-examination
I. 119	jury
I. 123	be acquitted
I. 124	jury
I. 124	prosecution
I. 125	jury
I. 126	appellant
I. 126	defendant
I. 127	jury
I. 127	appellant's
I. 130	jury
I. 131	jury
I. 132	appellant
I. 132	appellant's
I. 134	jury
I. 135	appellant
I. 139	appellant
I. 139	jury
I. 140	verdict
I. 142	jury
I. 143	appellant
I. 146	verdict
I. 152	Re-trial
I. 155	charge
I. 155	jury
I. 157	trial
I. 158	jury
I. 159	Re-trial
I. 161	trial
I. 161	indictment
I. 164	Re-trial
I. 165	arraignment
I. 167	conviction
I. 167	appellant
I. 167	bail
I. 169	surety
I. 170	bail
I. 183	bail
I. 184	surety
I. 186	surety

I. 188	surety
I. 190	bail
I. 192	bail
I. 196	surety
I. 200	proceedings
I. 202	Re-trial
I. 202	counsel
I. 202	solicitor
I. 204	indictment
I. 204	indictment
juridiske kollokationer:	
I. 4	court of appeal
I. 5	criminal division
I. 33	to be convicted of...
I. 33	drug smuggling
I. 33	cannabis resin
I. 34	be sentenced to...
I. 35	to appeal against conviction
I. 35	the single judge
I. 41	cannabis resin
I. 64	to impose a fine
I. 73	to give evidence
I. 82	defence evidence
I. 86	defence of duress
I. 87	defence of duress
I. 88	the defending counsel
I. 89	defence of duress
I. 97	counsel for the prosecution
I. 102	to give evidence
I. 111	drug smuggling
I. 112	defence of duress
I. 130	defence of duress
I. 141	defence evidence
I. 147	to quash a conviction
I. 151	to quash a conviction
I. 154	cannabis resin
I. 158	defence of duress
I. 162	the Crown Court
I. 179	probation service
I. 198	to be legally aided
I. 200	to be legally aided
I. 202	legal aid
Nominalkonstruktioner	
I. 44	they received an approach from a man who was never named and to whom we will refer to as Mr X (they were approached by a man who was never named and to whom we will refer to as Mr X)
I. 47	in order to make other <i>purchases</i> which would be of greater assistance to the business (in order to purchase other things/items which would be of greater

	assistance to the business)
I. 49	after Mr X had paid for and taken <i>delivery</i> of the tractor unit (after Mr X had paid for and Olympic Freight UK Ltd. had delivered the tractor unit)
I. 50	He demanded the <i>return</i> of his money (He demanded that the company should return his money)
I. 61	There was more aggressive <i>behaviour</i> , which put both men in fear for themselves and for their families (Mr X continued to behave aggressively, which put both men in fear for themselves and for their families)
I. 82	It is right to say that cogent <i>criticism</i> can be made of the defence evidence (It is right to say that the defence evidence can be cogently criticised)
I. 94	there was evidence of <i>threats</i> (there was evidence that Mr X had threatened the appellant)
I. 141	We have said that there are cogent <i>criticisms</i> which can be made of the defence evidence (we have said that the defence evidence can be cogently criticised)
I. 146	In these circumstances we are forced to the <i>conclusion</i> that this verdict is unsafe (In these circumstances we are forced to conclude that this verdict is unsafe)
I. 148	A <i>criticism</i> was also made of the direction on good character (the direction on good character was also criticised)
I. 149	there were character witnesses called and no <i>mention</i> was made of them (there were character witnesses called and the judge did not mention them)
I. 150	albeit a brief <i>reference</i> would have sufficed (albeit it would have been sufficient to refer to them briefly)
I. 167	before his <i>conviction</i> the appellant was on bail (before he was convicted the appellant was on bail)
I. 199	If I require to make that <i>application</i> to this Court, may I do so? (If I require to apply to this Court for legal aid, may I do so?)
Lix:	
2896 ord	
587 svære ord	
146 perioder	
A = 20,3	
B = 19,8	
Lix = (A+ B) = 40,1 (middelsvær)	



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ANDREW JOHN HALL, R v. [1997] EWCA Crim 223 (28th January, 1997)

No: 9604970 Y5

IN THE COURT OF APPEAL
CRIMINAL DIVISION
Royal Courts of Justice
The Strand
London WC2

Tuesday 28th January 1997

B E F O R E :

LORD JUSTICE STAUGHTON

MR JUSTICE SCOTT BAKER

and

MR JUSTICE HARRISON

R E G I N A

- v -

ANDREW JOHN HALL

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(Official Shorthand Writers to the Court)

MR MCCARTNEY appeared on behalf of the Appellant

JUDGMENT
(As Approved by the Court)

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Tuesday 28th January 1997

JUDGMENT

LORD JUSTICE STAUGHTON: Mr Justice Harrison will give the judgment of the Court.

MR JUSTICE HARRISON: On 19th April 1996, at Wolverhampton Crown Court before Mr Recorder David Jones, the appellant was convicted of two offences of arson. On 18th June 1996 he was sentenced to six years' imprisonment on each count concurrent. He now appeals against sentence by leave of the Single Judge.

The facts were that the appellant worked for a skip hire company as a general labourer during the day, but he also acted as a security guard for that firm at night. For that purpose he lived in a caravan provided for him in the yard and he was given a set of keys to the yard. He often returned to the site in a drunken state and sometimes found it difficult to get up for work. That is what happened on 31st October 1995. When he failed to get up for work the owner of the yard, Mr Grinsell, sacked him and retrieved the keys from him. The appellant left with some of his belongings, but said he would come back for the rest of them.

On 3rd November 1995 the appellant came to collect his wages and asked if he could collect his tobacco out of the caravan, but he was refused entry to the caravan.

On 4th November 1995, after Mr Grinsell had finished work, he looked through the window of the caravan to see if the appellant had taken anymore of his belongings. At that time he noticed the appellant's tobacco tin and a pouch of tobacco on a shelf inside the caravan.

The following day Mr Grinsell was informed that there had been a fire. He found that the caravan and a cab of a Scania tractor unit had been set alight. The cost of the damage was a bit less than £10,000. He noticed that the floodlights, which were normally left on, were off, and he knew that only someone working there would be able to find the switch for them. Also, the electricity cable had been reconnected to the caravan.

The appellant was arrested at his sister's house where he was staying, and there the police found the pouch of tobacco and the tobacco tin which had previously been in the caravan.

The appellant is a man aged 31 who has some 21 previous convictions recorded against him between 1979 and 1993, largely for offences of dishonesty, although they do include some offences of criminal damage.

Besides a Pre-sentence Report, there were before the court two psychiatric reports, both of which made it clear that the appellant was not suffering from any mental illness. One of the psychiatrists, Dr Zikis, in his report, having referred to the appellant's lack of remorse, said:

".....he is determined that when he is finally released he will return to his usual alcohol consumption and does not want any help or any change in his lifestyle, therefore I can predict with certainty that his two present offences of arson will not remain the last one in his criminal list."

However, in a later letter Dr Zikis explained what he meant by that phrase. He said that the phrase was intended to relate to the likelihood of the appellant's "re-offending in general, not specifically to arson".

When passing sentence the learned Recorder referred to these offences as having been committed out of revenge. He remarked that the appellant showed no remorse at all and that he had made it clear that he had no intention of giving up drink. He positively relished some of the crimes that he committed in drink and found it exciting, and had no intention of changing.

After referring to the appellant's extensive criminal career, the Recorder said:

"Fortunately the public, in my view, need protection from you and the least sentence that I can impose is one of six years on each count of the indictment."

Mr McCartney, who has appeared for the appellant, has submitted, first of all, that the Recorder was wrong in principle to pass a sentence which was longer than normal under section 2(2)(b) of the Criminal Justice Act 1991 where it was not established that the public was at risk from the appellant of serious harm. He submitted that the Recorder should have warned defence counsel that he was considering a longer than normal sentence. However the learned Recorder, in his sentencing remarks, did not mention section 2(2)(b) of the Criminal Justice Act 1991 at all. Nor did he refer to the need to protect the public from "serious harm" from the offender, which is the relevant criterion under that section of the Act. In those circumstances we do not consider that the Recorder was intending to impose a longer than normal sentence.

We have, therefore, considered whether, on the basis that section 2(2)(b) was not being invoked, that sentence was manifestly excessive.

Mr McCartney has helpfully referred us to a number of decided cases. Firstly, the case of Chamberlain (1987) 9 Cr.App.R.(S.) 337, where a sentence of five years' imprisonment for attempted arson was reduced to two and a half years on a guilty plea. However, that was a case, as we have said, of attempted arson, where there was no damage to the property at all.

Two other cases were referred to by Mr McCartney. First, Bond and Bennett (1994) 14 Cr.App.R.(S.) 173. That was a case where the appellants pleaded guilty to arson. They had been dismissed from their employment, went drinking, and broke into their ex-employer's factory and started a fire, causing, in that case, almost £500,000 worth of damage. A sentence of three years was upheld on appeal.

Finally, Mr McCartney referred to the case of Hartley and Blevins (1994) 14 Cr.App.R.(S.) 198. That again was a case where the appellants pleaded guilty to arson and, again, it was a case of arson of their employer's factory. One of the appellants was a key holder. Using petrol, they started a fire which caused £690,000 worth of damage. They were aged 20 and 22 respectively and of previous good character. In that case a sentence of three years was upheld on appeal.

Bearing those cases in mind, Mr McCartney submitted that a range from two and a half years up to four years is an appropriate range for these types of offences, depending upon the amount of damage done and the reason for the offence.

The latter two cases we find as a helpful indication of the level of sentencing in this type of case, although, of course, each case must be considered according to its own circumstances, which, in the case of arson, vary considerably.

This plainly was an act of revenge for which the appellant showed no remorse. Furthermore, it was a contested case, so no credit could be given for a guilty plea. It was, however, a case of damage to property rather than to life, the amount of the damage being of the order of £10,000.

Having regard to those consideration, and also to the decided cases to which we have referred, we

have concluded that a sentence of six years' imprisonment was, in the circumstances, too high. In our view a sentence of four years would have been appropriate. We therefore will substitute a sentence of four years. To that extent this appeal is allowed.

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28 January 1997 Hall	
passiver:	
I. 31	the appellant was convicted of two offences of arson
I. 31	he was sentenced to six years' imprisonment
I. 35	he lived in a caravan provided for him in the yard
I. 36	he was given a set of keys to the yard
I. 42	he was refused entry to the caravan
I. 46	Mr Grinsell was informed that there had been a fire
I. 46	the caravan and a cab of a Scania tractor unit had been set alight
I. 51	The appellant was arrested
I. 59	when he is finally released he will return to his usual alcohol consumption
I. 62	the phrase was intended to relate to the likelihood of the appellant's "re-offending in general
I. 74	it was not established that the public was at risk from the appellant of serious harm
I. 81	section 2(2)(b) was not being invoked
I. 84	a sentence of five years' imprisonment for attempted arson was reduced to two and a half years on a guilty plea
I. 87	Two other cases were referred to by Mr McCartney
I. 88	They had been dismissed from their employment,
I. 90	A sentence of three years was upheld on appeal
I. 96	a sentence of three years was upheld on appeal
I. 101	each case must be considered according to its own circumstances
I. 104	no credit could be given for a guilty plea
I. 109	this appeal is allowed
Adverbialer:	
I. 30 (initial)	<i>On 19th April 1996, at Wolverhampton Crown Court before Mr Recorder David Jones, the appellant was convicted of two offences of arson</i>
I. 31 (initial)	<i>On 18th June 1996 he was sentenced to six years' imprisonment on each count concurrent.</i>
I. 35 (initial)	<i>For that purpose he lived in a caravan provided for him in the yard</i>
I. 41 (initial)	<i>On 3rd November 1995 the appellant came to collect his wages</i>
I. 43 (initial)	<i>On 4th November 1995, after Mr Grinsell had finished work, he looked through the window of the caravan</i>
I. 44 (initial)	<i>At that time he noticed the appellant's tobacco tin and a pouch of tobacco on a shelf inside the caravan</i>
I. 46 (initial)	<i>The following day Mr Grinsell was informed that there had been a fire</i>
I. 56 (initial)	<i>Besides a Pre-sentence Report, there were before the court two psychiatric reports</i>
I. 58 (medial)	<i>Dr Zikis, in his report, having referred to the appellant's lack of remorse, said he is determined that when he is finally released he will return to his usual alcohol consumption</i>
I. 59 (initial)	
I. 62 (initial)	<i>However, in a later letter Dr Zikis explained what he meant by that phrase</i>
I. 65 (initial)	<i>When passing sentence the learned Recorder referred to these offences as having been committed out of revenge</i>
I. 69 (initial)	<i>After referring to the appellant's extensive criminal career, the Recorder said:</i>
I. 70 (medial)	<i>Fortunately the public, in my view, need protection from you</i>
I. 76 (medial)	<i>the learned Recorder, in his sentencing remarks, did not mention section 2(2)(b) of the Criminal Justice Act 1991</i>
I. 79 (initial)	<i>In those circumstances we do not consider that the Recorder was intending to impose a longer than normal sentence</i>

I. 81 (medial)	We have, therefore, considered whether, <i>on the basis that section 2(2)(b) was not being invoked</i> , that sentence was manifestly excessive
I. 85 (medial)	However, that was a case, <i>as we have said</i> , of attempted arson
I. 90 (medial)	causing, <i>in that case</i> , almost £ 500,000 worth of damage
I. 96 (initial)	<i>In that case</i> a sentence of three years was upheld on appeal
I. 97 (initial)	<i>Bearing those cases in mind</i> , Mr McCartney submitted that a range from two and a half years up to four years is an appropriate range for these types of offences
I. 101 (initial)	<i>although, of course</i> , each case must be considered according to its own circumstances
I. 101 (medial)	each case must be considered according to its own circumstances, which, <i>in the case of arson</i> , vary considerably.
I. 106 (initial)	<i>Having regard to those consideration, and also to the decided cases to which we have referred</i> , we have concluded that a sentence of six years' imprisonment was,...., too high
I. 107 (medial)	we have concluded that a sentence of six years' imprisonment was, <i>in the circumstances</i> , too high
I. 107 (initial)	<i>In our view</i> a sentence of four years would have been appropriate
I. 109 (initial)	<i>To that extent</i> this appeal is allowed
Sammensatte præpositioner:	
I. 23	on behalf of
I. 33	By leave of
Komplekse substantivsyntagmer:	
I. 35	a caravan provided for him
I. 48	the floodlights, which were normally left on
I. 51	his sister's house where he was staying
I. 51	the pouch of tobacco and the tobacco tin which had previously been in the caravan.
I. 53	a man aged 31 who has some 21 previous convictions recorded against him (between 1979 and 1993), largely for offences of dishonesty, although they do include some offences of criminal damage
I. 56	two psychiatric reports, both of which made it clear that the appellant was not suffering from any mental illness
I. 65	these offences as having been committed out of revenge
I. 67	some of the crimes that he committed in drink
I. 70	the least sentence that I can impose
I. 72	Mr McCartney, who has appeared for the appellant,
I. 73	a sentence which was longer than normal under section 2(2)(b) of the Criminal Justice Act 1991
I. 77	the need to protect the public from "serious harm" from the offender, which is the relevant criterion under that section of the Act
I. 82	the case of <u>Chamberlain</u> (1987) 9 Cr.App.R.(S.) 337, where a sentence of five years' imprisonment for attempted arson was reduced to two and a half years
I. 85	a case, as we have said, of attempted arson, where there was no damage to the property at all
I. 88	a case where the appellants pleaded guilty to arson
I. 93	a case where the appellants pleaded guilty to arson
I. 93	a case of arson of their employer's factory
I. 94	a fire which caused £ 690,000 worth of damage

I. 101	its own circumstances, which, (in the case of arson), vary considerably
I. 103	an act of revenge for which the appellant showed no remorse
I. 106	the decided cases to which we have referred
Fagterminologi:	
I. 15	regina
I. 23	appellant
I. 31	appellant
I. 31	offences
I. 32	count
I. 34	appellant
I. 39	appellant
I. 41	appellant
I. 44	appellant
I. 51	appellant
I. 53	appellant
I. 53	convictions
I. 54	offences
I. 54	offences
I. 57	appellant
I. 58	appellant's
I. 61	offences
I. 65	the Recorder
I. 66	appellant
I. 69	appellant's
I. 69	the Recorder
I. 71	count
I. 71	indictment
I. 72	appellant
I. 74	appellant
I. 75	the Recorder
I. 76	the Recorder
I. 78	offender
I. 79	the Recorder
I. 88	appellants
I. 91	appeal
I. 93	appellants
I. 94	appellants
I. 96	appeal
I. 98	offences
I. 99	offence
I. 103	appellant
juridiske kollokationer:	
I. 4	court of appeal
I. 5	criminal division
I. 30	the Crown Court
I. 31	to be convicted of...
I. 32	to be sentenced to...
I. 32	appeal against sentence

I. 33	the Single Judge
I. 55	criminal damage
I. 56	Pre-sentence report
I. 65	to pass a sentence
I. 65	to commit offences
I. 66	to commit crimes
I. 70	to impose a sentence
I. 73	to pass a sentence
I. 75	defence counsel
I. 76	sentencing remarks
I. 80	to impose a sentence
I. 85	a guilty plea
I. 88	to plead guilty
I. 93	to plead guilty
I. 104	a guilty plea
I. 109	to allow appeal
Nominalkonstruktioner :	
I. 53	The appellant is a man aged 31 who has some 21 previous <i>convictions</i> recorded against him between 1979 and 1993 (The appellant is a man aged 31 who has previously been convicted 21 times between 1979 and 1993)
I. 58	Dr Zikis, in his report, having referred to the appellant's <i>lack</i> of remorse, said: (Dr Zikis, in his report, having referred to that the appellant lacked remorse, said:)
I. 59	he is determined that when he is finally released he will return to his usual alcohol <i>consumption</i> (he is determined that when he is finally released he will return to consuming alcohol as usual)
I. 60	and does not want any <i>help</i> or any <i>change</i> in his lifestyle (and does not want to be helped or to change his lifestyle)
I. 63	the phrase was intended to relate to the <i>likelihood</i> of the appellant's " <i>re-offending</i> in general, not specifically to arson". (the phrase was intended to relate to how likely the appellant was to "reoffend in general, not specifically to commit arson")
I. 65	When passing <i>sentence</i> the learned Recorder referred to these offences as having been committed out of revenge (When sentencing the learned Recorder referred to these offences as having been committed out of revenge)
I. 67	he had no <i>intention</i> of giving up drink (he did not intend to give up drinking)
I. 68	and had no <i>intention</i> of changing (and did not intend to change)
I. 70	Fortunately the public, in my view, need <i>protection</i> from you (Fortunately the public, in my view, need to be protected from you)
Lix:	
1431 ord	
339 svære ord	
77 perioder	
A = 23,7	
B = 18,6	
Lix = (A+ B) = 42,3 (middelsvær)	



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BIVERA-MUNOZ GUSTAVO ALDOLFO, R v. [1997] EWCA Crim 440 (14th February, 1997)

No:96/05418/Y3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2

Friday 14th February 1997

B E F O R E:

LORD JUSTICE AULD

MR JUSTICE NEWMAN

and

HIS HONOUR JUDGE MARTIN STEPHENS QC

(Acting as a judge of the CACD)

R E G I N A

-v-

BIVERA-MUNOZ GUSTAVO ALDOLFO

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(Official Shorthand Writers to the Court)

Non-counsel Application

JUDGMENT
As Approved

Friday 14th February 1997

LORD JUSTICE AULD: His Honour Judge Stephens will give the judgment of the court.

HIS HONOUR JUDGE STEPHENS: The applicant was convicted at Kingston Crown Court on 12th July 1996 of being knowingly concerned in the fraudulent evasion of the prohibition on the importation of cocaine. On 19th August, he was sentenced to ten years' imprisonment. He now renews his application for leave to appeal against conviction, leave having been refused by the single judge.

A summary of the facts relevant to this application may be put in this way. The applicant was the named consignee of a crate of goods which were sent to Heathrow Airport from Ecuador. When opened by Customs officers the crate was found to contain 1.94 kilograms of cocaine of high purity hidden within six small statuettes and obviously potentially worth a very large sum of money.

The applicant is a Columbian national who arrived in the United Kingdom in September 1995. He was living at 64 Debden on the Broadwater Farm Estate and claimed to be an English language student at a college in London. The goods were stated on the documentation to be worth \$165 and were sent by a courier company, DHL, at a cost of \$257. On 5th February 1996, DHL wrote to the applicant at 67 Debden, inviting him to come and collect the consignment without giving any description of it. 67 Debden was the address of the consignee on the documentation. On 14th February, a Columbian friend of the applicant, who spoke better English than he, telephoned DHL in the applicant's presence. By that time of course, Customs officers had discovered the drugs and so the call was received by a Customs officer posing as a DHL employee. During the course of the conversation, Ramirez, the friend, stated that the address should have been 64 rather than 67 Debden.

The applicant was told on the phone where to go and collect the goods, and on the same day he went to the depot in Hounslow to collect them. When signing the delivery note he gave his address as 67 Debden rather than his actual address 64. In the course of removing the crate from the depot he was arrested.

Following arrest he spent time, with an interpreter, a Mr. Thompson, in a waiting room with no Customs officers present. In the course of a casual conversation, Mr. Thompson's evidence was that the applicant told him that the flats where he lived were being re-numbered and that his flat was now

number 64 Debden. Mr. Thompson immediately told the Customs officers of this because he knew that they were going to search number 67 which might turn out to be the wrong address and apart from anything else, he, the interpreter, was worried about the safety of the officers if they went to number 67. The customs officers in fact searched both flats. Number 67 was said to be lived in hardly at all and gave no impression of being used as a place of residence.

The applicant in interview said that his address was 64 but that the flats were being refurbished and that his number had changed to 67. He did not know who lived at 67. The letter had in fact reached him but he simply found it on the floor of his flat, number 64, or it might have been delivered by an English person who was living at 67 and knew his name and who was a friend of his girlfriend. Later on he denied knowledge of the person who lived at 67. His defence to the charge in the indictment was that he knew nothing of the contents of the crate and acted entirely innocently throughout.

The sole ground of complaint raised in counsel's perfected grounds of appeal on behalf of the applicant, relates to the brief conversation that the applicant had with Mr. Thompson, the interpreter, relating to his correct address. Had he been trying to mislead the Customs officers about his true address? This appears to be the issue to which this evidence relates. The judge should have excluded this conversation, says counsel in his ground of appeal, in the exercise of his discretion under section 78 of the Police and Criminal Evidence Act 1984. He exercised his discretion wrongly, says counsel. It was unfair because no caution was uttered at the time, and the defendant could not have known that his words might be used against him. There was no note made of the content or timing of the conversation, and in the light of later confusions in interpretation during the course of the interviews, the accuracy of the evidence was suspect. The applicant should not have been left alone in the company of the interpreter without Customs officers being present to ensure proper procedures.

These matters were submitted to the trial judge who, in his ruling, found that the codes of practice did not apply to what was said between the lay interpreter and the applicant. Nevertheless, had what had taken place been anything in the nature of an interview, he would have excluded what was said. But there was no interview, as he found. Nothing that was done or said was in breach of the code of practice in reality or in spirit. The judge carefully considered the exercise of his discretion under section 78, and held that the admission of the evidence would not have any adverse affect on the fairness of the trial.

In the judgment of this court his decision was correct. Furthermore, he summed up fully and fairly on this aspect of the evidence. Leave to appeal is therefore refused.

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14 February 1997 Adolfo	
passiver:	
I. 29	The applicant was convicted at Kingston Crown Court on 12th July 1996
I. 31	he was sentenced to ten years' imprisonment
I. 32	leave having been refused by the single judge
I. 34	A summary of the facts relevant to this application may be put in this way
I. 35	a crate of goods which were sent to Heathrow Airport from Ecuador
I. 35	When opened by Customs officers
I. 36	the crate was found to contain 1.94 kilograms of cocaine
I. 36	1.94 kilograms of cocaine of high purity hidden within six small statuettes
I. 40	The goods were stated on the documentation to be worth \$165
I. 41	(the goods) were sent by a courier company
I. 45	the call was received by a Customs officer posing as a DHL employee
I. 48	The applicant was told on the phone where to go and collect the goods
I. 50	In the course of removing the crate from the depot he was arrested
I. 54	the flats where he lived were being re-numbered
I. 58	Number 67 was said to be lived in hardly at all
I. 62	it might have been delivered by an English person
I. 66	The sole ground of complaint raised in counsel's perfected grounds of appeal on behalf of the applicant
I. 72	no caution was uttered at the time
I. 73	the defendant could not have known that his words might be used against him
I. 73	There was no note made of the content or timing of the conversation
I. 75	The applicant should not have been left alone in the company of the interpreter
I. 77	These matters were submitted to the trial judge
I. 77	the codes of practice did not apply to what was said between the lay interpreter and the applicant
I. 79	he would have excluded what was said
I. 85	Leave to appeal is therefore refused
Adverbialer:	
I. 31 (initial)	<i>On 19th August, he was sentenced to ten years' imprisonment</i>
I. 35 (initial)	<i>When opened by Customs officers the crate was found to contain 1.94 kilograms of cocaine of high purity hidden within six small statuettes</i>
I. 41 (initial)	<i>On 5th February 1996, DHL wrote to the applicant</i>
I. 43 (initial)	<i>On 14th February, a Columbian friend of the applicant, who spoke better English than he, telephoned DHL</i>
I. 45 (initial)	<i>By that time of course, Customs officers had discovered the drugs</i>
I. 46 (initial)	<i>During the course of the conversation, Ramirez, the friend, stated that the address should have been 64</i>
I. 48 (initial)	<i>on the same day he went to the depot in Hounslow to collect them</i>
I. 49 (initial)	<i>When signing the delivery note he gave his address as 67 Debden</i>
I. 50 (initial)	<i>In the course of removing the crate from the depot he was arrested</i>
I. 53 (initial)	<i>In the course of a casual conversation, Mr. Thompson's evidence was that the</i>

	applicant told him that the flats where he lived were being re-numbered
I. 56 (initial)	<i>apart from anything else</i> , he, the interpreter, was worried about the safety of the officers
I. 74 (initial)	<i>in the light of later confusions in interpretation during the course of the interviews</i> , the accuracy of the evidence was suspect
I. 77 (medial)	These matters were submitted to the trial judge who, <i>in his ruling</i> , found that the codes of practice did not apply
I. 78 (initial)	<i>Nevertheless, had what had taken place been anything in the nature of an interview</i> , he would have excluded what was said
I. 84 (initial)	<i>In the judgment of this court</i> his decision was correct
Sammensatte præpositioner:	
I. 66	on behalf of
Komplekse substantivsyntagmer:	
I. 32	his application for leave to appeal against conviction
I. 34	A summary of the facts relevant to this application
I. 35	a crate of goods which were sent to Heathrow Airport from Ecuador
I. 36	1.94 kilograms of cocaine of high purity hidden within six small statuettes and obviously potentially worth a very large sum of money
I. 38	a Columbian national who arrived in the United Kingdom in September 1995
I. 44	a Columbian friend of the applicant, who spoke better English than he,
I. 46	a Customs officer posing as a DHL employee
I. 62	an English person who was living at 67 and knew his name and who was a friend of his girlfriend
I. 64	knowledge of the person who lived at 67
I. 67	the brief conversation that the applicant had with Mr. Thompson, the interpreter, relating to his correct address
I. 69	the issue to which this evidence relates
Fagterminologi:	
I. 16	regina
I. 64	charge
I. 64	indictment
I. 66	counsel's
I. 71	counsel
I. 77	ruling
I. 83	trial
juridiske kollokationer:	
I. 4	court of appeal
I. 5	criminal division
I. 31	be sentenced to...
I. 32	leave to appeal against conviction
I. 66	grounds of appeal
I. 70	ground of appeal
I. 70	the exercise of his discretion
I. 71	to exercise one's discretion

I. 77	the trial judge
I. 81	to be in breach of sth.
I. 81	the code of practice
I. 82	admission of evidence
I. 85	leave to appeal
Nominalkonstruktioner :	
I. 30	The applicant was convicted at Kingston Crown Court on 12th July 1996 of being knowingly concerned in the fraudulent <i>evasion</i> of the prohibition on the <i>importation</i> of cocaine (The applicant was convicted at Kingston Crown Court on 12th July 1996 of being knowingly concerned in fraudulently evading the prohibition of importing cocaine)
I. 39	and claimed to be an English language <i>student</i> at a college in London (and claimed to be studying English at a college in London)
I. 40	The goods were stated on the <i>documentation</i> to be worth \$165 (The goods were documented to be worth \$165)
I. 43	without giving any <i>description</i> of it (without describing it)
I. 46	During the course of the <i>conversation</i> (when they were talking)
I. 52	Following <i>arrest</i> he spent time with an interpreter (After the police had arrested him, he spent time with an interpreter)
I. 53	In the course of a casual <i>conversation</i> (while they were speaking casually)
I. 70	in the <i>exercise</i> of his discretion under section 78 of the Police and Criminal Evidence Act 1984 (in exercising his discretion under section 78 of the Police and Criminal Evidence Act 1984)
I. 72	It was unfair because no <i>caution</i> was uttered (It was unfair because it was not cautioned)
I. 73	There was no <i>note</i> made of the content or timing of the conversation (the content or timing of the conversation was not noted)
I. 75	the <i>accuracy</i> of the evidence was suspect (it was suspect whether the evidence was accurate or not)
I. 82	the <i>admission</i> of the evidence would not have any adverse <i>affect</i> on the fairness of the trial (admitting the evidence would not adversely affect the fairness of the trial)
Lix:	
1081 ord	
283 svære ord	
65 perioder	
A = 26,2	
B = 16,6	
Lix = (A+ B) = 42,8 (middelsvær)	



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England and Wales Court of Appeal (Criminal Division) Decisions

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RAYMOND STOKES, R v. [1997] EWCA Crim 1069 (2nd May, 1997)

No: 965208 Y5

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2

Friday, 2nd May 1997

B E F O R E :

LORD JUSTICE JUDGE

MR JUSTICE LONGMORE

and

MR JUSTICE BRIAN SMEDLEY

R E G I N A

- v -

RAYMOND STOKES

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Smith Bernal Reporting Limited
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(Official Shorthand Writers to the Court)

MR LOUIS FRENCH appeared on behalf of the Appellant
MR IAN FOINETTE appeared on behalf of the Crown

JUDGMENT
(As approved)

J U D G M E N T

LORD JUSTICE JUDGE: Raymond Stokes was convicted on 3rd April 1996 in the Crown Court at Canterbury before His Honour Judge Langdon and a jury, by the unanimous verdict of the jury, of being knowingly concerned in the fraudulent evasion of a prohibition on the importation of a controlled Class "A" drug on 1st December 1995. He was sentenced to seven and a half years' imprisonment. Prior to the trial of the appellant, a man called Kenneth Quinton pleaded guilty to being knowingly concerned in the same fraudulent evasion of the prohibition on importation. On 3rd April 1996 Quinton was sentenced to three years' imprisonment. He was not called to give evidence either by the prosecution or the defence. Stokes now appeals against conviction with leave of the single judge.

The facts of the case can, in the light of the issue in this appeal, be taken extremely shortly. On 28th July 1995 Quinton and the appellant travelled from Cardiff to Amsterdam. They returned to the United Kingdom on the following day. They disembarked at the eastern docks in Dover. In a black holdall carried by Quinton, customs officers found, taped and wrapped in three clear plastic bags, a total of 3,050 tablets containing 851 grammes of Ecstasy with a street value of just under £40,000. This was their second brief trip together to Amsterdam that month. The first was called short. There was evidence that there had been a bereavement in the appellant's family.

The Crown's case was that the appellant knew of the drugs in Quinton's bag and was knowingly involved in a joint enterprise with him. It was of particular significance that the appellant had lied before he could have known that the officers had found the drugs in Quinton's bag. So far as the appellant was concerned, he denied any participation in Quinton's illegal activities with the importation of drugs and there was a serious issue about the time when he told any lie and the significance to be attached to it. No criticism is made, or could be made, of the summing-up; the directions of law were accurate, the summary of the evidence was balanced.

The single matter raised in the appeal is an application by the appellant to call Quinton to give evidence on his behalf to support his denial of any relevant knowledge or involvement in Quinton's activities. We have been supplied with a copy of a statement made by Quinton dated 3rd May 1996, exactly one month after sentence had been imposed. In this statement he purports to exculpate the appellant. The statement has obviously been reconsidered (I do not mean that in any pejorative sense) and the evidence contained in it has been now produced in the form of an affidavit recently sworn on 30th April 1997. The effect of the affidavit is identical to the statement made in May 1996.

Throughout Quinton was represented by solicitors and counsel, and we have assumed, and the assumption has been confirmed by the contents of his affidavit, that he waived the privilege which exists between him and his own legal advisors. The small bundle of relevant correspondence before us includes a letter from Quinton's solicitors to him. The relevant bundle begins with a letter dated 8th March 1996 from the appellant's solicitors to Quinton's solicitors asking them to confirm that there would be no objection to the solicitors for the appellant visiting Quinton. The letter points out that the appellant was visiting him while he was in custody and bringing his daughter up from Wales to see him. Quinton's solicitors wrote back to the appellant's solicitors pointing out that Quinton was in custody and vulnerable and that they had advised him in the past that:

"It is not in his best interests to give evidence for Mr Stokes. We do hope that in his visits Mr Stokes has not been putting pressure on our client. Mr Quinton has advised us that he will find difficulty even giving evidence on his own behalf in a Newton trial after the trial of your client."

On the same date the solicitors wrote to their client, Quinton. The relevant passage in the letter reads: "As counsel has advised you, you must disassociate yourself to some extent from Mr Stokes and let him get on with his own defence. Although you have said at times that he had nothing to do with it there is strong evidence against him and if you were not believed in your evidence for Mr Stokes, it is unlikely that your allegation of not knowing the true drug would be believed".

This letter provides Quinton with clear and unequivocal advice about his own best interests. The letter concludes by referring to a number of matters which include the possibility that Quinton might know more than Stokes was understanding that he would say.

"You have also given us to understand obliquely that Mr Stokes might have had some involvement". For present purposes we attach no weight to those last comments, but it is right that we should note in the judgment that we have read them.

We assume of course that Quinton accepted the advice of his legal advisers. He pleaded guilty. In the result he was not called as a witness by the appellant at the appellant's trial, despite the fact that he was both competent and compellable and that arrangements could have been made in the usual way for his production at court. The decision made by Stokes's legal advisers was made because it was indicated to them by Quinton's lawyers, and the appellant himself had received a similar intimation from Quinton to the same effect, that Quinton was unwilling to assist by giving evidence at the appellant's trial.

Our attention has been drawn by Mr French to the decision of this court in R v. Boal and Cordrey (1964) 48 Cr App R 342. The two defendants were jointly charged with involvement in the infamous great train robbery and Cordrey was a co-accused in much the same position as Quinton in the present case. On the basis of the legislation then in force the court decided that the fact that Cordrey "may have been unwilling to testify at the trial and is willing to testify now is not in itself sufficient to make his evidence 'fresh evidence' within the well known principle on which this court acts."

Following the coming into force of section 4(1) of the Criminal Appeal Act 1995 this court is granted jurisdiction under section 23(1) of the Criminal Appeal Act 1968 to admit evidence which was not adduced at trial. When considering whether or not to receive such evidence, it is now necessary for the court to consider four specific matters. They are:

"(a) whether the evidence appears to the court to be capable of belief;

(b) whether it appears to the court that the evidence may afford any ground for allowing the appeal;

(c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and

(d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings."

These provisions are wider than those which obtained when the R v. Boal and Cordrey was decided. We have therefore re-considered that decision and the statement of principle in it in the light of the

recent legislation, and we have examined the application made in this case with each of the four express considerations in mind. The evidence of Quinton would have been admissible. We have outlined the explanation for the failure to call it, namely his unwillingness to be called. The problem with this explanation is that it overlooks an essential principle, which is that there should be one trial and in the course of that trial each side must put before the jury the evidence on which it seeks to rely. When the defence is aware of a potential witness available to be called and elects not to call him merely because of an expressed unwillingness on the part of the witness to give evidence, there will very rarely be occasions when the court would regard that as a reasonable explanation for failing to call him. If it were otherwise the principle that each side must adduce the relevant evidence of the trial would be significantly undermined. In this context too we bear in mind what we regard as a continuing principle:

"... public mischief would ensue and legal process could become indefinitely prolonged were it the case that evidence produced at any time will generally be admitted by this court when verdicts are being reviewed." Per Edmund Davies LJ in R v Stafford and R v Luvaglio Levalio [1968] 3 All Eng R 752.

It is perhaps unnecessary in addition to spell out the obvious possibilities for manipulation and subversion of the entire trial process which could arise if it were possible for the defence to decide not to call a competent compellable witness to give evidence at the trial merely because of an asserted "unwillingness" to be called, and then after conviction to seek after all to do so. This consideration applies with particular force to a witness who was involved in, or connected with the crime of which the appellant has been convicted. One reason for not calling such a witness before a jury is that he may well be disbelieved by them, particularly if he has been convicted, whether on his plea or after a trial. Certainly his evidence would rightly be approached by the jury with considerable suspicion, and if less than utterly convincing would serve to tarnish the defence case in the eyes of the jury. In summary, even after the coming into effect of section 4(1) of the 1995 Act the defendant is not entitled to have the best of both worlds. Save in a very rare case he simply cannot decide not to call a witness at his trial and thereafter if convicted seek to call him as additional "fresh" evidence before the Court of Appeal.

Having reflected on the material in this case and the papers available to us, together with the documents provided by counsel for the appellant, we do not consider in this case that it is either necessary or expedient in the interests of justice for Quinton's evidence to be received. That being the single ground of appeal, the appeal will be dismissed.

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2 May 1997, Stokes	
passiver:	
I. 28	Raymond Stokes was convicted on 3rd April 1996
I. 31	He was sentenced to seven and a half years' imprisonment
I. 34	Quinton was sentenced to three years' imprisonment
I. 34	He was not called to give evidence
I. 37	The facts of the case can,...., be taken extremely shortly
I. 42	The first was called short
I. 43	there had been a bereavement in the appellant's family
I. 48	the significance to be attached to it
I. 49	No criticism is made, or could be made, of the summing-up
I. 53	We have been supplied with a copy of a statement
I. 54	one month after sentence had been imposed
I. 55	The statement has obviously been reconsidered
I. 56	the evidence contained in it has been now produced
I. 56	an affidavit recently sworn on 30th April 1997
I. 57	the statement made in May 1996
I. 58	Throughout Quinton was represented by solicitors and counsel
I. 59	the assumption has been confirmed by the contents of his affidavit
I. 61	a letter dated 8th March 1996
I. 73	it is unlikely that your allegation of not knowing the true drug would be believed
I. 82	he was not called as a witness by the appellant
I. 83	that arrangements could have been made in the usual way for his production at court
I. 88	Our attention has been drawn by Mr French to the decision of this court
I. 89	The two defendants were jointly charged with involvement in the infamous great train robbery
I. 94	this court is granted jurisdiction under section 23(1) of the Criminal Appeal Act 1968
I. 104	These provisions are wider than those which obtained when the <u>R v. Boal and Cordrey</u> was decided
I. 106	the application made in this case
I. 107	The evidence of Quinton would have been admissible
I. 108	his unwillingness to be called
I. 111	a potential witness available to be called
I. 118	that evidence produced at any time will generally be admitted by this court
I. 118	when verdicts are being reviewed
I. 126	the crime of which the appellant has been convicted
I. 127	he may well be disbelieved by them
I. 127	if he has been convicted
I. 128	Certainly his evidence would rightly be approached by the jury with considerable suspicion
I. 132	he simply cannot decide not to call a witness at his trial and thereafter if convicted seek to call him as additional "fresh" evidence
I. 135	the documents provided by counsel for the appellant
I. 136	for Quinton's evidence to be received
I. 137	the appeal will be dismissed
Adverbialer:	
I. 28 (initial)	Raymond Stokes was convicted on 3rd April 1996 in the Crown Court at Canterbury before His Honour Judge Langdon and a jury, by the unanimous verdict of the jury, of being knowingly concerned in the fraudulent evasion of a prohibition on the importation

	of a controlled Class "A" drug
I. 32 (initial)	<i>Prior to the trial of the appellant</i> , a man called Kenneth Quinton pleaded guilty to being knowingly concerned in the same fraudulent evasion of the prohibition on importation
I. 33 (initial)	<i>On 3rd April 1996</i> Quinton was sentenced to three years' imprisonment
I. 37 (initial)	The facts of the case can, <i>in the light of the issue in this appeal</i> , be taken extremely shortly
I. 37 (initial)	<i>On 28th July 1995</i> Quinton and the appellant travelled from Cardiff to Amsterdam
I. 39 (initial)	<i>In a black holdall carried by Quinton</i> , customs officers found, taped and wrapped in three clear plastic bags, a total of 3,050 tablets containing 851 grammes of Ecstasy
I. 46 (initial)	<i>So far as the appellant was concerned</i> , he denied any participation in Quinton's illegal activities
I. 51 (initial)	The single matter raised <i>in the appeal</i> is an application by the appellant to call Quinton to give evidence
I. 54 (initial)	<i>In this statement</i> he purports to exculpate the appellant
I. 67 (initial)	<i>in his visits</i> Mr Stokes has not been putting pressure on our client
I. 70 (initial)	<i>On the same date</i> the solicitors wrote to their client, Quinton.
I. 71 (initial)	<i>As counsel has advised you</i> , you must disassociate yourself to some extent from Mr Stokes
I. 72 (initial)	<i>Although you have said at times that he had nothing to do with it</i> there is strong evidence against him
I. 73 (initial)	<i>if you were not believed in your evidence for Mr Stokes</i> , it is unlikely that your allegation of not knowing the true drug would be believed
I. 79 (initial)	<i>For present purposes</i> we attach no weight to those last comments
I. 79 (medial)	it is right that we should note <i>in the judgment</i> that we have read them
I. 81 (initial)	<i>In the result</i> he was not called as a witness by the appellant
I. 91 (initial)	<i>On the basis of the legislation then in force</i> the court decided that the fact that...
I. 94 (initial)	<i>Following the coming into force of section 4(1) of the Criminal Appeal Act 1995</i> this court is granted jurisdiction under section 23(1) of the Criminal Appeal Act 1968
I. 96 (initial)	<i>When considering whether or not to receive such evidence</i> , it is now necessary for the court to consider four specific matters
I. 110 (initial)	<i>in the course of that trial</i> each side must put before the jury the evidence
I. 111 (initial)	<i>When the defence is aware of a potential witness available to be called and elects not to call him merely because of an expressed unwillingness on the part of the witness to give evidence</i> , there will very rarely be occasions when the court would regard that as a reasonable explanation for failing to call him
I. 114 (initial)	<i>If it were otherwise</i> the principle that each side must adduce the relevant evidence of the trial would be significantly undermined
I. 115 (initial)	<i>In this context too</i> we bear in mind what we regard as a continuing principle:
I. 129 (initial)	<i>if less than utterly convincing</i> (his evidence) would serve to tarnish the defence case
I. 130 (initial)	<i>In summary, even after the coming into effect of section 4(1) of the 1995 Act</i> the defendant is not entitled to have the best of both worlds
I. 131 (initial)	<i>Save in a very rare case</i> he simply cannot decide not to call a witness at his trial and thereafter if convicted seek to call him as additional "fresh" evidence
I. 134 (initial)	<i>Having reflected on the material in this case and the papers available to us, together with the documents provided by counsel for the appellant</i> , we do not consider...that it is either necessary or expedient in the interests of justice for Quinton's evidence to be received
I. 135 (medial)	we do not consider <i>in this case</i> that it is either necessary or expedient in the interests of justice for Quinton's evidence to be received
I. 136 (initial)	<i>That being the single ground of appeal</i> , the appeal will be dismissed
Sammensatte præpositioner:	
I. 24	on behalf of

I. 24	on behalf of
I. 35	With leave of
Komplekse substantivsyntagmer:	
I. 30	the fraudulent evasion of a prohibition on the importation of a controlled Class "A" drug
I. 33	the same fraudulent evasion of the prohibition on importation
I. 40	taped and wrapped in three clear plastic bags, a total of 3,050 tablets containing 851 grammes of Ecstasy with a street value of just under £ 40,000
I. 48	the time when he told any lie
I. 48	the significance to be attached to it
I. 51	The single matter raised in the appeal
I. 52	his denial of any relevant knowledge or involvement in Quinton's activities
I. 53	a copy of a statement made by Quinton dated 3rd May 1996, exactly one month after sentence had been imposed
I. 56	the evidence contained in it
I. 56	an affidavit recently sworn on 30th April 1997
I. 57	the statement made in May 1996
I. 59	the privilege which exists between him and his own legal advisors
I. 60	The small bundle of relevant correspondence before us i
I. 61	a letter from Quinton's solicitors to him
I. 61	a letter dated 8th March 1996 from the appellant's solicitors to Quinton's solicitors asking them to confirm that there would be no objection to the solicitors for the appellant visiting Quinton
I. 75	clear and unequivocal advice about his own best interests
I. 76	a number of matters which include the possibility that Quinton might know more than Stokes was understanding that he would say
I. 84	The decision made by Stokes's legal advisers
I. 89	involvement in the infamous great train robbery
I. 90	a co-accused in much the same position as Quinton in the present case
I. 91	the legislation then in force
I. 93	the well known principle on which this court acts
I. 94	the coming into force of section 4(1) of the Criminal Appeal Act 1995
I. 95	evidence which was not adduced at trial
I. 101	an issue which is the subject of the appeal
I. 102	the failure to adduce the evidence
I. 104	those which obtained when the <u>R v. Boal and Cordrey</u> was decided
I. 106	the application made in this case
I. 108	the explanation for the failure to call it, namely his unwillingness to be called
I. 109	an essential principle, which is that there should be one trial
I. 110	the evidence on which it seeks to rely
I. 111	a potential witness available to be called
I. 112	an expressed unwillingness on the part of the witness to give evidence
I. 113	occasions when the court would regard that as a reasonable explanation for failing to call him
I. 118	Evidence produced at any time
I. 121	subversion of the entire trial process which could arise
I. 125	a witness who was involved in, or connected with the crime of which the appellant has been convicted
I. 130	the coming into effect of section 4(1) of the 1995 Act
I. 134	the papers available to us

I. 134	the documents provided by counsel for the appellant
Fagterminologi:	
I. 15	Regina
I. 23	Appellant
I. 24	the Crown
I. 28	to be convicted
I. 29	Jury
I. 29	Jury
I. 32	Trial
I. 32	Appellant
I. 35	Prosecution
I. 37	Appeal
I. 38	Appellant
I. 43	appellant's
I. 44	the Crown
I. 44	Appellant
I. 45	Appellant
I. 47	Appellant
I. 51	Appeal
I. 51	Appellant
I. 54	Exculpate
I. 55	Appellant
I. 56	Affadavit
I. 57	Affadavit
I. 58	Solicitors
I. 58	counsel
I. 59	affadavit
I. 61	solicitors
I. 62	appellant's
I. 62	solicitors
I. 62	solicitors
I. 63	solicitors
I. 63	appellant
I. 64	appellant
I. 64	custody
I. 65	solicitors
I. 65	appellant
I. 65	solicitors
I. 66	custody
I. 69	Trial
I. 71	counsel
I. 74	allegation
I. 82	appellant
I. 82	appellant
I. 82	Trial
I. 85	lawyers
I. 85	appellant
I. 87	appellant
I. 87	Trial

I. 90	Co-accused
I. 92	to testify
I. 92	Trial
I. 92	to testify
I. 95	jurisdiction
I. 96	trial
I. 101	appeal
I. 103	proceedings
I. 104	provisions
I. 109	trial
I. 110	trial
I. 110	jury
I. 115	trial
I. 118	verdicts
I. 122	trial
I. 123	trial
I. 124	conviction
I. 126	appellant
I. 126	to be convicted
I. 127	jury
I. 127	to be convicted
I. 128	jury
I. 128	plea
I. 128	trial
I. 130	jury
I. 132	trial
I. 132	to be convicted
juridiske kollokationer:	
I. 4	court of appeal
I. 5	criminal division
I. 28	crown court
I. 29	unanimous verdict
I. 30	to be knowingly concerned in
I. 30	fraudulent evasion of the prohibition on the importation of...
I. 31	a controlled Class "A" drug
I. 31	to be sentenced to...
I. 32	to plead guilty
I. 33	To be knowingly concerned in...
I. 33	fraudulent evasion of the prohibition on importation
I. 34	to be sentenced to...
I. 34	to give evidence
I. 35	to appeal against conviction
I. 36	the single judge
I. 51	to give evidence
I. 54	to impose a sentence
I. 60	legal advisers
I. 67	to give evidence
I. 69	to give evidence
I. 69	a Newton trial

I. 81	legal advisers
I. 81	to plead guilty
I. 82	to be called as a witness
I. 84	legal advisers
I. 86	to give evidence
I. 89	to be jointly charged
I. 95	to admit evidence
I. 99	to allow an appeal
I. 111	to call a witness
I. 112	to give evidence
I. 117	legal process
I. 118	to produce evidence
I. 123	to call a witness
I. 123	to give evidence
I. 126	to call a witness
I. 129	the defence case
I. 132	to call a witness
I. 133	court of appeal
I. 135	counsel for the appellant
I. 137	ground of appeal
I. 137	to dismiss an appeal
Nominalkonstruktionen:	
I. 30	of being knowingly concerned in the fraudulent <i>evasion</i> of a <i>prohibition</i> on the <i>importation</i> of a controlled Class "A" drug (of with his knowledge being concerned in fraudulently importing a controlled Class "A" drug, which is prohibited by law)
I. 33	Kenneth Quinton pleaded guilty to being knowingly concerned in the same fraudulent <i>evasion</i> of the <i>prohibition</i> on <i>importation</i> (Kenneth Quinton pleaded guilty to fraudulently having imported a controlled Class "A" drug, which is prohibited by law)
I. 45	It was of particular <i>significance</i> that the appellant had lied (It was particularly significant that the appellant had lied)
I. 47	he denied any <i>participation</i> in Quinton's illegal activities (he denied having participated in Quinton's illegal activities)
I. 49	No <i>criticism</i> is made, or could be made, of the summing-up (the summing-up has not been and could not be criticised)
I. 54	exactly one month after <i>sentence</i> had been imposed (exactly one month after the defendant/appellant had been sentenced)
I. 63	a letter dated 8th March 1996 from the appellant's solicitors to Quinton's solicitors asking them to confirm that there would be no <i>objection</i> to the solicitors for the appellant visiting Quinton (a letter dated 8th March 1996 from the appellant's solicitors to Quinton's solicitors asking them to confirm that they would not object to the appellant's solicitors visiting Quinton)
I. 78	Mr Stokes might have had some <i>involvement</i> (Mr Stokes might have been involved (to some degree))
I. 83	despite the fact...that <i>arrangements</i> could have been made in the usual way for his production at court (despite the fact...that his production at court could have been arranged in the usual way)
I. 84	The <i>decision</i> made by Stokes's legal advisers was made because it was indicated to them by Quinton's lawyers, and the appellant himself had received a similar intimation from Quinton to the same effect, that Quinton was unwilling to assist by giving evidence at the appellant's trial (This was decided by Stokes's legal advisers because Quinton's layers had indicated to them, and the appellant himself had received a similar intimation from Quinton to the same effect, that Quinton was unwilling to assist by giving evidence at the appellant's trial)

I. 89	The two defendants were jointly charged with <i>involvement</i> in the infamous great train robbery (The two defendants were jointly charged with being involved in the infamous great train robbery)
I. 124	and then after <i>conviction</i> to seek after all to do so (and then after having been convicted to seek after all to do so)
Lix:	
1956 ord	
494 svære ord	
87 perioder	
A = 25,3	
B = 22,5	
Lix = (A+ B) = 47,8 (svær)	



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Cite as: [1997] EWCA Crim 2459

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JULIAN WEYMAN, R v. [1997] EWCA Crim 2459 (14th October, 1997)

No: 97/1253/W5

IN THE COURT OF APPEAL
CRIMINAL DIVISION
Royal Courts of Justice
The Strand
London WC2

Tuesday 14th October 1997

B E F O R E :

LORD JUSTICE POTTER

MRS JUSTICE EBSWORTH

and

MR JUSTICE FORBES

R E G I N A

- v -

JULIAN WEYMAN

 Computer Aided Transcript of the Stenograph Notes of
 Smith Bernal Reporting Limited
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 (Official Shorthand Writers to the Court)

MR S SHAY appeared on behalf of the Appellant
MR M FIELD appeared on behalf of the Crown

 JUDGMENT
 (As Approved by the Court)

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 JUDGMENT

LORD JUSTICE POTTER: In this case the appellant was jointly indicted with David Edward Hall on two counts: burglary on count 1 (entering as a trespasser with intent to steal) and arson on count 2, both offences relating to premises which were a garden shed. On 20th February 1996 at the Crown Court at Hove the appellant pleaded guilty to count 1. On 31st January 1997 before the same court he was convicted on count 2 of arson after a five day trial. His sentence was adjourned for reports. His co-defendant Hall was acquitted on both counts. On 21st February 1997 the appellant was sentenced to a combination order of one year probation and 100 hours community service on each count concurrent. He appeals against his conviction by leave of the single judge.

The facts can be shortly stated. Just after midnight on 24th July 1995 the fire brigade attended 6 Greenfield Road, Chichester, West Sussex, a council house rented by Mr and Mrs Austin who were away on holiday. A shed attached to the house was on fire. Forensic evidence suggested the fire had been started deliberately and there was over £7,000 worth of damage. In the hours that followed the police spoke to four males in connection with the offence. The appellant who was then aged 15, Hall who was then nearly 25, John Crisp then 16 and Paul Cunningham then 15. Crisp and Cunningham were not charged and gave evidence for the prosecution at the trial. In essence the prosecution case was that Hall, a man of low IQ, had approached Paul Cunningham earlier in the evening and suggested that they break into the house, steal some drink and burn the house down. The suggestion was that the occupier of the house owed a friend of Hall's (a Mr Dunn) a favour. It subsequently transpired that Mr Dunn had a minor complaint against Mr Austin and may have jokingly suggested to Hall that he burn down Austin's house.

Cunningham gave evidence. He said that he had agreed with Hall's proposal to go and break into the house. He did not take seriously the suggestion that the house would be burnt down. He accompanied Hall to the bar of a local football club where he saw Hall pick up a box of matches. Later that evening they both went to Crisp's house where the appellant was staying as a guest. The four then walked to 6 Greenfield Road. Crisp took no part in what followed. Cunningham went with the appellant and Hall into the shed together looking for something to steal but they then left the shed. After they had done so, the appellant and Hall went back into the shed and shortly afterwards they re-emerged, the appellant saying something to the effect that Cunningham should try to put out the fire in the shed. Cunningham was unable to do so and the four youths split up. Crisp and the

appellant went back to Crisp's house, whilst Hall and Cunningham remained in the vicinity of the fire. Hall telephoned the fire brigade from a nearby telephone box, pretending to be a neighbour. Crisp said next morning he discovered a box of matches in his bedroom where the appellant had been sleeping.

In interview, the appellant admitted being present in the shed when the fire was lit. He had been keeping Hall's matches, at the latter's request, he said, and handed them back to Hall in the shed. He did not think Hall would set fire to the shed but he accepted that by the time they entered the shed for the second time he knew there was a plan to steal. It was then that Hall used the match to set fire to a plastic bag hanging from the wall.

Hall was also interviewed at some length. There was some doubt about his mental capacity, so his father was present during the interviews. Evidence was given at the trial that his intellectual level was borderline mentally retarded and we shall return to that shortly. At first Hall told what was admitted in court to be a lie, namely that he had never entered the shed but saw the appellant doing so. At the trial he did not give evidence, but the case advanced for him was to rely on that part of his statement where he had said he was in the shed with the appellant when the latter used his lighter to set fire to a deckchair.

The appellant did give evidence and substantially repeated the account which he had given in interview.

While Hall did not give evidence, with leave of the judge a psychiatric report was admitted and read on his behalf, without challenge by the prosecution, which asserted that he had an extremely low IQ. Its stated purpose was to explain why, as an adult, he consorted with boys and to explain why he had told admitted lies at the interview.

The position so far as the character of the defendants was concerned was that Hall was of good character. The appellant's only previous conviction was on count 1, which he had admitted at the earlier plea and directions hearing and which by agreement the jury knew about. However, he also had two cautions for criminal damage, both of which involved damaging the windows of a local church and both of which were aired at the trial.

At the close of the prosecution case and before the appellant was called to give evidence, submissions had been made on the appellant's behalf, his counsel asking the judge first to consider giving him a good character direction as well as Hall, on the basis that the only reason he had a conviction was that he had taken a more realistic view of the prosecution case on the burglary than had Hall; second, or in the alternative, for a ruling that the appellant could not be cross-examined by Hall's counsel about the two matters of damage for which he had received cautions.

The Assistant Recorder in his ruling first declined to exercise his discretion and give the appellant a good character direction, and second to exercise his discretion to prohibit Hall's counsel cross-examining the appellant about the cautions. Those rulings are not challenged on this appeal. The first was plainly a matter for the judge's discretion and, while it is arguable that the second was an error, on the grounds that the cautions were irrelevant and inadmissible so far as the charge of arson was concerned [to which we will return below], it is acknowledged by counsel for the appellant that, once the appellant had accused Hall in his evidence at trial, Hall's counsel was entitled to cross-examine as to character. The second ruling therefore falls away as any ground of appeal.

Before turning to the grounds of appeal, it is appropriate to state that the basis of the prosecution case against both defendants was of a simple joint enterprise for which both were liable, whichever had set the fire. Four young men had gone to the shed. Two had ceased to participate and left the shed before the fire was set. But two returned - that is to say the two defendants - being in the shed at the time the fire was started. It was also the prosecution case that each of the defendants had lied at his original interview.

The case as conducted between the defendants at trial involved each blaming the other for starting the fire, while himself denying responsibility. The appellant did so in evidence. Hall did not. However, as already indicated Hall's statement was relied on as his defence. Finally, because of the judge's rulings, the jury were aware that while Hall was of good character the appellant was not. In this situation it

was of course incumbent upon the judge to consider carefully the necessity for directions as to character, lies, the effect of statements made in interview and in evidence by one defendant against the other, as well as the proper approach to the psychiatric evidence which we have mentioned. The grounds of appeal go to all those matters.

Ground 1 in the original grounds has been abandoned. Ground 2 is to the following effect: that the appellant, having had his cautions for criminal damage aired in court and made the subject of cross-examination, the jury should have received a bad character direction - that is to say they should have been told that the appellant's bad character in that respect went solely to credibility and not to whether he was likely to have committed the offence of arson (see R v Cain (1993) 99 Cr App R 208, in particular at page 212 and R v Strudwick and Merry (1993) 99 Cr App R 326, in particular at pages 333-334). It is said, we consider correctly, that, once the jury were aware of the appellant's cautions for the offences of damage, they would have been highly likely to take them as indicating propensity. In the case of Strudwick and Merry the ground of appeal, on lines of some similarity to this, failed because the judge in summing-up to the jury had, in relation to a particular earlier incident relied on by the prosecution, directed the jury:

"...you must be careful about it, because one of the matters which the criminal law in this country rightly looks upon with great care in safeguarding the interests of accused persons is that juries have to be warned and instructed that they must resist any temptation to look at the defendant and say: 'This man has a propensity to commit a particular type of crime, therefore we are going to find him guilty of this one'."

Regrettably no such words or their equivalent were included in the summing-up in this case. The Crown have conceded that such a direction should have been given, but it is suggested that there was no real danger that the jury would infer guilt on the basis of two lesser and, as the Crown submit, dissimilar offences, which were essentially the throwing of stones at church windows by a young defendant. We do not consider that we can be confident that that is so and we consider that the failure to give the direction is indeed an appropriate matter for criticism.

Ground 3 of the original grounds complain of the absence of a Lucas direction. When the appellant was cross-examined by the prosecution, it was put to him that he lied in his interview when he denied that he would have stolen anything. He admitted in the witness box that this was a lie and the prosecution subsequently referred to and relied on that lie in their closing address to the jury. In those circumstances, as again it is conceded by the Crown, the jury should have been directed in accordance with Lucas. We consider that this was particularly so because the co-accused, Hall, received such a direction in respect of his lies in interview. The Crown have sought on this appeal to suggest that because that direction was in such clear terms, it was well within the compass of the jury to appreciate that the same reasoning would apply when considering the position of the appellant. Again we do not think that is correct. The position was that the judge had given clear directions that the cases in respect of each defendant fell to be considered separately. Further, the form of the summing-up generally preserved that demarcation; it was thus incumbent upon the judge specifically to give the jury a direction in terms of Lucas in relation to the appellant's position.

Ground 4 of the original grounds is based on certain remarks made by the judge in the summing-up (transcript 11G to 12C). He said of the appellant:

"...the central core of Mr Weyman's evidence is: 'Yes I was there but I didn't do it and David Hall did do it, and David Hall was in on the whole thing and it was actually David Hall who started the fire.' That is the central core of what Julian Weyman was telling you during his evidence. Of course, it is a matter again for you to determine what weight you place upon it, but you do need to have particular care when you are considering that central theme of Julian Weyman's evidence to you because, of course, in saying what he did about that, he may have been more mindful of protecting his own position than necessarily about speaking the truth to you in regard to what did and did not happen, so you will need to bear that in mind when you are deciding whether you can believe what Julian Weyman has told you in regard to David Hall."

The direction that the appellant may have been more mindful of protecting his own position than the

necessity to speak the truth was, of course, one which was appropriate in relation to the effect of the appellant's evidence as against his co-defendant and it was important to make that clear to the jury in the circumstances of the case. However, it has been submitted for the appellant, and we consider rightly, that the judge should also have made clear that this was only a relevant consideration when the jury considered the case against Hall. As the direction stood, the jury were in effect being broadly invited to attach less weight to the appellant's evidence in his own behalf by reason of the fact that he was blaming Hall. Hall's defence, as set out in his interview and advanced at trial was made the subject of no such balancing comment because Hall did not go into the witness box to repeat it. The jury were merely told correctly that what Hall said in interview was not evidence against the appellant.

Finally, ground 5 of the original grounds complains that when the judge came to direct the jury on the psychological evidence about Hall's IQ he did not give the jury any help or direction as to its significance. He merely said that the appellant's advisors had not had the opportunity of cross-examining the psychologist and that they could not be taken as accepting his evidence. That was indeed the case. While the report had apparently been supplied in advance to the prosecution, who had no objection to its admission, it was only supplied in copy form to counsel for the appellant on the morning of the trial. It was therefore necessary that a comment of that sort should be made. However, the complaint which arises, and we consider it is a valid complaint, is that the judge should have gone further and told the jury that the evidence, if accepted, did not make it more likely that the appellant had committed the offence rather than Hall, the sole purpose of the evidence being to explain why Hall was consorting with youths and why he lied initially in the interview. As it was, the judge did not go further and the jury were left in the air and to draw their own conclusions, or make their own inferences, concerning that evidence. It is complained for the appellant, we think with some justification, that without guidance the jury may have concluded that the evidence given was in some way directed to the fairness of holding that Hall played a guilty role in the matter rather than the appellant.

We consider that the various criticisms which are made of the summing-up are justified and that cumulatively they amount to a substantial misdirection in relation to the case of the appellant. We have no doubt that they render the conviction unsafe and accordingly the appeal will be allowed. The appellant's conviction on count 2 of the indictment is quashed.

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14 October 1997 Weyman	
passiver:	
I. 29	the appellant was jointly indicted with David Edward Hall
I. 32	he was convicted on count 2 of arson
I. 33	His sentence was adjourned for reports
I. 33	His co-defendant Hall was acquitted on both counts
I. 34	the appellant was sentenced to a combination order
I. 37	The facts can be shortly stated
I. 38	a council house rented by Mr and Mrs Austin
I. 39	the fire had been started deliberately
I. 42	Crisp and Cunningham were not charged
I. 50	the house would be burnt down
I. 62	when the fire was lit
I. 67	Hall was also interviewed at some length
I. 68	Evidence was given at the trial
I. 69	Hall told what was admitted in court to be a lie
I. 71	the case advanced for him
I. 76	a psychiatric report was admitted and read on his behalf
I. 78	he had told admitted lies
I. 84	both of which were aired at the trial
I. 85	the appellant was called to give evidence
I. 85	submissions had been made on the appellant's behalf
I. 90	the two matters of damage for which he had received cautions
I. 93	Those rulings are not challenged on this appeal
I. 96	it is acknowledged by counsel for the appellant that...
I. 97	Hall's counsel was entitled to cross-examine as to character
I. 102	the two defendants - being in the shed at the time the fire was started
I. 105	The case as conducted between the defendants at trial
I. 106	as already indicated
I. 107	Hall's statement was relied on as his defence
I. 110	the effect of statements made in interview and in evidence by one defendant against the other
I. 113	Ground 1 in the original grounds has been abandoned
I. 114	that the appellant, having had his cautions for criminal damage aired in court and made the subject of cross-examination
I. 115	the jury should have received a bad character direction
I. 115	they should have been told that the appellant's bad character
I. 119	It is said,...., that, once the jury were aware of the appellant's cautions for the offences of damage
I. 122	a particular earlier incident relied on by the prosecution
I. 125	the interests of accused persons is that...
I. 125	juries have to be warned and instructed that they must resist any temptation
I. 129	Regrettably no such words or their equivalent were included in the summing-up
I. 130	such a direction should have been given
I. 130	but it is suggested that there was no real danger
I. 135	the appellant was cross-examined by the prosecution
I. 139	it is conceded by the Crown
I. 139	the jury should have been directed in accordance with <u>Lucas</u>

I. 140	the co-accused, Hall, received such a direction in respect of his lies in interview
I. 148	Ground 4 of the original grounds is based on certain
I. 148	certain remarks made by the judge in the summing-up
I. 162	it has been submitted for the appellant
I. 164	the jury were in effect being broadly invited to attach less weight to the appellant's evidence
I. 166	Hall's defence, as set out in his interview and advanced at trial
I. 166	Hall's defence, as set out in his interview and advanced at trial was made the subject of no such balancing comment
I. 167	The jury were merely told correctly that what Hall said in interview was not evidence against the appellant
I. 175	it was only supplied in copy form to counsel for the appellant
I. 176	It was therefore necessary that a comment of that sort should be made
I. 182	It is complained for the appellant
I. 186	the various criticisms which are made of the summing-up
I. 186	the various criticisms which are made of the summing-up are justified
I. 188	the appeal will be allowed
I. 189	The appellant's conviction on count 2 of the indictment is quashed
Adverbialer:	
I. 29 (initial)	<i>In this case</i> the appellant was jointly indicted with David Edward Hall
I. 31 (initial)	<i>On 20th February 1996 at the Crown Court at Hove</i> the appellant pleaded guilty to count 1
I. 32 (initial)	<i>On 31st January 1997 before the same court</i> he was convicted on count 2 of arson
I. 34 (initial)	<i>On 21st February 1997</i> the appellant was sentenced to a combination order
I. 37 (initial)	<i>Just after midnight on 24th July 1995</i> the fire brigade attended 6 Greenfield Road, Chichester, West Sussex
I. 39 (initial)	<i>In the hours that followed</i> the police spoke to four males
I. 51 (initial)	<i>Later that evening</i> they both went to Crisp's house
I. 55 (initial)	<i>After they had done so,</i> the appellant and Hall went back into the shed
I. 64 (initial)	<i>by the time they entered the shed for the second time</i> he knew there was a plan to steal
I. 65 (initial)	<i>It was then</i> that Hall used the match to set fire to a plastic bag
I. 70 (initial)	<i>At the trial</i> he did not give evidence
I. 76 (initial)	<i>While Hall did not give evidence, with leave of the judge</i> a psychiatric report was admitted
I. 77 (medial)	a psychiatric report was admitted and read on his behalf, <i>without challenge by the prosecution,</i> which asserted that he had an extremely low IQ
I. 78 (medial)	Its stated purpose was to explain why, <i>as an adult,</i> he consorted with boys
I. 85 (initial)	<i>At the close of the prosecution case and before the appellant was called to give evidence,</i> submissions had been made on the appellant's behalf
I. 88 (initial)	<i>second, or in the alternative,</i> for a ruling that the appellant could not be cross-examined by Hall's counsel
I. 91 (medial)	The Assistant Recorder <i>in his ruling</i> first declined to exercise his discretion
I. 94 (initial)	<i>while it is arguable that the second was an error, on the grounds that the cautions were irrelevant and inadmissible so far as the charge of arson was concerned [to which we will return below],</i> it is acknowledged by counsel for the appellant that, ..., Hall's counsel was entitled to cross-examine as to character
I. 96 (initial)	it is acknowledged by counsel for the appellant that, <i>once the appellant had accused Hall in his evidence at trial,</i> Hall's counsel was entitled to cross-examine as to character

I. 99 (initial)	<i>Before turning to the grounds of appeal, it is appropriate to state that the basis of the prosecution case against both defendants was of a simple joint enterprise</i>
I. 106 (initial)	<i>However, as already indicated Hall's statement was relied on as his defence</i>
I. 107 (initial)	<i>Finally, because of the judge's rulings, the jury were aware that...</i>
I. 108 (initial)	<i>while Hall was of good character the appellant was not</i>
I. 108 (initial)	<i>In this situation it was of course incumbent upon the judge to consider carefully the necessity for directions</i>
I. 113 (initial)	<i>that the appellant, having had his cautions for criminal damage aired in court and made the subject of cross-examination, the jury should have received a bad character direction</i>
I. 119 (initial)	<i>once the jury were aware of the appellant's cautions for the offences of damage, they would have been highly likely to take them as indicating propensity</i>
I. 121 (initial)	<i>In the case of <u>Strudwick and Merry</u> ground of appeal,..., failed</i>
I. 121 (medial)	<i>ground of appeal, on lines of some similarity to this, failed</i>
I. 122 (medial)	<i>the jury had, in relation to a particular earlier incident relied on by the prosecution, directed the jury</i>
I. 124 (medial)	<i>one of the matters which the criminal law in this country rightly looks upon</i>
I. 125 (medial)	<i>one of the matters which the criminal law...looks upon with great care in safeguarding the interests of accused persons is that juries have to be warned and instructed</i>
I. 135 (initial)	<i>When the appellant was cross-examined by the prosecution, it was put to him that he lied in his interview</i>
I. 137 (medial)	<i>He admitted in the witness box that this was a lie</i>
I. 138 (initial)	<i>In those circumstances, as again it is conceded by the Crown, the jury should have been directed in accordance with <u>Lucas</u></i>
I. 142 (initial)	<i>because that direction was in such clear terms, it was well within the compass of the jury to appreciate that the same reasoning would apply</i>
I. 155 (initial)	<i>in saying what he did about that, he may have been more mindful of protecting his own position than necessarily about speaking the truth</i>
I. 164 (initial)	<i>As the direction stood, the jury were in effect being broadly invited to attach less weight to the appellant's evidence</i>
I. 170 (initial)	<i>when the judge came to direct the jury on the psychological evidence about Hall's IQ he did not give the jury any help or direction as to its significance</i>
I. 174 (initial)	<i>While the report had apparently been supplied in advance to the prosecution, who had no objection to its admission, it was only supplied in copy form to counsel for the appellant</i>
I. 177 (medial)	<i>the complaint which arises, and we consider it is a valid complaint, is that the judge should have gone further and told the jury that the evidence, if accepted, did not make it more likely that the appellant had committed the offence rather than Hall</i>
I. 180 (initial)	<i>As it was, the judge did not go further</i>
I. 182 (medial)	<i>It is complained for the appellant, we think with some justification, that without guidance the jury may have concluded that the evidence given was in some way directed to the fairness of holding that Hall played a guilty role in the matter rather than the appellant</i>
Sammensatte præpositioner:	
I. 23	on behalf of
I. 24	on behalf of
I. 41	in connection with
I. 122	in relation to
I. 139	in accordance with

I. 141	in respect of
I. 145	in respect of
I. 147	in terms of
I. 147	in relation to
I. 156	in regard to
I. 158	in regard to
I. 160	in relation to
I. 165	by reason of
I. 174	in advance to
I. 187	in relation to
Komplekse substantivsyntagmer:	
I. 31	premises which were a garden shed
I. 35	a combination order of one year probation and 100 hours community service on each count concurrent
I. 38	a council house rented by Mr and Mrs Austin who were away on holiday
I. 41	The appellant who was then aged 15
I. 41	Hall who was then nearly 25
I. 44	Hall, a man of low IQ,
I. 49	Hall's proposal to go and break into the house
I. 50	the suggestion that the house would be burnt down
I. 51	the bar of a local football club where he saw Hall pick up a box of matches
I. 52	Crisp's house where the appellant was staying as a guest
I. 60	his bedroom where the appellant had been sleeping
I. 71	that part of his statement where he had said he was in the shed with the appellant when the latter used his lighter to set fire to a deckchair
I. 74	the account which he had given in interview
I. 76	a psychiatric report <i>-(was admitted and read on his behalf, without challenge by the prosecution,)-</i> which asserted that he had an extremely low IQ
I. 81	count 1, which he had admitted at the earlier plea and directions hearing and which by agreement the jury knew about
I. 88	a more realistic view of the prosecution case on the burglary
I. 89	a ruling that the appellant could not be cross-examined by Hall's counsel about the two matters of damage for which he had received cautions
I. 92	his discretion to prohibit Hall's counsel cross-examining the appellant about the cautions
I. 95	charge of arson <i>-(was concerned-)</i> to which we will return below
I. 99	the basis of the prosecution case against both defendants
I. 100	a simple joint enterprise for which both were liable, whichever had set the fire
I. 105	The case as conducted between the defendants
I. 109	the necessity for directions as to character, lies, the effect of statements made in interview and in evidence by one defendant against the other
I. 111	the psychiatric evidence which we have mentioned
I. 120	the appellant's cautions for the offences of damage
I. 124	one of the matters which the criminal law in this country rightly looks upon
I. 131	no real danger that the jury would infer guilt on the basis of two lesser and, as the Crown submit, dissimilar offences, which were essentially the throwing of stones at church windows by a young defendant.
I. 133	the failure to give the direction
I. 144	clear directions that the cases in respect of each defendant fell to be considered separately

I. 152	the central core of what Julian Weyman was telling you
I. 159	The direction that the appellant may have been more mindful of protecting his own position than the necessity to speak the truth
I. 160	one which was appropriate in relation to the effect of the appellant's evidence as against his co-defendant
I. 166	Hall's defence, as set out in his interview and advanced at trial
I. 174	the prosecution, who had no objection to its admission
I. 177	the complaint which arises
I. 186	the various criticisms which are made of the summing-up
I. 188	The appellant's conviction on count 2 of the indictment
Fagterminologi:	
I. 15	regina
I. 23	appellant
I. 24	the Crown
I. 29	appellant
I. 29	to be indicted
I. 30	Counts
I. 30	count
I. 30	count
I. 31	offences
I. 32	appellant
I. 32	count
I. 33	to be convicted
I. 33	count
I. 33	Trial
I. 34	Co-defendant
I. 34	to be acquitted
I. 34	Counts
I. 34	appellant
I. 35	probation
I. 35	count
I. 36	concurrent
I. 41	offence
I. 41	appellant
I. 43	to be charged
I. 43	prosecution
I. 43	Trial
I. 52	appellant
I. 55	appellant
I. 56	appellant
I. 58	appellant
I. 60	appellant
I. 62	appellant
I. 68	Trial
I. 70	appellant
I. 71	Trial
I. 72	appellant
I. 74	appellant
I. 77	prosecution
I. 81	appellant's

I. 81	conviction
I. 81	count
I. 83	Jury
I. 84	Trial
I. 85	appellant
I. 86	appellant's
I. 86	counsel
I. 87	conviction
I. 89	ruling
I. 89	appellant
I. 89	to be cross-examined
I. 91	ruling
I. 91	appellant
I. 92	counsel
I. 92	to cross-examine
I. 93	appellant
I. 93	rulings
I. 93	appeal
I. 95	charge
I. 97	appellant
I. 97	trial
I. 97	counsel
I. 97	to cross-examine
I. 98	ruling
I. 105	trial
I. 106	appellant
I. 107	ruling
I. 108	jury
I. 108	appellant
I. 114	appellant
I. 114	Cross-examination
I. 115	jury
I. 116	appellant's
I. 119	jury
I. 119	appellant's
I. 120	offences
I. 122	jury
I. 123	prosecution
I. 123	jury
I. 125	juries
I. 130	the Crown
I. 131	jury
I. 131	the Crown
I. 132	offences
I. 135	appellant
I. 136	to be cross-examined
I. 136	prosecution
I. 138	prosecution
I. 138	jury
I. 139	the Crown

I. 139	jury
I. 140	Co-accused
I. 141	the Crown
I. 141	appeal
I. 142	jury
I. 143	appellant
I. 147	jury
I. 147	appellant's
I. 149	appellant
I. 159	appellant
I. 161	appellant's
I. 161	jury
I. 162	appellant
I. 164	jury
I. 164	jury
I. 165	appellant's
I. 166	trial
I. 168	jury
I. 169	appellant
I. 170	jury
I. 171	jury
I. 172	appellant's
I. 172	to cross-examine
I. 174	prosecution
I. 176	trial
I. 178	jury
I. 179	appellant
I. 181	jury
I. 182	appellant
I. 185	appellant
I. 187	appellant
I. 188	conviction
I. 188	appeal
I. 189	appellant's
I. 189	count
I. 189	indictment
juridiske kollokationer:	
I. 4	court of appeal
I. 5	criminal division
I. 32	to plead guilty
I. 35	a combination order
I. 35	community service
I. 36	to appeal against conviction
I. 36	the single judge
I. 43	to give evidence
I. 43	the prosecution case
I. 49	to give evidence
I. 68	to give evidence
I. 74	to give evidence

I. 76	to give evidence
I. 82	a plea and directions hearing
I. 83	criminal damage
I. 85	the prosecution case
I. 85	to give evidence
I. 87	a good character direction
I. 88	the prosecution case
I. 91	the Assistant Recorder
I. 91	to exercise ones discretion
I. 96	counsel for the appellant
I. 99	grounds of appeal
I. 99	the prosecution case
I. 103	the prosecution case
I. 112	grounds of appeal
I. 114	criminal damage
I. 115	a bad character direction
I. 117	to commit an offence
I. 121	grounds of appeal
I. 135	a Lucas direction
I. 175	counsel for the appellant
I. 179	to commit an offence
I. 189	to quash a conviction
Nominalkonstruktioner :	
I. 45	The <i>suggestion</i> was that the occupier of the house owed a friend of Hall's (a Mr Dunn) a favour (he suggested that the occupier of the house owed a friend of Hall's (a Mr Dunn) a favour)
I. 65	by the time they entered the shed for the second time he knew there was a <i>plan</i> to steal (by the time they entered the shed for the second time he knew that Hall was planning to steal)
I. 77	a psychiatric report was admitted and read on his behalf, <i>without challenge</i> by the prosecution (a psychiatric report was admitted and read on his behalf, which the prosecution did not challenge)
I. 81	The appellant's only previous conviction was on count 1 (The appellant had only previously been convicted on count 1)
I. 87	he only reason he had a <i>conviction</i> was that he had taken a more realistic view of the prosecution case on the burglary than had Hall (he only reason he had been convicted was that he had taken a more realistic view of the prosecution case on the burglary than had Hall)
I. 90	the two matters of damage for which he had received <i>cautions</i> (the two matters of damage for which he had been cautioned)
I. 91	The Assistant Recorder in his <i>ruling</i> first declined to exercise his discretion (when the Assistant Recorder ruled, he first declined to exercise his discretion)
I. 103	It was also the prosecution case that each of the defendants had lied at his original <i>interview</i> (It was also the prosecution case that each of the defendants had lied when they were first interviewed)
I. 106	The case as conducted between the defendants at trial involved each blaming the other for starting the fire, while himself denying <i>responsibility</i> (The case as conducted between the defendants at trial involved each blaming the other for starting the fire, while himself denying to be responsible)
I. 109	it was of course incumbent upon the judge to consider carefully the <i>necessity</i> for <i>directions</i> as to character, lies, the effect of statements made in interview

	and in evidence by one defendant against the other (it was of course incumbent upon the judge to consider carefully if it might be necessary to direct the jury as to character, lies, the effect of statements made in interview and in evidence by one defendant against the other)
I. 116	they should have been told that the appellant's bad character in that respect went solely to <i>credibility</i> and not to whether he was likely to have committed the offence of arson (they should have been told that the appellant's bad character in that respect went solely to whether he was credible or not and not to whether he was likely to have committed the offence of arson)
I. 119	once the jury were aware of the appellant's <i>cautions</i> for the offences of damage, they would have been highly likely to take them as indicating propensity (once the jury were aware that the appellant had been cautioned for the offences of damage, they would have been highly likely to take them as indicating propensity)
I. 120	once the jury were aware of the appellant's cautions for the offences of damage, they would have been highly likely to take them as indicating <i>propensity</i> (once the jury were aware of the appellant's cautions for the offences of damage, they would have been highly likely to take them as indicating that he was inclined/liable to commit such offences)
I. 127	This man has a <i>propensity</i> to commit a particular type of crime (This man is liable/inclined to commit a particular type of crime)
I. 132	two lesser and, as the Crown submit, dissimilar offences, which were essentially the <i>throwing</i> of stones at church windows by a young defendant (two lesser and, as the Crown submit, dissimilar offences, which were essentially a young man throwing stones at church windows)
I. 133	we consider that the failure to give the direction is indeed an appropriate matter for criticism (we consider that it is indeed appropriate to criticise the fact that the judge failed to give the direction)
I. 137	He admitted in the witness box that this was a <i>lie</i> (He admitted in the witness box that he had lied about that)
I. 141	Hall received such a direction in respect of his lies in <i>interview</i> (Hall received such a direction in respect of the lies he told when he was interviewed)
I. 144	The position was that the judge had given clear <i>directions</i> that the cases in respect of each defendant fell to be considered separately (The position was that the judge had clearly directed that the cases in respect of each defendant fell to be considered separately)
I. 146	it was thus incumbent upon the judge specifically to give the jury a <i>direction</i> in terms of <u>Lucas</u> (it was thus incumbent upon the judge specifically to direct the jury in terms of <u>Lucas</u>)
I. 168	what Hall said in <i>interview</i> was not evidence against the appellant (what Hall said when he was interviewed was not evidence against the appellant)
I. 175	the report had apparently been supplied in advance to the prosecution, who had no <i>objection</i> to its <i>admission</i> (the report had apparently been supplied in advance to the prosecution, who did not object to it being admitted)
Lix:	
2841 ord	
635 svære ord	
120 perioder	
A = 22,6	
B = 23,7	
Lix = (A+ B) = 46,3 (svær)	

Engelske domssanalyser efter Woolf-reformen i 1999



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No. 2008/06011/A8

**IN THE COURT OF APPEAL
CRIMINAL DIVISION**

Royal Courts of Justice
The Strand
London WC2
20 January 2009

B e f o r e :

**THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(Lord Judge)
MR JUSTICE PITCHFORD
and
MR JUSTICE RODERICK EVANS**

**ATTORNEY GENERAL'S REFERENCE No. 67 of
2008**

**UNDER SECTION 36 OF
THE CRIMINAL JUSTICE ACT 1988**

R E G I N A

- v -

SHARON EDWARDS

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(Official Shorthand Writers to the Court)**

**Mr S Denison appeared on behalf of the Attorney General
Miss D Sherwin appeared on behalf of the Offender**

HTML VERSION OF JUDGMENT

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Tuesday 20 January 2009

THE LORD CHIEF JUSTICE:

1. This is an application by Her Majesty's Attorney General under section 36 of the Criminal Justice Act 1988 for leave to refer to this court for review a sentence which she considers to be unduly lenient. We grant leave. The sentence was one of twelve months' imprisonment suspended for two years. It was passed by the Recorder of Middlesbrough (His Honour Judge Fox QC) in the Crown Court at Teesside on 13 October 2008.
2. The offender is Sharon Edwards. She is now aged 40. She was born on 9 September 1968. She is a woman of good character.
3. On 30 May 2008 she pleaded guilty to four offences of sexual activity with a child, contrary to section 9(1) of the Sexual Offences Act 2003, having indicated her willingness to plead guilty to these offences at a preliminary hearing on 3 April 2008.
4. The child in question was a boy who was just 14 years old when the first offence took place. He was the offender's son's best friend.
5. The offender had pleaded not guilty to one offence of being concerned in the supply of a controlled drug of Class A. That matter was adjourned for trial. However, when it was listed for trial an alternative count was included in the indictment and she pleaded guilty to offering to supply a controlled drug of Class A contrary to section 4(1)(b) of the Misuse of Drugs Act 1971. That plea was accepted by the Crown. On that day (13 October) she was sentenced to twelve months' imprisonment on each count, suspended for two years, with a two year supervision requirement.
6. In brief summary, the offender admitted that she had had a sexual relationship with the 14 year old boy. On two occasions they had sexual intercourse together and on two further occasions he penetrated her mouth with his penis. On the last occasion (18 January 2008) he found some cocaine. In the course of a conversation that night the offender offered to supply him with cocaine.
7. The judge's reasons for his decision are encapsulated in his brief sentencing remarks. He said this:

".... you are 39 years of age. You have never been in trouble before. You have been a very

unhappy lady for a very considerable time, and this mature 14 year old boy seduced you, not you him, both sexually and so far as drugs are concerned. Of course you had a responsibility as an adult to reject his advances in both those regards, but in the circumstances which obtained at the time, and of which I have read in detail in the psychiatric report, I can regard this case as an exceptional one and suspend the inevitable prison sentence."

8. The assertion that the boy seduced the offender, whether in relation to sexual activity or drugs, is challenged by the prosecution. We must examine the evidence.
9. The victim "A" was born on 18 October 1993. He lived at home with his mother and a younger brother. His parents had separated four years previously. He is a tall boy, 6ft 1in tall. That said, he was still using a dental brace and he was being treated for acne. More important, he was a virgin. Before his relationship with the offender began he had not experimented with drugs.
10. The offender was 39 years old when she committed these offences. She and her husband had been together for 23 years. They had been married for nine years. They had two sons aged 13 and 10. Her husband had been at school with A's mother. The two families knew each other very well. They lived in the same street. The adults baby-sat for each other's children on a regular basis. A was the best friend of the offender's older son "J" and he spent a lot of time at the offender's home. The offender's husband had become something of a father figure to A after the separation of his parents.
11. The marriage between the offender and her husband was unhappy. She had briefly separated from him in 2006 when she had an affair, but she returned to live with him to try to make the marriage work for the sake of the children. However, as the medical report (which was before the sentencing judge and is before us) shows, by October 2007 she was drinking to excess and there were occasions on which she would take cocaine. Her parents, whom she had been used to seeing regularly, had emigrated. Her husband had become convinced that she was having another affair. When he confronted her with it, she denied it.
12. The husband had noticed that A seemed to have something of a crush on the offender and spent a lot of time at their home. He also noticed that his wife sent A a great number of text messages. He asked her about it, but she laughed it off saying that they were "just having a laugh". Unsurprisingly, it did not occur to her husband that she was having a sexual relationship with A.
13. By January 2008 the husband noticed that the offender was staying up late and using the MSN Messenger Service to communicate with somebody. She started to sleep in a separate bedroom.
14. On 18 January 2008, which happened to be an evening after the offender and A had had sexual intercourse and he had found cocaine in her premises, her husband changed the settings on their home computer so that it saved the MSN conversations. The following morning he checked the saved conversations that the offender had had the previous evening. On reading them he realised that the offender was indeed having a sexual relationship with A. He immediately telephoned A's mother and told her what he had found. Unsurprisingly, she was shattered at the news.
15. A's mother decided that she should speak to A about it. When she did so, he became distressed and cried hysterically. He said that he was sorry, that he knew it was wrong but that he did not know how to stop it. She decided to inform the police. When she did so, A went to his bedroom and in an emotional outburst said that his life was over and he might as well die now.
16. When the offender returned home later that morning her husband confronted her with the text messages. To begin with she denied that she had had an affair with A and she stormed out of the

house. But later that day she admitted to her husband that it was true.

17. A was interviewed by the police on 19 January, the same day. He said that he had started texting and MSN messaging with the offender in September 2007 when he was still 13 years old. He said that he had developed a crush on her and that he had told her about it. They would send each other text messages fifty times a day. He said that they had first had sexual intercourse shortly after his fourteenth birthday at the offender's sister's home when the sister was away, after they had taken her dog for a walk. He had not used a condom. He spoke of two occasions when she put his penis in her mouth. He said that he had had sexual intercourse the previous evening at her home. Again he had not used a condom.
18. There is a revealing passage in the interview which encapsulates the message which A was trying to convey in interview.

"But like after that like when I was like walking down the road home, at one point.... When I was there I knew -- I knew I wanted to do -- like I didn't want to do it but You know what I mean? Like I wanted -- I wanted to find out what it would be like. And then the other like part of me thought 'I know it's wrong', but I wanted to find out what it's like, you know what I mean?"

Later in the interview, in a passage to which our attention has been drawn in the course of her attractive submissions by Miss Sherwin, A came to deal with how he felt at a time when in the course of the interview it became apparent that he was troubled about what might happen to the offender. At one stage he said:

"I -- I don't -- I know she's gonna get like sent down for it, but I don't want her to get as many years as she's gonna get because she's got [J]."

He was asked:

"So, each time you've had a sexual -- a sexual act between you and Sharon has taken place, have you wanted it to happen?"

A. Well, I wouldn't have said 'No', but

Q. Did she force you?

A. No, she never.

Q. She didn't force you.

A. She didn't force me but but she's -- she's like always went along with me, if you know what I mean? Like not like went along with me, but she never like backed off or anything.

Q. So, who would you say was more up for it?

A. Probably me cos of my age and hormones and that.

....

Q. did she ever tell you to stop or anything like that?

A. No.

Q. Did she ever not want you to do it?

A. She said No. But she said once or twice she felt we shouldn't be doing this."

19. The offender was arrested on the same day. When she was interviewed by the police she admitted that sexual activity had taken place. She said that she knew it was wrong, but that A persisted and told her that he loved her and she had gone along with it. She declined altogether to answer any questions relating to the use of cocaine. She said:

"Well, first of all, I mean I've known [A] for, well since he was about 2. He had a bit of a crush on me. I approached him about this and obviously he admitted it. We just, we started texting each other and basically one thing led to another."

Later she said:

"On several occasions I told him by text and stuff that I couldn't go on and yesterday was one of the days. I text him several times at school to say that I couldn't do it no more and he just, he just basically wouldn't have it.

....

Well he just said no. He, he On several occasions, no, I don't want it to stop, that he loved me. He was in love with me and he wanted me in his life and just things like that"

20. We must now examine (albeit not in detail) the messages that were found on the MSN text. The text messages that the offender sent A do not give the impression that she sought to convey in the interview, that she was reluctant whereas A pursued her. The texting went on from 10.50pm on 18 January 2008 until 12.20am on 19 January.
21. We shall deal first with the reference to cocaine. The way in which this count was put by the prosecution is based largely on the defence case statement. The offender had been using cocaine. On 18 January when she was at home with A, and before they had sexual intercourse, she went into her kitchen and took some cocaine. She then went to the lavatory. On her return she was told by A that he had taken some of her cocaine. He had told her that he had done this by dipping his finger into it and rubbing it into his gums. The defence case statement says that the offender did not consent to him doing that and had not encouraged him in any way. She did not think that he had taken much. She was not aware of any change in his behaviour while he was at her house. They then had sexual intercourse.
22. During the course of the text messages later that evening, A told her he had traces of cocaine on his braces. An extract from the texts reads as follows:

"ges wa was all over ma brace babe

wa

coke lol [laugh out loud]

nor lol

wa ya do with it

just licked it lol don't taste nice lol

good lad yer a no its awful aint it

a just had some more

lol i will pay ya 2 get me some next time babe and when i sleep down yours i will take it then in the slie

lol

ya will wa

i will pay ya next time 2 get me some and i will take it when I sleep round yours on the slie.

a dont want no money ya daft sod

a should have give ya some to take home in ya room

ar yer ya no wa i am like 4 hiding things

nope"

The conversation then proceeds along sexual lines. It is unnecessary for the purposes of this judgment, or the conclusion to which we have come, to read out the exchange of sexual messages which then took place. But it certainly cannot be said that it was just the boy who made advances to the offender. Later in the exchanges she said that it would not matter if

"ya were like 17 but a would get locked up and he would made sure of it"

(we assume that is a reference to her husband). A replied:

"i no he would babe lol

and thats wa am frightened of

well ya can see ma point then

so you need to reassure me

if ya no ho to cos sometimes am like amfg

he is hopeless"

Shortly afterwards A responds that he has to go because his mother has said it is time for him to turn off his light. He ends:

"love ya fuckin loads sexy"

The last element of conversation before the final end of the text ends with the offender saying to A:

"well you asked me and a said whatever you wanted so you should of done whatever you wanted

babe

....

tell me what ya like wa ya dont and wa ya want

and a love it wen ya naked and not shy babe cos ya got a gorgeous body on ya babe"

23. We have considered the material of the interview with A, the interview with the offender and the unvarnished text which was discovered of the communications between them on the night of 18-19 January 2008. We reject the judge's conclusion that this boy (and we used the word deliberately) seduced the offender whether for sexual purposes or in order to gain access to cocaine. He had never touched any drug before he met her. She undoubtedly had. He was a boy of 14, a virgin. She was sexually experienced. She is not unintelligent, nor simple. She was not by blood, but by years of close friendship a member almost of the extended family who had known him as a little boy and had seen him grow up. During the years he and her son J were in and out of each other's homes in the usual way. If he had developed something of a crush on her, that is what it was, a boyhood crush. She should have helped him get over it, or simply waited until time had done what was necessary.
24. However that may be, and however thrilled, as A indicated in his answers he may have been, he was simultaneously very worried. However all that adds up, it does not amount to him seducing her. In fairness to her counsel, we do not find in the transcript of the proceedings before the judge any suggestion that the offender had been seduced by the boy. Nor did the offender suggest that in terms. Counsel accepted that a custodial sentence would be appropriate. The issue, as she submitted to the judge, was its length, not whether it should be suspended.
25. But for the intervention of the offender's husband, which brought all these matters to light, it is difficult to avoid the conclusion that the offender's offer to supply cocaine was genuine and that if the boy had indeed asked for it she would have found some for him. In the end she did not actually supply it. On the only occasion he took it, he helped himself from her own supply.
26. The evidence before the judge, apart from the fact that the offender was a woman of good character, included a detailed psychiatric report dated 3 October 2008. It records that the offender was very depressed from about the summer of 2007, at the time when these offences were committed, and that after they had come to light she took an overdose of paracetamol in March 2008 which led to her admission to hospital for three days and that she had since then thought of a number of different ways to kill herself.
27. Since the decision of the sentencing judge we have been provided with a further report from the Probation Service and a report from the offender's current hostel. We accept that she is making every effort to put all this behind her. In order to examine the judge's view that the boy had seduced the offender, we have addressed in more detail than would be normal the aggravating features of this case. There is, however (and we do not overlook it), a sad element to it. As we have said, the offender was a woman of good character. The judge was right to explain, on the basis of medical evidence, that she had been depressed for some time before this affair began and had continued so after it came to light. We must also record that the consequences of the affair and of it coming to light have been for her catastrophic. Unsurprisingly, her marriage has broken down. Her children no longer live with her. Her elder son wants nothing to do with her. Fortunately, contact has been re-established with her younger son. In truth she has lost everything. Her life is in ruins. All this is taking place in the public eye. It is true that these wounds are self-inflicted, but

they are nonetheless wounds.

28. These are offences of serious culpability. That cannot be denied. The mitigation, too, is substantial. The offender is entitled to credit for her guilty pleas. We have been asked to note that guidelines proposed in these cases are put forward on the basis that they should apply irrespective of the gender of the victim or of the offender, except in specified circumstances where a distinction is justified by the nature of the offence. We agree that young boys, as well as young girls, are vulnerable. Parliament has not sought to distinguish between them in the legislation. Neither should we.
29. We must therefore reach a sentencing decision in the context of a sentence imposed by the judge which we regard as unduly lenient because it was based, among other things, on an incorrect approach to what was described as A's seduction of the offender. We do so in the context of all the individuals concerned, bearing in mind the substantial mitigation to which the offender can point. In our judgment the conclusion which cannot be avoided is that the sentence of imprisonment imposed by Judge Fox ought not to have been suspended and that his decision that it should be suspended was unduly lenient.
30. Accordingly, we have concluded that this is a case where an immediate sentence of imprisonment is appropriate. Given the mitigation, the guilty plea, the impact of the double jeopardy principle, we have concluded that the right sentence to be imposed is one of twelve months' imprisonment. That sentence will no longer be suspended. It will take effect from the moment when the offender surrenders to custody. Miss Sherwin?
31. **MISS SHERWIN:** My Lord, if she surrenders to custody today, that will cause some logistical difficulties.
32. **THE LORD CHIEF JUSTICE:** No, it must be back in the home area.
33. **MISS SHERWIN:** My Lord, she will travel up north where she will arrive some time later this evening, I would anticipate. I do not know if your Lordship wishes her to surrender to somewhere tonight?
34. **THE LORD CHIEF JUSTICE:** Mr Denison, unless there is any suggestion to the contrary from you, we would be inclined to say she must surrender to the nearest police station to the accommodation where she currently lives by one o'clock tomorrow.
35. **MISS SHERWIN:** I am grateful, my Lord.
36. **THE LORD CHIEF JUSTICE:** The sentence of twelve months' imprisonment will be on each count on this indictment, all the sentences to run concurrently.

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20 January 2009 Edwards	
passiver:	
I. 35	The sentence was one of twelve months' imprisonment suspended for two years.
I. 36	It was passed by the Recorder of Middlesbrough
I. 46	That matter was adjourned for trial.
I. 46	when it was listed for trial
I. 47	an alternative count was included in the indictment
I. 49	That plea was accepted by the Crown
I. 49	she was sentenced to twelve months' imprisonment
I. 50	twelve months' imprisonment on each count, suspended for two years
I. 56	The judge's reasons for his decision are encapsulated in his brief sentencing remarks
I. 60	The assertion that the boy seduced the offender...is challenged by the prosecution
I. 67	he was being treated for acne
I. 81	Her husband had become convinced that she was having another affair.
I. 102	A was interviewed by the police on 19 January,
I. 116	in a passage to which our attention has been drawn
I. 118	he was troubled about what might happen to the offender
I. 138	The offender was arrested on the same day
I. 138	When she was interviewed by the police
I. 156	The way in which this count was put by the prosecution
I. 159	she was told by A that he had taken some of her cocaine
I. 207	the unvarnished text which was discovered of the communications between them
I. 220	the offender had been seduced by the boy
I. 222	it should be suspended
I. 228	a detailed psychiatric report dated 3 October 2008
I. 229	at the time when these offences were committed
I. 233	we have been provided with a further report from the Probation Service
I. 243	contact has been re-established with her younger son
I. 244	these wounds are self-inflicted
I. 246	That cannot be denied
I. 247	The offender is entitled to credit for her guilty pleas
I. 247	We have been asked to note that...
I. 247	guidelines proposed in these cases
I. 248	guidelines...are put forward
I. 249	a distinction is justified by the nature of the offence
I. 253	a sentence imposed by the judge
I. 254	it was based...on an incorrect approach
I. 255	what was described as A's seduction of the offender
I. 257	the conclusion which cannot be avoided is that...
I. 257	the sentence of imprisonment imposed by Judge Fox
I. 257	the sentence of imprisonment...ought not to have been suspended
I. 258	his decision that it should be suspended
I. 262	the right sentence to be imposed is one of twelve months' imprisonment
I. 263	That sentence will no longer be suspended.

Adverbialer:	
I. 33 (medial)	This is an application <i>by Her Majesty's Attorney General under section 36 of the Criminal Justice Act 1988</i> for leave to refer to this court for review a sentence which she considers to be unduly lenient
I. 40 (initial)	<i>On 30 May 2008</i> she pleaded guilty to four offences
I. 46 (initial)	<i>However, when it was listed for trial</i> an alternative count was included in the indictment
I. 49 (initial)	<i>On that day (13 October)</i> she was sentenced to twelve months' imprisonment
I. 52 (initial)	<i>In brief summary,</i> the offender admitted that she had had a sexual relationship with the 14 year old boy
I. 55 (initial)	<i>In the course of a conversation that night</i> the offender offered to supply him with cocaine
I. 60 (initial)	<i>but in the circumstances which obtained at the time, and of which I have read in detail in the psychiatric report,</i> I can regard this case as an exceptional one
I. 63 (medial)	The assertion that the boy seduced the offender, <i>whether in relation to sexual activity or drugs,</i> is challenged by the prosecution.
I. 78 (initial)	<i>However, as the medical report (which was before the sentencing judge and is before us) shows, by October 2007</i> she was drinking to excess
I. 82 (initial)	<i>When he confronted her with it,</i> she denied it.
I. 87 (medial)	<i>By January 2008</i> the husband noticed that the offender was staying up late
I. 89 (initial)	<i>On 18 January 2008, which happened to be an evening after the offender and A had had sexual intercourse and he had found cocaine in her premises,</i> her husband changed the settings on their home computer
I. 92 (initial)	<i>on reading them</i> he realised that the offender was indeed having a sexual relationship with A
I. 95 (initial)	<i>When she did so,</i> he became distressed and cried hysterically.
I. 97 (initial)	<i>When she did so,</i> A went to his bedroom
I. 99 (initial)	<i>When the offender returned home later that morning</i> her husband confronted her with the text messages.
I. 100 (initial)	<i>To begin with</i> she denied that she had had an affair
I. 101 (initial)	<i>But later that day</i> she admitted to her husband that it was true.
I. 116 (initial)	<i>Later in the interview, in a passage to which our attention has been drawn in the course of her attractive submissions by Miss Sherwin,</i> A came to deal with how he felt
I. 117 (initial)	<i>at a time when in the course of the interview</i> it became apparent that he was troubled about what might happen to the offender.
I. 123 (initial)	<i>So, each time you've had a sexual -- a sexual act between you and Sharon has taken place,</i> have you wanted it to happen?
I. 138 (initial)	<i>When she was interviewed by the police</i> she admitted that sexual activity had taken place
I. 142 (initial)	<i>Well, first of all,</i> I mean I've known [A] for, well since he was about 2
I. 146 (initial)	<i>On several occasions</i> I told him...that I couldn't go on
I. 146 (medial)	I told him <i>by text and stuff</i> that I couldn't go on
I. 150 (initial)	<i>On several occasions,</i> no, I don't want it to stop, that he loved me.
I. 152 (medial)	We must now examine <i>(albeit not in detail)</i> the messages
I. 158 (initial)	<i>On 18 January when she was at home with A, and before they had sexual intercourse,</i> she went into her kitchen and took some cocaine
I. 165 (initial)	<i>During the course of the text messages later that evening,</i> A told her he had traces of cocaine on his braces
I. 187 (initial)	<i>Later in the exchanges</i> she said that it would not matter
I. 213 (initial)	<i>During the years</i> he and her son J were in and out of each other's homes
I. 214 (initial)	<i>If he had developed something of a crush on her,</i> that is what it was, a boyhood crush
I. 217 (medial)	<i>However that may be, and however thrilled, as A indicated in his answers he may have been,</i> he was simultaneously very worried.

I. 218 (initial)	<i>However all that adds up, it does not amount to him seducing her</i>
I. 219 (initial)	<i>In fairness to her counsel, we do not find...any suggestion that the offender had been seduced by the boy</i>
I. 219 (medial)	<i>we do not find in the transcript of the proceedings before the judge any suggestion that the offender had been seduced by the boy</i>
I. 223 (initial)	<i>But for the intervention of the offender's husband, which brought all these matters to light, it is difficult to avoid the conclusion that...</i>
I. 224 (initial)	<i>if the boy had indeed asked for it she would have found some for him</i>
I. 225 (initial)	<i>In the end she did not actually supply it</i>
I. 226 (initial)	<i>On the only occasion he took it, he helped himself from her own supply</i>
I. 227 (medial)	<i>The evidence before the judge, apart from the fact that the offender was a woman of good character, included a detailed psychiatric report</i>
I. 230 (initial)	<i>after they had come to light she took an overdose of paracetamol</i>
I. 233 (initial)	<i>Since the decision of the sentencing judge we have been provided with a further report</i>
I. 235 (initial)	<i>In order to examine the judge's view that the boy had seduced the offender, we have addressed...the aggravating features of this case.</i>
I. 236 (medial)	<i>we have addressed in more detail than would be normal the aggravating features of this case.</i>
I. 237 (medial)	<i>There is, however (and we do not overlook it), a sad element to it.</i>
I. 237 (initial)	<i>As we have said, the offender was a woman of good character.</i>
I. 238 (medial)	<i>The judge was right to explain, on the basis of medical evidence, that she had been depressed for some time</i>
I. 248 (medial)	<i>We have been asked to note that guidelines proposed in these cases are put forward</i>
I. 254 (medial)	<i>it was based, among other things, on an incorrect approach to what was described as A's seduction of the offender</i>
I. 257 (initial)	<i>In our judgment the conclusion which cannot be avoided is that...</i>
I. 261 (initial)	<i>Given the mitigation, the guilty plea, the impact of the double jeopardy principle, we have concluded that the right sentence to be imposed is one of twelve months' imprisonment.</i>
I. 265 (initial)	<i>if she surrenders to custody today, that will cause some logistical difficulties unless there is any suggestion to the contrary from you, we would be inclined to say she must surrender to the nearest police station</i>
I. 271 (initial)	<i>to say she must surrender to the nearest police station</i>
Sammensatte præpositioner:	
I. 27	on behalf of
I. 28	on behalf of
I. 63	in relation to
I. 209	in order to
I. 235	in order to
Komplekse substantivsyntagmer:	
I. 1	an application by Her Majesty's Attorney General under section 36 of the Criminal Justice Act 1988 for leave to refer to this court for review
I. 2	a sentence which she considers to be unduly lenient
I. 35	one of twelve months' imprisonment suspended for two years
I. 40	four offences of sexual activity with a child, contrary to section 9(1) of the Sexual Offences Act 2003
I. 43	a boy who was just 14 years old
I. 45	one offence of being concerned in the supply of a controlled drug of Class A
I. 49	twelve months' imprisonment on each count, suspended for two years, with a

	two year supervision requirement
I. 60	the circumstances which obtained at the time, and of which I have read in detail in the psychiatric report,
I. 63	The assertion that the boy seduced the offender
I. 78	the medical report (which was before the sentencing judge and is before us)
I. 80	occasions on which she would take cocaine
I. 80	Her parents, whom she had been used to seeing regularly,
I. 89	18 January 2008, which happened to be an evening after the offender and A had had sexual intercourse and he had found cocaine in her premises,
I. 91	the saved conversations that the offender had had
I. 110	a revealing passage in the interview which encapsulates the message which A was trying to convey
I. 116	a passage to which our attention has been drawn in the course of her attractive submissions by Miss Sherwin
I. 117	a time when in the course of the interview it became apparent that he was troubled about what might happen to the offender
I. 152	the messages that were found on the MSN text
I. 152	The text messages that the offender sent A
I. 156	The way in which this count was put by the prosecution
I. 185	the conclusion to which we have come
I. 185	the exchange of sexual messages which then took place
I. 186	the boy who made advances to the offender
I. 206	the unvarnished text which was discovered of the communications between them
I. 212	A member of the extended family who had known him as a little boy and had seen him grow up
I. 220	any suggestion that the offender had been seduced by the boy
I. 221	The issue, as she submitted to the judge
I. 223	the intervention of the offender's husband, which brought all these matters to light,
I. 228	a detailed psychiatric report dated 3 October 2008
I. 229	the time when these offences were committed,
I. 230	an overdose of paracetamol (in March 2008) which led to her admission to hospital for three days
I. 247	guidelines proposed in these cases
I. 249	specified circumstances where a distinction is justified by the nature of the offence
I. 253	a sentence imposed by the judge which we regard as unduly lenient
I. 254	an incorrect approach to what was described as A's seduction of the offender
I. 256	the substantial mitigation to which the offender can point
I. 257	the conclusion which cannot be avoided
I. 257	the sentence of imprisonment imposed by Judge Fox
I. 258	his decision that it should be suspended
I. 260	a case where an immediate sentence of imprisonment is appropriate
I. 262	the right sentence to be imposed
I. 263	the moment when the offender surrenders to custody
I. 272	the nearest police station to the accommodation where she currently lives
Fagterminologi:	
I. 19	regina
I. 36	recorder
I. 38	offender

I. 40	offences
I. 42	offences
I. 43	offence
I. 44	offender's
I. 45	offender
I. 45	offence
I. 47	indictment
I. 49	plea
I. 49	The crown
I. 50	count
I. 52	offender
I. 55	offender
I. 63	offender
I. 64	prosecution
I. 68	offender
I. 69	offender
I. 69	offences
I. 73	offender's
I. 74	offender's
I. 76	offender
I. 83	offender
I. 87	offender
I. 89	offender
I. 92	offender
I. 93	offender
I. 99	offender
I. 103	offender
I. 106	offender's
I. 119	offender
I. 138	offender
I. 153	offender
I. 156	count
I. 157	prosecution
I. 157	offender
I. 161	offender
I. 187	offender
I. 199	offender
I. 206	offender
I. 209	offender
I. 219	counsel
I. 219	proceedings
I. 220	offender
I. 220	offender
I. 221	counsel
I. 223	offender's
I. 224	offender's
I. 227	offender
I. 228	offender
I. 234	offender's
I. 236	offender

I. 238	offender
I. 246	offences
I. 246	culpability
I. 246	mitigation
I. 247	offender
I. 249	offender
I. 250	offence
I. 255	offender
I. 256	mitigation
I. 256	offender
I. 261	mitigation
I. 263	offender
I. 276	indictment
juridiske kollokationer:	
I. 3	court of appeal
I. 4	criminal division
I. 15	attorney general
I. 33	attorney general
I. 34	unduly lenient
I. 35	to grant leave
I. 36	to pass sentence
I. 40	to plead guilty
I. 41	to plead guilty
I. 42	preliminary hearing
I. 45	to plead guilty
I. 46	a controlled drug of Class A
I. 46	to adjourn a matter for trial
I. 47	an alternative count
I. 47	to plead guilty
I. 48	a controlled drug of Class A
I. 49	to be sentenced to...
I. 56	sentencing remarks
I. 62	prison sentence
I. 157	the defence case statement
I. 161	the defence case statement
I. 221	a custodial sentence
I. 229	to commit offences
I. 233	the sentencing judge
I. 236	aggravating features
I. 247	guilty pleas
I. 253	sentencing decision
I. 253	to impose a sentence
I. 254	unduly lenient
I. 257	to impose a sentence
I. 257	a sentence of imprisonment
I. 258	to suspend a sentence
I. 259	unduly lenient
I. 260	an immediate sentence of imprisonment
I. 261	guilty plea

I. 261	the double jeopardy principle
I. 262	to impose a sentence
I. 263	to suspend a sentence
I. 264	to surrender to custody
I. 265	to surrender to custody
I. 276	sentences to run concurrently
Nominalkonstruktioner :	
I. 45	The offender had pleaded not guilty to one offence of being concerned in the <i>supply</i> of a controlled drug of Class A (The offender had pleaded not guilty to one offence of supplying a controlled drug of Class A)
I. 50	she was sentenced to twelve months' imprisonment on each count, suspended for two years, with a two year <i>supervision requirement</i> (she was sentenced to twelve months' imprisonment on each count, suspended for two years, with it being required that she is supervised for two year)
I. 55	In the course of a <i>conversation</i> that night (when/while they were talking that night)
I. 74	The offender's husband had become something of a father figure to A after the <i>separation</i> of his parents (The offender's husband had become something of a father figure to A after his parents had separated)
I. 76	The <i>marriage</i> between the offender and her husband was unhappy (the offender and her husband were unhappily married)
I. 224	it is difficult to avoid the <i>conclusion</i> that the offender's offer to supply cocaine was genuine (it is difficult not to conclude that the offender's offer to supply cocaine was genuine)
I. 231	she took an overdose of paracetamol in March 2008 which led to her <i>admission</i> to hospital for three days (she took an overdose of paracetamol in March 2008 which led to her being admitted to hospital for three days)
I. 271	unless there is any <i>suggestion</i> to the contrary from you (unless you can suggest anything else)
Lix:	
3618 ord	
svære ord	
256 perioder	
A = 19,9	
B = 15,3	
Lix = (A+ B) = 35,2 (middelsvær)	



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No. 2008/06150/A3

**IN THE COURT OF APPEAL
CRIMINAL DIVISION**

Royal Courts of Justice
The Strand
London WC2
21 January 2009

B e f o r e :

**THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(Lord Judge)
MR JUSTICE PITCHFORD
and
MR JUSTICE RODERICK EVANS**

**ATTORNEY GENERAL'S REFERENCE No. 70 of
2008**

**UNDER SECTION 36 OF
THE CRIMINAL JUSTICE ACT 1988**

R E G I N A

- v -

B W

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**Miss S Whitehouse appeared on behalf of the Attorney General
Mr R Lowe appeared on behalf of the Offender**

HTML VERSION OF JUDGMENT

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THE LORD CHIEF JUSTICE:

1. This is an application by Her Majesty's Solicitor General under section 36 of the Criminal Justice Act 1988 for leave to refer to this court for review a sentence she considers to be unduly lenient. The sentence was passed by His Honour Judge David Morris in the Crown Court at Newport on 21 October 2008.
2. The offender is 72 years old. He was born in August 1936. He has not previously been convicted.
3. He was charged with 20 counts of indecent assault on a female aged under 13 years contrary to section 14 of the Sexual Offences Act 1956. The charges related to indecent assaults on six girls.
4. On 19 September 2008, after an unsuccessful application was made on his behalf to stay the indictment as an abuse of process on the basis that it was an extremely stale prosecution, the offender offered to plead guilty to one count of indecent assault in relation to each of the victims. The plea was offered, and accepted, on the basis that they represented specific indecent assaults and that they were not specimen counts. The offender was accordingly sentenced on that basis.
5. The sentence imposed by Judge Morris on 21 October 2008 was a Community Order with requirements to participate in a Sex Offenders Programme and to attend probation appointments for a period of three years. The offender was also disqualified from working with children and made subject to the notification requirements of the Sexual Offences Act 2003.
6. In brief summary the allegations of sexual indecency involved the offender fondling the vaginas of his nieces in the late 1950s, early 1960s and 1970s, and then, after a twenty year gap, another incident where the vagina of a great niece was fondled in about 1992 or 1993. It is important to note that there was no penetration and no other additional touching in relation to the offences to which he had pleaded guilty.
7. We need not name, and we shall not identify, any of the victims by name. The first, K, was 5 years old when she found herself alone in the house with the offender. He fondled her in the area of the vagina. By the time these matters came to light she could not remember whether the fondling had occurred under or over her clothing.
8. The second girl, S, was subjected to much the same kind of indecency in the course of a car journey she was taking with the offender to his home when he stopped the vehicle in a lane. He

moved his hand up her leg higher and higher. She held her dress down on her thigh and between her legs and said no to him. He made a reply to the effect of "Let me and I will give you pocket money". She said, "No". The offender desisted and they drove on.

9. The third girl, E, was aged 6 or 7. She was in bed with mumps in 1961 or 1962. The offender put his hand under the bedding and inside her pyjamas.
10. A similar incident occurred in the course of another car journey. The offender put his hand inside H's knickers and touched her vagina. He asked her not to tell, that it was their secret.
11. The fifth of the incidents involved J. The offender visited her in her bedroom in 1968 or 1969, pulled up her nightdress and touched her in the area of the vagina.
12. The last victim, L, is a great niece of the offender. Her sister saw the offender touching L in the area of her vagina when she was 5 or 6 years old. The victim herself had no recollection of the incident.
13. Following this last incident the family became aware of what had happened to L. A meeting was held in which, the offender having made admissions of what he had done, the family decided on the action to be taken. The decision was that if the offender promised not to do it again and to receive treatment, then he would not be reported to the police. He agreed. He went to see his general practitioner to whom he confessed his offences and he attended for further professional treatment. In the end he discharged himself. Since then there have been no further offences.
14. These matters would not have come to light, save for something entirely coincidental. In April 2007 the offender's brother and sister-in-law, with whom he was living, fostered a child. A family member, who knew about the offender's criminal behaviour, was very concerned about the possible implications for another small child in the home where the offender was living. Information was given to the police because the member of the family was concerned for the welfare of any foster children.
15. Following that information, a meeting was held between the police and Social Services. In May 2007 Social Services visited the address where the offender was living to check the accuracy of the information. When he was asked, the offender admitted to the social workers that he had indecently touched his nieces. He made reference to having received medical treatment for his problem. He gave his consent that his medical records about the treatment for his sexual problems should be disclosed to the social workers. Social Services were therefore able to confirm that he had received hospital treatment in 1993.
16. Following all that, a police investigation commenced. The victims made the allegations that they had suffered sexual abuse at the hands of the offender when they were children. The offender was invited to attend the police station in Newport in late November. He was then arrested on suspicion of indecent assault upon the victims. In the presence of his solicitor, and on his advice, on interview he made no comment to the allegations.
17. When the case was listed for trial it was submitted on the offender's behalf that the allegations were so old and so delayed that he could not receive a fair trial and thus an abuse of process would be constituted. That submission was rejected. Accordingly, the case was adjourned for trial. However, on 19 September 2008 the offender pleaded guilty to one count of indecent assault involving each of the six victims.
18. The judge adjourned sentence. He indicated that his preliminary view was that the matter was so

serious that only immediate imprisonment could be considered. A pre-sentence report was prepared. It is clear from the report that the judge's observation had rightly been conveyed to the author of the report and that it had influenced her response.

19. On 16 October 2008, after hearing the prosecution opening and the mitigation advanced on behalf of the offender, Judge Morris was troubled by the contents of the pre-sentence report. It is at this stage that the Reference becomes sparse. It does not begin to convey the extreme care with which Judge Morris approached this difficult sentencing decision. The problem with the pre-sentence report can be seen by a contrast between these two paragraphs:

"4.2 It is my opinion that [the offender] poses a high risk of serious harm to children. The nature of this abuse is sexual assault and manipulation or intimidation of vulnerable individuals. This opinion is also confirmed by the risk assessment tool currently used by the National Probation Service.

4.3 [The offender] has been assessed as falling into the low risk category using Risk Matrix 2000."

20. The judge decided that he wanted more information. He adjourned the case so that it might be obtained both from the author of the pre-sentence report and from the court liaison probation officer. He told the offender that the offences he had committed were serious. He recorded that they had been committed many years ago and that he had not offended in this way for a large number of years. He noted that the offender had made admissions at the time when the family first became aware of his "disgraceful conduct" and had made further admissions which ultimately ended in a guilty plea. He said that normally such offences could only be dealt with by immediate imprisonment. He decided however that a tension arose in this case between the public interest to see that sex offenders were locked up for a period of time and the interests of the offender. He remanded the offender in custody whilst further information was provided.
21. Following the luncheon adjournment the court liaison officer gave evidence. The judge was concerned about the differences that we have indicated. The evidence given by the liaison probation officer was fairly summarised by counsel for the Crown when he said:

"The risk of offending is low, but if the re-offending did occur, then the risk of harm to a person would be high."

22. There remained, however, the view of the author of the pre-sentence report that a custodial sentence would be appropriate. The judge wanted to know from her why she had formed this opinion and to examine how, if at all, any Sex Offender Programme which might be available in prison would work and make any difference to the offender. He therefore decided not to pass sentence at that stage. His view was that imprisonment was almost inevitable but that in fairness he should explore any possible alternatives, albeit he said:

"I do not presently take a view that there is one, but if there is then I ought to know about it and be able to consider it on its own merits."

Accordingly the case was adjourned.

23. The author of the pre-sentence report attended court on 21 October and gave evidence. She began by dealing with the way in which a programme might work. Following a detailed analysis of the possibility with the element of punishment very much in mind, the witness was cross-examined on behalf of the applicant. She agreed that she had been influenced by the view expressed by the

judge when she had first produced her report, but her conclusion remained unaltered.

24. Following a consideration of all that material the judge came to pass sentence. His sentencing remarks show the meticulous and balanced approach that he had taken in reaching his decision. He addressed all the significant features of the offender's criminality. He reminded himself of the views expressed by the author of the pre-sentence report, to which she had adhered in her evidence, and he reminded himself of the basis of the offender's plea by which he was bound. He also recognised that none of the incidents of sexual indecency for which he had to sentence the offender involved any penetrative sexual interference, that none was marked by oral sex, and that none involved the offender persuading or cajoling the child to touch him indecently. The judge considered those matters before he turned to the "subjective elements" of the case. He said:

"You are now 72 years of age. You have not re-offended since 1992. There are no young children within the family setting within which you now reside, and it is not suggested that you present as a danger to young children generally given the pattern of your previous and now admitted offending. I am asked to consider whether it is really necessary in the public interest now to send a man like you to prison."

Having reflected on these matters and gone through all the material before him, the judge noted that in 1992 the last of the offences had come to light within the family, that within the family the offender had made admissions and had sought medical attention, and that there had been no re-offending since. He said:

"The public interest should be that offenders of this type are dealt with in a way, whether it is simply by locking them up, or in any other way, which removes or minimises any risk of re-offending."

In the offender's case there was no risk, given his age, that could not be managed within the community. Accordingly, for "very special reasons which apply to this particular case alone" the judge declined to pass an immediate custodial sentence.

25. The Solicitor General points to the following aggravating features. The offender was in a position of trust; there were six victims who were all very young girls at the time when they were indecently assaulted; and there would be a considerable impact on the victims (save for the last one who had no recollection of it).
26. On the other hand, the Solicitor General acknowledged that there were the features of mitigation which the judge regarded as sufficient in the end to persuade him to pass "an exceptional sentence".
27. It is suggested that the offences should have been met with a sentence of immediate imprisonment. It is acknowledged by Miss Whitehouse, who appears today on behalf of the Solicitor General, that the judge gave careful consideration to the sentencing exercise. However, it is contended that in the end he gave undue weight to the mitigating features and insufficient weight to the aggravating factors. It is said:

"The authorities demonstrate that the good character of the offender and the age of the offences are of comparatively little weight."

So, too, it was suggested, is the age of the offender.

28. Inherent in this application is what we perceive to be the danger that the sentencing process should be approached as if it involves compartmentalisation. In many cases of serious sexual assault it is true that too much weight should not be given to the age of the offender or indeed the age of the offences, particularly if the offender has deliberately pressurised his victims into silence. But these matters do not cease to be factors which may form part of available mitigation. They are not always of "comparatively little weight". Nothing is *always of little weight*. Everything must depend on the individual circumstances of the specific case and the sentencing decision which the judge has to make in relation to the defendant who is standing before him in the dock. And in these applications our concern is with the eventual sentence, and whether it is properly to be described, in the round, as unduly lenient.
29. This sentence was imposed by a very experienced trial judge who had most carefully considered every single serious and aggravating feature of the offences committed by the offender. In the end he decided that the right sentence was a non-custodial sentence for an offender who was aged 72, in poor health, none of whose offences had involved sexual penetration of any of his victim, whose offences (apart from one) had happened at least thirty years or more ago, and whose last offence occurred sixteen years earlier, of which the victim herself had no recollection, and following which, under pressure from his family when these matter came to light he had attended his general practitioner and had received treatment, following which no further offending had occurred.
30. A non-custodial sentence in our judgment was within the proper range of the judgment and responsibility vested in the judge. If the sentences are to be regarded as merciful, perhaps it is salutary to remind ourselves of the observations of Lord Lane CJ in one of the very first Attorney General's References following the implementation of the 1988 Criminal Justice Act:

"That mercy should season justice is a proposition as soundly based in law as it is in literature."

For these reasons this application will be refused.

30. **MR LOWE:** My Lord, it remains, I am afraid --
31. **THE LORD CHIEF JUSTICE:** Yes, we have to sort out the sentence.
32. **MR LOWE:** Yes. The order imposed under the Criminal Justice Act 2003 and I am afraid we all omitted -- and I take responsibility for it -- to notice that those orders covered offences before April 2005. I have discussed with what my learned friend what would have been the correct sentencing regime and we are, I think, agreed that it should have been a Community Rehabilitation Order under section 41 of the Powers of Criminal Courts (Sentencing) Act 2000 and the conditions of that order would be the same.
33. **THE LORD CHIEF JUSTICE:** In practical terms, if we say that the order will be a Community Rehabilitation Order under section 41 with the same conditions attached to it, that will be sufficient, will it?
34. **MR LOWE:** Yes, I believe so.
35. **THE LORD CHIEF JUSTICE:** What has actually happened?
36. **MR LOWE:** What has happened is that he has been to six or seven appointments with the Probation Service, all of which he has attended, but because of this application, and because of concern being expressed about various children in the family, the main part of the probation course

was put on hold. The Probation Service are awaiting the judgment of this court before continuing. That is my understanding.

37. **THE LORD CHIEF JUSTICE:** And there are members of the family in court, are there not, Mr Lowe?
38. **MR LOWE:** There are. His brother, who has been supporting him, and a number of the victims are here today.
39. **THE LORD CHIEF JUSTICE:** We shall say no more than that this must have been a dreadful matter for every single member of this family. We recognise that and we thank them all for coming.

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21 January 2009 B W	
passiver:	
I. 33	The sentence was passed by His Honour Judge David Morris
I. 35	He has not previously been convicted
I. 36	He was charged with 20 counts of indecent assault
I. 38	after an unsuccessful application was made
I. 41	The plea was offered, and accepted
I. 42	The offender was accordingly sentenced on that basis
I. 43	The sentence imposed by Judge Morris
I. 45	The offender was also disqualified from working with children
I. 46	and (he was) made subject to the notification requirements of the Sexual Offences Act 2003
I. 49	the vagina of a great niece was fondled
I. 56	The second girl, S, was subjected to much the same kind of indecency
I. 70	A meeting was held
I. 72	the action to be taken
I. 72	then he would not be reported to the police
I. 79	Information was given to the police
I. 82	A meeting was held
I. 84	when he was asked
I. 86	his medical records about the treatment for his sexual problems should be disclosed to the social workers
I. 90	The offender was invited to attend the police station in Newport
I. 91	He was then arrested
I. 94	When the case was listed for trial
I. 94	it was submitted...that...
I. 95	an abuse of process would be constituted
I. 96	That submission was rejected
I. 96	the case was adjourned for trial
I. 100	only immediate imprisonment could be considered
I. 100	A pre-sentence report was prepared
I. 101	the judge's observation had rightly been conveyed to the author of the report
I. 104	Judge Morris was troubled by the contents of the pre-sentence report
I. 106	The problem with the pre-sentence report can be seen by a contrast between these two paragraphs
I. 110	This opinion is also confirmed by the risk assessment tool currently used by the National Probation Service.
I. 112	[The offender] has been assessed as falling into the low risk category
I. 114	it might be obtained both from the author of the pre-sentence report and from the court liaison probation officer
I. 117	they had been committed many years ago
I. 122	sex offenders were locked up
I. 123	whilst further information was provided.
I. 125	The evidence given by the liaison probation officer
I. 126	The evidence...was fairly summarised by counsel
I. 137	Accordingly the case was adjourned
I. 140	the witness was cross-examined
I. 141	she had been influenced by the view...
I. 141	the view expressed by the judge
I. 145	the views expressed by the author of the pre-sentence report

I. 147	the basis of the offender's plea by which he was bound
I. 149	none was marked by oral sex
I. 154	it is not suggested that you present as a danger to young children
I. 156	I am asked to consider...
I. 165	there was no risk, given his age, that could not be managed within the community
I. 169	when they were indecently assaulted
I. 175	It is suggested that...
I. 175	the offences should have been met with a sentence of immediate imprisonment
I. 176	It is acknowledged by Miss Whitehouse...that...
I. 179	it is said:
I. 182	it was suggested
I. 183	the sentencing process should be approached as if it involves compartmentalisation
I. 185	too much weight should not be given to the age of the offender
I. 191	whether it is properly to be described, in the round, as unduly lenient
I. 193	This sentence was imposed by a very experienced trial judge
I. 194	the offences committed by the offender
I. 201	the proper range of the judgment and responsibility vested in the judge
I. 202	If the sentences are to be regarded as merciful
I. 207	this application will be refused
I. 210	The order imposed under the Criminal Justice Act 2003
I. 223	because of concern being expressed about various children in the family
I. 223	the main part of the probation course was put on hold
Adverbialer:	
I. 38 (initial)	<i>On 19 September 2008, after an unsuccessful application was made on his behalf to stay the indictment as an abuse of process on the basis that it was an extremely stale prosecution, the offender offered to plead guilty to one count of indecent assault</i>
I. 47 (initial)	<i>In brief summary the allegations of sexual indecency involved the offender fondling the vaginas of his nieces</i>
I. 48 (initial)	<i>and then, after a twenty year gap, another incident where the vagina of a great niece was fondled in about 1992 or 1993</i>
I. 54 (initial)	<i>By the time these matters came to light she could not remember whether the fondling had occurred under or over her clothing</i>
I. 70 (initial)	<i>Following this last incident the family became aware of what had happened to L</i>
I. 71 (initial)	<i>A meeting was held in which, the offender having made admissions of what he had done, the family decided on the action to be taken</i>
I. 72 (initial)	<i>if the offender promised not to do it again and to receive treatment, then he would not be reported to the police</i>
I. 76 (initial)	<i>In April 2007 the offender's brother and sister-in-law, with whom he was living, fostered a child.</i>
I. 82 (initial)	<i>Following that information, a meeting was held between the police and Social Services.</i>
I. 84 (initial)	<i>When he was asked, the offender admitted to the social workers that he had indecently touched his nieces</i>
I. 89 (initial)	<i>Following all that, a police investigation commenced.</i>
I. 92 (initial)	<i>In the presence of his solicitor, and on his advice, on interview he made no comment to the allegations</i>
I. 94 (initial)	<i>When the case was listed for trial it was submitted on the offender's behalf that...</i>

I. 96 (initial)	<i>However, on 19 September 2008 the offender pleaded guilty to one count of indecent assault</i>
I. 103 (initial)	<i>On 16 October 2008, after hearing the prosecution opening and the mitigation advanced on behalf of the offender, Judge Morris was troubled by the contents of the pre-sentence report</i>
I. 124 (initial)	<i>Following the luncheon adjournment the court liaison officer gave evidence</i>
I. 139 (initial)	<i>Following a detailed analysis of the possibility with the element of punishment very much in mind, the witness was cross-examined</i>
I. 143 (initial)	<i>Following a consideration of all that material the judge came to pass sentence</i>
I. 158 (initial)	<i>Having reflected on these matters and gone through all the material before him, the judge noted that...</i>
I. 165 (initial)	<i>In the offender's case there was no risk, given his age, that could not be managed within the community.</i>
I. 166 (initial)	<i>Accordingly, for "very special reasons which apply to this particular case alone" the judge declined to pass an immediate custodial sentence.</i>
I. 172 (initial)	<i>On the other hand, the Solicitor General acknowledged that...</i>
I. 183 (medial)	<i>Inherent in this application is what we perceive to be the danger that the sentencing process should be approached as if it involves compartmentalisation</i>
I. 184 (initial)	<i>In many cases of serious sexual assault it is true that too much weight should not be given to the age of the offender</i>
I. 192 (medial)	<i>whether it is properly to be described, in the round, as unduly lenient.</i>
I. 199 (initial)	<i>under pressure from his family when these matter came to light he had attended his general practitioner and had received treatment</i>
I. 201 (medial)	<i>A non-custodial sentence in our judgment was within the proper range of the judgment</i>
I. 202 (initial)	<i>If the sentences are to be regarded as merciful, perhaps it is salutary to remind ourselves of the observations of Lord Lane CJ</i>
I. 207 (initial)	<i>For these reasons this application will be refused</i>
I. 211 (medial)	<i>I am afraid we all omitted -- and I take responsibility for it -- to notice that those orders covered offences before April 2005</i>
I. 216 (initial)	<i>In practical terms, if we say that the order will be a Community Rehabilitation Order under section 41 with the same conditions attached to it, that will be sufficient, will it?</i>
I. 222 (initial)	<i>because of this application, and because of concern being expressed about various children in the family, the main part of the probation course was put on hold.</i>
Sammensatte præpositioner:	
I. 27	on behalf of
I. 28	on behalf of
I. 40	in relation to
I. 50	in relation to
I. 103	on behalf of
I. 140	on behalf of
I. 176	on behalf of
I. 190	in relation to
Komplekse substantivsyntagmer:	
I. 31	an application by Her Majesty's Solicitor General under section 36 of the Criminal Justice Act 1988 for leave to refer to this court for review a sentence she considers to be unduly lenient

I. 36	20 counts of indecent assault on a female aged under 13 years contrary to section 14 of the Sexual Offences Act 1956
I. 43	The sentence imposed by Judge Morris
I. 43	a Community Order with requirements to participate in a Sex Offenders Programme and to attend probation appointments for a period of three years
I. 46	the notification requirements of the Sexual Offences Act 2003
I. 48	another incident where the vagina of a great niece was fondled
I. 50	the offences to which he had pleaded guilty
I. 56	a car journey she was taking with the offender to his home
I. 59	a reply to the effect of "Let me and I will give you pocket money"
I. 71	A meeting (was held) in which,...., the family decided on the action to be taken
I. 73	his general practitioner to whom he confessed his offences
I. 77	the offender's brother and sister-in-law, with whom he was living,
I. 77	A family member, who knew about the offender's criminal behaviour,
I. 78	the possible implications for another small child
I. 79	child in the home where the offender was living
I. 83	the address where the offender was living
I. 85	reference to having received medical treatment for his problem
I. 91	suspicion of indecent assault upon the victims
I. 97	one count of indecent assault involving each of the six victims
I. 105	the extreme care with which Judge Morris approached this difficult sentencing decision
I. 111	the risk assessment tool currently used by the National Probation Service
I. 118	the time when the family first became aware of his "disgraceful conduct"
I. 119	further admissions which ultimately ended in a guilty plea
I. 125	The evidence given by the liaison probation officer
I. 129	the view of the author of the pre-sentence report
I. 131	any Sex Offender Programme which might be available in prison
I. 139	the way in which a programme might work
I. 139	a detailed analysis of the possibility with the element of punishment very much in mind
I. 144	the meticulous and balanced approach that he had taken
I. 145	all the significant features of the offender's criminality
I. 145	the views expressed by the author of the pre-sentence report, to which she had adhered in her evidence,
I. 147	the basis of the offender's plea by which he was bound
I. 148	none of the incidents of sexual indecency for which he had to sentence the offender
I. 153	the family setting within which you now reside,
I. 166	"very special reasons which apply to this particular case alone"
I. 169	six victims who were all very young girls
I. 172	the features of mitigation which the judge regarded as sufficient in the end to persuade him to pass "an exceptional sentence"
I. 176	Miss Whitehouse, who appears today on behalf of the Solicitor General,
I. 187	factors which may form part of available mitigation
I. 188	the sentencing decision which the judge has to make
I. 190	the defendant who is standing before him
I. 193	a very experienced trial judge who had most carefully considered every single serious and aggravating feature of the offences
I. 195	a non-custodial sentence for an offender who was aged 72, in poor health, none of whose offences had involved sexual penetration of any of his victim, whose offences (apart from one) had happened at least thirty years or more

	ago, and whose last offence occurred sixteen years earlier
I. 197	(an offender) whose last offence occurred sixteen years earlier, of which the victim herself had no recollection, and following which,...he had attended his general practitioner and had received treatment??
I. 200	treatment, following which no further offending had occurred??
I. 210	The order imposed under the Criminal Justice Act 2003
I. 213	a Community Rehabilitation Order under section 41 of the Powers of Criminal Courts (Sentencing) Act 2000
I. 216	a Community Rehabilitation Order under section 41 with the same conditions attached to it
I. 221	six or seven appointments with the Probation Service, all of which he has attended,
Fagterminologi:	
I. 28	offender
I. 35	Offender
I. 36	Counts
I. 37	Charges
I. 39	indictment
I. 39	prosecution
I. 40	Offender
I. 40	count
I. 42	Offender
I. 45	Offender
I. 47	allegations
I. 47	Offender
I. 50	Offences
I. 53	Offender
I. 57	Offender
I. 60	Offender
I. 61	Offender
I. 63	Offender
I. 65	Offender
I. 67	Offender
I. 67	Offender
I. 71	Offender
I. 72	Offender
I. 74	Offences
I. 75	Offences
I. 77	offender's
I. 78	offender's
I. 79	Offender
I. 83	Offender
I. 84	offender
I. 89	allegations
I. 90	Offender
I. 90	Offender
I. 92	Solicitor
I. 93	allegations
I. 94	offender's

I. 94	allegations
I. 96	to constitute
I. 97	Offender
I. 97	count
I. 103	prosecution
I. 103	mitigation
I. 104	Offender
I. 108	Offender
I. 112	Offender
I. 116	Offender
I. 117	to offend
I. 118	Offender
I. 120	Offences
I. 126	Counsel
I. 126	the Crown
I. 127	Offending
I. 127	Re-offending
I. 132	Offender
I. 141	Applicant
I. 145	offender's
I. 146	To adhere
I. 147	offender's
I. 147	plea
I. 148	to sentence
I. 149	Offender
I. 150	Offender
I. 152	Re-offended
I. 156	Offending
I. 159	Offences
I. 160	Offender
I. 160	Re-offending
I. 161	offenders
I. 164	Re-offending
I. 165	offender's
I. 168	Offender
I. 175	Offences
I. 180	Offender
I. 181	Offences
I. 182	Offender
I. 185	Offender
I. 186	Offences
I. 186	Offender
I. 187	mitigation
I. 194	Offender
I. 195	Offender
I. 196	Offences
I. 197	Offences
I. 197	offence
I. 200	Offending
I. 211	Orders

I. 211	Offences
juridiske kollokationer:	
I. 3	court of appeal
I. 4	criminal division
I. 27	attorney general
I. 30	lord chief justice
I. 31	her majesty's solicitor general
I. 32	to apply for leave to...
I. 32	unduly lenient
I. 33	to pass a sentence
I. 33	the Crown Court
I. 35	to be convicted
I. 36	to be charged with...
I. 36	indecent assault
I. 37	indecent assault
I. 39	abuse of process
I. 40	to plead guilty
I. 40	indecent assault
I. 41	to offer a plea
I. 41	to accept a plea
I. 41	indecent assault
I. 42	specimen counts
I. 43	to impose a sentence
I. 43	community order
I. 44	probation appointments
I. 45	notification requirements
I. 51	plead guilty to...
I. 78	criminal behaviour
I. 92	on suspicion of
I. 92	indecent assault
I. 94	to be listed for trial
I. 95	To receive a fair trial
I. 95	an abuse of process
I. 96	to reject a submission
I. 96	to adjourn a case for trial
I. 97	to plead guilty to...
I. 97	indecent assault
I. 99	to adjourn sentence
I. 99	preliminary view
I. 100	Pre-sentence report
I. 104	Pre-sentence report
I. 106	sentencing decision
I. 106	Pre-sentence report
I. 114	to adjourn a case
I. 115	Pre-sentence report
I. 115	court liaison probation officer
I. 116	to commit an offence
I. 120	a guilty plea
I. 123	to remand in custody

I. 124	court liaison probation officer
I. 124	give evidence
I. 125	give evidence
I. 125	court liaison probation officer
I. 129	Pre-sentence report
I. 129	a custodial sentence
I. 132	To pass sentence
I. 137	to adjourn a case
I. 138	Pre-sentence report
I. 138	to attend court
I. 138	to give evidence
I. 140	to cross-examine a witness
I. 143	To pass sentence
I. 143	sentencing remarks
I. 146	Pre-sentence report
I. 149	penetrative sexual interference
I. 167	To pass sentence
I. 167	a custodial sentence
I. 168	the Solicitor General
I. 168	aggravating features
I. 170	indecently assaulted
I. 170	considerable impact
I. 172	the Solicitor General
I. 172	features of mitigation
I. 173	to pass a sentence
I. 175	A sentence of immediate imprisonment
I. 176	the Solicitor General
I. 177	the sentencing exercise
I. 178	mitigating features
I. 178	aggravating factors
I. 183	sentencing process
I. 189	sentencing decision
I. 192	unduly lenient
I. 193	to impose a sentence
I. 193	trial judge
I. 194	aggravating features
I. 194	to commit an offence
I. 195	a non-custodial sentence
I. 201	a non-custodial sentence
I. 203	attorney general
I. 207	to refuse an application
I. 210	to impose an order
I. 203	a Community Rehabilitation Order
I. 206	a Community Rehabilitation Order
I. 222	the Probation Service
I. 223	the probation course
I. 224	the Probation Service
Nominalkonstruktionen	
:	

I. 43	The <i>sentence</i> imposed by Judge Morris on 21 October 2008 was a Community Order with <i>requirements</i> to participate in a Sex Offenders Programme (Judge Morris sentenced the offender to a Community Order on 21 October 2008 and required him to participate in a Sex Offenders Programme)
I. 54	she could not remember whether the <i>fondling</i> had occurred under or over her clothing. (she could not remember whether he had fondled her under or over her clothing)
I. 68	The victim herself had no <i>recollection</i> of the incident (The victim herself did not recollect/remember the incident)
I. 71	the offender having made <i>admissions</i> of what he had done (the offender having admitted what he had done)
I. 72	the family decided on the <i>action</i> to be taken (the family decided on how to act to the offences)
I. 72	The <i>decision</i> was that if the offender promised not to do it again... (They decided that if the offender promised not to do it again...)
I. 75	Since then there have been no further <i>offences</i> . (Since then he has not offended)
I. 79	A family member...was very concerned about the possible <i>implications</i> for another small child (A family member...was very concerned what that could possibly imply for another small child)
I. 79	<i>Information</i> was given to the police because the member of the family was concerned for the welfare of any foster children (the family member informed the police because he/she was concerned for the welfare of any foster children)
I. 85	He made <i>reference</i> to having received medical treatment for his problem (He referred to having received medical treatment for his problem)
I. 88	he had received hospital <i>treatment</i> in 1993 (he had been treated in hospital in 1993)
I. 89	Following all that, a police <i>investigation</i> commenced. (Following all that, the police started investigating)
I. 89	The victims made the <i>allegations</i> that they had suffered sexual <i>abuse</i> (The victims alleged that they had been sexually abused)
I. 91	He was then arrested on <i>suspicion</i> of indecent assault (He was then arrested because the police suspected him of indecent assault)
I. 92	In the presence of his solicitor, and on his <i>advice</i> , on interview he made no <i>comment</i> to the allegations (In the presence of his solicitor, and because he advised him not to, on interview he did not comment on the allegations)
I. 118	the offender had made <i>admissions</i> (the offender had admitted...)
I. 119	and (he) had made further <i>admissions</i> (and (he)had furthermore admitted to...)
I. 124	Following the luncheon <i>adjournment</i> (After they had adjourned for lunch)
I. 132	He therefore decided not to pass <i>sentence</i> at that stage (He therefore decided not to sentence the defendant at that stage)
I. 133	His view was that <i>imprisonment</i> was almost inevitable (His view was that it was almost inevitable for the defendant to go to prison)
I. 143	Following a <i>consideration</i> of all that material the judge came to pass <i>sentence</i> . (after considering all that material the judge came to sentence the defendant)
I. 160	the offender had made <i>admissions</i> (the offender had admitted...)
I. 171	save for the last one who had no <i>recollection</i> of it (save for the last one who did not recollect/remember it)
I. 177	the judge gave careful consideration to the sentencing exercise (the judge carefully considered the sentencing exercise)
I. 197	whose last <i>offence</i> occurred sixteen years earlier (who offended for the last time 16 years ago)

I. 198	of which the victim herself had no <i>recollection</i> (which the victim herself did not recollect/remember)
I. 200	and had received <i>treatment</i> (and had been treated)
I. 203	the <i>observations</i> of Lord Lane CJ in one of the very first Attorney General's References (what Lord Lane CJ observed in one of the very first Attorney General's References)
I. 204	following the <i>implementation</i> of the 1988 Criminal Justice Act (after the 1988 Criminal Justice Act had been implemented)
I. 216	if we say that the <i>order</i> will be a Community Rehabilitation Order under section 41 with the same conditions attached to it, that will be sufficient, will it? (if we say that I order a Community Rehabilitation Order under section 41 with the same conditions attached to it, that will be sufficient, will it?)
I. 225	that is my <i>understanding</i> (that is how I understand it)
Lix:	
3125 ord	
823 svære ord	
172 perioder	
A = 26,3	
B = 18,2	
Lix = (A+ B) = 44,5 (middelsvær)	



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Case No: 200806093 A7

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM CROWN COURT AT GREAT GRIMSBY
HIS HONOUR JUDGE MOORE
T20080168**

Royal Courts of Justice
Strand, London, WC2A 2LL
29/07/2009

B e f o r e :

**LORD JUSTICE RIX
MR JUSTICE CALVERT-SMITH
and
HIS HONOUR JUDGE PAGET QC**

Between:

REGINA

Respondent

- and -

DANIEL ANTHONY DEAN TUPLIN

Appellant

**Mr E Bindloss (instructed by Rix McLaren) for the Appellant
Mr I J Groom (instructed by Grimsby CPS Trial Unit) for the Respondent
Hearing dates : 10th February 2009**

HTML VERSION OF JUDGMENT

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Lord Justice Rix :

1. This appeal raises the complex and controversial question of the circumstances in which the Crown Court is restricted in its sentencing powers to those of the magistrates' court. It began life as an application for leave to appeal against sentence which was referred to the full court by the registrar of criminal appeals. However, we granted leave to appeal and allowed the appeal at its hearing. The effect was the reduction of the appellant's total sentence from one of ten months to one of eight months. These are our reasons for that decision.
2. Daniel Tuplin, the appellant, was born on 28 April 2008. He was just 19 at the time of his offending, and 20 at the time of sentence. His previous record and the conduct for which he was sentenced are certainly unattractive, although in the instant case of relatively minor criminality. However, his appeal turns not on any assessment of his culpability but on matters of law.
3. His sentence arose out of his unpleasant harassment of a family in his neighbourhood of Barrow on Humber. He got it into his head that because the wife of this household had been targeted as a girl by Ian Huntley, she might become the victim of his own malice. On 22 February 2008 she observed him next to her house with a stepladder. She called the police. He was searched and items from a neighbour's garden shed were found on him. Later the police searched his home and found cannabis resin there. He pleaded guilty to burglary and possession of the controlled drug and on 5 March 2008 received a community order from North Lincolnshire magistrates' court. As a result he became verbally abusive to the woman and her husband, and threatened them and their children.
4. On 29 March 2008 at about 5am the appellant approached their house and threatened to set fire to it and cut their children's throats. He was abusive and sought to goad the husband into a fight. He then kicked their Mitsubishi Shogun and Mercedes car, causing slight damage to each which was estimated to cost respectively £300/400 and £1,000 to repair. The police were called, and on his arrest he was put in the back of a police car. There he verbally abused and spat at a police officer. He denied the offences in interview and blamed the other family.
5. In the event, he was charged with threatening to destroy or damage property, ie the house (under section 2(a) of the Criminal Damage Act 1971), with assault of a constable in the execution of his duty (under section 89(1) of the Police Act 1996), and with "Criminal damage to property valued under £5000", ie to the two cars (under sections 1(1) and 4 of the Criminal Damage Act 1971).
6. In due course the appellant was committed for trial under section 6(2) of the Magistrates' Courts Act 1980 for the offence of threatening to destroy or damage property under section 2(a) of the Criminal Damage Act 1971. That offence led the indictment as count 1. In the event, the prosecution chose to offer no evidence on that count (in circumstances set out below) and a verdict of not guilty was recorded pursuant to section 17 of the Criminal Justice Act 1967.
7. Two further counts were included in the indictment pursuant to section 40(1) and (3) of the Criminal Justice Act 1988 (see below at para 22): viz, count 2, a count of damaging property under section 1(1) of the Criminal Damage Act 1971 (the two cars), and count 3, a count of common assault under section 39 of the Criminal Justice Act 1988 (the spitting at the police officer). It was common ground at the appeal that these two counts were included pursuant to section 40, and the judge, HHJ Moore, purported to direct his sentence on that basis.

8. On 11 August 2008, at a plea and case management hearing, the appellant pleaded guilty to count 3 (common assault) at the Crown Court at Grimsby before HHJ Swanson. On 29 September 2008, the day before trial, at a disclosure hearing, the appellant also pleaded guilty to count 2 (criminal damage), before Judge Moore. Lastly, on 30 September, the day of trial, a new count, count 4, of affray under section 3(1) of the Public Order Act 1986 was added by agreement and the appellant pleaded guilty to the alternative lesser offence of using threatening, abusive or insulting words or behaviour with intent contrary to section 4 of the 1986 Act. That was done by virtue of section 7(3) of the 1986 Act (see below at para 30). That was in respect of the threats to the family. The Crown and the judge accepted that the threats were not meant seriously and were made in the heat of the moment. The pleas of 29/30 September were acceptable to the Crown and had been prompted by a letter to the defence dated 26 September.
9. In the circumstances, the judge had before him three offences on indictment which were or were treated as being summary only: an offence of criminal damage (count 2) in an amount below £5,000, an either way offence but one for which the maximum sentence on summary disposal in the magistrates' court would have been 3 months (sections 22(1) and (2) and 33(1) of the Magistrates' Courts Act 1980, see also Schedule 2 to that Act); an offence of common assault (count 3), a summary offence with a maximum sentence of six months; and an offence of threatening words or behaviour with intent (as an alternative to count 4), also a summary offence with a maximum sentence of 6 months.
10. On 17 October 2008 Judge Moore sentenced the appellant to terms of detention in a young offender institution as follows. On count 2 (criminal damage), 2 months; on count 3 (common assault), 3 months consecutive; on count 4 (disorderly behaviour with intent), 3 months consecutive: a total of 8 months detention (the "basic sentence"). In addition, the judge revoked the community order which had been imposed by the magistrates' court on 5 March 2008 and resented the appellant in respect of the two offences committed on 22 February 2008 as follows: for the burglary, 2 months' detention consecutive, and for the possession of the cannabis resin, no separate penalty (the "additional sentence"). The total sentence was therefore one of 10 months detention. No complaint is made about the additional sentence. We are concerned only with the basic sentence of 8 months.
11. Although the appellant *in fact* pleaded guilty under count 4 to the alternative lesser offence of threatening words or behaviour with intent contrary to section 4 of the Public Order Act 1986, the appeal before us was conducted throughout on the basis that the alternative offence to which the appellant had pleaded guilty was section 4A of the same Act, a very similar offence of using disorderly behaviour with intent. We were told that this was done by virtue of section 6(1)(b) of the Criminal Law Act 1967 (see below at para 29). This error was common ground at the appeal. However the error arose, it found its way into the summary prepared by the Criminal Appeals Office for the court and agreed by the parties. The error came to light as a result of further enquiries which we have caused to be made in the course of writing this judgment (and which have delayed it). We are grateful to the Criminal Appeals Office for obtaining for us a transcript of the "Discussion regarding amendment of indictment to add count 4 and arraignment on that count" dated 30 September 2008. It is quite plain from that transcript that on count 4, when it was added, the appellant pleaded not guilty to affray "but guilty to section 4".
12. We will come below to the consequences of a conviction pursuant to section 4 rather than section 4A of the Public Order Act 1986. In the meantime, however, we continue this judgment on the basis argued at the appeal, which was that the count 4 conviction was pursuant to section 4A.

13. It was submitted by Mr Edward Bindloss on behalf of the appellant that the Crown Court was limited in respect of the three counts concerned to a maximum combined sentence of 6 months, on the basis that the Crown Court was limited to the sentencing powers of a magistrates' court and a magistrates court could not have sentenced these three offences to more than 6 months: see section 133(1) of the Magistrates' Courts Act 1980 (at para 21 below). The latter point, as to the powers of a magistrates' court under section 133(1), was not in dispute.
14. On behalf of the Crown, however, Mr Ian Groom submitted that at the Crown Court the judge was not so limited. He had two major arguments. The first was that the sentence on count 4 stood apart. This was not included in the indictment under section 40 of the Magistrates' Courts Act 1980, but only came on the scene, pursuant to section 6(1) of the Criminal Law Act 1967, as a result of the amendment to include count 4. There was nothing about a plea of guilty in such circumstances which limited the Crown Court to the maximum sentence available to the magistrates' court under section 133(1). It followed that there was nothing to stop Judge Moore adding his 3 months in respect of count 4 on top of the 5 months in respect of counts 2 and 3 combined *even if* those two offences, having been included in the indictment pursuant to section 40 of the Criminal Justice Act 1988, had themselves to be sentenced within the six months maximum provided by section 133(1).
15. Mr Groom's second argument was that an either way offence of criminal damage (count 2) did not cease to be an either way offence when included in an indictment pursuant to section 40 unless and until the magistrates' court had concluded that it appeared to them that the damage concerned was to be valued at less than £5,000 (see section 22(2) of the Magistrates' Courts Act 1980 at para 19 below), and there was no evidence that the magistrates in this case had turned their minds to that question: see *R v. Alden* [2002] EWCA Crim 421, [2002] 2 Cr App R (S) 74. Mr Groom also appeared to challenge whether count 2 had been included in the indictment pursuant to section 40. Therefore count 2 on the indictment remained an either way offence in the Crown Court and so in theory Judge Moore was operating on a maximum sentence of 10 years, even if in practice he might be inclined (as he was) to sentence within the 3 months' sentence available to a magistrates' court. Even so, Judge Moore was not bound to sentence count 2 within the six months' total to which a magistrates' court would be limited by section 133(1). In sum, the judge was entitled to sentence the three counts concerned as he had done, irrespective of the 6 months' limit which would have applied in the magistrates' court.
16. Before the judge Mr Bindloss had submitted to the judge that he was bound, since he was concerned with three summary offences (the criminal damage offence being treated under section 40(2) as if it were a summary offence), to sentence within the six months available to a magistrates' court. This argument was renewed to the judge at a "slip rule" application made to him on 31 November 2008. The judge gave a ruling rejecting that submission, and we have that ruling before us. The judge accepted that counts 2 and 3 were before him pursuant to section 40 of the Criminal Justice Act 1988 and the alternative to count 4 pursuant to "the different statutory power which permits the defendant to plead to such counts as a jury could bring in". That appears to be a reference to the language of section 6(1)(b) of the Criminal Law Act 1967. He concluded that he was therefore limited to the individual maxima to which the magistrates' court would have been subject, viz 3 months in the case of criminal damage of less than £5,000. However, he rejected the idea that section 40(2) (or anything else) introduced the further limitation of section 133(1). He said:

"It is important to distinguish between those words in section 40(2), which I have already highlighted [viz, "the Crown Court may only deal with the offender in respect of it in a manner in which a Magistrates' Court could have dealt with him", see below] and the other powers of the Magistrates' Courts Act. They are provided by a specific

statute which has no application whatsoever to the Crown Court on indictment. The powers of the Crown Court on indictment are set down by a totally different statutory regime. If Parliament had intended one to influence the other it would have said so. In the absence of it saying so it cannot be the case that a conclusion which would be both artificial and contrary to justice, in my view, should be imported."

17. On this appeal, Mr Bindloss submits that the judge was wrong. Section 40(2) does import the sentencing regime of the magistrates' court into the Crown Court. Moreover, the same is true under the section 6 regime of the Criminal Law Act 1967. For his part, as will appear, Mr Groom came eventually very close to conceding the appeal.

The statutory provisions

18. The following provisions are relevant for present purposes to the sentencing regime of the magistrates' courts.

(1) The Magistrates' Courts Act 1980

19. Section 22 provides:

22. (1) If the offence charged by the information is one of those mentioned in the first column of Schedule 2 to this Act (in this section referred to as "scheduled offences") then, ...the court shall, before proceeding in accordance with section 19 above, consider whether, having regard to any representations made by the prosecutor or the accused, the value involved (as defined in subsection (10) below) appears to the court to exceed the relevant sum.

For the purposes of this section the relevant sum is £5,000.

(2) If, where subsection (1) above applies, it appears to the court clear that, for the offence charged, the value involved does not exceed the relevant sum, the court shall proceed as if the offence were triable only summarily, and sections 19 to 21 shall not apply.

(3) If, where subsection (1) above applies, it appears to the court clear that, for the offence charged, the value exceeds the relevant sum, the court shall thereupon proceed in accordance with section 19 above in the ordinary way without further regard to the provisions of this section."

Schedule 2, paragraph 1 refers to section 1 of the Criminal Damage Act 1971. Section 19 and following set out the procedure whereby a defendant is offered the option of electing for summary trial in the magistrates' court or jury trial in the Crown Court. However, under section 22(2) the justices may be compelled ("shall proceed as if the offence were triable only summarily") to deal with a case of low value simple criminal damage summarily.

20. Section 32(1) provides that on summary conviction of any of the offences triable either way listed within Schedule 1 of the Act (which includes section 1(1) of the Criminal Damage Act 1971) the magistrates court is limited to a term of 6 months. Section 33, however, goes on to provide that where there is a summary conviction pursuant to section 22(2), then the maximum sentence available is reduced to 3 months. Therefore, if it appears to the magistrates that the damage is below £5,000, the maximum sentence is 3 months.

21. Section 133(1) then provides that the maximum in the magistrates' court for a series of consecutive sentences is six months:

"...a magistrates' court imposing imprisonment or detention in a young offender institution on any person may order that the term of imprisonment or detention in a young offender institution shall commence on the expiry of any other term of imprisonment or detention in a young offender institution imposed by that or any other court; but where a magistrates' court imposes two or more terms of imprisonment or detention in a young offender institution to run consecutively the aggregate of such terms shall not, subject to the provisions of this section, exceed 6 months."

(2) *Criminal Justice Act 1988, section 40*

22. This section is central to this appeal and provides as follows:

"40. (1) A count charging a person with a summary offence to which this section applies may be included in an indictment if the charge –

(a) is founded on the same facts or evidence as a count charging an indictable offence; or

(b) is part of a series of offences of the same or similar character as an indictable offence which is also charged,

but only if (in either case) the facts or evidence relating to the offence were disclosed to a magistrates' court inquiring into the offence as examining justices or are disclosed by material which, in pursuance of regulations made under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1988 (procedure where person sent for trial under section 51) has been served on the person charged.

(2) Where a count charging an offence to which this section applies is included in an indictment, the offence shall be tried in the same manner as if it were an indictable offence; but the Crown Court may only deal with the offender in respect of it in a manner in which a magistrates' court could have dealt with him.

(3) The offences to which this section applies are –

(a) common assault;...

(d) an offence mentioned in the first column of Schedule 2 to the Magistrates' Courts Act 1980 (criminal damage etc.) which would otherwise be triable only summarily by virtue of section 22(2) of that Act; and

(e) any summary offence specified under subsection (4) below."

23. Thus section 40 appears to provide that where any summary offence to which the section applies, which, by reason of subsection (3)(d) encompasses an offence triable either way which would have been triable only summarily by virtue of section 22(2) of the Magistrates' Courts Act 1980, is included in an indictment, it can only be sentenced in a manner in which a magistrates' court could have dealt with it.

24. It might also be observed that where a magistrates' court commits a defendant for trial at the Crown Court on an either-way offence, it may also commit him for trial on a summary offence with which he is charged, provided it is punishable by imprisonment or disqualification from driving and "arises out of circumstances which appear to the court to be the same as or connected with" the circumstances of the either-way offence (section 41 of the 1980 Act). In such a case too, the Crown Court "may deal with him only in a manner in which a magistrates' court could have dealt with him", whether he pleads guilty before or is tried by the Crown Court (section 41(7) and (8)). That, however, is not this case.

(3) Crime and Disorder Act 1988

25. Section 40(1) cited above refers to the alternative procedure where a summary offence is sent to the Crown Court under section 51 of the Crime and Disorder Act 1988. That currently provides as follows:

"51. (1) Where an adult appears or is brought before a magistrates' court ("the court") charged with an offence triable only on indictment ("the indictable-only offence"), the court shall send him forthwith to the Crown Court for trial –

(a) for that offence, and

(b) for any either-way or summary offence with which he is charged which fulfils the requisite conditions (as set out in subsection (11) below)

...

(11) An offence fulfils the requisite conditions if –

(a) it appears to the court to be related to the indictable-only offence; and

(b) in the case of a summary offence, it is punishable with imprisonment or involves obligatory or discretionary disqualification from driving."

26. Section 52(6) states that Schedule 3 to the 1998 Act makes further provision in relation to persons sent for trial to the Crown Court under section 51. Schedule 3 is headed "Procedure where Persons are Sent for Trial under Section 51". Paragraph 6 of Schedule 3 deals with summary offences and states by sub-para (4) –

"(4) If the person pleads guilty, the Crown Court shall convict him, but may deal with him in respect of the summary offence only in a manner in which a magistrates' court could have dealt with him."

That is the same wording as section 40(2) of the Criminal Justice Act 1988.

27. Other paragraphs of Schedule 3 provide inter alia for what is to happen where in the Crown Court on a sending under section 51 no indictable-only offence remains. In such a case the Crown Court has to find the suitable mode of trial for any either-way offence still on the indictment. There are similar provisions to those to be found in sections 19ff of the Magistrates' Courts Act 1980. However, separately from that, it is paragraph 14 of the Schedule which reflects section 22 of the 1980 Act in dealing with either-way offences such as section 1 of the Criminal Damage Act 1971 (and other such offences within Schedule 2 to the 1980 Act) where the value involved is relevant to the mode of trial. Thus paragraph 14 is headed "Procedure for determining whether offences of criminal damage etc. are summary offences" and provides in relevant part as follows:

"14. (1) This paragraph applies where the Crown Court has to determine, for the purposes of this Schedule, whether an offence which is listed in the first column of Schedule 2 to the 1980 Act (offences for which the value involved is relevant to the mode of trial) is a summary offence...

(3) If it appears clear to the court that the value involved does not exceed the relevant sum, it shall treat the offence as a summary offence.

(4) If it appears clear to the court that the value involved exceeds the relevant sum, the court shall treat the offence as an indictable offence...

Thus, where the Crown Court under paragraph 14 of Schedule 3 to the 1998 Act treats a count of low value criminal damage as a summary offence, paragraph 6(4) of the same Schedule 3 requires the Crown Court to sentence that matter "only in a manner in which a magistrates' court could have dealt with him".

28. Thus, whether what clearly appears to the relevant court to be a low value criminal damage count appears on an indictment pursuant to section 40(2) of the 1988 Act or pursuant to a section 51 sending under the 1998 Act, in either case the Crown Court can deal with it on sentence only in a manner in which a magistrates' court could have dealt with it. That is not surprising, because it has ceased to have the quality of an either-way offence and has come to be treated as a summary offence.

(4) Criminal Law Act 1967, section 6

29. This statute is relevant to the situation which arose in relation to count 4 on the indictment in the present case. Section 6 provides as follows:

"6. (1) Where a person is arraigned on an indictment –

...

(b) he may plead not guilty to the offence specifically charged in the indictment but guilty of another offence of which he might be found guilty on that indictment..."

It was common ground that section 6(1)(b) applies to and covers the appellant's plea of guilty to disorderly behaviour with intent under section 4A of the Public Order Act 1986 as an alternative to the offence of affray that came to be charged under count 4. There is no specific provision, however, as to how in such an event a summary offence such as disorderly behaviour with intent is to be sentenced by a Crown Court (save of course that under section 4A(5) of the 1986 Act itself a maximum sentence of only six months imprisonment is permitted).

30. There is, however, provision about what is to happen if a *jury convicts* a defendant of an alternative summary offence. That is in subsections (3)ff of section 6:

"(3) Where, on a person's trial on indictment for any offence except treason or murder, the jury find him not guilty of the offence specifically charged in the indictment, but the allegations in the indictment amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the court of trial, the jury may find him guilty of that other offence of which he could be found guilty on an

indictment specifically charging that other offence.

(3A) For the purposes of subsection (3) above an offence falls within the jurisdiction of the court of trial if it is an offence to which section 40 of the Criminal Justice Act 1988 applies (power to join in indictment count for common assault etc.), even if a count charging the offence is not included in the indictment.

(3B) A person convicted of an offence by virtue of subsection (3A) may only be dealt with for it in a manner in which a magistrates' court could have dealt with him."

31. However, it was also common ground that subsection (3) does not apply in this case because the offence of disorderly behaviour with intent is not within section 40. That is the basis of the point made by Mr Groom to the effect that count 4 stands apart from any requirement of the Crown Court to treat the summary offence of disorderly behaviour with intent as a magistrates' court would have had to deal with it. In any event, section 6(3) is dealing only with the situation of conviction by the jury, not with pleas of guilty. And so, submitted Mr Groom, the count 4 offence did not fall within the limitations of section 133(1) of the Magistrates' Courts Act 1980. However, in *R v. Jones* [2007] EWCA Crim 1906, [2008] 1 Cr App R (S) 44 this court was similarly faced with a *plea* to an alternative summary offence, rather than a jury conviction. There, the appellant pleaded guilty to two counts of common assault which were on the indictment by virtue of section 40 and in addition pleaded guilty (pursuant to section 6(1)(b) of the 1967 Act) to a third offence of common assault as an alternative to a charge on the indictment of causing actual bodily harm. The sentencing judge handed down consecutive sentences totalling 9 months, with 4 months for the alternative plea. It was held that, by virtue of the provisions of section 6(3B), the total sentence was unlawful and it was limited to 6 months in total. This court therefore made no distinction between a case within section 6(1)(b) (plea of guilty) and a case within section 6(3) and (3A) (conviction by a jury) for the purposes of the application of section 6(3B), even though, on the latter's own terms, it is limited to a conviction within subsection (3A).

32. There are, however, specific provisions about certain Public Order Act offences which also have to be taken into account.

(5) Public Order Act 1986, section 7

33. Section 7 supplements the general provisions of section 6(3) of the Criminal Law Act 1967, as follows:

"7... (3) If on the trial on indictment of a person charged with violent disorder or affray the jury find him not guilty of the offence charged, they may (without prejudice to section 6(3) of the Criminal Law Act 1967) find him guilty of an offence under section 4.

(4) The Crown Court has the same powers and duties in relation to a person who is by virtue of subsection (3) convicted before it of an offence under section 4 as a magistrates' court would have on convicting him of the offence."

34. So, if the appellant had stood trial on count 4 and had been convicted by the jury of the alternative offence under section 4 (which is very similar to that under section 4A), the Crown Court would have been limited to the sentencing powers of a magistrates' court in respect of that conviction. A magistrates' court would have been subject to the limitations of section 133(1) of the 1980 Act. In the present case the appellant pleaded guilty (as was mistakenly assumed at the appeal) to the alternative offence within section 4A, which was inserted into the 1986 Act by the Criminal Justice

and Public Order Act 1994. On the express terms of section 7(3) and (4) therefore the present case (on that mistaken basis) did not fall within it for two reasons: (i) it concerned section 4A not section 4; and (ii) it concerned a plea of guilty and not a jury conviction. It seems odd that when section 4A was added in 1994, section 7 was not also amended to embrace section 4A, and that may well have been an oversight.

35. In the light of these provisions Mr Bindloss submitted that it was highly anomalous that there was provision dealing with the sentencing consequences of a jury conviction on an alternative verdict on a summary offence, but not with the sentencing consequences where there was a plea of guilty on an alternative offence to the one charged. This anomaly is again reflected in the provisions of section 6 of the 1967 Act. Mr Bindloss submitted that the greater (the situation where a jury convicts after a trial) must include the lesser (the situation where the defendant pleads guilty). Mr Groom recognised the force of that submission. In this connection, neither counsel drew any distinction between section 4 and section 4A of the 1986 Act.
36. It is now clear, however, that the appellant *in fact* pleaded guilty on count 4 to a section 4 offence, not a section 4A offence. Therefore we are concerned with section 7(3) of the 1986 Act, and not with section 6(3)/(3A) of the 1967 Act. And so, subject to the point that on its express terms section 7(3)/(4) is dealing only with a conviction by a jury and not with a plea of guilty, and subject also to the possibility that it is the combination of section 6(1)(b) of the 1967 Act and of section 7(3) of the 1986 Act that permits the plea of guilty where the jury could have convicted, we are not troubled with the ramifications of section 6. However, we should state our view that if (as turns out not to have been the case) the appellant had pleaded guilty to a section 4A offence, that conviction would have been unlawful because section 6 does not cover such an offence: it is not "within the jurisdiction of the court of trial" within the meaning of section 6(3) (3A), and nothing else makes good that lack of jurisdiction (such as, in the case of section 4, section 7(3) of the 1986 Act).
37. Therefore, on the basis of a section 4A offence which was common ground at the appeal hearing, we would have had to allow not only the sentence appeal in respect of count 4 but also (at any rate in theory) an appeal against conviction as well. That would have reduced the basic sentence to 5 months (on the assumption that the conviction itself was quashed), from 8 months (see para 10 above).

Jurisprudence

38. There are a number of cases which deal with the special case of the either-way offence of criminal damage and the situation where it may have to be treated as a summary offence because clearly of a value below £5,000.
39. In *R v. Walker* [1996] 1 Cr App R (S) 447 the defendant was committed to the Crown Court for trial on charges of burglary and affray, but a count of section 1(1) criminal damage arising out of the same facts was included in the indictment under section 40 of the 1988 Act. The evidence was that the criminal damage concerned would cost between £2,000/£3,000 to repair, ie below £5,000. In the end, all other counts were dealt with by acquittals or otherwise and the court was left to sentence only the count of criminal damage. The defendant received a 9 month sentence and appealed on the basis that the maximum sentence which would have been available to the magistrates, and thus was available to the Crown Court under section 40(2), was one of 3 months only. The appeal succeeded, and the 9 months sentence was held to be unlawful. That is a directly relevant authority on the effect of section 40(2), where it applies. It does not explicitly contradict the sentences in the present case, for Judge Moore kept within the 3 months limit. However, it

directly supports his view that he was in any event limited to 3 months. On that basis, it is not disputed by the Crown on this appeal that section 133(1), as well as section 22(2) would apply, to limit the Crown Court to a total of 6 months, so far at any rate as the section 40 offences (counts 2 and 3) are concerned.

40. In *R v. Fennell* [2000] 2 Cr App R 318 this court (in the judgment of Rose LJ) decided that *Burt (1996) 161 JP 77* had been decided *per incuriam* and that the relevant provisions of sections 22 and 40 were related only to mode of trial. The defendant stood trial on charges of racially aggravated assault occasioning actual bodily harm and racially aggravated criminal damage. The jury were permitted under section 6(3) of the Criminal Law Act 1967 to return alternative verdicts of guilty on simple actual bodily harm and simple criminal damage. He was sentenced to 8 months imprisonment on the verdict of actual bodily harm and a concurrent 1 month on the verdict of criminal damage. The appeal was against conviction, on the ground that the judge had no power to permit an alternative verdict of simple criminal damage. The issue was therefore one of jurisdiction. It was not a section 40 case. There never had been a count of simple criminal damage on the indictment. The submission was that section 22, perhaps because the damage in question was below £5,000 (for the amount had been identified in the indictment as about £1,500) but the argument was also put a number of times more broadly to apply to simple criminal damage as a whole, meant that the offence could only be tried summarily and thus was not open to the jury *without* a further alternative count being added to the indictment. The court rejected that submission. Simple criminal damage remained an either-way offence. All that section 22 did was to direct magistrates –

"to proceed on a basis which assumes that criminal damage can be tried on indictment: for, when considering the appropriate mode of trial, if the damage is less than £5,000, they are to proceed "as if" the offence was triable only summarily."

The appeal on conviction was therefore dismissed. There were also submissions about sentence, but none which are relevant to the current appeal.

41. In *R v. Alden* [2002] 2 Cr App R (S) 74 this court revisited *Fennell* in the context of an appeal against sentence, not conviction. *Alden* concerned a defendant who pleaded guilty to an offence of common assault and to a lesser alternative of harassment with intent under section 4A of the Public Order Act 1986 (the offence with which we had mistakenly thought we were concerned in the present case in respect of count 4). The indictment was then amended to include new counts of criminal damage and of assault occasioning actual bodily harm, to which the defendant also pleaded guilty. The common assault occurred on one occasion, and the ABH and criminal damage on another. The criminal damage was again due to the kicking of a car and did not exceed about £1,000 in value. The defendant had been sentenced as follows: on the ABH, to 10 months detention in a young offender institution; 3½ months consecutive on the public order offence (a summary only offence, with a maximum term of 6 months); 2½ months consecutive on the criminal damage; and 2 months consecutive on the common assault: a total of 18 months. The issue was whether the three shorter sentences, totalling 8 months, represented summary offences –

"so that the Crown Court's powers of sentencing were limited to those of the justices; that is to say, a total of only six months..." (at para 3).

So it was common ground, and accepted by the court, that section 133 (1)'s limit of six months would have been applicable if all three offences had been summary offences.

42. Since there was no dispute that the public order offence and the common assault were summary

offences (and the sentence for them totalled 5½ months, ie within the six months limit), -

"The critical question is whether or not the criminal damage offence, in relation to which, as we have said, a sentence of two-and-a-half months was imposed, was a summary offence, or an either-way offence at the time the Crown Court dealt with the matter. This in turn depends on whether a decision of this Court, differently constituted, in *Fennell*...was correctly decided. It was conceded...that if this Court concludes that *Fennell* was correctly decided, that is fatal to the legal aspect of this appeal" (at para 6).

43. It will be recalled that *Alden* was not a case of criminal damage being included in the indictment under section 40. The offence was added by amendment at trial. It had never been anywhere near the magistrates' court. It will also be recalled that in *Fennell* too there had been no question of the criminal damage being included in the indictment under section 40. There too it had first arisen at trial as an alternative offence, on the conviction of a jury.

44. In these circumstances Rose LJ proceeded to reason the matter as follows:

"24. Mr Hall [counsel for the appellant] draws attention to certain anomalies which will follow, as Dr Thomas [counsel acting as amicus curiae] concedes they will, if the *Fennell* interpretation is right. For example, a case of criminal damage, coming by way of information before the justices, would give rise in an appropriate case, to a maximum sentence of only three months. Whereas, if there were no information before the justices and the matter came before the Crown Court by way of amendment to the indictment, as it did in the present case, for the same offence, the Crown Court would have the power to sentence up to 10 years...

25....The submission made by Dr Thomas, is that section 40 is not a freestanding provision which reclassifies criminal damage: it is a procedural provision which follows on the categorisation process by justices, provided for by section 22 of the Magistrates' Courts Act. The Crown Court's sentencing powers are limited if, but only if, the magistrates have categorised the criminal damage offence as relating to damage of low value. But if the magistrates have not so categorised the criminal damage offence, the Crown Court's powers are the same as they would be in relation to any other either way offence...

30...In our judgment...*Fennell* was rightly decided. Criminal damage is an either way offence, punishable on conviction, on indictment, with 10 years' imprisonment, irrespective of the value of the damage caused. It is not necessary to allege the value of the damage in an indictment, or to prove the value of the damage.

31. If an offender appears for sentence before the Crown Court, for criminal damage otherwise than under a particular provision specifically restricting the sentencing power of the Crown Court, then the maximum sentence available is 10 years. If a defendant appears before a magistrates' court charged with an offence of criminal damage, the court must proceed under section 22 of the Magistrates' Courts Act 1980, to determine the apparent value of the damage. If that apparent value is less than £5,000, it must proceed as if the offence were a summary offence. After such a determination, an offence treated as a summary offence is subject to the maximum sentence of three months' imprisonment, whether the offender is sentenced by the magistrates, or, ultimately, sentenced by the Crown Court because the offence has

come before the Crown Court on committal by the magistrates, under section 40, or otherwise...

33. In the present case, as it seems to us, following from the conclusions which we have reached, the sentence of two-and-a-half months imposed for the criminal damage, not only is not capable of being criticised in itself, but is not capable of being criticised in conjunction with the sentences passed for the two summary offences. The criminal damage offence was not a summary offence requiring a capping of the Crown Court sentencing powers to the six months permissible to justices had they been dealing with three summary offences."

45. In the present case, however, the criminal damage offence had appeared before the justices, and was moreover, as Judge Moore understood the matter, included on the indictment pursuant to section 40. That was presumably on the basis provided for in section 40, namely that the offence "would otherwise be triable only summarily by virtue of section 22(2)..." (section 40(3)(d)). In those circumstances, it would seem that *Alden* is authority for the result contended for before Judge Moore, but rejected by him, that he was restricted to a total of six months for the criminal damage, the common assault and the alternative plea to section 3 of the Public Order Act 1986. That was exactly the position that this court in *Alden* said would have prevailed if the criminal damage count had reached the Crown Court under section 40 as an offence which had been categorised by the magistrates as if it were a summary offence (see para 3 of *Alden*, cited at para 41 above).
46. Finally, in *Gwynn* [\[2002\] EWCA Crim 2951](#), [2003] 2 Cr App R (S) 41, the defendant had been sent for trial under section 51 of the Crime and Disorder Act 1998. There were six charges, all arising out of the same incident, to which the defendant pleaded guilty: one charge of theft, four of criminal damage, and one of having an offensive weapon. The criminal damage offences had concerned damage to four cars in a single lay-by, caused with a metal bar. The damage totalled some £2,200. The defendant was sentenced to 6 months for the theft, to 3 months for each of the four criminal damage offences, and to 3 months for the offensive weapon: all consecutively to one another except that one of the counts of criminal damage was made concurrent: a total of 18 months imprisonment. The offences of theft and having an offensive weapon were not summary offences: but the submission was that the four offences of criminal damage were to be treated as if they were summary offences, because of their low value and the provisions of paragraph 14 of Schedule 3 to the 1998 Act (see cited above): with the result that they were limited to a total of 6 months rather than the 9 months they received. The court accepted that submission. Andrew Smith J referred to para 22 of *Alden* where the case of a sending under section 51 of a low value criminal damage charge had been considered and continued:

"13. As is apparent from *Alden*, the question whether there was a six months limit on the total permissible sentence depends on whether or not the consecutive sentences are passed for offences that are either actually summary or to be treated as if summary. In *Alden* the criminal damage charge was introduced to the indictment by amendment, and so neither s. 22 of the MCA nor Sch. 3 to the Crime and Disorder Act 1998 came into play. The position here is different. Having accepted that it was clear that the damage was less than the relevant sum, the court should have proceeded as if the offence was a summary one, and recognised that its powers for sentencing the criminal damage offences were limited to six months' imprisonment in total."

47. *Gwynn* therefore is a second authority which recognises that where summary offences or offences which must be treated as though they are summary offences are concerned, the Crown Court is limited to the magistrates' total sentencing powers of 6 months.

Discussion and conclusion

48. In the present case, Mr Groom at the hearing seemed to be submitting on behalf of the Crown: (1) that it was not clear that counts 2 and 3 had been charged or therefore considered at the magistrates' court, and that therefore they had been added later by amendment, so that this was an *Alden* type case; (2) that even if the criminal damage count had been included in the indictment pursuant to section 40, it was still necessary to show that the justices had considered the amount of damage in question and that it had appeared to them to be clear that the damage concerned was less than £5,000, but that there was no evidence that they had so categorised the offence; and (3) that there was no provision which limited the Crown Court to include the sentence on the public order offence within the total of six months applicable under section 133(1).
49. These submissions appeared to us at the hearing to be unlikely to be well directed, but we were unable at that stage to be sure of our ground. Moreover, we lacked the schedule to the committal certificate, and requested the Crown to obtain it. We therefore considered it necessary to reserve our reasoned judgment. Our difficulty, however, was that the appellant had already served all but a few days of an eight months' sentence: with the result that before very long he would have served the whole of his sentence, even if, as seemed likely to us, his appeal should succeed. In those circumstances, we determined to allow his appeal and reduce his total sentence to one of eight months. We did so on the basis that the sentences on counts 2, 3 and 4 should remain consecutive sentences, but should each be reduced to 2 months, giving a total of six months in respect of the basic sentence (plus the 2 months additional sentence in respect of the offences committed on 22 February 2008). We thought that that would reflect the justice of the matter, even if it were to turn out on reflection that the judge was not limited to the six months maximum set by section 133(1). He had after all directed himself that he was bound by a maximum of 3 months for the criminal damage count, which meant that he was considering that the criminal damage count did have to be treated as though it was a summary offence and not an either-way offence – for on the latter basis he would not have been limited to three months but only (in theory) to ten years. On the basis, however, that he was dealing with a section 40 offence to which a maximum sentence of 3 months applied, he was wrong to have considered that he was not also bound by section 133(1)'s 6 months in total rule. In particular, if we were to consider on reflection that the judge was bound by the 6 months' limit, as seemed likely, it would have been unjust to the appellant that his successful appeal would have been practically ineffective. If, on the other hand, we were on reflection to consider that the judge was entitled to impose the sentence that he did, the only consequence would have been that, while the appellant would have been fortunate to escape the longer sentence of ten months in total, no injustice would have been done.
50. After the hearing Mr Groom supplied us with two further notes. He was unable to obtain a copy of the committal certificate with its schedule. But he was able to establish that the original charges included charges of criminal damage (stated to be "to property valued under £5,000") and of assaulting an officer, which became counts 2 and 3 (the latter translated into common assault) respectively. He also expressed reservations about *Alden*, which as we understand them proceed upon the basis that the criminal damage count in that case was added by subsequent amendment under section 40(2). In that case, he submitted, prosecuting counsel there must have impliedly represented that the offence was one "which would otherwise be triable only summarily by virtue of section 22(2)" (see section 40(3)(d)); and the defendant must have relied on that representation when he entered his plea.
51. However, we do not so read *Alden*. As stated above, *Alden* was a case where the criminal damage count was added by amendment as an either-way count without any prior consideration before the magistrates' court. It was entirely new on the scene at the Crown Court. As such, it could not have

been added under section 40: for section 40(1) requires it to have been either inquired into at the magistrates' court or to have been made the subject of a section 51 sending; and of course section 40(3)(b) requires it, on *Alden's* reasoning, to have been categorised by the magistrates' court as clearly involving damage of less than £5,000 and thus triable only summarily under section 22(2). Therefore, by the *Alden* court's own definition, the amendment to add criminal damage could not have been pursuant to section 40. Indeed, as we understand the matter, there is *no need* of section 40 to include an either-way count of criminal damage on an indictment by way of amendment. Section 40 is needed to include a *summary* offence in an indictment, or an either-way offence which needs to be treated "as if the offence were triable only summarily". That is why the section begins: "(1) A count charging a person with a *summary* offence to which this section applies..." (emphasis added).

52. However, in the present case, it was common ground at the Crown Court before Judge Moore that the counts of criminal damage and common assault had been included under section 40. The judge so stated the matter more than once. As he said in giving his ruling on the "slip rule" application:

"These matters were on the indictment pursuant to a combination of section 40 of the Criminal Justice Act 1988 [*sc* counts 2 and 3] and the different statutory power which permits the defendant to plead to such counts as a jury could bring in and one of the pleas that was entered here was indeed such an alternative. Accordingly, we ended up with three matters, the sentence for which was limited to the powers of the Magistrates' Court."

53. Judge Moore was there recognising that the criminal damage count had been included under section 40 (it was not added by amendment as in *Alden* but had been on the original indictment) as an offence which had to be treated as if it were a summary offence under section 22(2). It was for that reason also that he considered himself bound by a maximum for that count of 3 months, which would not otherwise have applied. As he said:

"Thus, in relation to our three offences, the maximum were three months [the criminal damage], six months [the common assault] and six months [the disorderly behaviour] respectively..."

54. In these circumstances, this case is not within *Alden* but within *Walker* (which was not mentioned in *Alden*). However, *Alden* itself recognises that, where section 40 is in play, the Crown Court is limited to the powers of the magistrates' courts including the applicable limitation within section 133(1). In our judgment, it cannot be appropriate in such circumstances to speculate, in the absence of sure knowledge of what went on at the magistrates' court, as to whether there had been a formal appearing to the justices under section 22(2) that it was clear that the damage was under £5,000. Indeed, Mr Groom's submission about *Alden* would apply to this very case: it being common ground before Judge Moore that the count of criminal damage was before the Crown Court under section 40, it could not be right that the appellant, after pleading guilty on that basis, could be at peril of a sentence of more than 3 months (up to a theoretical maximum of 10 years) or of a total sentence for the relevant offences of more than 6 months. In any event, the natural inference in this case is that, given the nature of the charge (of damage below £5,000) and of the evidence (concerning damage in the order of about £1,400 at most), it must have appeared clear to the justices that the damage was lower than £5,000.

55. We therefore need not consider, even if it were appropriate for us to do so, whether *Alden* is correctly decided, despite Mr Groom's reservations, and indeed the reservations of the learned editors of *Archbold* 2009: see at paras 1-75aj, 23-44. We have not heard detailed submissions as to

Mr Groom's reservations, nor as to *Archbold's* criticisms. We consider ourselves bound by *Walker*, *Alden* and *Gwynn* respectively: the first is a section 40 case, and of particular relevance for us; the second is not a section 40 case, but supports this appeal on the hypothesis that section 40 applied; and the third confirms that approach in the alternative case of a section 51 sending.

56. It also follows that the summary section 4 public order offence under count 4 falls within the six months in total rule. Mr Groom's submission (dealing with what he thought was a section 4A offence) was nevertheless to the contrary: but that submission is itself contrary to *Alden* on the hypothesis that the criminal damage count in that case had fallen within section 40 and was therefore subject to the magistrates' courts' powers. For these purposes the facts of *Alden* were very pertinent, for there too, as was thought to be the position in the present case, the defendant pleaded guilty to a summary public order offence under section 4A of the 1986 Act as an alternative to an indictable public order offence on the indictment. Rose LJ saw no difficulty in regarding the Crown Court as bound to treat that summary offence as falling within the limitations of section 133(1).
57. Moreover, despite the limitations of section 6(3A) and (3B) of the Criminal Law Act 1967, this court in *Jones* applied subsection (3B) to the case of a plea of guilty (see at para 31 above). Similarly, in *R v. Armour* [2007] EWCA Crim 3294, a plea of guilty to an offence under section 4 of the Public Order Act 1986 was regarded by this court as falling within section 7(4) of that Act, even though on its terms that is dealing with conviction by a jury: a total sentence of more than 6 months was held unlawful.
58. In every other circumstance we have considered, statute has emphasised that the Crown Court's sentencing powers for summary offences are limited to those of a magistrates' court. *Alden* demonstrates an exception for the very reason that the offence there was neither a summary offence nor one that had to be treated as if it were a summary offence, but on the contrary was an either-way offence. There are perhaps some mysteries here, but this court has consistently treated summary offences in the Crown Court as falling within the general limitations of section 133(1). We would therefore regard the section 4 offence here as falling within those limitations.

Conclusion

59. We therefore confirm, for these reasons, our decision to grant leave to appeal and to allow the appeal, in the manner stated at the hearing of it: namely, that the total sentence is reduced to one of 8 months detention, from 10 months detention; and the individual sentences on counts 2, 3 and 4 respectively are 2 months (as before) for the criminal damage, 2 months consecutive for the common assault (reduced from 3 months), and 2 months consecutive for the threatening words or behaviour with intent (reduced from 3 months). The additional sentence of 2 months remains unaffected, so that the total sentence becomes one of 8 months detention.

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29 juli 2009 Dean Tuplin	
Passiver:	
I. 25	the Crown Court is restricted in its sentencing powers
I. 26	an application for leave to appeal against sentence which was referred to the full court by the registrar of criminal appeals
I. 30	the appellant was born on 28 April 2008
I. 31	the conduct for which he was sentenced are certainly unattractive
I. 35	the wife of this household had been targeted as a girl by Ian Huntley
I. 37	He was searched
I. 37	items from a neighbour's garden shed were found on him
I. 39	on 5 March 2008 received a community order from North Lincolnshire magistrates' court
I. 44	causing slight damage to each which was estimated to cost respectively £ 300/400 and £ 1,000 to repair
I. 45	The police were called
I. 46	he was put in the back of a police car
I. 48	he was charged with threatening to destroy or damage property
I. 52	the appellant was committed for trial under section 6(2) of the Magistrates' Courts Act 1980
I. 55	a verdict of not guilty was recorded
I. 57	Two further counts were included in the indictment pursuant to section 40(1) and (3) of the Criminal Justice Act 1988
I. 61	these two counts were included pursuant to section 40
I. 66	a new count, count 4, of affray under section 3(1) of the Public Order Act 1986 was added by agreement
I. 69	that was done by virtue of section 7(3) of the 1986 Act
I. 71	the threats were not meant seriously and were made in the heat of the moment
I. 71	The pleas of 29/30 September...had been prompted by a letter to the defence
I. 74	three offences on indictment which were or were treated as being summary only
I. 85	the community order which had been imposed by the magistrates' court
I. 87	in respect of the two offences committed on 22 February 2008
I. 90	No complaint is made about the additional sentence
I. 93	the appeal before us was conducted throughout on the basis that the alternative offence
I. 96	We were told that this was done by virtue of section 6(1)(b) of the Criminal Law Act 1967
I. 103	It is quite plain from that transcript that on count 4, <i>when it was added</i> , the appellant pleaded not guilty
I. 106	on the basis argued at the appeal
I. 108	It was submitted by Mr Edward Bindloss
I. 108	the Crown Court was limited in respect of the three counts
I. 110	the Crown Court was limited to the sentencing powers of a magistrates' court
I. 114	Mr Ian Groom submitted that at the Crown Court the judge was not so limited
I. 116	This was not included in the indictment
I. 121	those two offences, having been included in the indictment pursuant to section 40 of the Criminal Justice Act 1988

I. 121	even if those two offences...had themselves to be sentenced within the six months maximum
I. 124	offence of criminal damage (count 2)... when included in an indictment pursuant to section 40...
I. 126	the damage concerned was to be valued at less than £ 5,000
I. 130	whether count 2 had been included in the indictment pursuant to section 40
I. 134	Judge Moore was not bound to sentence count 2 within the six months' total
I. 135	the six months' total to which a magistrates' court would be limited by section 133(1)
I. 135	the judge was entitled to sentence the three counts concerned as he had done
I. 136	irrespective of the 6 months' limit which would have applied in the magistrates' court
I. 139	the criminal damage offence being treated under section 40(2) as if it were a summary offence
I. 141	This argument was renewed to the judge
I. 141	a "slip rule" application made to him on 31 November 2008
I. 146	he was therefore limited to the individual maxima
I. 147	the individual maxima to which the magistrates' court would have been subject
I. 154	They are provided by a specific statute which has no application whatsoever to the Crown Court on indictment
I. 155	The powers of the Crown Court on indictment are set down by a totally different statutory regime.
I. 158	it cannot be the case that a conclusion which would be both artificial and contrary to justice...should be imported
I. 169	If the offence charged by the information is one of those mentioned in the first column of Schedule 2 to this Act
I. 176	for the offence charged
I. 181	for the offence charged
I. 185	a defendant is offered the option of electing for summary trial in the magistrates' court or jury trial in the Crown Court
I. 186	However...the justices may be compelled
I. 189	any of the offences triable either way listed within Schedule 1 of the Act
I. 190	the magistrates court is limited to a term of 6 months
I. 192	then the maximum sentence available is reduced to 3 months
I. 209	an indictable offence which is also charged
I. 212	only if (...) the facts or evidence relating to the offence were disclosed to a magistrates' court
I. 213	..or are disclosed by material which...has been served on the person charged
I. 217	Where a count charging an offence to which this section applies is included in an indictment
I. 218	the offence shall be tried in the same manner as if it were an indictable offence
I. 223	an offence mentioned in the first column of Schedule 2
I. 227	any summary offence specified under subsection (4)
I. 229	an offence triable either way which would have been triable only summarily by virtue of section 22(2)
I. 229	where any summary offence to which the section applies...is included in an indictment, it can only be sentenced in a manner in which a magistrates' court could have dealt with it.

I. 233	It might also be observed that...
I. 234	a summary offence with which he is charged
I. 239	whether he pleads guilty before or <i>is tried</i> by the Crown Court
I. 242	where a summary offence is sent to the Crown Court
I. 245	Where an adult appears or <i>is brought</i> before a magistrates' court ("the court") <i>charged</i> with an offence triable only on indictment
I. 249	any either-way or summary offence with which he is charged
I. 256	in relation to persons sent for trial to the Crown Court
I. 257	Schedule 3 is headed "Procedure where Persons are Sent for Trial under Section 51"
I. 271	paragraph 14 is headed "Procedure for determining whether offences of criminal damage etc. are summary offences"
I. 274	an offence which is listed in the first column of Schedule 2 to the 1980 Act
I. 289	because it has ceased to have the quality of an either-way offence and <i>has come to be treated</i> as a summary offence
I. 294	Where a person is arraigned on an indictment
I. 296	the offence specifically charged in the indictment
I. 297	another offence of which he might be found guilty
I. 300	an alternative to the offence of affray that came to be charged under count 4
I. 302	a summary offence such as disorderly behaviour with intent is to be sentenced by a Crown Court
I. 308	the jury find him not guilty of the offence specifically charged in the indictment
I. 310	the jury may find him guilty of that other offence of which he could be found guilty on an indictment
I. 315	even if a count charging the offence is not included in the indictment
I. 332	It was held that...the total sentence was unlawful and it was limited to 6 months in total
I. 336	it is limited to a conviction within subsection (3A)
I. 337	There are...specific provisions about certain Public Order Act offences which also <i>have to be taken into account</i>
I. 342	a person charged with violent disorder or affray
I. 343	the jury find him not guilty of <i>the offence charged</i>
I. 347	The Crown Court has the same powers and duties in relation to a <i>person who is...convicted</i> before it
I. 349	if the appellant had stood trial on count 4 and <i>had been convicted</i> by the jury
I. 350	the Crown Court would have been limited to the sentencing powers of a magistrates' court
I. 353	(as was mistakenly assumed at the appeal)
I. 354	...which was inserted into the 1986 Act by the Criminal Justice and Public Order Act 1994
I. 357	It seems odd that when <i>section 4A</i> was added in 1994, <i>section 7</i> was <i>not also amended</i> to embrace section 4A
I. 363	This anomaly is again reflected in the provisions of section 6
I. 383	(on the assumption that the conviction itself was quashed)
I. 387	the situation where it may have to be treated as a summary offence
I. 389	the defendant was committed to the Crown Court for trial on charges of burglary and affray
I. 390	but a count of section 1(1) criminal damage arising out of the same facts <i>was included</i> in the indictment under section 40 of the 1988 Act
I. 393	all other counts were dealt with by acquittals or otherwise

I. 393	the court <i>was left</i> to sentence only the count of criminal damage
I. 397	the 9 months sentence was held to be unlawful
I. 400	it is <i>not disputed</i> by the Crown on this appeal that section 133(1), as well as section 22(2) would apply, to limit the Crown Court to a total of 6 months
I. 404	Burt (1996) 161 JP 77 had been decided per incuriam
I. 407	The jury were permitted under section 6(3) of the Criminal Law Act 1967 to return alternative verdicts
I. 409	He was sentenced to 8 months imprisonment
I. 415	(for the amount had been identified in the indictment as about £ 1,500)
I. 415	the argument was also put a number of times more broadly
I. 417	the offence could only be tried summarily
I. 421	Criminal damage can be tried on indictment
I. 424	The appeal on conviction was therefore dismissed
I. 430	The indictment was then amended
I. 434	The defendant had been sentenced as follows
I. 439	the Crown Court's powers of sentencing were limited to those of the justices
I. 446	a sentence of two-and-a-half months was imposed
I. 449	This in turn depends on whether a decision of this Court, differently constituted, in Fennell... <i>was correctly decided</i>
I. 452	It will be recalled that <i>Alden</i> was not a case of criminal damage being included in the indictment
I. 453	The offence was added by amendment at trial
I. 454	It <i>will also be recalled</i> that in Fennell too there had been no question of the criminal damage <i>being included</i> in the indictment
I. 466	The submission made by Dr Thomas
I. 469	The Crown Court's sentencing powers are limited
I. 474	Fennell was rightly decided
I. 476	irrespective of the value of the damage caused
I. 481	If a defendant appears before a magistrates' court <i>charged</i> with an offence of criminal damage
I. 485	an offence <i>treated</i> as a summary offence is subject to the maximum sentence
I. 486	whether the offender is sentenced by the magistrates, or, ultimately, sentenced by the Crown Court
I. 491	the sentence of two-and-a-half months <i>imposed</i> for the criminal damage, not only is not capable of <i>being criticised</i> in itself, but is not capable of <i>being criticised</i> in conjunction with the sentences <i>passed</i> for the two summary offences
I. 499	That was presumably on the basis <i>provided for</i> in section 40
I. 499	the offence "would otherwise be triable only summarily by virtue of section 22(2)..."
I. 501	authority for the result <i>contended for</i> before Judge Moore, but <i>rejected</i> by him
I. 502	he was restricted to a total of six months for the criminal damage
I. 505	an offence which had been categorised by the magistrates as if it were a summary offence
I. 507	the defendant had been sent for trial under section 51 of the Crime and Disorder Act 1998
I. 512	The defendant was sentenced to 6 months for the theft
I. 514	one of the counts of criminal damage was made concurrent

I. 516	the four offences of criminal damage were to be treated as if they were summary offences
I. 518	they were limited to a total of 6 months
I. 520	the case of a sending under section 51 of a low value criminal damage charge had been considered and continued
I. 523	the consecutive sentences are passed for offences that are either actually summary or to be treated as if summary
I. 525	the criminal damage charge was introduced to the indictment by amendment
I. 529	its powers for sentencing the criminal damage offences were limited to six months' imprisonment in total
I. 531	where summary offences or offences which <i>must be treated as though they are summary offences are concerned</i>
I. 532	the Crown Court is limited to the magistrates' total sentencing powers of 6 months
I. 536	counts 2 and 3 had been charged or therefore considered at the magistrates' court
I. 537	they had been added later by amendment
I. 538	the criminal damage count had been included in the indictment
I. 552	but should each be reduced to 2 months
I. 555	the judge was not limited to the six months maximum set by section 133(1)
I. 559	he would not have been limited to three months
I. 565	the judge was entitled to impose the sentence
I. 567	no injustice would have been done
I. 573	the criminal damage count in that case was added by subsequent amendment under section 40(2)
I. 579	the criminal damage count was added by amendment
I. 580	it could not have been added under section 40
I. 581	for section 40(1) requires it to have been either inquired into at the magistrates' court or to have been made the subject of a section 51 sending
I. 583	section 40(3)(b) requires it, on <i>Alden's</i> reasoning, to have been categorised by the magistrates' court as clearly involving damage
I. 588	Section 40 is needed to include a <i>summary</i> offence in an indictment
I. 589	an either-way offence which needs to be treated "as if the offence were triable only summarily"
I. 593	the counts of criminal damage and common assault had been included under section 40
I. 598	one of the pleas that <i>was entered</i> here was indeed such an alternative
I. 601	the criminal damage count had been included under section 40
I. 602	it was not added by amendment...but had been on the original indictment
I. 603	an offence which had to be treated as if it were a summary offence under section 22(2)
I. 609	which was not mentioned in <i>Alden</i>
I. 610	the Crown Court is limited to the powers of the magistrates' courts
I. 623	whether <i>Alden</i> is correctly decided
I. 641	a plea of guilty to an offence under section 4 of the Public Order Act 1986 was regarded by this court as falling within section 7(4)
I. 643	a total sentence of more than 6 months was held unlawful
I. 645	the Crown Court's sentencing powers for summary offences are limited to those of a magistrates' court
I. 648	nor one that had to be treated as if it were a summary offence

I. 654	in the manner stated at the hearing of it
I. 654	the total sentence is reduced to one of 8 months detention
I. 657	2 months consecutive for the common assault (<i>reduced</i> from 3 months)
I. 658	2 months consecutive for the threatening words or behaviour with intent (<i>reduced</i> from 3 months)
Adverbialer:	
I. 35 (initial)	He got it into his head that <i>because the wife of this household had been targeted as a girl by Ian Huntley</i> , she might become the victim of his own malice
I. 36 (initial)	<i>On 22 February 2008</i> she observed him
I. 39 (initial)	and <i>on 5 March 2008</i> received a community order
I. 42 (initial)	<i>On 29 March 2008 at about 5am</i> the appellant approached their house
I. 45 (initial)	and <i>on his arrest</i> he was put in the back of a police car
I. 48 (initial)	<i>In the event</i> , he was charged with threatening to destroy or damage property
I. 54 (initial)	<i>In the event</i> , the prosecution chose to offer no evidence on that count
I. 63 (initial)	<i>On 11 August 2008, at a plea and case management hearing</i> , the appellant pleaded guilty
I. 64 (initial)	<i>On 29 September 2008, the day before trial, at a disclosure hearing</i> , the appellant also pleaded guilty to count 2
I. 66 (initial)	<i>Lastly, on 30 September, the day of trial</i> , a new count, count 4, of affray...was added
I. 67 (medial)	count 4, of affray under section 3(1) of the Public Order Act 1986 was added
I. 82 (initial)	<i>On 17 October 2008</i> Judge Moore sentenced the appellant to terms of detention
I. 92 (initial)	<i>Although the appellant in fact pleaded guilty under count 4 to the alternative lesser offence of threatening words or behaviour with intent contrary to section 4 of the Public Order Act 1986</i> , the appeal before us was conducted throughout...
I. 103 (initial)	It is quite plain from that transcript that <i>on count 4, when it was added</i> , the appellant pleaded not guilty
I. 106 (initial)	<i>In the meantime, however</i> , we continue this judgment
I. 108 (medial)	It was submitted by Mr Edward Bindloss on behalf of the appellant that the Crown Court was limited
I. 109 (medial)	the Crown Court was limited <i>in respect of the three counts concerned</i> to a maximum combined sentence of 6 months
I. 112 (medial)	The latter point, <i>as to the powers of a magistrates' court under section 133(1)</i> , was not in dispute
I. 114 (initial)	Mr Ian Groom submitted that <i>at the Crown Court</i> the judge was not so limited
I. 118 (medial)	There was nothing about a plea of guilty <i>in such circumstances</i> which limited the Crown Court to the maximum sentence
I. 122 (medial)	if those two offences, <i>having been included in the indictment pursuant to section 40 of the Criminal Justice Act 1988</i> , had themselves to be sentenced within the six months
I. 138 (initial)	<i>Before the judge</i> Mr Bindloss had submitted to the judge that
I. 138 (medial)	Mr Bindloss had submitted <i>to the judge that he was bound, since he was concerned with three summary offences (the criminal damage offence being treated under section 40(2) as if it were a summary offence)</i> , to sentence within the six months available to a magistrates' court

I. 157 (initial)	<i>If Parliament had intended one to influence the other it would have said so</i>
I. 157 (initial)	<i>In the absence of it saying so it cannot be the case that</i>
I. 159 (medial)	<i>a conclusion which would be both artificial and contrary to justice, in my view, should be imported."</i>
I. 160 (initial)	<i>On this appeal, Mr Bindloss submits that the judge was wrong</i>
I. 162 (initial)	<i>For his part, as will appear, Mr Groom came eventually very close to conceding the appeal.</i>
I. 169 (initial)	<i>If the offence charged by the information is one of those mentioned in the first column of Schedule 2 to this Act (in this section referred to as "scheduled offences") then,...the court shall,</i>
I. 171 (medial)	<i>the court shall, before proceeding in accordance with section 19 above, consider whether...</i>
I. 172 (initial)	<i>whether, having regard to any representations made by the prosecutor or the accused, the value involved...appears to the court to exceed the relevant sum.</i>
I. 173 (medial)	<i>the value involved (as defined in subsection (10) below) appears to the court to exceed the relevant sum.</i>
I. 176 (Initial)	<i>If, where subsection (1) above applies, it appears to the court clear that, for the offence charged, the value involved does not exceed the relevant sum,</i>
I. 180 (initial)	<i>If, where subsection (1) above applies, it appears to the court clear that, for the offence charged, the value involved does not exceed the relevant sum,</i>
I. 186 (initial)	<i>However, under section 22(2) the justices may be compelled</i>
I. 187 (medial)	<i>the justices may be compelled ("shall proceed as if the offence were triable only summarily") to deal with a case of low value simple criminal damage summarily.</i>
I. 189 (initial)	<i>Section 32(1) provides that on summary conviction of any of the offences triable either way listed within Schedule 1 of the Act (which includes section 1(1) of the Criminal Damage Act 1971) the magistrates court is limited to a term of 6 months.</i>
I. 192 (initial)	<i>Section 33, however, goes on to provide that where there is a summary conviction pursuant to section 22(2), then the maximum sentence available is reduced</i>
I. 195 (medial)	<i>Section 133(1) then provides that the maximum in the magistrates court for a series of consecutive sentences is six months</i>
I. 198 (medial)	<i>the term of imprisonment or detention in a young offender institution shall commence on the expiry of any other term of imprisonment or detention</i>
I. 201 (initial)	<i>but where a magistrates' court imposes two or more terms of imprisonment or detention in a young offender institution to run consecutively the aggregate of such terms shall not...exceed 6 months.</i>
I. 203 (medial)	<i>the aggregate of such terms shall not, subject to the provisions of this section, exceed 6 months.</i>
I. 212 (initial)	<i>but only if (in either case) the facts or evidence relating to the offence were disclosed</i>
I. 214 (medial)	<i>the facts or evidence relating to the offence were disclosed to a magistrates' court inquiring into the offence as examining justices or are disclosed by material which, in pursuance of regulations made under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1988 (procedure where person sent for trial under section 51) has been served on the person charged.</i>
I. 217 (initial)	<i>Where a count charging an offence to which this section applies is included in an indictment, the offence shall be tried in the same manner as if it were an indictable offence</i>

l. 228 (initial)	Thus section 40 appears to provide that <i>where any summary offence to which the section applies, which, by reason of subsection (3)(d) encompasses an offence triable either way which would have been triable only summarily by virtue of section 22(2) of the Magistrates' Courts Act 1980, is included in an indictment, it can only be sentenced in a manner in which a magistrates' court could have dealt with it.</i>
l. 233 (initial)	It might also be observed that <i>where a magistrates' court commits a defendant for trial at the Crown Court on an either-way offence, it may also commit him for trial on a summary offence</i>
l. 237 (initial)	<i>In such a case too, the Crown Court "may deal with him only in a manner in which a magistrates' court could have dealt with him"</i>
l. 245 (initial)	<i>Where an adult appears or is brought before a magistrates' court ("the court") charged with an offence triable only on indictment ("the indictable-only offence"), the court shall send him forthwith to the Crown Court for trial</i>
l. 254 (initial)	<i>in the case of a summary offence, it is punishable with imprisonment</i>
l. 260 (initial)	<i>If the person pleads guilty, the Crown Court shall convict him,</i>
l. 261 (medial)	<i>but may deal with him in respect of the summary offence only in a manner in which a magistrates' court could have dealt with him</i>
l. 264 (initial)	<i>where in the Crown Court on a sending under section 51 no indictable-only offence remains</i>
l. 265 (initial)	<i>In such a case the Crown Court has to find the suitable mode of trial</i>
l. 268 (initial)	<i>However, separately from that, it is paragraph 14 of the Schedule which reflects section 22...</i>
l. 273 (medial)	the Crown Court has to determine, <i>for the purposes of this Schedule, whether an offence which is listed in the first column of Schedule 2 to the 1980 Act (offences for which the value involved is relevant to the mode of trial) is a summary offence</i>
l. 277 (initial)	<i>If it appears clear to the court that the value involved does not exceed the relevant sum, it shall treat the offence as a summary offence</i>
l. 279 (initial)	<i>If it appears clear to the court that the value involved exceeds the relevant sum, the court shall treat the offence as an indictable offence</i>
l. 285 (initial)	<i>Thus, whether what clearly appears to the relevant court to be a low value criminal damage count appears on an indictment pursuant to section 40(2) of the 1988 Act or pursuant to a section 51 sending under the 1998 Act, in either case the Crown Court can deal with it on sentence only in a manner in which a magistrates' court could have dealt with it</i>
l. 294 (initial)	<i>Where a person is arraigned on an indictment he may plead...</i>
l. 302 (initial)	There is no specific provision, however, <i>as to how in such an event a summary offence such as disorderly behaviour with intent is to be sentenced by a Crown Court (save of course that under section 4A(5) of the 1986 Act itself a maximum sentence of only six months imprisonment is permitted)</i>
l. 307 (initial)	<i>Where, on a person's trial on indictment for any offence except treason or murder, the jury find him not guilty of the offence specifically charged in the indictment, but the allegations in the indictment amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the court of trial, the jury may find him guilty of that other offence</i>
l. 313 (initial)	<i>For the purposes of subsection (3) above an offence falls within the jurisdiction of the court of trial if it is an offence to which...</i>

I. 317 (medial)	A person convicted of an offence <i>by virtue of subsection (3A)</i> may only be dealt with for it in a manner in which a magistrates' court could have dealt with him
I. 323 (initial)	<i>In any event</i> , section 6(3) is dealing only with the situation of conviction
I. 324 (initial)	And so, <i>submitted Mr Groom</i> , the count 4 offence did not fall within the limitations
I. 329 (medial)	and in addition pleaded guilty (<i>pursuant to section 6(1)(b) of the 1967 Act</i>) to a third offence of common assault
I. 332 (initial)	It was held that, <i>by virtue of the provisions of section 6(3B)</i> , the total sentence was unlawful
I. 335 (initial)	even though, <i>on the latter's own terms</i> , it is limited to a conviction within subsection (3A)
I. 342 (initial)	<i>If on the trial on indictment of a person charged with violent disorder or affray the jury find him not guilty of the offence charged</i> , they may...find him guilty of an offence under section 4
I. 343 (medial)	they may (<i>without prejudice to section 6(3) of the Criminal Law Act 1967</i>) find him guilty of an offence under section 4
I. 346 (medial)	a person who is <i>by virtue of subsection (3)</i> convicted before it of an offence
I. 349 (initial)	<i>So, if the appellant had stood trial on count 4 and had been convicted by the jury of the alternative offence under section 4 (which is very similar to that under section 4A)</i> , the Crown Court would have been limited to the sentencing powers of a magistrates' court
I. 352 (initial)	<i>In the present case</i> the appellant pleaded guilty
I. 353 (medial)	the appellant pleaded guilty (<i>as was mistakenly assumed at the appeal</i>) to the alternative offence within section 4A
I. 355 (initial)	<i>On the express terms of section 7(3) and (4) therefore</i> the present case...did not fall within it for two reasons
I. 356 (medial)	the present case (<i>on that mistaken basis</i>) did not fall within it for two reasons
I. 357 (initial)	It seems odd that <i>when section 4A was added in 1994</i> , section 7 was not also amended
I. 360 (initial)	<i>In the light of these provisions</i> Mr Bindloss submitted that...
I. 364 (medial)	the greater (<i>the situation where a jury convicts after a trial</i>) must include the lesser
I. 366 (initial)	<i>In this connection</i> , neither counsel drew any distinction between section 4 and section 4A
I. 370 (initial)	And so, <i>subject to the point that on its express terms section 7(3)/(4) is dealing only with a conviction by a jury and not with a plea of guilty, and subject also to the possibility that it is the combination of section 6(1)(b) of the 1967 Act and of section 7(3) of the 1986 Act that permits the plea of guilty where the jury could have convicted</i> , we are not troubled with the ramifications of section 6
I. 375 (initial)	However, we should state our view that <i>if (as turns out not to have been the case) the appellant had pleaded guilty to a section 4A offence</i> , that conviction would have been unlawful because section 6 does not cover such an offence
I. 380 (initial)	<i>Therefore, on the basis of a section 4A offence which was common ground at the appeal hearing</i> , we would have had to allow not only the sentence appeal...
I. 389 (initial)	<i>In R v. Walker [1996] 1 Cr App R (S) 447</i> the defendant was committed to the Crown Court for trial
I. 396 (medial)	the maximum sentence which would have been available to the magistrates, <i>and thus was available to the Crown Court under section 40(2)</i> , was one of 3 months only

I. 406 (initial)	<i>In R v. Fennell [2000] 2 Cr App R 318</i> this court (in the judgment of Rose LJ) decided that...
I. 408 (medial)	The jury were permitted <i>under section 6(3) of the Criminal Law Act 1967</i> to return alternative verdicts
I. 414 (medial)	The submission was that section 22, <i>perhaps because the damage in question was below £5,000 (for the amount had been identified in the indictment as about £1,500) but the argument was also put a number of times more broadly to apply to simple criminal damage as a whole</i> , meant that the offence could only be tried summarily
I. 422 (initial)	<i>for, when considering the appropriate mode of trial, if the damage is less than £5,000, they are to proceed "as if" the offence was triable only summarily</i>
I. 426 (initial)	<i>In R v. Alden [2002] 2 Cr App R (S) 74</i> this court revisited Fennell
I. 441 (initial)	So it was common ground, <i>and accepted by the court</i> , that section 133 (1)'s limit of six months would have been applicable
I. 443 (initial)	<i>Since there was no dispute that the public order offence and the common assault were summary offences (and the sentence for them totalled 5½ months, ie within the six months limit),</i>
I. 446 (medial)	the criminal damage offence, in relation to which, <i>as we have said</i> , a sentence of two-and-a-half months was imposed, was a summary offence,
I. 449 (initial)	It was conceded... <i>that if this Court concludes that Fennell was correctly decided</i> , that is fatal to the legal aspect of this appeal
I. 454 (initial)	It will also be recalled that <i>in Fennell too</i> there had been no question of the criminal damage
I. 457 (initial)	<i>In these circumstances</i> Rose LJ proceeded to reason the matter as follows
I. 461 (medial)	would give rise <i>in an appropriate case</i> , to a maximum sentence
I. 462 (initial)	<i>Whereas, if there were no information before the justices and the matter came before the Crown Court by way of amendment to the indictment, as it did in the present case, for the same offence, the Crown Court would have the power to sentence up to 10 years</i>
I. 471 (initial)	<i>But if the magistrates have not so categorised the criminal damage offence</i> , the Crown Court's powers are the same as they would be in relation to any other either way offence
I. 474 (initial)	<i>In our judgment...Fennell was rightly decided</i>
I. 478 (initial)	<i>If an offender appears for sentence before the Crown Court, for criminal damage otherwise than under a particular provision specifically restricting the sentencing power of the Crown Court, then the maximum sentence available is 10 years</i>
I. 480 (initial)	<i>If a defendant appears before a magistrates' court charged with an offence of criminal damage</i> , the court must proceed under section 22 of the Magistrates' Courts Act 1980
I. 483 (initial)	<i>If that apparent value is less than £5,000</i> , it must proceed as if the offence were a summary offence
I. 484 (initial)	<i>After such a determination</i> , an offence treated as a summary offence is subject to the maximum sentence
I. 490 (initial)	<i>In the present case, as it seems to us, following from the conclusions which we have reached,</i>
I. 497 (initial)	<i>In the present case, however</i> , the criminal damage offence had appeared before the justices
I. 498 (medial)	and (the criminal damage offence) was <i>moreover, as Judge Moore understood the matter</i> , included on the indictment pursuant to section 40.

I. 500 (initial)	<i>In those circumstances, it would seem that Alden is authority for the result</i>
I. 507 (initial)	<i>Finally, in Gwynn [2002] EWCA Crim 2951, [2003] 2 Cr App R (S) 41, the defendant had been sent for trial</i>
I. 520 (medial)	<i>the case of a sending under section 51 of a low value criminal damage charge had been considered and continued</i>
I. 522 (initial)	<i>As is apparent from Alden, the question whether there was a six months limit on the total permissible sentence depends on...</i>
I. 527 (initial)	<i>Having accepted that it was clear that the damage was less than the relevant sum, the court should have proceeded as if the offence was a summary one</i>
I. 531 (initial)	<i>Gwynn therefore is a second authority which recognises that where summary offences or offences which must be treated as though they are summary offences are concerned, the Crown Court is limited to the magistrates' total sentencing powers of 6 months.</i>
I. 535 (initial)	<i>In the present case, Mr Groom...seemed to be submitting on behalf of the Crown</i>
I. 535 (medial)	<i>Mr Groom at the hearing seemed to be submitting on behalf of the Crown</i>
I. 535 (medial)	<i>Mr Groom at the hearing seemed to be submitting on behalf of the Crown that...</i>
I. 538 (initial)	<i>even if the criminal damage count had been included in the indictment pursuant to section 40, it was still necessary to show that the justices had considered the amount of damage</i>
I. 544 (medial)	<i>These submissions appeared to us at the hearing to be unlikely to be well directed</i>
I. 545 (medial)	<i>we were unable at that stage to be sure of our ground</i>
I. 548 (medial)	<i>the result that before very long he would have served the whole of his sentence</i>
I. 549 (medial)	<i>even if, as seemed likely to us, his appeal should succeed</i>
I. 549 (initial)	<i>In those circumstances, we determined to allow his appeal and reduce his total sentence</i>
I. 559 (initial)	<i>On the basis, however, that he was dealing with a section 40 offence to which a maximum sentence of 3 months applied, he was wrong to have considered that...</i>
I. 562 (initial)	<i>In particular, if we were to consider on reflection that the judge was bound by the 6 months' limit, as seemed likely, it would have been unjust to the appellant that...</i>
I. 564 (initial)	<i>If, on the other hand, we were on reflection to consider that the judge was entitled to impose the sentence that he did, the only consequence would have been that...</i>
I. 566 (initial)	<i>the only consequence would have been that, while the appellant would have been fortunate to escape the longer sentence of ten months in total, no injustice would have been done</i>
I. 568 (initial)	<i>After the hearing Mr Groom supplied us with two further notes</i>
I. 572 (medial)	<i>He also expressed reservations about Alden, which as we understand them proceed upon the basis that...</i>
I. 574 (initial)	<i>In that case, he submitted, prosecuting counsel there must have impliedly represented that the offence was one "which would otherwise be triable only summarily by virtue of section 22(2)</i>
I. 578 (initial)	<i>As stated above, Alden was a case where the criminal damage count was added by amendment</i>
I. 583 (medial)	<i>section 40(3)(b) requires it, on Alden's reasoning, to have been categorised by the magistrates' court</i>
I. 585 (initial)	<i>Therefore, by the Alden court's own definition, the amendment to add criminal damage could not have been pursuant to section 40.</i>

I. 586 (initial)	<i>Indeed, as we understand the matter, there is no need of section 40 to include an either-way count</i>
I. 592 (initial)	<i>However, in the present case, it was common ground..that the counts of criminal damage and common assault had been included under section 40</i>
I. 592 (medial)	<i>it was common ground at the Crown Court before Judge Moore that the counts of criminal damage and common assault had been included under section 40</i>
I. 606 (initial)	<i>Thus, in relation to our three offences, the maximum were three months</i>
I. 609 (initial)	<i>In these circumstances, this case is not within Alden but within Walker</i>
I. 612 (initial)	<i>In our judgment, it cannot be appropriate in such circumstances to speculate</i>
I. 612 (medial)	<i>it cannot be appropriate in such circumstances to speculate, in the absence of sure knowledge of what went on at the magistrates' court, as to whether there had been a formal appearing to the justices</i>
I. 615 (initial)	<i>it being common ground before Judge Moore that the count of criminal damage was before the Crown Court under section 40, it could not be right that the appellant, after pleading guilty on that basis, could be at peril of a sentence of more than 3 months</i>
I. 617 (medial)	<i>it could not be right that the appellant, after pleading guilty on that basis, could be at peril of a sentence of more than 3 months</i>
I. 619 (initial)	<i>In any event, the natural inference in this case is that...</i>
I. 620 (medial)	<i>the natural inference in this case is that, given the nature of the charge (of damage below £5,000) and of the evidence (concerning damage in the order of about £1,400 at most), it must have appeared clear to the justices that the damage was lower than £ 5,000.</i>
I. 623 (medial)	<i>We therefore need not consider, even if it were appropriate for us to do so, whether Alden is correctly decided</i>
I. 630 (medial)	<i>It also follows that the summary section 4 public order offence under count 4 falls within the six months in total rule</i>
I. 633 (medial)	<i>the criminal damage count in that case had fallen within section 40</i>
I. 634 (initial)	<i>For these purposes the facts of Alden were very pertinent</i>
I. 635 (initial)	<i>for there too, as was thought to be the position in the present case, the defendant pleaded guilty to a summary public order offence</i>
I. 639 (initial)	<i>Moreover, despite the limitations of section 6(3A) and (3B) of the Criminal Law Act 1967, this court in Jones applied subsection (3B)</i>
I. 641 (initial)	<i>Similarly, in R v. Armour [2007] EWCA 3294, a plea of guilty to an offence under section 4 of the Public Order Act 1986 was regarded by this court as falling within section 7(4)</i>
I. 645 (initial)	<i>In every other circumstance we have considered, statute has emphasised that ...</i>
I. 653 (medial)	<i>We therefore confirm, for these reasons, our decision to grant leave to appeal</i>
Sammensatte præpositioner:	
I. 69	by virtue of
I. 70	in respect of
I. 87	in respect of
I. 96	by virtue of
I. 108	on behalf of
I. 109	in respect of

l. 114	on behalf of
l. 120	in respect of
l. 121	in respect of
l. 152	in respect of
l. 171	in accordance with
l. 182	in accordance with
l. 214	in pursuance of
l. 219	in respect of
l. 225	by virtue of
l. 229	by reason of
l. 256	in relation to
l. 261	in respect of
l. 292	in relation to
l. 317	by virtue of
l. 328	by virtue of
l. 332	by virtue of
l. 346	in relation to
l. 346	by virtue of
l. 351	in respect of
l. 430	in respect of
l. 445	in relation to
l. 472	in relation to
l. 493	in conjunction with
l. 500	by virtue of
Komplekse substantivsyntagmer:	
l. 24	the complex and controversial question of the circumstances in which the Crown Court is restricted in its sentencing powers to those of the magistrates' court
l. 25	an application for leave to appeal against sentence which was referred to the full court by the registrar of criminal appeals
l. 31	the conduct for which he was sentenced
l. 68	the alternative lesser offence of using threatening, abusive or insulting words or behaviour with intent contrary to section 4 of the 1986 Act
l. 74	three offences on indictment which were or were treated as being summary only
l. 85	the community order which had been imposed by the magistrates' court
l. 94	the alternative offence to which the appellant had pleaded guilty was section 4A of the same Act, a very similar offence of using disorderly behaviour with intent
l. 99	a result of further enquiries which we have caused to be made in the course of writing this judgment (and which have delayed it)
l. 101	a transcript of the "Discussion regarding amendment of indictment to add count 4 and arraignment on that count" dated 30 September 2008
l. 105	the consequences of a conviction pursuant to section 4 rather than section 4A of the Public Order Act 1986
l. 106	the basis argued at the appeal, which was that the count 4 conviction was pursuant to section 4A
l. 118	a plea of guilty...which limited the Crown Court to the maximum sentence available to the magistrates' court under section 133(1)

I. 121	those two offences, having been included in the indictment pursuant to section 40 of the Criminal Justice Act 1988
I. 136	the 6 months' limit which would have applied in the magistrates' court
I. 144	the different statutory power which permits the defendant to plead to such counts as a jury could bring in
I. 147	the individual maxima to which the magistrates' court would have been subject, viz 3 months in the case of criminal damage of less than £ 5,000
I. 148	the idea that section 40(2) (or anything else) introduced the further limitation of section 133(1)
I. 151	those words in section 40(2), which I have already highlighted [viz, "the Crown Court may only deal with the offender in respect of it in a manner in which a Magistrates' Court could have dealt with him", see below]
I. 154	a specific statute which has no application whatsoever to the Crown Court on indictment
I. 158	a conclusion which would be both artificial and contrary to justice
I. 185	the procedure whereby a defendant is offered the option of electing for summary trial in the magistrates' court or jury trial in the Crown Court
I. 189	summary conviction of any of the offences triable either way listed within Schedule 1 of the Act (which includes section 1(1) of the Criminal Damage Act 1971)
I. 195	the maximum in the magistrates' court for a series of consecutive sentences
I. 197	a magistrates' court imposing imprisonment or detention in a young offender institution on any person
I. 199	the expiry of any other term of imprisonment or detention in a young offender institution imposed by that or any other court;
I. 201	two or more terms of imprisonment or detention in a young offender institution to run consecutively
I. 206	A count charging a person with a summary offence to which this section applies
I. 210	a series of offences of the same or similar character as an indictable offence which is also charged
I. 214	material which, in pursuance of regulations made under paragraph 1 of Schedule 3 to the Crime and Disorder Act 1988 (procedure where person sent for trial under section 51)
I. 217	a count charging an offence to which this section applies
I. 219	a manner in which a magistrates' court could have dealt with him
I. 223	an offence mentioned in the first column of Schedule 2 to the Magistrates' Courts Act 1980 (criminal damage etc.) which would otherwise be triable only summarily by virtue of section 22(2) of that Act
I. 228	any summary offence to which the section applies, which, by reason of subsection (3)(d) encompasses an offence triable either way which would have been triable only summarily by virtue of section 22(2) of the Magistrates' Courts Act 1980,
I. 231	a manner in which a magistrates' court could have dealt with it
I. 234	a summary offence with which he is charged
I. 236	circumstances which appear to the court to be the same as or connected with" the circumstances of the either-way offence (section 41 of the 1980 Act).
I. 238	a manner in which a magistrates' court could have dealt with him
I. 242	the alternative procedure where a summary offence is sent to the

	Crown Court under section 51 of the Crime and Disorder Act 1988
I. 249	any either-way or summary offence with which he is charged which fulfils the requisite conditions (as set out in subsection (11) below)
I. 255	obligatory or discretionary disqualification from driving
I. 261	a manner in which a magistrates' court could have dealt with him
I. 266	the suitable mode of trial for any either-way offence still on the indictment
I. 267	similar provisions to those to be found in sections 19ff of the Magistrates' Courts Act 1980
I. 268	paragraph 14 of the Schedule which reflects section 22 of the 1980 Act in dealing with either-way offences such as section 1 of the Criminal Damage Act 1971 (and other such offences within Schedule 2 to the 1980 Act) where the value involved is relevant to the mode of trial
I. 271	"Procedure for determining whether offences of criminal damage etc. are summary offences"
I. 274	an offence which is listed in the first column of Schedule 2 to the 1980 Act (offences for which the value involved is relevant to the mode of trial)
I. 283	a manner in which a magistrates' court could have dealt with him
I. 287	a manner in which a magistrates' court could have dealt with it
I. 292	the situation which arose in relation to count 4 on the indictment
I. 296	the offence specifically charged in the indictment
I. 297	another offence of which he might be found guilty on that indictment
I. 299	the appellant's plea of guilty to disorderly behaviour with intent under section 4A of the Public Order Act 1986
I. 300	an alternative to the offence of affray that came to be charged under count 4
I. 302	a summary offence such as disorderly behaviour with intent
I. 305	provision about what is to happen if a <i>jury convicts</i> a defendant of an alternative summary offence
I. 307	a person's trial on indictment for any offence except treason or murder
I. 308	the offence specifically charged in the indictment
I. 309	an allegation of another offence falling within the jurisdiction of the court of trial
I. 311	an indictment specifically charging that other offence
I. 314	an offence to which section 40 of the Criminal Justice Act 1988 applies (power to join in indictment count for common assault etc.)
I. 317	A person convicted of an offence by virtue of subsection (3A)
I. 318	a manner in which a magistrates' court could have dealt with him
I. 320	the basis of the point made by Mr Groom to the effect that count 4 stands apart from any requirement of the Crown Court to treat the summary offence of disorderly behaviour with intent as a magistrates' court would have had to deal with it
I. 328	two counts of common assault which were on the indictment by virtue of section 40
I. 329	a third offence of common assault as an alternative to a charge on the indictment of causing actual bodily harm
I. 331	consecutive sentences totalling 9 months, with 4 months for the alternative plea
I. 337	specific provisions about certain Public Order Act offences which also have to be taken into account.
I. 346	a person who is by virtue of subsection (3) convicted before it of an offence under section 4

I. 349	the alternative offence under section 4 (which is very similar to that under section 4A)
I. 353	the alternative offence within section 4A, which was inserted into the 1986 Act by the Criminal Justice and Public Order Act 1994
I. 361	provision dealing with the sentencing consequences of a jury conviction on an alternative verdict on a summary offence, but not with the sentencing consequences where there was a plea of guilty on an alternative offence to the one charged
I. 380	the basis of a section 4A offence which was common ground at the appeal hearing
I. 386	a number of cases which deal with the special case of the either-way offence of criminal damage and the situation where it may have to be treated as a summary offence because clearly of a value below £ 5,000
I. 390	a count of section 1(1) criminal damage arising out of the same facts
I. 395	the maximum sentence which would have been available to the magistrates, and thus was available to the Crown Court under section 40(2)
I. 400	his view that he was in any event limited to 3 months
I. 406	charges of racially aggravated assault occasioning actual bodily harm and racially aggravated criminal damage
I. 408	alternative verdicts of guilty on simple actual bodily harm and simple criminal damage
I. 421	a basis which assumes that criminal damage can be tried on indictment
I. 427	a defendant who pleaded guilty to an offence of common assault and to a lesser alternative of harassment with intent under section 4A of the Public Order Act 1986 (the offence with which we had mistakenly thought we were concerned in the present case in respect of count 4)
I. 430	new counts of criminal damage and of assault occasioning actual bodily harm, to which the defendant also pleaded guilty
I. 443	no dispute that the public order offence and the common assault were summary offences (and the sentence for them totalled 5½ months, ie within the six months limit)
I. 445	the criminal damage offence, in relation to which, as we have said, a sentence of two-and-a-half months was imposed
I. 452	a case of criminal damage being included in the indictment under section 40
I. 454	no question of the criminal damage being included in the indictment under section 40
I. 458	certain anomalies which will follow, as Dr Thomas [counsel acting as amicus curiae] concedes they will
I. 460	a case of criminal damage, coming by way of information before the justices,
I. 466	The submission made by Dr Thomas
I. 466	a freestanding provision which reclassifies criminal damage
I. 467	a procedural provision which follows on the categorisation process by justices, provided for by section 22 of the Magistrates' Courts Act
I. 474	an either way offence, punishable on conviction, on indictment, with 10 years' imprisonment, irrespective of the value of the damage caused
I. 485	an offence treated as a summary offence
I. 491	the sentence of two-and-a-half months imposed for the criminal damage
I. 493	the sentences passed for the two summary offences

I. 494	a summary offence requiring a capping of the Crown Court sentencing powers to the six months permissible to justices had they been dealing with three summary offences
I. 499	on the basis provided for in section 40, namely that the offence "would otherwise be triable only summarily by virtue of section 22(2)..." (section 40(3)(d))
I. 501	the result contended for before Judge Moore, but rejected by him, that he was restricted to a total of six months for the criminal damage, the common assault and the alternative plea to section 3 of the Public Order Act 1986
I. 505	an offence which had been categorised by the magistrates as if it were a summary offence
I. 508	six charges, all arising out of the same incident, to which the defendant pleaded guilty
I. 511	damage to four cars in a single lay-by, caused with a metal bar
I. 515	The offences of theft and having an offensive weapon
I. 517	the provisions of paragraph 14 of Schedule 3 to the 1998 Act
I. 520	para 22 of <i>Alden</i> where the case of a sending under section 51 of a low value criminal damage charge had been considered
I. 522	the question whether there was a six months limit on the total permissible sentence
I. 524	offences that are either actually summary or to be treated as if summary
I. 529	its powers for sentencing the criminal damage offences
I. 531	a second authority which recognises that where summary offences or offences which must be treated as though they are summary offences are concerned
I. 533	the magistrates' total sentencing powers of 6 months
I. 542	no provision which limited the Crown Court to include the sentence on the public order offence within the total of six months applicable under section 133(1)
I. 548	with the result that before very long he would have served the whole of his sentence
I. 569	charges of criminal damage (stated to be "to property valued under £ 5,000") and of assaulting an officer, which became counts 2 and 3 (the latter translated into common assault)
I. 572	reservations about <i>Alden</i> , which as we understand them proceed upon the basis that the criminal damage count in that case was added by subsequent amendment under section 40(2)
I. 574	one "which would otherwise be triable only summarily by virtue of section 22(2)" (see section 40(3)(d))
I. 578	a case where the criminal damage count was added by amendment as an either-way count without any prior consideration before the magistrates' court
I. 585	the amendment to add criminal damage
I. 587	an either-way count of criminal damage on an indictment by way of amendment
I. 588	a summary offence in an indictment
I. 588	an either-way offence which needs to be treated "as if the offence were triable only summarily"
I. 590	A count charging a person with a <i>summary</i> offence to which this section applies
I. 596	the different statutory power which permits the defendant to plead to such counts as a jury could bring in
I. 559	the sentence for which was limited to the powers of the Magistrates'

	Court
I. 603	an offence which had to be treated as if it were a summary offence under section 22(2).
I. 604	a maximum for that count of 3 months, which would not otherwise have applied
I. 609	<i>Walker</i> (which was not mentioned in <i>Alden</i>)
I. 618	of a total sentence for the relevant offences of more than 6 months
I. 620	the nature of the charge (of damage below £5,000)
I. 620	(the nature) of the evidence (concerning damage in the order of about £ 1,400 at most)
I. 631	Mr Groom's submission (dealing with what he thought was a section 4A offence)
I. 636	a summary public order offence under section 4A of the 1986 Act as an alternative to an indictable public order offence on the indictment
I. 639	the limitations of section 6(3A) and (3B) of the Criminal Law Act 1967
I. 641	a plea of guilty to an offence under section 4 of the Public Order Act 1986
I. 645	the Crown Court's sentencing powers for summary offences
I. 648	one that had to be treated as if it were a summary offence
I. 653	our decision to grant leave to appeal and to allow the appeal
	Fagterminologi:
I. 3	Judicature
I. 4	Appeal
I. 4	Appeal
I. 17	Respondent
I. 18	Appellant
I. 20	Appellant
I. 21	respondent
I. 22	Hearing
I. 24	Appeal
I. 27	appellant
I. 27	Registrar
I. 28	Hearing
I. 30	appellant
I. 31	Offending
I. 31	Record
I. 33	culpability
I. 42	appellant
I. 47	offence
I. 52	Appellant
I. 53	offence
I. 54	indictment
I. 54	count
I. 55	prosecution
I. 57	indictment
I. 58	count
I. 58	count
I. 59	count
I. 59	count
I. 61	Counts

I. 63	Appellant
I. 63	Plea
I. 63	count
I. 64	Appellant
I. 65	Appellant
I. 65	count
I. 72	Pleas
I. 74	Offences
I. 74	indictment
I. 75	Summary
I. 78	offence
I. 82	Appellant
I. 82	Detention
I. 83	count
I. 83	count
I. 85	Detention
I. 87	Appellant
I. 87	resentence
I. 90	Detention
I. 92	Appellant
I. 92	count
I. 93	Appellant
I. 95	offence
I. 97	Appeal
I. 102	indictment
I. 102	arraignment
I. 102	count
I. 103	Transcript
I. 103	count
I. 104	Appellant
I. 104	affray
I. 105	conviction
I. 107	Appeal
I. 107	count
I. 107	conviction
I. 108	Appellant
I. 109	Counts
I. 110	Offences
I. 115	count
I. 116	indictment
I. 118	count
I. 119	Plea
I. 121	count
I. 121	count
I. 122	offences
I. 122	indictment
I. 122	offences
I. 122	indictment
I. 124	count
I. 125	indictment

I. 130	count
I. 130	indictment
I. 131	count
I. 131	indictment
I. 134	count
I. 136	Counts
I. 142	Ruling
I. 142	Ruling
I. 143	Counts
I. 144	count
I. 145	to plead
I. 145	Counts
I. 145	Jury
I. 152	the offender
I. 155	Statute
I. 155	indictment
I. 156	indictment
I. 156	statutory regime
I. 160	Appeal
I. 165	provisions
I. 169	offence
I. 171	proceedings
I. 177	offence
I. 178	offence
I. 181	offence
I. 181	proceed
I. 183	provisions
I. 187	offence
I. 189	offences
I. 189	Triable
I. 203	provisions
I. 205	Appeal
I. 206	Charge
I. 207	indictment
I. 207	Charge
I. 210	offences
I. 215	Trial
I. 216	count
I. 216	offence
I. 217	indictment
I. 217	offences
I. 218	indictment
I. 218	offence
I. 221	offences
I. 223	offence
I. 231	indictment
I. 231	be sentenced
I. 233	trial
I. 248	offence
I. 252	offence

I. 256	provision
I. 257	procedure
I. 260	to convict
I. 266	indictment
I. 267	provisions
I. 271	trial
I. 271	procedure
I. 271	offences
I. 274	offence
I. 275	offences
I. 276	trial
I. 278	offence
I. 286	indictment
I. 292	statute
I. 292	count
I. 292	indictment
I. 294	arraigned
I. 294	indictment
I. 296	offence
I. 297	indictment
I. 297	offence
I. 298	indictment
I. 299	Appellant
I. 301	offence
I. 301	Provision
I. 307	Trial
I. 307	indictment
I. 307	offence
I. 307	Treason
I. 308	Jury
I. 308	offence
I. 308	indictment
I. 309	allegations
I. 309	indictment
I. 310	allegation
I. 310	offence
I. 310	jurisdiction
I. 310	Jury
I. 311	offence
I. 312	indictment
I. 312	offence
I. 313	offence
I. 314	offence
I. 315	indictment
I. 315	count
I. 316	count
I. 316	Offence
I. 316	indictment
I. 317	Convicted
I. 317	Offence

I. 320	Offence
I. 321	count
I. 324	conviction
I. 324	Jury
I. 324	count
I. 324	offence
I. 327	a plea
I. 327	appellant
I. 328	counts
I. 328	indictment
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I. 330	charge
I. 330	indictment
I. 335	application
I. 336	conviction
I. 337	provisions
I. 337	offences
I. 337	provisions
I. 340	provisions
I. 342	trial
I. 342	indictment
I. 343	offence
I. 343	prejudice
I. 344	offence
I. 347	offence
I. 348	offence
I. 349	appellant
I. 349	jury
I. 350	conviction
I. 353	appellant
I. 353	appeal
I. 360	provisions
I. 361	provision
I. 363	provisions
I. 364	jury
I. 365	trial
I. 366	counsel
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I. 368	count
I. 368	offence
I. 369	offence
I. 373	jury
I. 375	Appellant
I. 375	Offence
I. 376	conviction
I. 376	offence
I. 377	jurisdiction
I. 378	jurisdiction
I. 381	count
I. 383	conviction

l. 385	jurisprudence
l. 390	charges
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l. 391	indictment
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l. 394	counts
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l. 402	offences
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l. 406	charges
l. 408	jury
l. 410	imprisonment
l. 410	verdict
l. 410	verdict
l. 413	jurisdiction
l. 413	count
l. 414	indictment
l. 415	indictment
l. 417	offence
l. 417	jury
l. 418	count
l. 418	indictment
l. 421	indictment
l. 421	to proceed
l. 422	trial
l. 423	to proceed
l. 423	offence
l. 424	appeal
l. 424	conviction
l. 424	sentence
l. 424	appeal
l. 427	conviction
l. 427	offence
l. 429	offence
l. 430	indictment
l. 430	counts
l. 435	detention
l. 435	offence
l. 436	consecutive
l. 439	justices
l. 442	offences
l. 451	appeal
l. 452	indictment
l. 453	offence
l. 453	trial

l. 455	indictment
l. 456	trial
l. 456	jury
l. 458	appellant
l. 458	counsel
l. 459	counsel
l. 461	justices
l. 463	justices
l. 464	indictment
l. 464	offence
l. 467	provision
l. 467	a procedural provision
l. 468	justices
l. 475	conviction
l. 475	indictment
l. 477	indictment
l. 479	provision
l. 484	offence
l. 485	offence
l. 487	offence
l. 488	committal
l. 495	justices
l. 497	justices
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l. 503	count
l. 505	offence
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l. 509	charge
l. 510	offences
l. 513	offences
l. 514	counts
l. 515	offences
l. 516	offences
l. 517	provisions
l. 524	offences
l. 525	indictment
l. 525	amendment
l. 529	offence
l. 535	hearing
l. 538	indictment
l. 541	offence
l. 542	provision
l. 544	hearing
l. 547	appellant
l. 547	judgment
l. 549	appeal
l. 550	appeal

l. 553	offences
l. 560	offence
l. 564	appeal
l. 567	appellant
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l. 569	charges
l. 570	charges
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l. 587	indictment
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l. 589	offence
l. 590	count
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l. 595	indictment
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l. 597	counts
l. 602	indictment
l. 603	offence
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l. 606	offences
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l. 617	Appellant
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l. 637	indictment
l. 641	offence
l. 647	offence
l. 651	offence
l. 654	appeal
l. 655	counts
juridiske kollokationer:	
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l. 27	criminal appeals
l. 28	grant leave to appeal
l. 28	allow an appeal
l. 39	controlled drug
l. 39	plead guilty
l. 40	community order
l. 47	to be charged with
l. 49	a constable in the execution of his duty
l. 50	criminal damage
l. 52	to be committed for trial
l. 55	to offer evidence

I. 55	to record a verdict
I. 60	common assault
I. 63	a plea and case management hearing
I. 63	to plead guilty
I. 64	common assault
I. 65	criminal damage
I. 65	disclosure hearing
I. 65	to plead guilty
I. 66	count of affray
I. 68	a lesser offence
I. 68	to be charged with
I. 69	behaviour with intent
I. 75	criminal damage
I. 76	an either way offence
I. 76	maximum sentence
I. 76	summary disposal
I. 78	common assault
I. 79	summary offence
I. 79	maximum sentence
I. 80	behaviour with intent
I. 80	summary offence
I. 81	maximum sentence
I. 82	criminal damage
I. 82	to sentence someone to
I. 83	common assault
I. 85	to revoke an order
I. 85	to impose an order
I. 85	basic sentence
I. 86	to commit an offence
I. 89	additional sentence
I. 90	additional sentence
I. 91	basic sentence
I. 92	to plead guilty
I. 94	to conduct an appeal
I. 95	to plead guilty
I. 96	to use disorderly behaviour
I. 96	with intent
I. 92	the alternative lesser offence
I. 93	behaviour with intent
I. 94	the alternative offence
I. 92	the alternative lesser offence
I. 104	to plead not guilty
I. 109	a maximum combined sentence
I. 110	sentencing powers
I. 113	to be in dispute
I. 118	a plea of guilty
I. 124	criminal damage
I. 124	an either way offence
I. 125	an either way offence
I. 130	an either way offence

I. 131	an either way offence
I. 139	summary offences
I. 139	criminal damage offence
I. 140	summary offence
I. 144	statutory power
I. 147	an individual maxima
I. 148	criminal damage
I. 161	the sentencing regime
I. 164	statutory provisions
I. 165	the sentencing regime
I. 178	to be triable only summarily
I. 184	criminal damage
I. 185	summary trial
I. 186	jury trial
I. 187	to be compelled
I. 187	to be triable only summarily
I. 188	to deal with a case summarily
I. 188	criminal damage
I. 189	summary conviction
I. 190	criminal damage
I. 192	summary conviction
I. 195	consecutive sentences
I. 202	to run consecutively
I. 206	summary offence
I. 209	an indictable offence
I. 211	an indictable offence
I. 218	an indictable offence
I. 222	common assault
I. 224	be triable only summarily
I. 225	be triable only summarily
I. 226	summary offence
I. 228	summary offence
I. 233	to commit sby for trial
I. 234	an either-way offence
I. 234	to commit sby for trial
I. 234	summary offence
I. 237	an either-way offence
I. 239	to plead guilty
I. 242	summary offence
I. 245	to appear before a court
I. 245	to be brought before a court
I. 245	to be charged with
I. 246	an offence triable only on indictment
I. 246	an indictable-only offence
I. 249	Either-way offence
I. 249	summary offence
I. 249	to be charged with
I. 253	an indictable-only offence
I. 254	summary offence
I. 255	obligatory disqualification

I. 255	Discretionary disqualification
I. 258	summary offences
I. 260	to plead guilty
I. 261	summary offence
I. 265	Indictable-only offence
I. 266	either-way offence
I. 269	either-way offences
I. 270	criminal damage
I. 272	criminal damage
I. 272	summary offences
I. 276	summary offence
I. 278	summary offence
I. 280	indictable offence
I. 282	criminal damage
I. 282	summary offence
I. 285	a low value criminal damage count (find andre)
I. 289	either-way offence
I. 289	summary offence
I. 296	to plead not guilty
I. 297	to be found guilty
I. 299	plea of guilty
I. 300	disorderly behaviour with intent
I. 302	summary offence
I. 302	disorderly behaviour with intent
I. 305	jury convicts
I. 306	summary offence
I. 308	to find sby not guilty
I. 311	to find sby guilty
I. 311	to find sby guilty
I. 313	to fall within the jurisdiction of...
I. 314	the court of trial
I. 315	common assault
I. 320	disorderly behaviour with intent
I. 322	summary offence
I. 322	disorderly behaviour with intent
I. 324	pleas of guilty
I. 327	a summary offence
I. 327	a jury conviction
I. 328	plead guilty
I. 328	common assault
I. 329	plead guilty
I. 330	common assault
I. 330	actual bodily harm
I. 331	the sentencing judge
I. 331	to hand down a sentence
I. 331	consecutive sentences
I. 332	the alternative plea
I. 334	plea of guilty
I. 335	conviction by a jury
I. 342	violent disorder

I. 342	to find sby not guilty
I. 343	to find sby guilty
I. 349	to stand trial
I. 349	alternative offence
I. 353	to plead guilty
I. 354	an alternative offence
I. 357	a plea of guilty
I. 357	a jury conviction
I. 361	sentencing consequences
I. 361	a jury conviction
I. 361	an alternative verdict
I. 362	a summary offence
I. 362	sentencing consequences
I. 362	a plea of guilty
I. 363	an alternative offence
I. 365	to plead guilty
I. 371	a conviction by a jury
I. 371	a plea of guilty
I. 373	plea of guilty
I. 375	to plead guilty
I. 377	the court of trial
I. 380	a section 4A offence
I. 380	appeal hearing
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I. 382	an appeal against conviction
I. 382	the basic sentence
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I. 386	criminal damage
I. 387	summary offence
I. 389	to be committed for trial
I. 390	criminal damage
I. 392	criminal damage
I. 394	criminal damage
I. 395	the maximum sentence
I. 405	per incuriam
I. 406	to stand trial
I. 407	Racially aggravated assault
I. 407	actual bodily harm
I. 407	racially aggravated criminal damage
I. 408	to return alternative verdicts of guilty
I. 408	simple actual bodily harm
I. 409	criminal damage
I. 409	to be sentenced to
I. 410	actual bodily harm
I. 411	appeal against conviction
I. 412	an alternative verdict
I. 412	simple criminal damage
I. 413	simple criminal damage
I. 416	simple criminal damage
I. 417	to be tried summarily

I. 419	simple criminal damage
I. 419	either-way offence
I. 421	criminal damage
I. 423	to be triable summarily
I. 424	an appeal on conviction
I. 427	to plead guilty
I. 428	common assault
I. 428	with intent
I. 431	criminal damage
I. 431	actual bodily harm
I. 432	to plead guilty
I. 432	common assault
I. 432	ABH (actual bodily harm)
I. 432	criminal damage
I. 433	criminal damage
I. 433	ABH (actual bodily harm)
I. 435	Public order offence
I. 436	a summary only offence
I. 436	Maximum term
I. 437	criminal damage
I. 437	common assault
I. 438	summary offences
I. 439	powers of sentencing
I. 442	summary offences
I. 443	public order offence
I. 443	common assault
I. 443	summary offences
I. 445	criminal damage offence
I. 446	to impose a sentence
I. 447	a summary offence
I. 447	an either-way offence
I. 452	criminal damage
I. 455	criminal damage
I. 456	an alternative offence
I. 459	amicus curiae
I. 460	criminal damage
I. 461	maximum sentence
I. 467	criminal damage
I. 469	sentencing powers
I. 470	criminal damage offence
I. 470	damage of low value
I. 471	criminal damage offence
I. 473	Either way offence
I. 474	criminal damage
I. 474	either way offence
I. 478	to appear for sentence before the court
I. 478	criminal damage
I. 478	sentencing powers
I. 480	maximum sentence
I. 480	to appear before a court

I. 481	criminal damage
I. 484	a summary offence
I. 485	a summary offence
I. 485	maximum sentence
I. 491	to impose a sentence
I. 493	summary offences
I. 494	criminal damage offence
I. 494	summary offence
I. 495	sentencing powers
I. 496	summary offences
I. 497	criminal damage offence
I. 498	pursuant to
I. 500	be triable only summarily
I. 502	criminal damage
I. 503	common assault
I. 503	alternative plea
I. 504	criminal damage
I. 506	summary offence
I. 509	to plead guilty
I. 510	criminal damage
I. 510	criminal damage
I. 514	criminal damage
I. 515	summary offences
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I. 517	summary offences
I. 520	A low value criminal damage charge
I. 523	consecutive sentences
I. 524	summary (offences)
I. 524	summary (offences)
I. 525	criminal damage charge
I. 529	summary (offences)
I. 529	criminal damage offences
I. 531	summary offences
I. 532	summary offences
I. 533	sentencing powers
I. 538	criminal damage count
I. 542	public order offence
I. 547	to serve a sentence
I. 548	to serve a sentence
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I. 557	criminal damage count
I. 558	summary offence
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I. 560	maximum sentence
I. 565	to impose a sentence
I. 570	criminal damage
I. 571	common assault

l. 573	criminal damage count
l. 575	to be triable only summarily
l. 578	criminal damage count
l. 579	an either-way count
l. 584	to be triable only summarily
l. 585	criminal damage
l. 587	an either-way count
l. 587	criminal damage
l. 588	summary offence
l. 588	an either-way offence
l. 589	to be triable only summarily
l. 590	summary offence
l. 593	criminal damage
l. 593	common assault
l. 594	a "slip-rule" application
l. 596	statutory power
l. 598	to enter a plea
l. 601	criminal damage
l. 603	summary offence
l. 606	criminal damage
l. 606	common assault
l. 607	disorderly behaviour
l. 616	the count of criminal damage
l. 617	to plead guilty
l. 630	public order offence
l. 633	criminal damage count
l. 635	to plead guilty
l. 636	a summary public order offence
l. 637	an indictable public order offence
l. 638	summary offence
l. 640	a plea of guilty
l. 641	a plea of guilty
l. 643	conviction by a jury
l. 646	sentencing powers
l. 646	summary offence
l. 647	summary offence
l. 648	summary offence
l. 649	an either-way offence
l. 650	summary offences
l. 653	to grant leave to appeal
l. 656	criminal damage
l. 657	common assault
l. 657	threatening behaviour with intent
Nominalisering:	
l. 28	The effect was the <i>reduction</i> of the appellant's total sentence (The effect was that the appellant's total sentence was reduced)
l. 31	He was just 19 at the time of his <i>offending</i> and 20 at the time of <i>sentence</i> (He was just 19 when he offended and 20 when he was sentenced)

I. 34	His <i>sentence</i> arose out of his unpleasant <i>harassment</i> of a family in his neighbourhood (he was sentenced because he unpleasantly harassed a family in his neighbourhood)
I. 44	He then kicked their Mitsubishi Shogun and Mercedes car, causing slight <i>damage</i> to each (He then kicked their Mitsubishi Shogun and Mercedes car, damaging each slightly)
I. 46	on his <i>arrest</i> he was put in the back of a police car (when the police arrested him he was put in the back of a police car)
I. 47	He denied the offences in <i>interview</i> (He denied the offences when he was interviewed)
I. 67	a new count, count 4, of affray under section 3(1) of the Public Order Act 1986 was added by <i>agreement</i> (xx agreed to add a new count, count 4, of affray under section 3(1) of the Public Order Act 1986)
I. 88	for the <i>possession</i> of the cannabis resin (for possessing the cannabis resin)
I. 89	The total <i>sentence</i> was therefore one of 10 months detention (he was therefore sentenced to a total of 10 months detention)
I. 90	No <i>complaint</i> is made about the additional sentence (none of the parties have complained about the additional sentence)
I. 96	a very similar offence of using disorderly <i>behaviour</i> with intent (a very similar offence of behaving disorderly with intent)
I. 142	The judge gave a <i>ruling</i> rejecting that submission (The judge ruled to reject that submission)
I. 172	having regard to any <i>representations</i> made by the prosecutor or the accused (having regard to anything the prosecutor or the accused have represented)
I. 300	section 6(1)(b) applies to and covers the appellant's plea of guilty to disorderly <i>behaviour</i> with intent under section 4A of the Public Order Act 1986 (section 6(1)(b) applies to and covers the appellant's plea of guilty to intentionally having behaved disorderly under section 4A of the Public Order Act 1986)
I. 333	This court therefore made no <i>distinction</i> between a case within section 6(1)(b) (plea of guilty) and a case within section 6(3) and (3A) (conviction by a jury) (This court therefore did not distinguish between a case within section 6(1)(b) (plea of guilty) and a case within section 6(3) and (3A) (conviction by a jury))
I. 362	where there was a <i>plea</i> of guilty on an alternative offence to the one charged (where the defendant has pleaded guilty to an alternative offence (and not) to the one charged)
I. 367	neither counsel drew any <i>distinction</i> between section 4 and section 4A of the 1986 Act (neither counsel distinguished between section 4 and section 4A of the 1986 Act)
I. 376	if (as turns out not to have been the case) the appellant had pleaded guilty to a section 4A offence, that <i>conviction</i> would have been unlawful because section 6 does not cover such an offence: (if (as turns out not to have been the case) the appellant had pleaded guilty to a section 4A offence, it would have been unlawful to convict him because section 6 does not cover such an offence:)
I. 383	on the <i>assumption</i> that the conviction itself was quashed (if we assume that the conviction itself was quashed)
I. 394	The defendant received a 9 month <i>sentence</i> (The court sentenced the defendant to be imprisoned for 9 months)
I. 406	The defendant stood trial on <i>charges</i> of racially aggravated assault occasioning actual bodily harm and racially aggravated criminal

	damage (The defendant was charged with and tried for racially aggravated assault occasioning actual bodily harm and racially aggravated criminal damage)
I. 414	The <i>submission</i> was that section 22,...meant that the offence could only be tried summarily (The appellant submitted that section 22, ...meant that the offence could only be tried summarily)
I. 446	a <i>sentence</i> of two-and-a-half months was imposed (the court sentenced the defendant to be imprisoned for two-and-a-half months)
I. 460	Mr Hall [counsel for the appellant] draws attention to certain anomalies which will follow,..., if the Fennell <i>interpretation</i> is right (Mr Hall [counsel for the appellant] draws attention to certain anomalies which will follow,..., if the Fennell case is interpreted correctly)
I. 466	The <i>submission</i> made by Dr Thomas, is that section 40 is not a freestanding provision which reclassifies criminal damage (Dr Thomas submitted that section 40 is not a freestanding provision which reclassifies criminal damage)
I. 490	following from the <i>conclusions</i> which we have reached (following from what we have concluded)
I. 516	but the <i>submission</i> was that the four offences of criminal damage were to be treated as if they were summary offences (but what the appellant submitted was that the four offences of criminal damage were to be treated as if they were summary offences)
I. 565	the judge was entitled to impose the <i>sentence</i> that he did (the judge was entitled to sentence the way he did)
I. 594	As he said in giving his <i>ruling</i> on the "slip rule" application (As he said when he ruled on the "slip rule" application)
I. 619	the natural inference in this case is that...it must have appeared clear to the justices that the damage was lower than £ 5,000. (it was natural in this case to infer that...it must have appeared clear to the justices that the damage was lower than £ 5,000)
I. 653	We therefore confirm, for these reasons, our <i>decision</i> to grant leave to appeal (We therefore confirm, for these reasons, that we have decided to grant leave to appeal)
Lix:	
9617 ord	
2550 svære ord	
355 perioder	
A = 26,5	
B = 27,1	
Lix = (A+ B) = 53,6 (svær)	



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England and Wales Court of Appeal (Criminal Division) Decisions

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No. 2009/00647/A8

**IN THE COURT OF APPEAL
CRIMINAL DIVISION**

Royal Courts of Justice
The Strand
London
WC2A 2LL
18 February 2009

B e f o r e :

**THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(Lord Judge)
MR JUSTICE WYN WILLIAMS
and
MR JUSTICE HOLROYDE**

R E G I N A

- v -

BILLY METCALFE

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(Official Shorthand Writers to the Court)**

Mr R S Sandford appeared on behalf of the Applicant

HTML VERSION OF JUDGMENT

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THE LORD CHIEF JUSTICE: I shall ask Mr Justice Wyn Williams to give the judgment of the court.

MR JUSTICE WYN WILLIAMS:

1. On 24 September 2008, at Barnsley Magistrates' Court, the applicant pleaded guilty to one offence of handling stolen goods and he was convicted of a second such offence. He was committed to the Crown Court for sentence. On 17 October 2008, again at Barnsley Magistrates' Court, the applicant pleaded guilty to an offence of theft. He was committed to the Crown Court for sentence in respect of that offence. On 22 October 2008, at the Crown Court at Sheffield, before the Recorder of Sheffield, His Honour Judge Goldsack QC, the applicant was sentenced as follows: in respect of the offence of handling stolen goods of which he had been found guilty, twelve months' imprisonment; in respect of the offence of handling stolen goods to which he had pleaded guilty, eight months' imprisonment, concurrent; and in respect of the offence of theft, two months' imprisonment, consecutively. The total sentence passed was therefore fourteen months' imprisonment.
2. By the time that he appeared at the Crown Court for sentence, the applicant had spent 88 days in custody on remand in connection with the offences for which he was sentenced. Mr Sandford, his counsel, assumed that the judge would direct that those 88 days spent on remand should count towards the applicant's sentence. He therefore made no submissions to the judge about that aspect of the sentencing process during the course of mitigation. When the judge passed sentence, however, he expressly specified that the 88 days should not count towards the sentence.
3. On 26 October 2008 (that is four days after sentence was passed), Mr Sandford settled grounds of appeal against sentence. He took one point, namely that the judge fell into error in directing that the 88 days should not count towards sentence. For reasons about which we are not entirely clear, the grounds of appeal were not lodged in time. Indeed, they were lodged 82 days late. However, upon consideration of the documents lodged, the Registrar granted an extension of time in which to apply for leave to appeal and referred the application to the full court. For reasons which will become obvious, we consider that this is an appropriate case for leave and accordingly we grant it. Henceforth in this judgment we will refer to the applicant as the appellant.
4. The facts of the three offences for which the appellant was sentenced can be stated very briefly. In the early hours of the morning of 8 June 2008, police officers came across some male persons acting suspiciously. When the men saw the police they ran off. The appellant was one of the men. After a short chase he was found hiding in some long grass. He was searched and found to be in possession of a toy and a car stereo lead which had been stolen from a car which had been parked outside a house. This was the offence of theft for which the appellant was given two months' imprisonment.
5. He was arrested. Upon arrest and during interview he denied any wrongdoing.

6. Approximately six weeks later, on 24 July 2008, the appellant's home was searched. A power drill and drill bits worth £210, which had been stolen during the course of a burglary of a garden shed the previous day, were discovered. Also discovered and recovered were some tools consisting of a wrecking bar, two saws, two boxes of screws, a transformer and battery, which had all been stolen from a building site the previous night. Those constituted the two offences of handling stolen goods.
7. The appellant was arrested. When interviewed he did not admit his involvement in either offence.
8. When the appellant appeared for sentence on 22 October 2008 he was aged 24. He had a large number of previous convictions. In summary, he had appeared before courts on 17 occasions in relation to 30 offences. For present purposes by far the most significant of those appearances was that which occurred on 6 March 2006. On that occasion the appellant appeared before the Sheffield Crown Court and was sentenced to a total term of four years' imprisonment. He was sentenced to two years' imprisonment for the offence of assault with intent to rob, and a consecutive term of two years' imprisonment for the offence of possessing an imitation firearm with intent to cause fear of violence.
9. The appellant was released from the sentence of four years' imprisonment on 26 October 2007. It follows that he was being supervised on licence at the time that he committed the offences of handling and theft in June and July 2008. By virtue of section 254 of the Criminal Justice Act 2003 it would have been open to the Secretary of State, or those persons to whom she delegated the relevant function, to recall the appellant to prison once it had been discovered that he had committed offences in June and July 2008. It appears, however, that a considered decision was made that the appellant should not be recalled. The information we have about that is contained in the pre-sentence report which was before His Honour Judge Goldsack QC. The pre-sentence report indicated that the Probation Service had taken the decision that there should be no recall and that there were two bases for that decision. The first was that the appellant had been remanded in custody. The second was that the view had been taken that the offences committed were offences of dishonesty, not violence, and that in those circumstances the appellant could be appropriately managed in the community. In fact, the pre-sentence report presented to the sentencing judge suggested sentencing options other than immediate custody.
10. Judge Goldsack QC decided not to follow the recommendation in the pre-sentence report, but imposed immediate custodial sentences. No complaint is made about this aspect of the sentencing process.
11. The judge also expressly considered what he should do about the 88 days spent on remand. On this topic he said this:

"It is outside the power now of the court to order you to go back and serve the balance of the four year sentence. That power has apparently been given by Parliament to either the Prison Governor or the Probation Service, and the Probation Service in this case decided not to recommend your recall because these were not offences of violence."

The judge then went on to explain the nature of the sentences he was to pass and why he was passing them. At the end of his sentencing remarks he returned to the question of the 88 days. He said:

"I then have to consider whether I should direct that the 88 days spent on

remand should count towards your sentence. In my judgment, in this case, they should not, given that you were on licence at the time and really should still have been serving your sentence, so it is fourteen months from today."

12. The relevant parts of section 240 of the Criminal Justice Act 2003 are in the following terms:

"(3) Subject to subsection (4), the court must direct that the number of days for which the offender was remanded in custody in connection with the offence or a related offence is to count as time served by him as part of the sentence.

(4) Subsection (3) does not apply if and to the extent that --

(a) rules made by the Secretary of State so provide

(b) it is in the opinion of the court just in all the circumstances not to give a direction under that subsection."

13. The issue raised by Mr Sandford in this appeal relates to sub-paragraph (b). He submits that it was not just in all the circumstances not to give a direction under the subsection. He has developed his submission most helpfully in his advice and grounds of appeal. In paragraph 22 he makes the following submission:

"In the case of R v Gordon [\[2007\] 2 Cr App R\(S\) 66](#), [\[2007\] EWCA Crim 165](#), paragraph 31, the Court of Appeal stated as follows:

"The imperative is that no prisoner should be detained for a day longer than the period justified by the sentence of the court. Section 240 of the 2003 Act is clearly directed to achieve that, save in cases specifically identified for express reasons, credit should be given to the prisoner for time spent in custody on remand, unless such credit would contravene some other statutory provision or result in double crediting. That is why the Sentencing Guidelines Council in "New Sentences: Criminal Justice Act" explained that "The court should seek to give credit for time spent on remand in all cases it should explain its reasons for not giving credit"

In paragraph 23 Mr Sandford continues by submitting that one of the effects of the Criminal Justice Act 2003 was to take decision-making on the issue of recall to prison during a licence period out of the hands of the judiciary and to place it in the hands of the Home Office and Probation Service. He therefore submits that in the instant case, where the Probation Service has made a conscious decision not to recall the appellant, it was not just in all the circumstances to decline to credit the remand period against sentence, thereby indirectly and in effect triggering a custodial period arising from the licence period.

14. On the particular facts of this case we agree with those submissions. We accept them to be well-founded. Accordingly we take the view that the judge should have made a direction under section 240, as opposed expressly declining so to do.

15. Mr Sandford makes a further complaint about the sentencing process. He complains that he was not given the opportunity to deal with the possibility that the judge would make no direction under section 240 before the judge took that course. In his grounds he referred to the decision of this court in R v Barber [2006] 2 Cr App R(S) 81, [2006] EWCA Crim 162, which makes it clear that a sentencing judge who has it in mind to direct that time spent in custody on remand should not count towards sentence should raise the issue squarely with defence counsel before sentence is passed, thereby affording him the opportunity to make appropriate submissions on the point.
16. We repeat what was said in Barber. In our judgment good practice demands that counsel is given the opportunity to address the point head-on if a sentencing judge is considering not making a direction under section 240 of the 2003 Act.
17. For the reasons we have indicated, this appeal is allowed. This court directs, pursuant to section 240 of the Criminal Justice Act 2003, that the 88 days spent in custody on remand should count towards the appellant's sentence.

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18 February 2009 Metcalf	
passiver:	
I. 31	he was convicted of a second such offence
I. 31	He was committed to the Crown Court for sentence
I. 33	He was committed to the Crown Court for sentence
I. 35	the applicant was sentenced as follows:
I. 36	he had been found guilty
I. 39	The total sentence passed
I. 42	in connection with the offences for which he was sentenced
I. 47	four days after sentence was passed
I. 50	the grounds of appeal were not lodged in time
I. 50	they were lodged 82 days late
I. 51	upon consideration of the documents lodged
I. 55	the three offences for which the appellant was sentenced
I. 55	The facts of the three offences for which the appellant was sentenced can be stated very briefly
I. 58	he was found
I. 58	He was searched and found to be in possession of a toy and a car stereo lead
I. 59	a toy and a car stereo lead which had been stolen from a car
I. 59	a car which had been parked outside a house
I. 60	the offence of theft for which the appellant was given two months' imprisonment.
I. 62	He was arrested
I. 63	the appellant's home was searched
I. 63	A power drill and drill bits worth £ 210, which had been stolen during the course of a burglary of a garden shed the previous day, were discovered
I. 64	A power drill and drill bits worth £ 210, which had been stolen during the course of a burglary
I. 65	Also discovered and recovered were some tools consisting of a wrecking bar, two saws, two boxes of screws, a transformer and battery
I. 65	a wrecking bar, two saws, two boxes of screws, a transformer and battery, which had all been stolen from a building site the previous night
I. 69	The appellant was arrested
I. 69	When interviewed he did not admit his involvement in either offence.
I. 73	the appellant appeared before the Sheffield Crown Court and was sentenced to a total term of four years' imprisonment
I. 74	He was sentenced to two years' imprisonment
I. 78	The appellant was released from the sentence of four years' imprisonment
I. 79	he was being supervised on licence
I. 82	once it had been discovered that he had committed offences
I. 83	a considered decision was made that the appellant should not be recalled
I. 84	The information we have about that is contained in the pre-sentence report
I. 87	the appellant had been remanded in custody
I. 88	the view had been taken that...
I. 88	the offences committed
I. 89	the appellant could be appropriately managed in the community
I. 90	the pre-sentence report presented to the sentencing judge
I. 93	No complaint is made about this aspect of the sentencing process
I. 95	the 88 days spent on remand

I. 98	That power has apparently been given by Parliament
I. 105	the 88 days spent on remand
I. 111	the number of days for which the offender was remanded in custody
I. 113	time served by him
I. 121	The issue raised by Mr Sandford
I. 127	no prisoner should be detained
I. 128	the period justified by the sentence of the court
I. 129	Section 240 of the 2003 Act is clearly directed to achieve that
I. 130	in cases specifically identified
I. 131	credit should be given to the prisoner
I. 131	time spent in custody on remand
I. 136	time spent on remand
I. 152	time spent in custody on remand
I. 153	before sentence is passed
I. 155	what was said in Barber
I. 155	counsel is given the opportunity to address the point head-on
I. 158	this appeal is allowed
I. 159	the 88 days spent in custody on remand
Adverbialer:	
I. 30 (initial)	<i>On 24 September 2008, at Barnsley Magistrates' Court, the applicant pleaded guilty to one offence of handling stolen goods</i>
I. 32 (initial)	<i>On 17 October 2008, again at Barnsley Magistrates' Court, the applicant pleaded guilty to an offence of theft</i>
I. 34 (initial)	<i>On 22 October 2008, at the Crown Court at Sheffield, before the Recorder of Sheffield, His Honour Judge Goldsack QC, the applicant was sentenced as follows:</i>
I. 41 (initial)	<i>By the time that he appeared at the Crown Court for sentence, the applicant had spent 88 days in custody on remand</i>
I. 45 (initial)	<i>When the judge passed sentence, however, he expressly specified that the 88 days should not count towards the sentence</i>
I. 47 (initial)	<i>On 26 October 2008 (that is four days after sentence was passed), Mr Sandford settled grounds of appeal against sentence</i>
I. 49 (initial)	<i>For reasons about which we are not entirely clear, the grounds of appeal were not lodged in time</i>
I. 50 (initial)	<i>However, upon consideration of the documents lodged, the Registrar granted an extension of time</i>
I. 52 (initial)	<i>For reasons which will become obvious, we consider that this is an appropriate case for leave</i>
I. 54 (initial)	<i>Henceforth in this judgment we will refer to the applicant as the appellant</i>
I. 56 (initial)	<i>In the early hours of the morning of 8 June 2008, police officers came across some male persons acting suspiciously</i>
I. 57 (initial)	<i>When the men saw the police they ran off</i>
I. 58 (initial)	<i>After a short chase he was found hiding in some long grass</i>
I. 62 (initial)	<i>Upon arrest and during interview he denied any wrongdoing</i>
I. 63 (initial)	<i>Approximately six weeks later, on 24 July 2008, the appellant's home was searched.</i>
I. 70 (initial)	<i>When the appellant appeared for sentence on 22 October 2008 he was aged 24</i>
I. 72 (initial)	<i>For present purposes by far the most significant of those appearances was that which occurred on 6 March 2006</i>
I. 73 (initial)	<i>On that occasion the appellant appeared before the Sheffield Crown Court</i>
I. 80 (initial)	<i>By virtue of section 254 of the Criminal Justice Act 2003 it would have been</i>

	open to the Secretary of State, or those persons to whom she delegated the relevant function, to recall the appellant to prison
I. 89 (initial)	<i>in those circumstances</i> the appellant could be appropriately managed in the community
I. 100 (medial)	the Probation Service <i>in this case</i> decided not to recommend your recall
I. 101 (initial)	<i>At the end of his sentencing remarks</i> he returned to the question of the 88 days
I. 106 (initial)	<i>In my judgment, in this case,</i> they should not
I. 111 (initial)	<i>Subject to subsection (4),</i> the court must direct that the number of days for which the offender was remanded in custody...is to count as time served by him as part of the sentence
I. 112 (medial)	the number of days for which the offender was remanded in custody <i>in connection with the offence or a related offence</i> is to count as time served by him as part of the sentence
I. 118 (medial)	it is <i>in the opinion of the court</i> just in all the circumstances not to give a direction under that subsection
I. 121 (medial)	The issue raised by Mr Sandford <i>in this appeal</i> relates to sub-paragraph (b).
I. 123 (initial)	<i>In paragraph 22</i> he makes the following submission:
I. 125 (initial)	<i>In the case of R v Gordon [2007] 2 Cr App R(S) 66, [2007] EWCA Crim 165, paragraph 31,</i> the Court of Appeal stated as follows:
I. 130 (initial)	<i>save in cases specifically identified for express reasons,</i> credit should be given to the prisoner for time spent in custody on remand
I. 138 (initial)	<i>In paragraph 23</i> Mr Sandford continues by submitting that one of the effects of the Criminal Justice Act 2003 was to take decision-making on the issue of recall to prison during a licence period out of the hands of the judiciary
I. 141 (initial)	<i>in the instant case, where the Probation Service has made a conscious decision not to recall the appellant,</i> it was not just in all the circumstances to decline to credit the remand period against sentence
I. 145 (initial)	<i>On the particular facts of this case</i> we agree with those submissions.
I. 150 (initial)	<i>In his grounds</i> he referred to the decision of this court in R v Barber
I. 155 (initial)	<i>In our judgment</i> good practice demands that counsel is given the opportunity to address the point head-on
I. 158 (initial)	<i>For the reasons we have indicated,</i> this appeal is allowed.
I. 158 (medial)	This court directs, <i>pursuant to section 240 of the Criminal Justice Act 2003,</i> that the 88 days spent in custody on remand should count towards the appellant's sentence.
Sammensatte præpositioner:	
I. 24	on behalf of
I. 33	in respect of
I. 35	in respect of
I. 37	in respect of
I. 38	in respect of
I. 42	in connection with
I. 71	in relation to
I. 76	with intent to
I. 80	by virtue of
I. 112	in connection with
Komplekse substantivsyntagmer:	
I. 36	the offence of handling stolen goods of which he had been found guilty

I. 37	The offence of handling stolen goods to which he had pleaded guilty
I. 39	The total sentence passed
I. 43	those 88 days spent on remand
I. 44	no submissions to the judge about that aspect of the sentencing process
I. 47	grounds of appeal against sentence
I. 49	reasons about which we are not entirely clear
I. 51	consideration of the documents lodged
I. 51	an extension of time in which to apply for leave to appeal
I. 52	reasons which will become obvious
I. 55	The facts of the three offences for which the appellant was sentenced
I. 56	the early hours of the morning of 8 June 2008
I. 59	a toy and a car stereo lead which had been stolen from a car
I. 59	a car which had been parked outside a house
I. 60	the offence of theft for which the appellant was given two months' imprisonment.
I. 63	A power drill and drill bits worth £ 210, which had been stolen
I. 64	the course of a burglary of a garden shed
I. 65	some tools consisting of a wrecking bar, two saws, two boxes of screws, a transformer and battery, which had all been stolen from a building site
I. 67	the two offences of handling stolen goods
I. 73	that which occurred on 6 March 2006
I. 74	a total term of four years' imprisonment.
I. 75	the offence of assault with intent to rob
I. 75	a consecutive term of two years' imprisonment
I. 76	the offence of possessing an imitation firearm with intent to cause fear of violence
I. 78	the sentence of four years' imprisonment
I. 79	At the time that he committed the offences of handling and theft
I. 81	those persons to whom she delegated the relevant function
I. 84	The information we have about that
I. 85	the pre-sentence report which was before His Honour Judge Goldsack QC
I. 90	the pre-sentence report presented to the sentencing judge
I. 92	the recommendation in the pre-sentence report?
I. 93	this aspect of the sentencing process
I. 95	the 88 days spent on remand
I. 98	the balance of the four year sentence
I. 102	the nature of the sentences he was to pass
I. 103	the end of his sentencing remarks
I. 110	The relevant parts of section 240 of the Criminal Justice Act 2003
I. 111	the number of days for which the offender was remanded in custody in connection with the offence or a related offence
I. 113	time served by him
I. 116	rules made by the Secretary of State
I. 121	The issue raised by Mr Sandford
I. 125	the case of <u>R v Gordon</u> [2007] 2 Cr App R(S) 66, [2007] EWCA Crim 165, paragraph 31,
I. 128	the period justified by the sentence of the court
I. 130	cases specifically identified for express reasons
I. 131	time spent in custody on remand
I. 136	time spent on remand
I. 138	one of the effects of the Criminal Justice Act 2003

I. 139	decision-making on the issue of recall to prison
I. 141	the instant case, where the Probation Service has made a conscious decision not to recall the appellant
I. 143	a custodial period arising from the licence period
I. 150	the decision of this court in <u>R v Barber</u> [2006] 2 Cr App R(S) 81, [2006] EWCA Crim 162, which makes it clear that a sentencing judge who has it in mind to direct that time spent in custody on remand should not count towards sentence should raise the issue squarely with defence counsel before sentence is passed
I. 151	a sentencing judge who has it in mind to direct that time spent in custody on remand should not count towards sentence
I. 159	the 88 days spent in custody on remand
	Fagterminologi:
I. 30	Applicant
I. 30	Offence
I. 31	Offence
I. 32	Applicant
I. 33	Offence
I. 34	Recorder
I. 35	Applicant
I. 36	Offence
I. 37	Offence
I. 38	Concurrent
I. 38	Offence
I. 39	Consecutively
I. 41	Applicant
I. 42	Remand
I. 42	Offences
I. 43	counsel
I. 43	Remand
I. 44	Applicant's
I. 45	Mitigation
I. 51	Registrar
I. 54	Applicant
I. 54	Appellant
I. 55	Offences
I. 55	Appellant
I. 57	Appellant
I. 60	Offence
I. 60	Appellant
I. 63	Appellant's
I. 69	Appellant
I. 69	Offence
I. 70	Appellant
I. 71	Convictions
I. 72	Offences
I. 73	Appellant
I. 75	Offence
I. 76	Offence
I. 78	Appellant

I. 82	Appellant
I. 84	Appellant
I. 87	Appellant
I. 88	Offences
I. 89	Appellant
I. 95	Remand
I. 99	Offences
I. 106	Remand
I. 112	Offender
I. 113	Offence
I. 113	Offence
I. 121	Appeal
I. 132	Custody
I. 132	Remand
I. 135	Remand
I. 140	Judiciary
I. 142	Appellant
I. 143	Remand
I. 150	grounds
I. 152	Custody
I. 152	Remand
I. 155	counsel
I. 158	to direct
I. 158	Custody
I. 158	Remand
I. 160	Appellant's
juridiske kollokationer:	
I. 3	the court of appeal
I. 4	criminal division
I. 30	magistrates' court
I. 30	to plead guilty
I. 31	to be convicted of...
I. 32	crown court
I. 32	magistrates' court
I. 33	to plead guilty
I. 33	crown court
I. 36	to be found guilty of...
I. 37	to plead guilty
I. 39	to pass a sentence
I. 44	to make submissions
I. 45	the sentencing process
I. 45	to pass sentence
I. 47	to pass sentence
I. 47	grounds of appeal against sentence
I. 50	grounds of appeal
I. 52	to apply for leave to appeal
I. 70	to appear for sentence
I. 71	to appear before courts

I. 73	to appear before the court
I. 74	be sentenced to
I. 74	be sentenced to
I. 75	a consecutive term
I. 79	to be supervised on licence
I. 79	to commit offences
I. 83	to commit offences
I. 85	Pre-sentence report
I. 85	Pre-sentence report
I. 87	to be remanded in custody
I. 88	to commit offences
I. 90	Pre-sentence report
I. 90	the sentencing judge
I. 91	immediate custody
I. 92	Pre-sentence report
I. 93	to impose immediate custodial sentences
I. 93	sentencing process
I. 102	to pass a sentence
I. 103	sentencing remarks
I. 107	be on licence
I. 108	to serve a sentence
I. 112	to be remanded in custody
I. 113	to serve time
I. 119	to give a direction
I. 122	to give a direction
I. 123	grounds of appeal
I. 123	make a submission
I. 126	court of appeal
I. 133	statutory provision
I. 139	licence period
I. 143	custodial period
I. 144	licence period
I. 146	to make a direction
I. 148	the sentencing process
I. 149	to make no direction
I. 152	sentencing judge
I. 153	the defence counsel
I. 153	to pass sentence
I. 154	to make submissions
I. 156	the sentencing judge
I. 156	to make a direction
I. 158	to allow an appeal
Nominalkonstruktionen:	
I. 27	I shall ask Mr Justice Wyn Williams to give the <i>judgment</i> of the court. (I shall ask Mr Justice Wyn Williams to judge on behalf of the court)
I. 44	He therefore made no <i>submissions</i> to the judge (He therefore did not submit anything to the judge)
I. 45	When the judge passed <i>sentence</i> (When the judge sentenced the appellant)
I. 47	four days after <i>sentence</i> was passed (four days after the appellant was

	sentenced)
I. 51	the Registrar granted an <i>extension</i> of time in which to apply for leave (the Registrar extended the time in which to apply for leave)
I. 58	He was found to be in <i>possession</i> of a toy and a car stereo lead (he was found to be possessing/to possess a toy and a car stereo lead)
I. 60	the appellant was given two months' <i>imprisonment</i> (the appellant was imprisoned for two months)
I. 69	he did not admit his <i>involvement</i> in either offence (he did not admit that he was involved in either offence)
I. 70	He had a large number of previous <i>convictions</i> (He had previously been convicted a large number of times)
I. 82	he had committed <i>offences</i> in June and July 2008 (he had offended in June and July 2008)
I. 83	a considered <i>decision</i> was made that the appellant should not be recalled (it was decided that the appellant should not be recalled)
I. 86	the Probation Service had taken the <i>decision</i> that... (the Probation Service had decided that...)
I. 93	No <i>complaint</i> is made about this aspect of the sentencing process (Nobody complained about this aspect of the sentencing process)
I. 119	it is in the opinion of the court just in all the circumstances not to give a <i>direction</i> under that subsection (it is in the opinion of the court just in all the circumstances not to direct under that subsection)
I. 122	He submits that it was not just in all the circumstances not to give a <i>direction</i> under the subsection (He submits that it was not just in all the circumstances not to direct under the subsection)
I. 123	In paragraph 22 he makes the following <i>submission</i> : (In paragraph 22 he submitted the following:)
I. 141	the Probation Service has made a conscious <i>decision</i> not to recall the appellant (the Probation Service has consciously decided not to recall the appellant)
I. 146	the judge should have made a <i>direction</i> under section 240 (the judge should have directed under section 240)
I. 148	Mr Sandford makes a further <i>complaint</i> about the sentencing process (Mr Sandford furthermore complained about the sentencing process)
I. 149	the judge would make no <i>direction</i> under section 240 (the judge would not direct under section 240)
I. 153	before <i>sentence</i> is passed (before sentencing)
I. 156	if a sentencing judge is considering not making a <i>direction</i> under section 240 (if a sentencing judge is considering not directing under section 240)
Lix:	
1991 ord	
532 svære ord	
106 perioder	
A = 26,7	
B = 18,8	
Lix = (A+ B) = 45,5 (svær)	



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England and Wales Court of Appeal (Criminal Division) Decisions

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Neutral Citation Number: [2009] EWCA Crim 651

Case No: 2006/05752/C1

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT WOLVERHAMPTON
MR JUSTICE MITTING**

Royal Courts of Justice
Strand, London, WC2A 2LL
2nd April 2009

B e f o r e :

**THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
LORD JUSTICE AIKENS
MR JUSTICE MACKAY
MR JUSTICE CHRISTOPHER CLARKE
and
MR JUSTICE HOLROYDE**

Between:

R

- V -

Wood

**Mr Malcolm Bishop QC and Mr O Daneshyar for the Appellant
Mr Roger Smith QC for the Crown
Hearing dates : 25th February 2009**

HTML VERSION OF JUDGMENT

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The Lord Chief Justice of England and Wales :

1. On 11 October 2006, after the jury rejected defences of provocation and diminished responsibility, Clive Wood was convicted of murder. He was sentenced to life imprisonment. The minimum term to be served was fixed at 18 years' imprisonment. An appropriate order was made under section 240 of the Criminal Justice Act 2003 (the 2003 Act).
2. On 20 June 2008 this court, differently constituted, quashed the appellant's conviction for murder and substituted a conviction for manslaughter on the grounds of diminished responsibility. The question of provocation did not arise for consideration. The jury was satisfied that the prosecution had disproved it, and the judge himself made plain that he did not believe a word of the defence case on the issue. After reflection the Crown did not seek a new trial for murder and accordingly the appellant must now be sentenced for manslaughter.
3. The essential facts of this crime are set out at [\[2008\] EWCA Crim 1305](#). For present purposes however we must underline that, in his own home, where he had offered accommodation to the appellant, the deceased, Francis Ryan, was subjected to a murderous attack of extreme ferocity. The attack was not only ferocious, it was persistent. There was ample evidence to show that the deceased had been attacked in two different rooms and the hallway, no doubt as he sought to escape from his assailant.
4. At post mortem 53 recent external injuries to his head, face, body and limbs were found. Many were consistent with having been caused by a meat cleaver. Other injuries were caused by blows with an object such as a lump hammer, yet further injuries may have been caused by gripping and yet others may have been defensive in nature. There were fractures in the thyroid cartilage, probably the result of pressure by an arm round the neck. The vast majority of the wounds in the scalp of the deceased extended down into the bone and there were underlying fractures in the skull corresponding to the wound in the left temple, the complex lacerations behind the left ear, and the complex wounds on the left side of the head. The fracture behind the left ear passed through the full thickness of the skull. The violence was indeed appalling, and the deceased's suffering and pure terror before he died must have been extreme.
5. Subsequent police investigations revealed a lump hammer, found in the deceased's lounge, which had contact blood staining, consistent with the DNA profile of the deceased, and a meat cleaver, found in the appellant's rucksack, similarly blood stained, and similarly linked to the deceased.
6. The deceased was homosexual. He did not conceal his sexual orientation, and we have little doubt that the appellant fully appreciated it before he joined the deceased at his home. According to the appellant, after they had arrived there and he fell asleep, the deceased made a homosexual advance to him. This formed the basis for a provocation defence ultimately rejected by the jury. However, the appellant told the police at interview that he hated "gays", an observation he sought to pass off in his evidence as something spoken in the confusion in his mind after his arrest, but if what he said was true, it is a little surprising that he chose to go with the deceased to his home. In addition there was evidence of some planning or preparation. The main weapon used in the attack on the deceased, the meat cleaver, was taken by the appellant to the deceased's flat. He normally carried it in a rucksack, but at some stage after his arrival at the deceased's home, he must have removed the

cleaver from the rucksack and enfolded his jacket around it. When the attack began he went and "fetched" the cleaver from his jacket.

7. After the attack the appellant proceeded to search the deceased's home, looking for alcohol in order to steal it. He was also searching for fresh clothes, and he stole a clean pair of trousers to exchange for his blood-stained pair. During his search the flat was ransacked. Thereafter the appellant took steps to hinder the finding of the deceased's body, and to obstruct access to the living room where the deceased's body was left. As he left the flat he locked the front door mortise lock and took the key away with him. Later he threw the key away.
8. The appellant is now approaching 50 years old. He has a long criminal record, and for many years he committed repeated offences of dishonesty and burglary. His record includes convictions for violence. In 2000 he beat his wife. In the attack her nose was broken and she suffered two black eyes. In 2004 he was convicted of common assault, and later of criminal damage, and in 2005 he was convicted of carrying an offensive weapon and criminal damage. The present offence occurred shortly after this conviction.
9. The most recent psychiatric report on the appellant is dated 1 September 2008. Dr Raki Abdur is a consultant forensic psychiatrist. He has examined the medical reports that were available at trial, although these, on examination, do not address the possible future risk presented by the appellant. Dr Abdur's report describes the appellant's history which shows that "although he is not violent on a regular basis, he has the ability to cause serious harm in the context of inter-personal conflict and especially when he (is) under the influence of alcohol. His history of carrying knives is certainly an additional risk factor". The report continues that although the appellant is not "an indiscriminate risk of violence on a day-to-day basis, if he were to offend in the future, he can pose a "significant risk" of "substantial harm" and that such a scenario could arise "at least theoretically" if the appellant were to drink heavily again...it is always possible, given his history, that in the community he could slip back into his previous lifestyle, which would lead to a rapid escalation of risk." Dr Abdur concludes his report by recording his judgment that the appellant probably lacks full insight into his own psychological functioning and that his explanations for the offence are "very simplistic". A significant amount of "psychological work focusing on issues like alcohol, anger, alleged sexual abuse and victim empathy" must be completed.
10. It is a striking feature of this case that the appellant's intention was to kill, and so it remained throughout the prolonged attack, until the victim was dead. That said, our decision must proceed on the basis that the appellant was suffering from abnormality of mind which substantially impaired his mental responsibility for acts in doing the killing. The abnormality arose from alcohol dependency syndrome. The submissions by Mr Malcolm Bishop QC on his behalf sensibly concentrated on the proposition that the sentence must reflect the acknowledged diminution of his client's mental responsibilities for his actions.
11. There are two distinct questions for decision. In the absence of any medical disposal (and none is suggested) the first question is whether the case requires a sentence of imprisonment for life under section 225(2) of the 2003 Act or imprisonment for public protection under section 225(3) of the Act as amended by the Criminal Justice and Immigration Act 2008. Whichever of these orders is appropriate, the second question is the assessment of the minimum term to be served by the appellant before any possibility of his release on parole may arise. That raises questions as to the nature of the link, if any, between the legislative structures introduced by section 269 of the 2003 Act for the determination of the minimum term in cases of murder, and the assessment of the minimum term where the defendant is convicted of manslaughter by reason of diminished responsibility.

Imprisonment for life or imprisonment for public protection

12. Section 225 (2) of the 2003 Act provides that if the offence is one attracting possible liability to imprisonment for life and

"...

(b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment for life,

the court must impose a sentence of imprisonment for life."

Section 225(3), as amended, identifies the conditions in which imprisonment for public protection may be ordered. In the present case, the conditions are met, and the power to impose imprisonment for public protection is available.

13. Mr Bishop founded his general contention on section 143 (1) of the Criminal Justice Act 2003 which requires the court addressing the seriousness of any offence to consider:

"...the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause, or might foreseeably have caused."

He argued that the appellant's culpability was reduced by the substantial diminution in his responsibility for his actions. He drew attention to the advice of the Sentencing Advisory Panel to the Sentencing Guidelines Council, August 2004, in relation to manslaughter, where the Panel acknowledged that sentencing in cases of manslaughter was much more complicated than in cases of murder. He asked us to note the view of the Panel and the Guidelines Council that in manslaughter cases culpability rather than harm should be the primary consideration in determining the sentence. He emphasised that the court should focus on the extent to which the offender was responsible for his acts, otherwise the distinction between murder and diminished responsibility manslaughter would be blurred. The critical distinction does not arise from the consequences of the appellant's acts – whether his crime was murder or manslaughter, the deceased's death was an unchanging factor - but in the appellant's mental responsibility at the time when he committed them. These considerations should lead to an order of imprisonment for public protection rather than imprisonment for life. He reinforced his submission by highlighting the need for the sentence of life imprisonment to be reserved for the gravest cases, and the value of imprisonment for public protection in achieving the objective of public protection.

14. We agree with Mr Bishop that, self-evidently, section 143(1) of the 2003 Act requires the assessment of the seriousness of any offence to address the offender's culpability and the harm consequent on his actions. However neither consideration is paramount, and more important for present purposes, they are not exclusive considerations. Death is the consequence of every murder. The terms of Schedule 21 of the 2003 Act, to which section 269 requires the court to have regard when making its assessment of the seriousness of the individual case of murder, are now familiar. No detailed repetition is needed in this judgment. However the very fact that a series of paragraphs offer starting points for the minimal custodial sentences – whole life, 30 years, and 15 years, with equally specific provisions for offenders aged under 18 years – demonstrates what every judge knows, that in murder cases although the *result* – the death of the victim – is identical, the gravity of each individual offence is not. Accordingly we disagree that the assessment of the seriousness of an offence of manslaughter on the grounds of diminished responsibility must be focused

exclusively on the defendant's culpability.

15. Our approach is consistent with the authorities, in particular, *R v Chambers* [1983] CAR (S) 190 where the various sentencing options then available to judges in cases of diminished responsibility were summarised. Although reference was made to a hospital order if recommended by a psychiatric report and justified, where the defendant constituted a danger to the public for an unpredictable time, the right sentence would probably be life imprisonment. However if the defendant's responsibility for his acts was so grossly impaired that his degree of responsibility was minimal, then a lenient course would be open, but the length of any determinate sentence depended on the judge's assessment of the degree of the defendant's responsibility and his assessment of the time for which the accused would continue to represent a danger to the public. At the time when *Chambers* was decided imprisonment for public protection was not available. Nevertheless *Chambers* remains relevant to our decision. This is because the judge concluded that, notwithstanding the acceptance by the prosecution of manslaughter on the grounds of diminished responsibility, what the judge described as a "very substantial amount of mental responsibility remained". The court did not consider that his observation, and the process of proceeding to sentence on the basis of it, provided any grounds for criticism. Indeed the court decided that the conclusion was right. This approach has not, so far as we are aware, been called into question.
16. *R v Bryan* [2006] 2 CAR (S) 66 was also decided before the 2003 Act came into force. The court considered the relevant pre-2003 sentencing decisions of this court. Mr Bishop drew attention to the way in which the court approached the appellant's diminished responsibility when it was clear that the appellant was indeed "severely mentally ill and that the mental illness had a dominant effect in causing him to act as he did" in the peculiarly horrible circumstances of the case. The court's conclusion was that Bryan's culpability was "very considerably diminished by his mental illness". Mr Bishop further asked us to bear in mind that the determinate term in that case was assessed at a total of 30 years which, when halved as required, reduced the minimum term to 15 years.
17. In *R v Porter* [2007] 1 CAR (S) 115 a sentence of life imprisonment imposed under the 2003 Act in the context of provocation was varied to imprisonment for public protection. "The distinction between a sentence of life imprisonment and a sentence of imprisonment for public protection is not felt until after the offender's release on licence. As we understand it, the two sentences are treated identically within the prison system but after release a life sentence prisoner remains on licence for the rest of his life, whereas in the case of a prisoner who has served the custodial term of a sentence of imprisonment for public protection, and has then been released after an assessment that it is safe to do so, the Parole Board, after at least 10 years, may direct that the licence be revoked". Apart from identifying this distinction, the judgment continued with an observation that the court was not "satisfied" that the starting points laid down in schedule 21 of the 2003 Act were "of relevance to the issue of sentencing for manslaughter". Despite this reference, in a provocation manslaughter case, the court did not directly address, and had no reason to address, the possibility of any link between schedule 21 of the 2003 Act and diminished responsibility manslaughter. However David Clarke J continued that there was:

"As yet no guidance...as to the application of s225(2)(b) and to the question whether the seriousness of the offence was such as to justify the imposition of life imprisonment. We can see that it may well be appropriate for cases, particularly where there is a high level of criminal intent, for example, in cases of attempted murder and no doubt in other types of case... "
18. In *R v Kehoe* [2008] CLR 728, the defendant was convicted of manslaughter on the grounds of

diminished responsibility. Commenting on *Porter*, the court, presided over by Lord Phillips of Worth Matravers CJ, observed that:

"When, as here, an offender meets the criteria of dangerousness, there is no longer any need to protect the public by passing a sentence of life imprisonment for the public are now properly protected by the imposition of the sentence of imprisonment for public protection. In such cases, therefore, the cases decided before the Criminal Justice Act 2003 came into effect no longer offered guidance on when a life sentence should be imposed. We think that now, when the court finds that the defendant satisfies the criteria for dangerousness, a life sentence should be reserved for those cases where the culpability of the offender is particularly high or the offence itself is particularly grave. It is neither possible nor desirable to set out all those circumstances in which a life sentence might be appropriate, but we do not think that this unpremeditated killing of one drunk by another, at a time when her responsibility was diminished, and after she was provoked, can properly be said to be so grave that a life sentence is required or even justified."

The conclusion which follows from this observation is that the mere fact that the case is one of manslaughter on the grounds of diminished responsibility does not preclude a sentence of imprisonment for life. In reality this sentence will be rare in such cases, usually reserved for particularly grave cases, where the defendant's responsibility for his actions, although diminished, remains high.

19. Naturally, Mr Bishop focused his attention on the feature of *Kehoe* which is analogous to the present that is, one drunk killing another, but whereas *Kehoe* was at the lowest level of seriousness for an offence of this kind, by contrast the present case was at the highest level. We have decided, without hesitation, that the striking feature of this offence is not simply that the victim was killed, but he was killed in the course of a prolonged murderous (on the judge's findings, unprovoked) attack of repeated and utmost ferocity. We accept, of course, that the appellant's culpability was diminished, but it was very far from extinguished, and his level of responsibility for his actions merits examination in the light of his immediate activities both before the attack began and after it was concluded, and his insight into the need to do what could be done to cover up the fact of the killing and his involvement in it. In our judgment the level of his responsibility was just, but only just sufficiently diminished for the purposes of section 2 of the Homicide Act. As in *Chambers*, a very substantial element of mental responsibility remained. Finally, the risk represented by the appellant has not yet diminished. While in custody he is not able to obtain alcohol but there is no basis on which we can be satisfied that the alcohol dependency syndrome from which he suffered at the date of his crimes is now permanently cured, and that if and when released, he would not return to his excessive and dangerous drinking habits.
20. In the circumstances of this case, we are satisfied that the appropriate sentence is a discretionary sentence of imprisonment for life.

The minimum term

21. There is no express statutory link between the guidance in schedule 21 of the 2003 Act and the principles to be applied to sentencing decisions in diminished responsibility manslaughter. Where diminished responsibility is established it serves to reduce the defendant's culpability for his actions when doing the killing, but the remaining circumstances of the homicide are unchanged. Specific features of the seriousness of the homicide, for example a double rather than a single killing, or the sadistic killing of a child may be common both to murder and diminished

responsibility manslaughter. At the same time the mitigating features expressly identified in schedule 21 extend to what may approximate but not amount to the defence of diminished responsibility and provide an additional connection between the schedule and the defence. Finally, the culpability of the defendant in diminished responsibility manslaughter may sometimes be reduced almost to extinction, while in others, it may remain very high. Accordingly when the sentencing court is assessing the seriousness of the offence with a view to fixing the minimum term, we can discern no logical reason why, subject to the specific element of reduced culpability inherent in the defence, the assessment of the seriousness of the instant offence of diminished responsibility manslaughter should ignore the guidance. Indeed we suggest that the link is plain.

22. One of the striking features of schedule 21 is well known but not as yet perhaps fully appreciated. Any of the suggested levels of sentence represent the time actually to be served in custody. A thirty year term is therefore the equivalent of a sixty year determinate sentence, and a fifteen year term equivalent to a thirty year determinate sentence. This reality cannot be ignored, and a vast disproportion between sentences for murder and the sentences for offences of manslaughter which can sometimes come very close to murder would be inimical to the administration of justice. At the lowest, this means that the actual sentences imposed in cases of diminished responsibility manslaughter decided before the 2003 Act came into effect should be treated with utmost caution. The decisions may helpfully point to relevant broad considerations, but the actual sentences themselves no longer provide an accurate guide to the level of minimum term sentences to be imposed now. Although we are grateful to Mr Bishop for his careful, detailed analysis of a variety of sentencing decisions, we are unable to accept the broad thrust of the argument that would lead to a vast reduction from the minimum term imposed by the trial judge after the appellant was convicted of murder.
23. We derive some further, indirect support to our approach from the stark reality that the legislature has concluded, dealing with it generally, that the punitive element in sentences for murder should be increased. This coincides with increased levels of sentence for offences resulting in death, such as causing death by dangerous driving and causing death by careless driving. Parliament's intention seems clear: crimes which result in death should be treated more seriously and dealt with more severely than before. Our conclusion is not governed by, but is consistent with this approach.
24. As a case of murder, the trial judge assessed the minimum term at 18 years. We have not been invited to, and we see no reason to disagree with this assessment. It carefully reflected the essential features of the case as described in this judgment. The minimum term must now be reduced to allow for the level of reduced culpability consequent on diminished responsibility. We shall not repeat the very grave features which led us to conclude that imprisonment for life is appropriate in this case. Bearing in mind that the protection of the public for the future is secured by the sentence of imprisonment for life, the minimum term should be fixed at 13 years.

02 April 2009 Wood	
passiver:	
I. 27	Clive Wood was convicted of murder
I. 27	He was sentenced to life imprisonment
I. 28	The minimum term to be served was fixed at 18 years' imprisonment
I. 28	An appropriate order was made
I. 34	the jury was satisfied
I. 36	the appellant must now be sentenced for manslaughter
I. 40	the deceased, Francis Ryan, was subjected to a murderous attack
I. 42	the deceased had been attacked
I. 44	external injuries to his head, face, body and limbs were found
I. 45	Other injuries were caused by blows with an object such as a lump hammer
I. 46	further injuries may have been caused by gripping a meat cleaver, found in the appellant's rucksack, similarly blood stained, and similarly linked to the deceased
I. 57	
I. 67	The main weapon used in the attack on the deceased
I. 68	the meat cleaver, was taken by the appellant to the deceased's flat
I. 74	During his search the flat was ransacked
I. 81	In the attack her nose was broken
I. 82	he was convicted of common assault
I. 83	he was convicted of carrying an offensive weapon
I. 87	the possible future risk presented by the appellant
I. 99	A significant amount of "psychological work focusing on issues like alcohol, anger, alleged sexual abuse and victim empathy" must be completed
I. 109	(and none is suggested)
I. 112	imprisonment for public protection under section 225(3) of the Act as amended by the Criminal Justice and Immigration Act 2008
I. 114	the minimum term to be served by the appellant
I. 117	where the defendant is convicted of manslaughter
I. 124	one or more offences associated with it
I. 127	Section 225(3), as amended
I. 127	imprisonment for public protection may be ordered
I. 128	the conditions are met
I. 129	the power to impose imprisonment for public protection is available
I. 135	the appellant's culpability was reduced by the substantial diminution in his responsibility for his actions
I. 149	the need for the sentence of life imprisonment to be reserved for the gravest cases
I. 157	No detailed repetition is needed in this judgment
I. 164	the assessment of the seriousness of an offence of manslaughter on the grounds of diminished responsibility must be focused exclusively on the defendant's culpability
I. 166	the various sentencing options then available to judges in cases of diminished responsibility were summarised
I. 167	reference was made to a hospital order if recommended by a psychiatric report
I. 174	when Chambers was decided
I. 181	This approach has not...been called into question
I. 183	R v Bryan [2006] 2 CAR (S) 66 was also decided before the 2003 Act came into force
I. 188	Bryan's culpability was "very considerably diminished by his mental illness

I. 190	the determinate term in that case was assessed at a total of 30 years
I. 191	when halved as required
I. 192	a sentence of life imprisonment imposed under the 2003 Act in the context of provocation was varied to imprisonment for public protection
I. 195	a sentence of imprisonment for public protection is not felt until after the offender's release on licence
I. 196	the two sentences are treated identically within the prison system
I. 199	a prisoner who has served the custodial term of a sentence of imprisonment for public protection, and has then been released after an assessment
I. 200	the Parole Board...may direct that the licence be revoked
I. 213	the defendant was convicted of manslaughter
I. 214	the court, presided over by Lord Phillips of Worth Matravers CJ
I. 218	the public are now properly protected by the imposition of the sentence of imprisonment
I. 220	the cases decided before the Criminal Justice Act 2003 came into effect
I. 222	guidance on when a life sentence should be imposed
I. 224	a life sentence should be reserved for those cases where the culpability of the offender is particularly high
I. 230	her responsibility was diminished
I. 230	after she was provoked
I. 231	can properly be said to be so grave that...
I. 231	a life sentence is required or even justified
I. 235	usually reserved for particularly grave cases
I. 244	the appellant's culpability was diminished
I. 244	it was very far from extinguished
I. 245	both before the attack began and after it was concluded
I. 248	the level of his responsibility was just, but only just sufficiently diminished?
I. 250	the risk represented by the appellant has not yet diminished
I. 253	the alcohol dependency syndrome from which he suffered at the date of his crimes is now permanently cured
I. 254	that if and when released,...
I. 260	the principles to be applied to sentencing decisions
I. 261	Where diminished responsibility is established
I. 262	but the remaining circumstances of the homicide are unchanged
I. 266	the mitigating features expressly identified in schedule 21
I. 268	the culpability of the defendant in diminished responsibility manslaughter may sometimes be reduced almost to extinction
I. 276	One of the striking features of schedule 21 is well known but not as yet perhaps fully appreciated
I. 280	This reality cannot be ignored
I. 282	the actual sentences imposed in cases of diminished responsibility manslaughter
I. 283	cases of diminished responsibility manslaughter decided before the 2003 Act came into effect should be treated with utmost caution
I. 286	guide to the level of minimum term sentences to be imposed now
I. 289	the minimum term imposed by the trial judge after the appellant was convicted of murder
I. 292	the punitive element in sentences for murder should be increased
I. 295	crimes which result in death should be treated more seriously
I. 300	the essential features of the case as described in this judgment
I. 300	The minimum term must now be reduced
I. 304	the protection of the public for the future is secured
I. 305	the minimum term should be fixed at 13 years

Adverbialer:	
I. 26 (initial)	<i>On 11 October 2006, after the jury rejected defences of provocation and diminished responsibility,</i>
I. 31 (initial)	<i>On 20 June 2008 this court, differently constituted, quashed the appellant's conviction for murder</i>
I. 31 (medial)	<i>this court, differently constituted, quashed the appellant's conviction for murder</i>
I. 38 (initial)	<i>For present purposes however we must underline that,...</i>
I. 39 (initial)	<i>in his own home, where he had offered accommodation to the appellant, the deceased, Francis Ryan, was subjected to a murderous attack</i>
I. 44 (initial)	<i>At post mortem 53 recent external injuries to his head, face, body and limbs were found</i>
I. 53 (medial)	<i>the deceased's suffering and pure terror before he died must have been extreme</i>
I. 61 (initial)	<i>According to the appellant, after they had arrived there and he fell asleep, the deceased made a homosexual advance to him</i>
I. 65 (initial)	<i>but if what he said was true, it is a little surprising that he chose to go with the deceased to his home</i>
I. 69 (initial)	<i>but at some stage after his arrival at the deceased's home, he must have removed the cleaver from the rucksack</i>
I. 70 (initial)	<i>When the attack began he went and "fetched" the cleaver from his jacket</i>
I. 72 (initial)	<i>After the attack the appellant proceeded to search the deceased's home</i>
I. 74 (initial)	<i>During his search the flat was ransacked</i>
I. 76 (initial)	<i>As he left the flat he locked the front door mortise lock</i>
I. 79 (initial)	<i>and for many years he committed repeated offences of dishonesty and burglary</i>
I. 81 (initial)	<i>In the attack her nose was broken</i>
I. 87 (medial)	<i>although these, on examination, do not address the possible future risk</i>
I. 89 (initial)	<i>although he is not violent on a regular basis, he has the ability to cause serious harm</i>
I. 92 (initial)	<i>although the appellant is not "an indiscriminate risk of violence on a day-to-day basis, if he were to offend in the future, he can pose a "significant risk"</i>
I. 95 (medial)	<i>it is always possible, given his history, that...he could slip back into his previous lifestyle</i>
I. 95 (initial)	<i>in the community he could slip back into his previous lifestyle</i>
I. 103 (initial)	<i>That said, our decision must proceed on the basis that...</i>
I. 109 (initial)	<i>In the absence of any medical disposal (and none is suggested) the first question is whether the case requires a sentence of imprisonment for life</i>
I. 113 (initial)	<i>Whichever of these orders is appropriate, the second question is the assessment of the minimum term</i>
I. 115 (medial)	<i>That raises questions as to the nature of the link, if any, between the legislative structures... and the assessment of the minimum term</i>
I. 127 (medial)	<i>Section 225(3), as amended, identifies the conditions...???</i>
I. 128 (initial)	<i>In the present case, the conditions are met</i>
I. 145 (initial)	<i>whether his crime was murder or manslaughter, the deceased's death was an unchanging factor</i>
I. 153 (initial)	<i>...and more important for present purposes, they are not exclusive considerations</i>
I. 166 (medial)	<i>the various sentencing options then available to judges in cases of diminished responsibility were summarised</i>
I. 167 (initial)	<i>Although reference was made to a hospital order if recommended by a psychiatric report and justified, where the defendant constituted a danger to the public for an unpredictable time, the right sentence would probably be life imprisonment.</i>

I. 170 (initial)	<i>However if the defendant's responsibility for his acts was so grossly impaired that his degree of responsibility was minimal, then a lenient course would be open</i>
I. 174 (initial)	<i>At the time when Chambers was decided imprisonment for public protection was not available.</i>
I. 177 (initial)	<i>notwithstanding the acceptance by the prosecution of manslaughter on the grounds of diminished responsibility, what the judge described as a "very substantial amount of mental responsibility remained"</i>
I. 181 (medial)	<i>This approach has not, so far as we are aware, been called into question</i>
I. 190 (medial)	<i>the determinate term in that case was assessed at a total of 30 years</i>
I. 191 (medial)	<i>a total of 30 years which, when halved as required, reduced the minimum term to 15 years</i>
I. 192 (initial)	<i>In R v Porter [2007] 1 CAR (S) 115 a sentence of life imprisonment...</i>
I. 195 (initial)	<i>As we understand it, the two sentences are treated identically</i>
I. 196 (initial)	<i>but after release a life sentence prisoner remains on licence</i>
I. 197 (initial)	<i>whereas in the case of a prisoner who has served the custodial term of a sentence of imprisonment for public protection, and has then been released after an assessment that it is safe to do so, the Parole Board...may direct that the licence be revoked</i>
I. 200 (medial)	<i>the Parole Board, after at least 10 years, may direct that the licence be revoked</i>
I. 200 (initial)	<i>Apart from identifying this distinction, the judgment continued with an observation</i>
I. 203 (initial)	<i>Despite this reference, in a provocation manslaughter case, the court did not directly address, and had no reason to address, the possibility of any link</i>
I. 213 (initial)	<i>In R v Kehoe [2008] CLR 728, the defendant was convicted of manslaughter</i>
I. 214 (initial)	<i>Commenting on Porter, the court, presided over by Lord Phillips of Worth Matravers CJ, observed that</i>
I. 216 (initial)	<i>When, as here, an offender meets the criteria of dangerousness, there is no longer any need to protect the public</i>
I. 220 (initial)	<i>In such cases, therefore, the cases decided before the Criminal Justice Act 2003 came into effect no longer offered guidance on when a life sentence should be imposed</i>
I. 222 (initial)	<i>now, when the court finds that the defendant satisfies the criteria for dangerousness, a life sentence should be reserved for those cases where the culpability of the offender is particularly high</i>
I. 229 (medial)	<i>we do not think that this unpremeditated killing of one drunk by another, at a time when her responsibility was diminished, and after she was provoked, can properly be said to be so grave</i>
I. 239 (initial)	<i>but whereas Kehoe was at the lowest level of seriousness for an offence of this kind, by contrast the present case was at the highest level</i>
I. 248 (initial)	<i>In our judgment the level of his responsibility was just, but only just sufficiently diminished</i>
I. 249 (initial)	<i>As in Chambers, a very substantial element of mental responsibility remained</i>
I. 254 (initial)	<i>if and when released, he would not return to his excessive and dangerous drinking habits</i>
I. 256 (initial)	<i>In the circumstances of this case, we are satisfied that the appropriate sentence is a discretionary sentence of imprisonment for life</i>
I. 261 (initial)	<i>Where diminished responsibility is established it serves to reduce the defendant's culpability for his actions when doing the killing</i>
I. 265 (initial)	<i>At the same time the mitigating features expressly identified in schedule 21 extend to what may approximate but not amount to the defence of diminished responsibility</i>
I. 270 (initial)	<i>Accordingly when the sentencing court is assessing the seriousness of the offence with a view to fixing the minimum term, we can discern no logical reason why...</i>

I. 272 (medial)	we can discern no logical reason why, <i>subject to the specific element of reduced culpability inherent in the defence</i> , the assessment of the seriousness of the instant offence of diminished responsibility manslaughter should ignore the guidance.
I. 282 (initial)	<i>At the lowest</i> , this means that...
I. 287 (initial)	<i>Although we are grateful to Mr Bishop for his careful, detailed analysis of a variety of sentencing decisions</i> , we are unable to accept the broad thrust of the argument
I. 292 (medial)	the legislature has concluded, <i>dealing with it generally</i> , that the punitive element in sentences for murder should be increased
I. 298 (initial)	<i>As a case of murder</i> , the trial judge assessed the minimum term at 18 years
I. 304 (initial)	<i>Bearing in mind that the protection of the public for the future is secured by the sentence of imprisonment for life</i> , the minimum term should be fixed at 13 years
Sammensatte præpositioner:	
I. 117	in cases of
I. 118	by reason of
I. 137	in relation to
I. 138	in cases of
I. 139	in cases of
I. 166	in cases of
I. 283	in cases of
Komplekse substantivsyntagmer:	
I. 44	53 recent external injuries to his head, face, body and limbs
I. 46	blows with an object such as a lump hammer
I. 48	The vast majority of the wounds in the scalp of the deceased
I. 50	underlying fractures in the skull corresponding to the wound in the left temple, the complex lacerations behind the left ear, and the complex wounds on the left side of the head
I. 55	a lump hammer, found in the deceased's lounge, which had contact blood staining, consistent with the DNA profile of the deceased
I. 56	a meat cleaver, found in the appellant's rucksack, similarly blood stained, and similarly linked to the deceased
I. 62	the basis for a provocation defence ultimately rejected by the jury
I. 67	The main weapon used in the attack on the deceased, the meat cleaver,
I. 85	The most recent psychiatric report on the appellant
I. 86	the medical reports that were available at trial
I. 87	the possible future risk presented by the appellant
I. 88	the appellant's history which shows that "although he is not violent on a regular basis, he has the ability to cause serious harm in the context of interpersonal conflict and especially when he (is) under the influence of alcohol
I. 92	an indiscriminate risk of violence on a day-to-day basis,
I. 97	his judgment that the appellant probably lacks full insight into his own psychological functioning and that his explanations for the offence are "very simplistic"
I. 99	A significant amount of "psychological work focusing on issues like alcohol, anger, alleged sexual abuse and victim empathy"
I. 104	on the basis that the appellant was suffering from abnormality of mind which substantially impaired his mental responsibility for acts in doing the killing
I. 107	the proposition that the sentence must reflect the acknowledged diminution of

	his client's mental responsibilities for his actions
I. 110	a sentence of imprisonment for life under section 225(2) of the 2003 Act or imprisonment for public protection under section 225(3) of the Act as amended by the Criminal Justice and Immigration Act 2008
I. 113	the assessment of the minimum term to be served by the appellant
I. 115	questions as to the nature of the link, if any, between the legislative structures introduced by section 269 of the 2003 Act for the determination of the minimum term in cases of murder, and the assessment of the minimum term where the defendant is convicted of manslaughter by reason of diminished responsibility
I. 127	the conditions in which imprisonment for public protection may be ordered
I. 128	the power to impose imprisonment for public protection i
I. 130	section 143 (1) of the Criminal Justice Act 2003 which requires the court addressing the seriousness of any offence to consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause, or might foreseeably have caused.
I. 135	the substantial diminution in his responsibility for his actions
I. 136	the advice of the Sentencing Advisory Panel to the Sentencing Guidelines Council, August 2004, in relation to manslaughter, where the Panel acknowledged that sentencing in cases of manslaughter was much more complicated than in cases of murder
I. 139	the Guidelines Council that in manslaughter cases culpability rather than harm should be the primary consideration in determining the sentence
I. 142	the extent to which the offender was responsible for his acts
I. 147	an order of imprisonment for public protection
I. 148	the need for the sentence of life imprisonment to be reserved for the gravest cases
I. 149	the value of imprisonment for public protection in achieving the objective of public protection
I. 151	the assessment of the seriousness of any offence
I. 155	The terms of Schedule 21 of the 2003 Act, to which section 269 requires the court to have regard when making its assessment of the seriousness of the individual case of murder,
I. 158	the very fact that a series of paragraphs offer starting points for the minimal custodial sentences – whole life, 30 years, and 15 years, with equally specific provisions for offenders aged under 18 years –
I. 162	the assessment of the seriousness of an offence of manslaughter on the grounds of diminished responsibility
I. 165	R v Chambers [1983] CAR (S) 190 where the various sentencing options then available to judges in cases of diminished responsibility were summarised
I. 167	a hospital order if recommended by a psychiatric report and justified, where the defendant constituted a danger to the public for an unpredictable time??
I. 172	the judge's assessment of the degree of the defendant's responsibility
I. 173	his assessment of the time for which the accused would continue to represent a danger to the public
I. 177	the acceptance by the prosecution of manslaughter on the grounds of diminished responsibility
I. 184	the relevant pre-2003 sentencing decisions of this court
I. 185	the way in which the court approached the appellant's diminished responsibility
I. 187	a dominant effect in causing him to act as he did
I. 190	a total of 30 years which...reduced the minimum term to 15 years
I. 192	a sentence of life imprisonment imposed under the 2003 Act in the context of provocation

I. 194	The distinction between a sentence of life imprisonment and a sentence of imprisonment for public protection
I. 201	an observation that the court was not "satisfied" that the starting points laid down in schedule 21 of the 2003 Act were "of relevance to the issue of sentencing for manslaughter"
I. 205	the possibility of any link between schedule 21 of the 2003 Act and diminished responsibility manslaughter
I. 207	no guidance...as to the application of s225(2)(b) and to the question whether the seriousness of the offence was such as to justify the imposition of life imprisonment
I. 219	the imposition of the sentence of imprisonment for public protection
I. 220	the cases decided before the Criminal Justice Act 2003 came into effect
I. 227	all those circumstances in which a life sentence might be appropriate
I. 228	this unpremeditated killing of one drunk by another
I. 233	The conclusion which follows from this observation
I. 233	the mere fact that the case is one of manslaughter on the grounds of diminished responsibility
I. 236	particularly grave cases, where the defendant's responsibility for his actions, although diminished, remains high
I. 238	the feature of <i>Kehoe</i> which is analogous to the present that is, one drunk killing another
I. 242	in the course of a prolonged murderous (on the judge's findings, unprovoked) attack of repeated and utmost ferocity
I. 246	his insight into the need to do what could be done to cover up the fact of the killing and his involvement in it
I. 250	a very substantial element of mental responsibility
I. 252	no basis on which we can be satisfied that the alcohol dependency syndrome from which he suffered at the date of his crimes is now permanently cured, and that if and when released, he would not return to his excessive and dangerous drinking habits
I. 259	no express statutory link between the guidance in schedule 21 of the 2003 Act and the principles to be applied to sentencing decisions in diminished responsibility manslaughter
I. 263	Specific features of the seriousness of the homicide, for example a double rather than a single killing, or the sadistic killing of a child
I. 268	the culpability of the defendant in diminished responsibility manslaughter
I. 272	no logical reason why, subject to the specific element of reduced culpability inherent in the defence, the assessment of the seriousness of the instant offence of diminished responsibility manslaughter
I. 280	a vast disproportion between sentences for murder and the sentences for offences of manslaughter which can sometimes come very close to murder
I. 282	the actual sentences imposed in cases of diminished responsibility manslaughter decided before the 2003 Act came into effect
I. 286	an accurate guide to the level of minimum term sentences to be imposed now
I. 287	his careful, detailed analysis of a variety of sentencing decisions
I. 288	the broad thrust of the argument that would lead to a vast reduction from the minimum term imposed by the trial judge
I. 291	the stark reality that the legislature has concluded, dealing with it generally, that the punitive element in sentences for murder should be increased
I. 293	increased levels of sentence for offences resulting in death, such as causing death by dangerous driving and causing death by careless driving
I. 295	crimes which result in death
I. 300	the essential features of the case as described in this judgment
I. 301	the level of reduced culpability consequent on diminished responsibility
I. 302	the very grave features which led us to conclude that imprisonment for life is

	appropriate in this case
Fagterminologi:	
I. 2	Judicature
I. 23	Hearing
I. 26	Defences
I. 32	Conviction
I. 32	Manslaughter
I. 36	Trial
I. 37	Manslaughter
I. 43	Assailant
I. 81	Convictions
I. 84	offence
I. 84	Conviction
I. 87	Trial
I. 93	to offend
I. 99	offence
I. 108	Diminution
I. 118	Manslaughter
I. 120	offence
I. 120	liability
I. 123	offence
I. 123	offence
I. 124	offences
I. 128	power
I. 131	offence
I. 132	culpability
I. 133	offence
I. 134	forseeably
I. 135	culpability
I. 137	manslaughter
I. 138	manslaughter
I. 140	manslaughter
I. 145	manslaughter
I. 152	offence
I. 152	culpability
I. 160	provisions
I. 162	offence
I. 163	offence
I. 163	manslaughter
I. 164	culpability
I. 171	lenient
I. 177	manslaughter
I. 203	manslaughter
I. 204	manslaughter
I. 208	offence
I. 225	culpability
I. 226	offence
I. 234	manslaughter
I. 240	offence

I. 241	offence
I. 251	custody
I. 262	culpability
I. 263	homicide
I. 266	mitigating
I. 267	defence
I. 268	defence
I. 268	culpability
I. 271	offence
I. 273	defence
I. 273	offence
I. 278	custody
I. 281	offences
I. 281	manslaughter
I. 292	legislature
I. 292	punitive
I. 293	Offences
juridiske kollokationer:	
I. 3	court of appeal
I. 26	diminished responsibility
I. 27	to be convicted of...
I. 27	to be sentenced to...
I. 28	the minimum term
I. 28	to serve a term
I. 31	To quash a conviction
I. 32	diminished responsibility
I. 35	the defence case
I. 36	to be sentenced
I. 44	post mortem
I. 44	external injuries
I. 62	a provocation defence
I. 75	to take steps to
I. 79	criminal record
I. 80	to commit an offence
I. 82	to be convicted of...
I. 82	common assault
I. 83	criminal damage
I. 83	to be convicted of...
I. 84	criminal damage
I. 92	an indiscriminate risk of violence
I. 93	a significant risk
I. 94	substantial harm
I. 105	mental responsibility
I. 108	mental responsibilities
I. 109	medical disposal
I. 110	a sentence of imprisonment for life
I. 110	imprisonment for public protection
I. 114	minimum term

I. 114	to serve a term
I. 114	release on parole
I. 115	the nature of...
L 115	legislative structures
I. 116	the minimum term
I. 116	the minimum term
I. 118	to be convicted of...
I. 118	diminished responsibility
I. 119	imprisonment for life
I. 119	imprisonment for public protection
I. 125	a sentence of imprisonment for life
I. 126	a sentence of imprisonment for life
I. 127	imprisonment for public protection
I. 129	imprisonment for public protection
I. 132	to commit an offence
I. 133	to cause harm
I. 135	substantial diminution in responsibility for ones actions
I. 136	the Sentencing Advisory Panel
I. 137	the Sentencing Guidelines Council
I. 141	to determine a sentence
I. 142	to be responsible for ones actions
I. 143	diminished responsibility manslaughter
I. 146	mental responsibility
I. 146	to commit a crime
I. 147	imprisonment for public protection
I. 148	imprisonment for life
I. 149	life imprisonment
I. 150	imprisonment for public protection
I. 150	public protection
I. 159	the minimal custodial sentence
I. 163	diminished responsibility
I. 166	sentencing options
I. 167	diminished responsibility
I. 169	to constitute a danger to...
I. 170	life imprisonment
I. 174	to represent a danger to...
I. 175	imprisonment for public protection
I. 178	diminished responsibility
I. 179	mental responsibility
I. 180	the process of proceeding to sentence
I. 184	sentencing decisions
I. 185	diminished responsibility
I. 188	diminished culpability
I. 191	the minimum term
I. 192	life imprisonment
I. 192	to impose a sentence
I. 193	imprisonment for public protection
I. 194	life imprisonment
I. 194	imprisonment for public protection
I. 195	release on licence

I. 197	a life sentence
I. 197	be on licence
I. 198	custodial term
I. 198	imprisonment for public protection
I. 200	to revoke a licence
I. 200	parole board
I. 205	diminished responsibility manslaughter
I. 209	life imprisonment
I. 211	criminal intent
I. 211	attempted murder
I. 213	to be convicted of...
I. 214	diminished responsibility
I. 214	presided over by...
I. 218	life imprisonment
I. 219	imprisonment for public protection
I. 220	to decide a case
I. 222	a life sentence
I. 222	to impose a sentence
I. 224	life sentence
I. 227	a life sentence
I. 230	diminished responsibility
I. 231	a life sentence
I. 234	diminished responsibility
I. 235	imprisonment for life
I. 236	diminished responsibility
I. 244	diminished culpability
I. 245	level of responsibility
I. 248	diminished responsibility
I. 256	a discretionary sentence
I. 257	imprisonment for life
I. 258	the minimum term
I. 260	sentencing decisions
I. 260	diminished responsibility manslaughter
I. 261	diminished responsibility
I. 265	diminished responsibility manslaughter
I. 267	diminished responsibility
I. 269	diminished responsibility manslaughter
I. 270	the sentencing court
I. 270	to fix the minimum term
I. 272	reduced culpability
I. 274	diminished responsibility manslaughter
I. 278	a determinate sentence
I. 279	a determinate sentence
I. 282	the administration of justice
I. 282	to impose a sentence
I. 283	diminished responsibility manslaughter
I. 286	minimum term sentences
I. 288	sentencing decisions
I. 289	minimum term
I. 289	the trial judge

I. 290	to be convicted of...
I. 294	causing death by dangerous driving
I. 294	causing death by careless driving
I. 298	the trial judge
I. 298	the minimum term
I. 300	the minimum term
I. 301	reduced culpability
I. 302	diminished responsibility
I. 303	imprisonment for life
I. 304	imprisonment for life
I. 305	the minimum term
Nominalkonstruktionen:	
I. 33	The question of <i>provocation</i> did not arise for <i>consideration</i> . (The court did not consider the question of whether the defendant had been provoked)
I. 35	After <i>reflection</i> the Crown did not seek a new trial for murder (After reflecting on the case the Crown did not seek a new trial for murder)
I. 39	he had offered <i>accommodation</i> to the appellant (he had offered to accommodate the appellant)
I. 40	Francis Ryan was subjected to a murderous <i>attack</i> of extreme ferocity (Francis Ryan was murderously attacked with extreme ferocity)
I. 47	There were <i>fractures</i> in the thyroid cartilage (The thyroid cartilage was fractured)
I. 48	probably the <i>result</i> of <i>pressure</i> by an arm round the neck (which was probably caused by the appellant pressuring an arm round the victim's neck.)
I. 65	he sought to pass off in his evidence as something spoken in the <i>confusion</i> in his mind after his arrest (he sought to pass off in his evidence as something he had said because he was confused after he was arrested)
I. 67	In addition there was evidence of some planning or preparation (In addition there was evidence that the assailant had planned or prepared the attack)
I. 69	but at some stage after his <i>arrival</i> at the deceased's home (but at some stage after he had arrived at the deceased's home)
I. 71	When the <i>attack</i> began he went and "fetched" the cleaver from his jacket (he went and "fetched" the cleaver from his jacket just before he attacked)
I. 72	After the <i>attack</i> the appellant proceeded to search the deceased's home (After attacking the victim, the appellant proceeded to search the deceased's home)
I. 75	Thereafter the appellant took steps to hinder the <i>finding</i> of the deceased's body (Thereafter the appellant took steps to hinder that the deceased's body was found)
I. 81	In the <i>attack</i> her nose was broken (when he attacked her, her nose was broken)
I. 102	It is a striking feature of this case that the appellant's <i>intention</i> was to kill (It is a striking feature of this case that the appellant intended to kill)
I. 108	the sentence must reflect the acknowledged <i>diminution</i> of his client's mental responsibilities for his actions (the sentence must reflect that his client's mental responsibilities for his actions are diminished, which has been acknowledged by X)
I. 114	the minimum term to be served by the appellant before any possibility of his <i>release</i> on parole may arise (the minimum term to be served by the appellant before he can possibly be released on parole)
I. 141	culpability rather than harm should be the primary <i>consideration</i> in determining the sentence (culpability rather than harm should be considered primarily in determining the sentence)

I. 148	He reinforced his submission by highlighting the <i>need</i> for the sentence of life imprisonment to be reserved for the gravest cases (He reinforced his submission by highlighting the that the sentence of life imprisonment needs to be reserved for the gravest cases)
I. 152	section 143(1) of the 2003 Act requires the <i>assessment</i> of the seriousness of any offence to address the offender's culpability and the harm consequent on his actions (section 143(1) of the 2003 Act requires that the seriousness of any offence is assessed by addressing the offender's culpability and the harm consequent on his actions)
I. 156	section 269 requires the court to have regard when making its <i>assessment</i> of the seriousness of the individual case of murder (section 269 requires the court to have regard when assessing the seriousness of the individual case of murder)
I. 157	No detailed <i>repetition</i> is needed in this judgment (it is not necessary to repeat any details in this judgment)
I. 165	Our <i>approach</i> is consistent with the authorities (we approach this case in consistency with the authorities)
I. 167	Although <i>reference</i> was made to a hospital order (Although x referred to a hospital order)
I. 172	the length of any determinate sentence depended on the judge's <i>assessment</i> of the degree of the defendant's responsibility (the length of any determinate sentence depended on how the judge assessed the degree of the defendant's responsibility)
I. 173	and his <i>assessment</i> of the time for which the accused would continue to represent a danger to the public (and for how long he assessed that the accused would continue to represent a danger to the public)
I. 177	notwithstanding the <i>acceptance</i> by the prosecution of manslaughter on the grounds of diminished responsibility (notwithstanding that the prosecution accepted manslaughter on the grounds of diminished responsibility)
I. 188	The court's <i>conclusion</i> was that Bryan's culpability was "very considerably diminished by his mental illness" (The court concluded that Bryan's culpability was "very considerably diminished by his mental illness")
I. 195	until after the offender's <i>release</i> on licence (until after the offender is released on licence)
I. 197	after <i>release</i> a life sentence prisoner remains on licence for the rest of his life (after he is released a life sentence prisoner remains on licence for the rest of his life,)
I. 199	in the case of a prisoner who has served the custodial term of a sentence of imprisonment for public protection, and has then been released after an <i>assessment</i> that it is safe to do so (in the case of a prisoner who has served the custodial term of a sentence of imprisonment for public protection, and has then been released after it has been assessed that it is safe to do so)
I. 209	whether the seriousness of the offence was such as to justify the <i>imposition</i> of life imprisonment (whether the seriousness of the offence was such as to justify that life imprisonment was imposed)
I. 245	his level of responsibility for his actions merits <i>examination</i> in the light of his immediate activities both before the attack began (his level of responsibility for his actions merits to be examined in the light of his immediate activities both before the attack began)
I. 247	his insight into the need to do what could be done to cover up the fact of the killing and his <i>involvement</i> in it (his insight into the need to do what could be done to cover up the fact of the killing and that he had been involved in it)
I. 262	it serves to reduce the defendant's culpability for his actions when doing the <i>killing</i> (it serves to reduce the defendant's culpability for his actions when killing the victim)
Lix:	

3949 ord		
1147 svære ord		
155 perioder		
A = 29,0		
B = 25,5		
Lix = (A+ B) = 54,5 (svær)		



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England and Wales Court of Appeal (Criminal Division) Decisions

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Case No: 2009/00415/A5

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT BIRMINGHAM
His Honour Judge Orme
T20067809**

Royal Courts of Justice
Strand, London, WC2A 2LL
14/05/2009

B e f o r e :

**LORD JUSTICE HOOPER
MR. JUSTICE LLOYD JONES
and
HIS HONOUR JUDGE JEREMY ROBERTS QC**

**Between:
REGINA
Appellant
- and -
TREVOR NORMAN CLARKE
Respondent**

**Between:
Between:**

REGINA

Appellant

- and -

TREVOR NORMAN CLARKE

Respondent

Mr. T. Green for the Respondent
Hearing date: 28th April 2009

HTML VERSION OF JUDGMENT

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Mr Justice Lloyd Jones:

1. On 19th August 2008 at the Crown Court at Birmingham the Appellant was convicted of causing death by dangerous driving. On the 19th December 2008 he was sentenced by His Honour Judge Orme to three years imprisonment. He was disqualified from driving for life. The judge directed that, if the Appellant's medical condition were to improve and were he deemed fit to drive, a driving licence could be applied for but a significant time must first pass and he must in any event take an extended driving test.
2. Shortly before 2.00 p.m. on 13th April 2006 the Appellant was driving his Renault motor car in Birmingham when he suffered a hypoglycaemic attack. This caused him to drive in a most erratic fashion. Witnesses described his vehicle entering roundabouts at inappropriate times, lurching through traffic lights, revving unnecessarily, braking suddenly and swerving from lane to lane. One witness described the Appellant's appearance: "I could see that his eyes were very glazed as he was just staring straight ahead of himself. His face was blank, expressionless. I thought he looked drunk or high on drugs." After a distance of about two and a quarter miles the Appellant veered off the road and onto a footpath where two boys were walking, Daniel Shakespeare aged 14 and his stepbrother Cory Ciesielski who was 4 years of age. The Appellant's vehicle collided with the boys. Cory Ciesielski was gravely injured and died two weeks later in hospital.
3. The Appellant suffered and still suffers from type 1 diabetes. Although after the collision he initially denied that he had suffered a hypoglycaemic attack, it was agreed by all parties at his trial that he had in fact suffered such an attack at the relevant time and that that was the cause of his totally erratic and uncontrolled driving. Furthermore it was accepted that his driving was dangerous. The central issue at trial appears to have been whether the Appellant was at some stage aware that he was suffering the onset of a hypoglycaemic attack and nevertheless continued to drive or whether his medical condition impaired his cognitive ability to the extent that he was not so aware.
4. The Appellant was 49 years of age at the date of the incident and 52 years of age by the time he came to be tried and sentenced. He lives alone. He has previous convictions in the Magistrates' Court for shoplifting in 1986 and for driving whilst disqualified in 1991. At his trial Professor Livesley, who gave expert evidence of behalf of the prosecution, said that he was 100% certain that the Appellant was aware that he was suffering from hypoglycaemia and that he could have prevented the accident by stopping and by eating or taking glucose tablets. Two experts called on behalf of the defence, Professor Barnett and Professor Marks, both gave evidence that the

Appellant was suffering from hypoglycaemic unawareness, a condition from which up to 40% of all long term type 1 diabetics suffer at some time. In their opinion, Mr. Clarke managed his condition in an exemplary manner and took all proper and reasonable precautions. They stated that in their view Mr. Clarke's driving was 'automatic behaviour' while he was suffering a hypoglycaemic attack and that it was more likely than not that he was unaware of the onset of the attack. In their view the most likely explanation for the attack was a sudden, very rapid drop in Mr. Clarke's blood sugar level of which he was unlikely to have been aware, particularly since he had tested his blood sugar level and eaten appropriately only an hour or so prior to the collision, in accordance to the DVLA guidelines. It is significant that Professor Barnett gave evidence of a consultation with the Appellant on 8th March 2007 at which the Appellant's speech was slurred, a possible sign of hypoglycaemia. The Appellant did not think that his blood sugar level was low but a blood test established that it was. Professor Barnett commented that this episode was highly suggestive of hypoglycaemia unawareness.

5. The Appellant was convicted by the jury of causing death by dangerous driving.
6. The sentencing hearing was delayed at the request of the defence in order to enable them to obtain further reports on the Appellant. At the hearing on 19th December 2008 there was medical evidence before the court that the Appellant had been diagnosed with diabetes in 1978 and suffered from type 1 diabetes. A medical report from Professor Barnett concluded that the Appellant would present serious management issues to the prison authorities, by reason of his medical condition, and that this would put him at serious risk of harm and even death. Professor Barnett also referred to the fact that it was proposed that the Appellant should undergo an islet cell transplant. It was Professor Barnett's opinion that there was no possibility of his receiving this treatment if a custodial sentence were imposed due to the complexity of the procedure and the need for immunosuppressant treatment and follow up. This would deny him the possibility of a cure for both his diabetes and hypoglycaemic unawareness.
7. Professor Barnett in his report of 18th December 2008 also referred to a planned operation to remove part of the Appellant's thyroid gland. He stated that if on biopsy this was found to be cancerous the Appellant may need further surgery and treatment which would require regular hospital attendance, perhaps for some time.
8. A pre-sentence report dated 26th September 2008 noted that the case had been to trial twice, the jury having failed to agree on the first occasion. It was noted that the Appellant accepted full responsibility for causing the death. In the opinion of the author there was a low risk of reconviction. It was possible that the Appellant could put other people at risk if he were to suffer a sudden drop in his blood sugar levels if he were in a situation where he was driving or engaged in some hazardous activity. However it was to be noted that this was the first occasion that he had committed an offence which caused injury to anyone else. Repetition of such an offence was unlikely and he did not pose a significant risk of serious harm. Furthermore, there were major risks to his health should he go to prison, given the high level of care and management needed to control his diabetes.
9. In passing sentence the Judge observed:

"...the management of your diabetic condition has been described by those who are responsible for your medical supervision as usually exemplary and good. You had taken, on the evidence that I heard, some precautions during the earlier part of the day to prevent any episode linked to your diabetes affecting your driving. However, there

came a time, on the basis of the evidence that we heard and the jury's verdict, when you should have been aware of your deteriorating condition, of the likelihood of an imminent hypoglycaemic attack, hypoglycaemic unawareness, and indeed that was, on the jury's finding and on the evidence we heard, either before you began driving at a particular time or during the course of your driving. The jury concluded that the awareness that you had was such as it should have caused you to stop driving or indeed never start driving that two miles stretch that led up to the tragic accident that shortly afterwards took place.

Your driving over that distance, on your own admission, was quite appalling. Whilst you were driving I acknowledge, and we heard from the doctors, you would have had no, or certainly very little awareness, awareness that you could control as to how you were driving but what took place before that leaves you now to be sentenced by me for causing a small child's death as a result of what you did. "

Account was taken by the judge of the unusual nature of the Appellant's medical condition and his usual exemplary ability to control his diabetes and health generally, which was nevertheless deteriorating. Furthermore, account was taken of the reports which indicated that in custody there would be serious management issues relating to the Appellant's medical condition. The possible loss of an islet cell transplant when he was in custody would be regrettable. He would require "very careful observation in prison by officers and medical staff to make sure that his acute diabetic state is properly managed." The judge accepted that the case was properly contested on the basis of the medical and legal advice given to the Appellant.

10. The judge considered that there was at least one aggravating feature present, namely that a driver knowing he was suffering from a medical condition which significantly impaired his driving skill nevertheless took a risk which led to an accident. The judge found the authorities of limited help save that they provided a range for sentencing, as did the sentencing guidelines. This had been an appalling tragedy for the family of Cory Ciesielski. The sentence was one of three years imprisonment.
11. We consider that the judge faced a particularly difficult sentencing exercise for a number of reasons, including the fact that the Appellant's conduct had caused the death of one child and injuries to another.
 - (1) It was necessary to assess the degree of the Appellant's culpability in the light of his medical condition.
 - (2) It was necessary to take account of the impact of the custodial sentence on the Appellant's health and in particular the treatment which would and would not be available to him in prison.
 - (3) It was necessary to take account of the impact of the custodial sentence on the ability of the Appellant to undergo necessary surgery for another medical condition.
 - (4) It was necessary to take into account to the delay which had occurred in bringing the matter to trial and sentence.

Culpability

12. The Appellant accepted he was responsible for the death of Cory Ciesielski. Although he had initially denied he suffered a hypoglycaemic attack, at trial it was agreed by all parties that he had

suffered such an attack. Following receipt of expert medical reports the issue at trial was whether or not the Appellant was aware of the onset of the attack or its likelihood and whether he could have prevented the incident.

13. The jury clearly rejected the evidence of Professor Barnett and Professor Marks. Mr Andrew Fisher QC, who appeared for the Appellant at trial and on this appeal, suggests that the jury may have been unable to accept that someone could drive in excess of two miles, negotiating the hazards which the Appellant did, without being aware of his condition and his appalling driving. Be that as it may, Mr Fisher accepts that it was open to the jury to reject the evidence of Professor Barnett and Professor Marks and to come to their verdict and that there are no grounds on which an appeal against conviction would be arguable.
14. Nevertheless, we have been concerned to identify the precise issues at trial and the precise basis on which the Appellant came to be sentenced. Because there was no appeal against conviction, we have not been provided with a transcript of the judge's summing up. Accordingly we have not been able to see precisely how the issues were presented to the jury. Furthermore, we have been troubled by apparent contradictions in the judge's sentencing remarks quoted above. However, we have been greatly assisted by counsel on the hearing of this appeal. In particular Mr Green on behalf of the prosecution has very fairly accepted that we should approach this case on the basis of fact most favourable to the Appellant which is consistent with the fact of his conviction. Accordingly, on the invitation of Mr Green and Mr Fisher we have approached the case on the following basis.

(1) The Appellant usually controlled his medical condition in an exemplary manner and was almost obsessive about testing himself, testing his blood more frequently than is recommended.

(2) He carried out a blood test at 12.48 p.m and took food after that blood test and before he suffered the hypoglycaemic attack.

(3) At some point before or after the start of the dangerous driving there would have come a stage at which he was conscious that he was in the early stage of a hypoglycaemic attack. However, after that he would have ceased to be aware of that fact. The period of awareness could have been very brief and may have been only momentary.

We draw particular attention to this unusual factual basis.

15. Subject to one exception, the judge's sentencing remarks accord with this approach. On this basis the Appellant moved from a condition of normality to a second phase during which he was aware of the onset of a hypoglycaemic attack and thereafter moved into a third phase which was one of hypoglycaemic unawareness. The legal basis for his conviction and the culpability of his conduct are to be found in his conscious failure during the second phase to stop driving. The one observation of the judge which cannot be accommodated within this framework is his observation that there came a time when the Appellant should have been aware of his deteriorating condition. If that were the limit of the Appellant's culpability he would not have committed the offence charged. We consider that this is a slip by the judge which does not reflect the resolution of the issues by the jury's verdict. The jury's verdict is based on their acceptance that there was a time when the Appellant was aware of his deteriorating condition.
16. When these findings are analysed in the light of *Cooksley* [2004] 1 Cr. App. R. (S.) 1, [2003]

[EWCA Crim 996](#) and *Richardson* [2007] 2 Cr. App. R. (S.) 36, [2006] EWCA Crim 3186 and the Sentencing Guideline Council guidelines, the aggravating feature that the Appellant drove while knowingly suffering from a medical condition which significantly impaired his ability to drive would normally make this a case of higher culpability in the scale identified by this court in *Cooksley* and a level two case in the framework of the Sentencing Guideline Council guidelines.

17. However, it was also common ground before us that the second phase during which the Appellant was aware of his deteriorating condition could have been of a very brief duration and may have been only momentary. We shall proceed on that basis. In our judgement this has an important bearing on the degree of culpability. Moreover, there is absent in the present case a further aggravating feature often encountered in cases of hypoglycaemia, namely a driver's reckless indifference in failing to follow the regime for the regulation for his illness. The very opposite was the case here.
18. A rigid application of the guidance in *Richardson* would lead to a starting point in the range of 4 ½ to 7 years imprisonment. Similarly, within the Sentencing Guidelines Council guidelines the starting point would be 5 years imprisonment and the sentencing range from 4 to 7 years imprisonment. However, we consider that the further factors we have identified significantly reduce the Appellant's culpability so that, even when the matter is considered without regard to other mitigation, the sentence falls significantly below the range indicated.

The effect of custody on the Appellant's health and treatment in prison.

19. It is necessary to consider two linked matters here: the management of the Appellant's condition in prison conditions and the effect of a custodial sentence on the ability of the Appellant to undergo a pancreatic cell implant.
20. In an undated report written between conviction and sentence, Prof Barnett states:

" There is no question in my mind (and this is true for other members of my staff who have seen Mr. Clarke and the other expert witnesses involved in this case) that Mr. Clarke has "hypoglycaemic unawareness". This is further supported by the fact that Mr. Clarke has now been accepted onto an islet cell transplant programme in Oxford. This is now a recommended procedure as a treatment / possible cure for type 1 diabetes under certain circumstances. The experts in Oxford believe that Mr. Clarke fulfils the requirements from the National Institute for Health and Clinical Excellence for an islet cell transplant based on the fact that he has "hypoglycaemic unawareness" as a clinical entity with "life threatening consequences" and importantly NICE considers this an indication for consideration of islet cell transplant.

...

In summary, it is my belief that Trevor Clarke will present serious management issues to the prison authorities which could put him at significant risk of harm or even death. This arises from poor warning symptoms of hypoglycaemia as well as the usual issues of having to give insulin injections five times a day, regularly record his blood glucose, care with diet and ensuring he has appropriate levels of exercise. ... It should also be noted that whilst in prison I cannot see any possibility of treatment of his diabetes with an islet cell transplant due to the complexity of the procedure, the need for immunosuppressant treatment and careful follow-up. This will deny him the possibility of a cure for both his diabetes and hypoglycaemic unawareness.

Poor warnings of hypoglycaemia may lead him to appear disorientated, confused, drowsy and may even be associated with loss of consciousness. He will need very careful observation in prison, not just by the prison officers but also by the medical and allied staff. He will also need regular follow up at hospital diabetes specialist services. There is also the possibility that he could be a danger to others during these episodes particularly if he is in an environment where "reduced brain function/collapse" could have a negative effect on others, e.g. prison workshops etc.

In short, I believe that Mr. Clarke will present major management problems to the prison authorities. He will need very careful observation, follow up and support. My previous dealings with prisoners with diabetes who attend our diabetes services is that many of them are provided with nothing like the level of care required and this may lead to significant detriment to health. In Mr. Clarke's case, this will be a particular problem given the complexity of his medical / diabetes condition."

21. In a letter dated 18th December 2008 – the day before sentence – Professor Barnett explained that experts in Oxford had confirmed that the Appellant fulfilled the requirements for a pancreatic islet cell transplant and were willing to put him into the transplant programme. A number of investigations were necessary however before this could proceed including a coronary angiogram. That was in hand. Some results had been received and others were awaited.
22. In a further report dated 30 March 2009 written for the purposes of this appeal, Professor Barnett repeats his conclusions and states further that he is concerned as to whether there is a safe way the Appellant's planned islet cell transplant can be pursued while he is in prison in view of the complexity of the procedure, the need for immunosuppressant treatment and careful follow up. He also states that any delay will deny the Appellant the possibility of a cure for both his diabetes and hypoglycaemic unawareness.
23. In a letter dated 2nd April 2009, Professor Paul Johnson of the Nuffield Department of Surgery at Oxford states that the Appellant is currently awaiting a pancreatic islet transplant. He emphasises that patients are accepted on this programme only if they completely fulfil the criteria for having no warnings of their hypoglycaemic attacks. The Appellant had clearly demonstrated this on detailed assessments carried out in Oxford. He explains that following the first transplant the Appellant will require a further top up transplant about three months later. He will also need intensive follow up, including attending outpatients in Oxford two to three times a week. He states that if the Appellant were not available for a transplant when a suitable pancreas became available it would be difficult to justify keeping him on the national waiting list. Professor Johnson confirms that hypoglycaemic unawareness is a life threatening condition and observes that, initially, the prison service was not carrying out blood tests as frequently as he would have liked.
24. In a further letter dated 6th April 2009 Professor Johnson states that the Appellant is currently second on the relevant waiting list for an islet transplant. He hopes to be able to carry out the operation in the next couple of months but this depends on the availability of a quality donor pancreas.

"If however we have not managed to transplant him within this timeframe, I would be seriously considering referring him to my colleague for a whole pancreas transplant as I am very concerned that his hypoglycaemic unawareness is potentially life threatening for him."

Professor Johnson adds:

"I would also re-emphasise the importance of very close monitoring of his diabetes while he is awaiting his transplant. If he has a severe hypoglycaemic episode without any warning this could be fatal. However, if he runs his blood sugars deliberately high in order to prevent hypoglycaemia, this is clearly associated with the onset of other severe complications of diabetes such as blindness and renal failure."

25. The report provided at the request of this court by the healthcare centre at HMP Hewell, where the Appellant is serving his sentence, is very brief. It consists of one short paragraph and states that the Appellant is coping with his diabetes. He has his medication and testing equipment in his possession and is able to contact healthcare staff at any time. In view of the evidence before us that the Appellant suffers from hypoglycaemic unawareness, this provides limited reassurance.
26. On 27th April 2009 the Criminal Appeal Office received, in response to a request for information from the court, a fax from the Governor of HM Prison Hewell confirming that Mr Clarke would be facilitated in having the islet transplant at Oxford, including the consequent application supervision, if the opportunity arose.

Further Medical Condition

27. Prior to sentence, the Appellant was found to have a nodule in the right lobe of the thyroid. On 27th of November 2008 he underwent a diagnostic hemi-thyroidectomy. At the date of sentence the only information before the sentencing court on this matter was that if the growth proved to be malignant it may well require further surgery and other treatment which would require regular hospital attendance. However, since sentence it has been established that this was in fact a benign lesion. As a result we do not have to consider the further complications which would have been introduced had the Appellant required surgery for this condition. Nevertheless, we note the opinion of Professor Barnett that the Appellant suffers from possible impairment of heart function and that he has 'a multiplicity of medical problems'.

Delay.

28. We note that there have been significant delays in his case and that, through no fault of the Appellant, 2 years and 8 months passed between the accident and the sentence. We consider that this factor should be taken into account in the Appellant's favour.

Conclusion.

29. For the reasons set out above, we consider that the highly exceptional circumstances of this case reduce the Appellant's culpability to an extent which brings the offence significantly below the sentencing range which would normally apply in a case of driving whilst conscious of a significant medical impairment. Furthermore, although we are satisfied that the prison authorities would make arrangements for the Appellant to undergo the two operations he requires as part of the cell transplant and would make efforts to accommodate the intensive outpatient regime which would follow, the treatment and the difficulties to which it would give rise make a custodial sentence considerably more onerous for the Appellant than would otherwise be the case.
30. Having regard to all of the considerations identified above, we have come to the conclusion that this is a case in which this Court is entitled to intervene. The seriousness of the offence is such that we are unable to substitute a suspended sentence. However, in our judgement the appropriate sentence is one of twelve months imprisonment.

31. There is, quite rightly, no appeal against the order of disqualification.
32. We wish to address some final remarks to Cory's parents who, we have been told, have conducted themselves throughout these prolonged and difficult proceedings with complete dignity. It may appear strange to them that this court should devote so much attention to the medical condition of the man whose conduct led to their son's death. However we are bound to do so in order to establish the degree of his culpability for what occurred and in order that we should be aware of the precise consequences for him of the sentence imposed. We certainly have not lost sight of the appalling tragedy suffered by Cory and his family. The victim impact statements in this case speak very clearly of the extreme suffering of Cory's family. However, the sentences imposed in cases such as this are not intended to reflect the value of the life lost nor to make reparation in any way. No doubt Cory's parents would be the first to accept that no sentence, however severe, could ever do that.
33. Accordingly the sentence of 3 years imprisonment will be quashed and one of imprisonment for one year will be substituted. To that extent the appeal is allowed.

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14 May 2009 Clarke	
passiver:	
I. 31	the Appellant was convicted of causing death by dangerous driving
I. 32	he was sentenced by His Honour Judge Orme
I. 33	He was disqualified from driving from life
I. 34	were he deemed fit to drive
I. 35	a driving licence could be applied for
I. 48	it was agreed by all parties at his trial
I. 50	Furthermore it was accepted that his driving was dangerous
I. 55	by the time he came to be tried and sentenced.
I. 60	Two experts called on behalf of the defence
I. 75	The Appellant was convicted by the jury
I. 76	The sentencing hearing was delayed
I. 78	the Appellant had been diagnosed with diabetes in 1978
I. 82	it was proposed that the Appellant should undergo an islet cell transplant
I. 83	if a custodial sentence were imposed
I. 88	if on biopsy this was found to be cancerous
I. 96	However it was to be noted that...
I. 99	management needed to control his diabetes
I. 102	the management of your diabetic condition has been described by those who are responsible for your medical supervision
I. 117	that leaves you now to be sentenced by me for causing a small child's death
I. 119	Account was taken by the judge
I. 121	account was taken of the reports
I. 124	his acute diabetic state is properly managed
I. 125	the case was properly contested
I. 126	the medical and legal advice given to the Appellant
I. 147	at trial it was agreed by all parties that...
I. 158	we have been concerned to identify the precise issues
I. 159	the Appellant came to be sentenced
I. 159	we have not been provided with a transcript of the judge's summing up
I. 161	we have been troubled by apparent contradictions
I. 162	we have been greatly assisted by counsel
I. 169	more frequently than is recommended
I. 182	the culpability of his conduct are to be found in his conscious failure
I. 184	The one observation of the judge which cannot be accommodated within this framework
I. 186	he would not have committed the offence charged
I. 190	When these findings are analysed in the light of Cooksley
I. 200	a further aggravating feature often encountered in cases of hypoglycaemia
I. 207	when the matter is considered without regard to other mitigation
I. 208	below the range indicated
I. 213	An undated report written between conviction and sentence
I. 215	the other expert witnesses involved in this case
I. 216	This is further supported by the fact that...
I. 217	Mr. Clarke has now been accepted onto an islet cell transplant programme
I. 221	based on the fact that he has "hypoglycaemic unawareness"
I. 228	It should also be noted that...
I. 234	may even be associated with loss of consciousness
I. 243	many of them are provided with nothing like...

I. 243	the level of care required
I. 250	Some results had been received and others were awaited
I. 251	In a further report dated 30 March 2009 written for the purposes of this appeal
I. 252	there is a safe way the Appellant's planned islet cell transplant can be pursued
I. 259	patients are accepted on this programme only if...
I. 280	this is clearly associated with the onset of other severe complications of diabetes
I. 282	The report provided at the request of this court by the healthcare centre at HMP Hewell,
I. 288	Mr Clarke would be facilitated in having the islet transplant at Oxford
I. 292	the Appellant was found to have a nodule in the right lobe of the thyroid
I. 296	since sentence it has been established that this was in fact a benign lesion
I. 297	the further complications which would have been introduced had the Appellant required surgery for this condition
I. 304	this factor should be taken into account
I. 314	all of the considerations identified above
I. 315	a case in which this Court is entitled to intervene
I. 319	we have been told
I. 322	However we are bound to do so
I. 324	the appalling tragedy suffered by Cory and his family
I. 326	the sentences imposed in cases such as this are not intended to reflect the value of the life lost
I. 330	the sentence of 3 years imprisonment will be quashed
I. 330	one of imprisonment for one year will be substituted
I. 331	To that extent the appeal is allowed
Adverbialer:	
I. 31 (initial)	<i>On 19th August 2008 at the Crown Court at Birmingham</i> the Appellant was convicted of causing death by dangerous driving.
I. 32 (initial)	<i>On the 19th December 2008</i> he was sentenced
I. 34 (initial)	<i>if the Appellant's medical condition were to improve and were he deemed fit to drive,</i> a driving licence could be applied for
I. 37 (initial)	<i>Shortly before 2.00 p.m. on 13th April 2006</i> the Appellant was driving his Renault motor car
I. 43 (initial)	<i>After a distance of about two and a quarter miles</i> the Appellant veered off the road
I. 47 (initial)	<i>Although after the collision he initially denied that he had suffered a hypoglycaemic attack,</i> it was agreed by all parties at his trial that he had in fact suffered such an attack
I. 51 (medial)	the Appellant was <i>at some stage</i> aware that he was suffering the onset of a hypoglycaemic attack
I. 57 (initial)	<i>At his trial</i> Professor Livesley, who gave expert evidence of behalf of the prosecution, said that...
I. 63 (initial)	<i>In their opinion,</i> Mr. Clarke managed his condition in an exemplary manner
I. 65 (initial)	<i>in their view</i> Mr. Clarke's driving was 'automatic behaviour'
I. 67 (initial)	<i>In their view</i> the most likely explanation for the attack was a sudden, very rapid drop in Mr. Clarke's blood sugar level
I. 77 (initial)	<i>At the hearing on 19th December 2008</i> there was medical evidence before the court
I. 87 (medial)	Professor Barnett <i>in his report of 18th December 2008</i> also referred to a planned operation
I. 88 (initial)	<i>if on biopsy this was found to be cancerous</i> the Appellant may need further surgery and treatment

I. 93 (initial)	<i>In the opinion of the author</i> there was a low risk of reconviction.
I. 104 (medial)	You had taken, <i>on the evidence that I heard</i> , some precautions
I. 106 (medial)	there came a time, <i>on the basis of the evidence that we heard and the jury's verdict</i> , when you should have been aware of your deteriorating condition,
I. 108 (medial)	that was, <i>on the jury's finding and on the evidence we heard</i> , either before you began driving at a particular time or during the course of your driving
I. 114 (medial)	Your driving over that distance, <i>on your own admission</i> , was quite appalling
I. 114 (initial)	<i>Whilst you were driving I acknowledge, and we heard from the doctors</i> , you would have had no, or certainly very little awareness
I. 123 (medial)	The possible loss of an islet cell transplant <i>when he was in custody</i> would be regrettable
I. 146 (initial)	<i>Although he had initially denied he suffered a hypoglycaemic attack, at trial</i> it was agreed by all parties that he had suffered such an attack.
I. 148 (initial)	<i>Following receipt of expert medical reports</i> the issue at trial was whether or not the Appellant was aware of the onset of the attack
I. 153 (medial)	the jury may have been unable to accept that someone could drive in excess of two miles, <i>negotiating the hazards which the Appellant did</i> , without being aware of his condition and his appalling driving.
I. 154 (initial)	<i>Be that as it may</i> , Mr Fisher accepts that it was open to the jury to reject the evidence of Professor Barnett and Professor Marks
I. 159 (initial)	<i>Because there was no appeal against conviction</i> , we have not been provided with a transcript of the judge's summing up.
I. 166 (initial)	<i>Accordingly, on the invitation of Mr Green and Mr Fisher</i> we have approached the case on the following basis
I. 173 (initial)	<i>At some point before or after the start of the dangerous driving</i> there would have come a stage at which he was conscious
I. 175 (initial)	<i>However, after that</i> he would have ceased to be aware of that fact
I. 179 (initial)	<i>Subject to one exception</i> , the judge's sentencing remarks accord with this approach.
I. 179 (initial)	<i>On this basis</i> the Appellant moved from a condition of normality to a second phase
I. 183 (medial)	The legal basis for his conviction and the culpability of his conduct are to be found in his conscious failure <i>during the second phase</i> to stop driving.
I. 186 (initial)	<i>If that were the limit of the Appellant's culpability</i> he would not have committed the offence charged.
I. 190 (initial)	<i>When these findings are analysed in the light of Cooksley [2004] 1 Cr. App. R. (S.) 1 and Richardson [2007] 2 Cr. App. R. (S.) 36 and the Sentencing Guideline Council guidelines</i> , the aggravating feature that the Appellant drove while knowingly suffering from a medical condition which significantly impaired his ability to drive would normally make this a case of higher culpability
I. 198 (initial)	<i>In our judgement</i> this has an important bearing on the degree of culpability
I. 200 (medial)	there is absent <i>in the present case</i> a further aggravating feature
I. 204 (initial)	<i>Similarly, within the Sentencing Guidelines Council guidelines</i> the starting point would be 5 years imprisonment
I. 207 (initial)	<i>even when the matter is considered without regard to other mitigation</i> , the sentence falls significantly below the range indicated.
I. 229 (initial)	<i>whilst in prison</i> I cannot see any possibility of treatment of his diabetes
I. 244 (initial)	<i>In Mr. Clarke's case</i> , this will be a particular problem given the complexity of his medical / diabetes condition
I. 246 (initial)	<i>In a letter dated 18th December 2008 – the day before sentence</i> – Professor Barnett explained that...
I. 251 (initial)	<i>In a further report dated 30 March 2009 written for the purposes of this appeal</i> , Professor Barnett repeats his conclusions
I. 257 (initial)	<i>In a letter dated 2nd April 2009</i> , Professor Paul Johnson of the Nuffield Department of Surgery at Oxford states that...
I. 261 (initial)	<i>following the first transplant</i> the Appellant will require a further top up

	transplant about three months later
I. 263 (initial)	<i>if the Appellant were not available for a transplant when a suitable pancreas became available it would be difficult to justify keeping him on the national waiting list</i>
I. 268 (initial)	<i>In a further letter dated 6th April 2009 Professor Johnson states that the Appellant is currently second on the relevant waiting list</i>
I. 272 (initial)	<i>If however we have not managed to transplant him within this timeframe, I would be seriously considering referring him to my colleague</i>
I. 278 (initial)	<i>If he has a severe hypoglycaemic episode without any warning this could be fatal.</i>
I. 279 (initial)	<i>However, if he runs his blood sugars deliberately high in order to prevent hypoglycaemia, this is clearly associated with the onset of other severe complications of diabetes</i>
I. 285 (initial)	<i>in view of the evidence before us that the Appellant suffers from hypoglycaemic unawareness, this provides limited reassurance</i>
I. 287 (initial)	<i>On 27th April 2009 the Criminal Appeal Office received,..., a fax from the Governor of HM Prison Hewell</i>
I. 287 (medial)	<i>the Criminal Appeal Office received, in response to a request for information from the court, a fax from the Governor of HM Prison Hewell</i>
I. 292 (initial)	<i>Prior to sentence, the Appellant was found to have a nodule in the right lobe of the thyroid.</i>
I. 292 (initial)	<i>On 27th of November 2008 he underwent a diagnostic hemi-thyroidectomy.</i>
I. 296 (initial)	<i>However, since sentence it has been established that this was in fact a benign lesion.</i>
I. 297 (initial)	<i>As a result we do not have to consider the further complications</i>
I. 320 (initial)	<i>through no fault of the Appellant, 2 years and 8 months passed between the accident and the sentence</i>
I. 306 (initial)	<i>For the reasons set out above, we consider that the highly exceptional circumstances of this case</i>
I. 309 (initial)	<i>Furthermore, although we are satisfied that the prison authorities would make arrangements for the Appellant to undergo the two operations he requires as part of the cell transplant and would make efforts to accommodate the intensive outpatient regime which would follow, the treatment and the difficulties to which it would give rise make a custodial sentence considerably more onerous for the Appellant than would otherwise be the case.</i>
I. 314 (initial)	<i>Having regard to all of the considerations identified above, we have come to the conclusion that this is a case in which this Court is entitled to intervene</i>
I. 316 (initial)	<i>However, in our judgement the appropriate sentence is one of twelve months imprisonment.</i>
I. 319 (medial)	<i>Cory's parents who, we have been told, have conducted themselves throughout these prolonged and difficult proceedings with complete dignity.</i>
Sammensatte præpositioner:	
I. 58	on behalf of
I. 60	on behalf of
I. 69	in accordance to
I. 76	in order to
I. 80	by reason of
I. 207	without regard to
I. 280	in order to
I. 285	in view of
I. 322	in order to
I. 323	in order to

Komplekse substantivsyntagmer:	
I. 44	a footpath where two boys were walking
I. 49	the cause of his totally erratic and uncontrolled driving
I. 57	Professor Livesley, who gave expert evidence of behalf of the prosecution,
I. 60	Two experts called on behalf of the defence, Professor Barnett and Professor Marks,
I. 63	hypoglycaemic unawareness, a condition from which up to 40% of all long term type 1 diabetics suffer
I. 67	a sudden, very rapid drop in Mr. Clarke's blood sugar level of which he was unlikely to have been aware
I. 70	a consultation with the Appellant on 8 th March 2007 at which the Appellant's speech was slurred, a possible sign of hypoglycaemia.
I. 83	no possibility of his receiving this treatment
I. 87	a planned operation to remove part of the Appellant's thyroid gland
I. 89	treatment which would require regular hospital attendance,
I. 91	A pre-sentence report dated 26 th September 2008
I. 95	a situation where he was driving or engaged in some hazardous activity
I. 97	an offence which caused injury to anyone else
I. 102	Those who are responsible for your medical supervision
I. 104	the evidence that I heard
I. 105	any episode linked to your diabetes affecting your driving
I. 106	the evidence that we heard
I. 107	the likelihood of an imminent hypoglycaemic attack
I. 110	the awareness that you had
I. 112	that two miles stretch that led up to the tragic accident that shortly afterwards took place
I. 119	the unusual nature of the Appellant's medical condition
I. 119	his usual exemplary ability to control his diabetes and health generally, which was nevertheless deteriorating.
I. 121	the reports which indicated that...there would be serious management issues relating to the Appellant's medical condition
I. 122	The possible loss of an islet cell transplant
I. 126	the medical and legal advice given to the Appellant
I. 129	a risk which led to an accident
I. 138	account of the impact of the custodial sentence on the Appellant's health
I. 139	the treatment which would and would not be available to him
I. 141	the ability of the Appellant to undergo necessary surgery for another medical condition
I. 143	The delay which had occurred in bringing the matter to trial and sentence
I. 148	Following receipt of expert medical reports
I. 151	Mr Andrew Fisher QC, who appeared for the Appellant
I. 156	no grounds on which an appeal against conviction would be arguable
I. 158	the precise basis on which the Appellant came to be sentenced
I. 162	the judge's sentencing remarks quoted above
I. 165	the basis of fact most favourable to the Appellant which is consistent with the fact of his conviction
I. 166	the invitation of Mr Green and Mr Fisher
I. 173	the start of the dangerous driving
I. 174	a stage at which he was conscious that he was in the early stage of a hypoglycaemic attack
I. 180	a second phase during which he was aware of the onset of a hypoglycaemic attack

I. 181	a third phase which was one of hypoglycaemic unawareness
I. 183	The one observation of the judge which cannot be accommodated within this framework
I. 185	a time when the Appellant <u>should have been aware</u> of his deteriorating condition
I. 187	a slip by the judge which does not reflect the resolution of the issues by the jury's verdict
I. 188	a time when the Appellant <u>was</u> aware of his deteriorating condition.
I. 193	the scale identified by this court
I. 196	the second phase during which the Appellant was aware of his deteriorating condition
I. 198	an important bearing on the degree of culpability.
I. 199	a further aggravating feature often encountered in cases of hypoglycaemia
I. 200	a driver's reckless indifference in failing to follow the regime for the regulation for his illness.
I. 203	A rigid application of the guidance in Richardson
I. 206	the further factors we have identified
I. 210	the management of the Appellant's condition
I. 211	the effect of a custodial sentence on the ability of the Appellant to undergo a pancreatic cell implant
I. 213	an undated report written between conviction and sentence
I. 214	other members of my staff who have seen Mr. Clarke
I. 215	the other expert witnesses involved in this case
I. 218	a recommended procedure as a treatment / possible cure for type 1 diabetes
I. 220	the requirements from the National Institute for Health and Clinical Excellence for an islet cell transplant
I. 223	an indication for consideration of islet cell transplant
I. 224	serious management issues to the prison authorities which could put him at significant risk of harm or even death
I. 229	any possibility of treatment of his diabetes with an islet cell transplant
I. 238	an environment where "reduced brain function/ collapse" could have a negative effect on others
I. 241	My previous dealings with prisoners with diabetes who attend our diabetes services
I. 243	the level of care required
I. 246	a letter dated 18 th December 2008
I. 247	the requirements for a pancreatic islet cell transplant
I. 251	a further report dated 30 March 2009 written for the purposes of this appeal,
I. 255	the possibility of a cure for both his diabetes and hypoglycaemic unawareness.
I. 257	a letter dated 2 nd April 2009,
I. 259	the criteria for having no warnings of their hypoglycaemic attacks.
I. 260	detailed assessments carried out in Oxford
I. 268	a further letter dated 6 th April 2009
I. 277	the importance of very close monitoring of his diabetes
I. 282	The report provided at the request of this court by the healthcare centre at HMP Hewell, where the Appellant is serving his sentence,
I. 285	the evidence before us that the Appellant suffers from hypoglycaemic unawareness,
I. 288	a fax from the Governor of HM Prison Hewell confirming that Mr Clarke would be facilitated in having the islet transplant at Oxford, including the consequent application supervision,
I. 295	other treatment which would require regular hospital attendance

I. 297	the further complications which would have been introduced
I. 307	an extent which brings the offence significantly below the sentencing range which would normally apply
I. 308	a case of driving whilst conscious of a significant medical impairment.
I. 310	the two operations he requires as part of the cell transplant
I. 311	the intensive outpatient regime which would follow
I. 312	the treatment and the difficulties to which it would give rise
I. 314	the conclusion that this is a case in which this Court is entitled to intervene
I. 319	Cory's parents who, we have been told, have conducted themselves throughout these prolonged and difficult proceedings with complete dignity
I. 321	the medical condition of the man whose conduct led to their son's death.
I. 323	the degree of his culpability for what occurred
I. 324	the precise consequences for him of the sentence imposed
I. 324	the appalling tragedy suffered by Cory and his family.
I. 326	the sentences imposed in cases such as this
Fagterminologi:	
I. 5	Appeal
I. 18	appellant
I. 21	respondent
I. 24	appellant
I. 26	respondent
I. 31	appellant
I. 31	Be convicted
I. 33	directed
I. 37	appellant
I. 41	appellant
I. 43	appellant
I. 45	appellant
I. 47	appellant
I. 48	Trial
I. 51	Trial
I. 51	appellant
I. 55	appellant
I. 56	be tried
I. 56	convictions
I. 57	Trial
I. 58	prosecution
I. 59	appellant
I. 62	appellant
I. 71	appellant
I. 71	appellant
I. 72	appellant
I. 75	appellant
I. 75	Jury
I. 76	defence
I. 77	appellant
I. 77	hearing
I. 78	appellant
I. 79	appellant
I. 88	appellant

I. 89	appellant
I. 91	Trial
I. 92	appellant
I. 94	reconviction
I. 94	appellant
I. 106	jury's
I. 106	Verdict
I. 109	jury's
I. 110	Jury
I. 119	appellant's
I. 122	appellant's
I. 126	appellant
I. 134	appellant's
I. 136	appellant's
I. 136	culpability
I. 139	appellant's
I. 142	appellant
I. 144	Trial
I. 145	culpability
I. 146	appellant
I. 148	Trial
I. 149	appellant
I. 151	Jury
I. 152	appellant
I. 152	Trial
I. 152	Appeal
I. 152	Jury
I. 154	appellant
I. 155	Jury
I. 156	Verdict
I. 158	Trial
I. 159	appellant
I. 161	Jury
I. 163	hearing
I. 163	Appeal
I. 164	prosecution
I. 164	convictions
I. 168	appellant
I. 180	appellant
I. 182	conviction
I. 182	culpability
I. 186	appellant's
I. 186	culpability
I. 188	jury's
I. 188	Verdict
I. 189	appellant
I. 192	appellant
I. 194	culpability
I. 196	appellant
I. 207	appellant's

I. 207	culpability
I. 208	mitigation
I. 209	appellant's
I. 210	appellant's
I. 211	appellant
I. 213	conviction
I. 247	appellant
I. 251	Appeal
I. 253	appellant's
I. 255	appellant
I. 258	appellant
I. 260	appellant
I. 261	appellant
I. 263	appellant
I. 268	appellant
I. 283	appellant
I. 284	appellant
I. 286	appellant
I. 292	appellant
I. 298	appellant
I. 299	appellant
I. 303	appellant
I. 304	appellant's
I. 307	appellant's
I. 307	culpability
I. 310	appellant
I. 313	appellant
I. 320	proceedings
I. 323	culpability
juridiske kollokationer:	
I. 3	the supreme court of judicature
I. 4	court of appeal
I. 4	criminal division
I. 5	crown court
I. 31	crown court
I. 32	be sentenced to
I. 56	the magistrates court
I. 58	give evidence
I. 61	give evidence
I. 70	give evidence
I. 76	the sentencing hearing
I. 84	to impose a sentence
I. 84	custodial sentence
I. 91	a pre-sentence report
I. 97	to commit an offence
I. 101	passing sentence
I. 125	to contest a case
I. 126	legal advice

I. 127	aggravating feature
I. 130	sentencing guidelines
I. 138	custodial sentence
I. 141	custodial sentence
I. 156	appeal against conviction
I. 159	appeal against conviction
I. 162	sentencing remarks
I. 179	sentencing remarks
I. 186	to commit an offence
I. 192	aggravating feature
I. 200	aggravating feature
I. 215	expert witnesses
I. 283	to serve a sentence
I. 308	sentencing range
I. 312	custodial sentence
I. 316	suspended sentence
I. 324	to impose a sentence
I. 325	victim impact statements
I. 326	to impose a sentence
I. 331	to allow an appeal
Nominalkonstruktionen:	
I. 32	By dangerous <i>driving</i> (by driving in a dangerous manner)
I. 47	After the <i>collision</i> (after he had collided with..)
I. 50	That was the cause of his totally erratic and uncontrolled <i>driving</i> (that caused him to drive in a totally erratic and uncontrolled manner)
I. 50	His <i>driving</i> was dangerous (he drove dangerously)
I. 56	He has previous <i>convictions</i> (he has previously been convicted)
I. 63	in their <i>opinion</i> (they thought that/they were of the opinion that...)
I. 65	In their <i>view</i> (they thought that/ they considered ...to be...)
I. 65	Clarke's <i>driving</i> (the way in which Clarke drove)
I. 67	In their <i>view</i> (they thought that/ they considered ...to be...)
I. 67	The most likely explanation for the attack was a sudden, very rapid <i>drop</i> in Mr. Clarke's blood sugar (the most likely explanation for the attack was that Mr. Clarke's blood sugar suddenly <i>dropped</i> rapidly)
I. 72	the appellant's <i>speech</i> was slurred (the appellant spoke in a slurred manner)
I. 76	At the <i>request</i> of the defence (the defence requested that...)
I. 83	It was Professor Barnett's <i>opinion</i> that... (Professor Barnett thought that...)
I. 83	There was no possibility of his receiving this <i>treatment</i> (there was no possibility of him being treated)
I. 90	Which would require regular hospital <i>attendance</i> (which would require that he attends hospital regularly)
I. 93	In the <i>opinion</i> of the author (the author <i>thought</i> ...)
I. 94	There was a low risk of <i>reconviction</i> (there was a low risk of the defendant being reconvicted)
I. 97	Caused <i>injury</i> (injured)
I. 97	<i>Repetition</i> of such an offence was unlikely (it was unlikely that he would repeat such an offence)
I. 101	In passing <i>sentence</i> (In sentencing)
I. 103	Those who are responsible for your medical <i>supervision</i> (those who are responsible for supervising medical condition)

I. 105	Affecting your <i>driving</i> (affecting the way you drive)
I. 109	On the jury's <i>finding</i> (on what the jury found)
I. 114	Your <i>driving</i> over that distance was quite appalling (the way you drove over that distance was quite appalling)
I. 114	On your own <i>admission</i> (which you admitted yourself)
I. 124	He would require very careful <i>observation</i> (he would require to be very carefully observed)
I. 148	Following <i>receipt</i> of expert medical reports (after having received expert medical reports)
I. 159	There was no <i>appeal</i> against conviction (the appellant did not appeal against conviction)
I. 163	On the <i>hearing</i> of this appeal (when this appeal was heard)
I. 173	Before or after the start of his dangerous <i>driving</i> (before or after he started driving dangerously)
I. 182	The legal basis for his <i>conviction</i> (the legal basis for the fact that he was convicted)
I. 183	Are to be found in his conscious <i>failure</i> to... (are to be found in that he consciously failed to...)
I. 184	The one <i>observation</i> of the judge (the judge observed ...)
I. 184	Is his <i>observation</i> that ... (is the fact that he observed that...)
I. 198	In our <i>judgment</i> this has an important bearing on... (we judge this to have/that this has an important bearing on...)
I. 210	The <i>management</i> of the Appellant's condition (how the appellant's condition is managed)
I. 213	In an updated report written between <i>conviction</i> and <i>sentence</i> (in an updated report written in between the time when the the appellant was convicted and sentenced)
I. 220	Fulfills the <i>requirements</i> from the National Institute.. (fulfills what is required from the National Institute...)
I. 223	An indication for <i>consideration</i> of islet cell transplant (an indication for them to consider an islet cell transplant)
I. 224	It is my <i>belief</i> that... (I believe that...)
I. 229	Any possibility of <i>treatment</i> of his diabetes (any possibility of his diabetes being treated)
I. 241	He will need careful <i>observation</i> (He will need to be carefully observed)
I. 246	The day before <i>sentence</i> (the day before he was sentenced)
I. 247	Fulfill the <i>requirements</i> for... (fulfill what was required for...)
I. 249	A number of <i>investigations</i> were necessary (it was necessary to investigate a number of issues/things)
I. 255	The possibility of a <i>cure</i> for both his diabetes and hypoglycaemic unawareness (the possibility of being cured of both his diabetes and hypoglycaemic unawareness)
I. 261	On detailed <i>assessments</i> carried out in Oxford (which was assessed in detail in Oxford)
I. 270	To carry out the <i>operation</i> (to operate)
I. 282	At the <i>request</i> of this court (because the court requested it)
I. 285	He has his medication and testing equipment in his <i>possession</i> (he possesses his medication and testing equipment)
I. 292	prior to <i>sentence</i> (before he was sentenced)
I. 293	At the date of <i>sentence</i> (On the day that the sentence was passed)
I. 294	The only <i>information</i> before the sentencing court...was.. (the sentencing court was only informed that...)
I. 296	Which would require hospital <i>attendance</i> (which would require that he attended hospital)
I. 296	Since <i>sentence</i> (since the appellant was sentenced)

I. 302	There have been significant <i>delays</i> in this case (this case has been delayed significantly)
I. 310	The prison authorities made <i>arrangements</i> for the appellant... (the prison authorities arranged for the appellant..)
I. 314	We have come to the <i>conclusion</i> that... (we have concluded that...)
I. 316	In our <i>judgment</i> (we judge that...)
Lix:	
4410 ord	
1243 svære ord	
184 perioder	
A = 28,2	
B = 24,0	
Lix = (A+ B) = 52,2 (svær)	



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England and Wales Court of Appeal (Criminal Division) Decisions

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Neutral Citation Number: [2009] EWCA Crim 1213

Case No: 200802146/B1

**IN THE COURT OF APPEAL
CRIMINAL DIVISION**

Royal Courts of Justice
Strand
London, WC2A 2LL
4 June 2009

B e f o r e :

**LORD JUSTICE THOMAS
MR JUSTICE KING
HIS HONOUR JUDGE MOSS QC
(Sitting as a Judge of the Court of Appeal Criminal Division)**

R E G I N A

**v
DT**

**Computer Aided Transcript of the Stenograph Notes of
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(Official Shorthand Writers to the Court)**

**Mr M Heyward (who did not appear at the trial) appeared on behalf of the Appellant
Mr I Wicks appeared on behalf of the Crown**

HTML VERSION OF JUDGMENT

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LORD JUSTICE THOMAS:

Introduction

1. The appellant appeals with the leave of the Full Court against his conviction at the Crown Court at Portsmouth before His Honour Judge Cowling and a jury for an offence under section 18 of the Offences Against the Person Act 1861 of causing grievous bodily harm with intent. After his conviction in March 2008 he received a sentence of five years' imprisonment.
2. The issue in the appeal relates to the admission of hearsay evidence under the Criminal Justice Act 2003 in circumstances where a witness did not attend and the Crown contended that she could not be found, although such steps as reasonably practicable had been taken.
3. The facts of the case and the issue for the jury to decide were simple. There was no doubt that the complainant in the case, MC, had suffered grievous bodily harm. This had resulted from his pouring a kettle of water over himself causing severe burns. It was the prosecution case that it was the appellant who had forced him to do so. It was the defence case that MC had done this of his own volition. Both MC and the appellant lived at the same hostel which was largely inhabited by those who had drug addictions.
4. Before turning to the issue in the appeal it is necessary briefly to summarise the evidence.

The evidence

5. MC's evidence can be summarised: (i) he was a drug addict who had lived at the hostel for two and a half years. On Friday 10 August 2007 the appellant sold him, he claimed, some Diazepam for £5. On Sunday 12th the appellant returned and asked for more money. He did not have this. (ii) On the following Wednesday, 15 August the appellant visited him with another male, identified as Henry. There was an argument during which the appellant accused MC of not paying sufficient for the drugs and stealing his clothes; Henry left. The appellant demanded £100, was aggressive and made MC make telephone calls to try and see if he could raise the money. That was unsuccessful. (iii) The appellant told MC he needed to teach him a lesson and put the kettle in the room on to boil. He told him that if he, MC, did not pour the water over his own back himself, the appellant would pour it over his head. MC pleaded with the appellant not to pour it over his head, but fearing the appellant would pour it over his head, he himself poured it over his back. He did not report the incident that day, but cycled to his mother's address. (iv) The following day, when the extent of his injury became apparent, the police were called. He told his key worker at the hostel about what had happened. He was then taken to hospital where the serious extent of his burns was clear.
6. The key worker also gave evidence. She effectively confirmed the account that MC had given. It is not necessary to set that out further.

7. Before turning to the evidence of the witness whose statement was read, it is necessary to say what the remaining evidence was. There was medical evidence that dealt with the extent of the injuries which was not in dispute. There was the evidence of the appellant's interviews.
8. The appellant himself gave evidence which was in substantial conformity with what he had said in interview. His account was as follows: (i) His jeans had been stolen. (ii) He had supplied MC with drugs but he had not asked for payment. He had gone to see MC with the person referred to as Henry. He had accompanied him because Henry was aggressive and agitated and he wanted to try and keep the peace. When they got to the room, Henry accused MC of stealing cannabis and cash. He then left. (iii) After Henry had left, the appellant asked MC about his jeans. There was a quiet discussion. There was no dispute over the payment for the drugs and no demand for money, as he had given MC the drugs. (iv) MC then became distressed. He was under the influence of drugs. He then admitted taking the appellant's jeans. To calm him down the appellant put on the kettle to make them both a cup of tea. MC then took the kettle and poured it over himself. (v) He denied he had had any conversation with SD, the witness whose statement was admitted under the CJA 2003. It is, therefore, to that witness's evidence we turn.
9. There can be no doubt, without needing to categorise the evidence any more than this, that it was evidence of some importance in the case. SD had made a statement on 16 August 2007 about what had happened the previous day. In summary she stated: (i) the appellant came to see her at about 8.30 when her mother was visiting her. He stormed in and said he had had a fall out with the key worker. He then accused MC of taking his jeans. (ii) The statement records the following:

"[The appellant] then said, 'I made him pour boiling water over himself.' 'What do you mean? I asked. [The appellant] said, 'I made him fill the kettle, boil it, I said if you haven't done it prove it.' [The appellant] made [MC] lay down and offered him a pillow to bite. [The appellant] said, 'He poured it over his back.' He added, '[MC] poured another kettle full on himself.' I said, 'What do you mean? You made him pour boiling water over himself twice?' [The appellant] said, 'Yes.'"

(iii) He then explained that MC had not been paying for the drugs that had been supplied. (iv) She then went on to say in her statement that the appellant said that MC had admitted taking the jeans. The appellant then had gone to the bin shed at the hostel and retrieved a pair of jeans which he then said were his. Her mother pointed to another bag in the shed which the appellant then opened. Inside were MC's jacket, coat and jeans.

10. (v) The statement concluded in these terms:

"I am due to leave Portsmouth tomorrow. If I had not been I would not make this statement. I would be concerned for my safety. I thought I knew [the appellant] but I realise now that I do not. I cannot understand why he would do something so disgusting I will not attend court. I am leaving the area and I and do not intend to return for court."

The application to admit the statement under the CJA 2003

11. There was a plea and case management hearing on 14 January 2008. At that plea and case management hearing it was made clear that this witness, SD, was required to attend. The trial was fixed for 17 March 2008.
12. A witness summons was issued on 29 February 2008 with an address for her which had been given in Newton Abbott. An attempt was made to serve the summons on her at that address in Newton

Abbott on 7 March 2008. The officers were told that she had moved to Torpoint. A mobile phone number was apparently available for her, but when that was rung the phone was switched off.

13. Those, as we understand it, were the grounds which formed the basis of the application under section 116(2)(d) of the CJA 2003 to read SD's statement.

14. The section provides as follows:

"In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if --

(a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter,

(b) the person who made the statement is identified to the court's satisfaction, and

(c) any of the five conditions mentioned in subsection (2) is satisfied."

15. The relevant condition was that in subsection (2)(d):

"that the relevant person cannot be found although such steps as it is reasonably practicable to take to find him have been taken."

16. It is important to note, that although part of the statement we have set out referred to her fear for her safety, that no application was made on the basis of fear.

17. What appears to have happened before the court (and we are greatly indebted for the assistance we have received from Mr Wicks for the Crown) is that no evidence at all was called in relation to the steps taken which we have set out. Prosecuting counsel told the judge the facts which we have outlined. It appears that counsel who was appearing for the appellant made no submission that evidence should have been called. Nothing was set out in writing as to agreed facts.

18. The judge heard the outline of the facts given by counsel and heard the argument from the appellant's then counsel, to the effect that, on the basis of what had been asserted by counsel for the prosecution, it did not amount to the taking of such steps as was reasonably practicable. The judge then proceeded to make a ruling.

19. He set out those facts and said, after noting them:

"So certainly efforts have been made to get the witness here."

20. What he then proceeded to say, after referring to the submissions made on behalf of the appellant, was:

"Well ... that may be a point; on the other hand how early can one serve witness summonses on people? This was done a couple of weeks or so before the trial was due to start and that would seem to be the reasonable time to do it, when you know the witness is reluctant. Clearly efforts were made here to try and find her, enquiries were made, and so on and she is, on the face of the evidence, quite clearly making herself scarce.

Looking at 116, it is specifically 116(2)(d), the evidence can be read."

He then set out the section and said:

"It seems to me that such steps as are reasonably practicable have been taken here and she still cannot be found in time for this trial. So the provisions of section 116(2)(d) in my judgment are made out."

21. Counsel for the appellant appearing at the trial also relied on section 78 of the Police and Criminal Evidence Act 1984. Complaint is made about the way in which the judge dealt with that matter. It is not necessary to refer to that for reasons that will shortly become apparent.

The summing up

22. After the admission of all the evidence to which we have referred the learned judge summed the case up to the jury. Although no specific complaint is made about the way in which the judge directed the jury in relation to how they should treat the statement of SD, we think it important to refer to one part of the summing-up which prefaced those remarks. The judge said:

"However the law allows evidence to be given in other ways and in this case you heard the evidence of [SD] read to you, even though she did not come to court and even though the defence do not accept what she has to say in that statement. You heard that the police had been trying to trace her and in the last bit of information they have she is somewhere down in the West Country, but she is clearly making herself scarce otherwise she might have been here. She has disappeared. Again, it is life, it is a fact of life, witnesses do not all turn up and everybody says what they say like they do in, you know, on the television documentaries ... we are dealing with real people. And sometimes real people are not very co-operative for all sorts of reasons. So you do not see her and you know the defence do not agree with what she says."

23. After the summing-up had been completed the jury retired. Their total retirement was a period of four hours and 29 minutes. They returned a guilty verdict by a majority of ten to two.

The grounds of appeal

24. We have adverted to the fact that counsel for the appellant raised before us as a ground of appeal the way the judge dealt with section 78 of the Police and Criminal Evidence Act 1984. There also is raised as a further ground of appeal the contention that the evidence of SD was decisive evidence. However, it seems to us that we do not need to consider those and other grounds, as the point that arises simply in this case relates to the way in which the judge admitted the evidence.

The approach to s.116(2)(d)

25. In the recent decision of this court in Horncastle [\[2009\] EWCA Crim 964](#) the court dealt with the position of witnesses who were in fear. At paragraph 87 the court said:

"It is, however, important that all possible efforts are made to get the witness to court. As is clear, the right to confrontation is a longstanding requirement of the common law and recognised in Article 6(3)(d). It is only to be departed from in the limited circumstances and under the conditions set out in the CJA 2003. The witness must be given all possible support, but also made to understand the importance of the citizen's duty ..."

26. Although the court was in that instance dealing with witnesses who were kept from court through

fear, the principle applicable is the same in the case of a witness who is reluctant to come to court and absents himself. It is important that all efforts are made to get the witness to court; this must start with the witness being given all possible support and made to understand the importance of the citizen's duty to give evidence.

27. The right to confrontation is a long-standing right of the common law and is reflected in the European Convention at Article 6(3)(d). The right to confrontation is not to be lightly departed from. The provisions of the Criminal Justice Act 2003, described in Horncastle as a carefully crafted code, need to be observed carefully.
28. It seems to us that in a case of this kind, unless there is a written agreed statement of facts, it is simply not possible to proceed to consider an application without evidence as to the steps taken to find the witness.
29. Our conclusion
30. If an agreed statement of facts had been produced in this case, it would have exposed the error in the approach of the learned judge, which was to look at the matter, as if this witness was reluctant from the time when the police started to make enquiries after the PCMH in the month before the trial. It is apparent from the witness's own statement that she was reluctant from the day she made the statement. She said she would not come and therefore was at risk of breaking contact so she could not be found.
31. There was, because matters proceeded so informally before the judge, no attempt to try and explore what steps the police had taken through the well-known programme established for Witness Care to keep contact with her, to explain to her her duty, to try and find where she had gone in the months before the PCMH. No doubt the constabulary at Portsmouth have a Witness Care Unit, but there was no evidence before the judge as to what steps it had taken. Nor was there any evidence when enquiries came to be made in the early part of 2008 and in the month or two before the trial as to what information the witness's mother had about her location, no evidence as to what enquiries had been made of social security (as one assumes that the witness concerned was on social security). She had been on the telephone. There was no evidence as to whether any attempt had been made to trace her through cell site analysis. It is said that all of this might be expensive. It may be. We do not know, however, because there was no evidence about that either.
32. It seems to us, and in particular from the judge's remarks, that there must be a suspicion that this kind of application is being dealt with far too informally. Given the importance of the right to confrontation under our law, it is quite impermissible to proceed with an application of this kind informally.
33. It is to be hoped in applications of this kind that the facts can be agreed, but, if not, evidence must be called and the judge must make findings of fact. With respect to the judge in this case, he did not make any findings. He merely expressed a summary of what he was told. It follows, therefore, first that there was no evidence properly before the judge on which he could have made any findings at all. Secondly, even if the limited matters that had been relied on by the Crown had been facts upon which they had established by evidence, it would have been hopeless to expect a judge to say that such steps as were reasonably practicable had been taken. If there was a problem with the cost of caring for a reluctant witness and finding her, then that needed to be dealt with by evidence. There was no such evidence.
34. In the result, therefore, we are of the clear view that this evidence was wrongly admitted as there

was no evidence to establish that such steps as were reasonably practicable to find SD had been taken. It is accepted that if the evidence was wrongly admitted, the conviction cannot be considered safe. In the circumstances, therefore, we have no alternative but to quash this conviction.

35. LORD JUSTICE THOMAS: Are you applying for a retrial?

36. MR WICKS: My Lord, yes.

37. LORD JUSTICE THOMAS: The appellant is in custody?

38. MR HEYWARD: Yes, my Lord.

39. LORD JUSTICE THOMAS: You can't have any objection to a retrial?

40. MR HEYWARD: My Lord, if a retrial -- if the Crown seek a retrial then we have no objection to it.

41. LORD JUSTICE THOMAS: They are seeking a retrial.

42. MR WICKS: My Lord, yes.

43. LORD JUSTICE THOMAS: Then we will order a retrial. There is only one count in the indictment. How quickly can you prefer a fresh indictment?

44. MR WICKS: My Lord, it can be done within the set period.

45. LORD JUSTICE THOMAS: What is that?

46. MR WICKS: My Lord, we can do it within seven days.

47. LORD JUSTICE THOMAS: Seven days, fine. Then we direct -- this ought to be got on with. He ought to be arraigned within a month. There is no reason why this can't be tried at Portsmouth?

48. MR WICKS: No.

49. LORD JUSTICE THOMAS: If there is an application for bail, we will not deal with it. You can make an application to the judge.

50. MR HEYWARD: My Lord.

51. LORD JUSTICE THOMAS: You will need a representation order, won't you?

52. MR HEYWARD: Yes, my Lord.

53. LORD JUSTICE THOMAS: We had better make a representation order. We had better make an order restricting the reporting of the proceedings or anonymising them until after the retrial, until we have approved an anonymised version. There is a point of some importance in this case relating to the conduct of these applications. Those who are sitting diligently in front of us, we will try and keep the transcript anonymised so that it can be reported. Is there anything further?

54. MR HEYWARD: My Lord, my Lord.

55. LORD JUSTICE THOMAS: We are very grateful to you and we do appreciate the help you have

given us. There is no personal criticism of you at all.

56. MR WICKS: Grateful.

57. LORD JUSTICE THOMAS: You will need a solicitor too, I imagine.

58. MR HEYWARD: Sorry, my Lord?

59. LORD JUSTICE THOMAS: You will need a solicitor.

60. MR HEYWARD: Yes, my Lord.

61. LORD JUSTICE THOMAS: We had better make an order to cover him as well. Thank you very much.

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4 June 2009 DT	
passiver:	
I. 34	she could not be found
I. 35	such steps as reasonably practicable had been taken
I. 40	the same hostel which was largely inhabited by those who had drug addictions
I. 56	the police were called
I. 57	He was then taken to hospital
I. 64	his jeans had been stolen
I. 73	the witness whose statement was admitted under the CJA 2003
I. 86	the drugs that had been supplied
I. 99	it was made clear that...
I. 99	this witness, SD, was required to attend
I. 99	The trial was fixed for 17 March 2008.
I. 101	A witness summons was issued on 29 February 2008
I. 101	an address for her which had been given in Newton Abbott
I. 102	An attempt was made to serve the summons on her
I. 103	The officers were told that...
I. 104	when that was rung
I. 110	oral evidence given in the proceedings by the person
I. 112	the person who made the statement is identified to the court's satisfaction
I. 113	any of the five conditions mentioned in subsection (2) is satisfied
I. 113	the relevant person cannot be found
I. 115	such steps as it is reasonably practicable to take to find him have been taken.
I. 118	no application was made on the basis of fear
I. 119	the assistance we have received from Mr Wicks
I. 120	no evidence at all was called
I. 123	evidence should have been called
I. 123	Nothing was set out in writing as to agreed facts
I. 124	the facts given by counsel
I. 125	what had been asserted by counsel
I. 129	So certainly efforts have been made to get the witness here
I. 130	the submissions made on behalf of the appellant
I. 135	Clearly efforts were made here to try and find her
I. 138	the evidence can be read
I. 140	such steps as are reasonably practicable have been taken here
I. 141	she still cannot be found in time for this trial
I. 141	the provisions of section 116(2)(d) in my judgment are made out
I. 144	Complaint is made about the way in which the judge dealt with that matter
I. 148	Although no specific complaint is made
I. 151	you heard the evidence of [SD] read to you
I. 161	After the summing-up had been completed
I. 165	There also is raised as a further ground of appeal the contention that the evidence of SD was decisive evidence
I. 172	It is, however, important that all possible efforts are made to get the witness to court
I. 174	It is only to be departed from in the limited circumstances
I. 175	the conditions set out in the CJA 2003
I. 175	The witness must be given all possible support but also made to understand the importance of the citizen's duty
I. 180	It is important that all efforts are made to get the witness to court

I. 180	this must start with the witness being given all possible support and made to understand the importance of the citizen's duty to give evidence.
I. 183	The right to confrontation...is reflected in the European Convention at Article 6(3)(d)
I. 184	The right to confrontation is not to be lightly departed from
I. 185	The provisions of the Criminal Justice Act 2003, described in <u>Horncastle</u> as a carefully crafted code, need to be observed carefully.
I. 187	a written agreed statement of facts
I. 188	the steps taken to find the witness
I. 191	If an agreed statement of facts had been produced in this case
I. 195	she could not be found.
I. 198	the well-known programme established for Witness Care
I. 202	when enquiries came to be made
I. 203	what enquiries had been made of social security
I. 205	any attempt had been made to trace her through cell site analysis
I. 208	this kind of application is being dealt with far too informally
I. 212	It is to be hoped in applications of this kind that the facts can be agreed
I. 212	evidence must be called
I. 214	what he was told
I. 216	the limited matters that had been relied on by the Crown
I. 218	such steps as were reasonably practicable had been taken
I. 221	this evidence was wrongly admitted
I. 222	such steps as were reasonably practicable to find SD had been taken
I. 223	It is accepted that...
I. 223	if the evidence was wrongly admitted
I. 223	the conviction cannot be considered safe
I. 236	it can be done within the set period.
I. 238	He ought to be arraigned within a month
I. 239	There is no reason why this can't be tried at Portsmouth?
I. 250	so that it can be reported
Adverbialer:	
I. 29 (medial)	The appellant appeals <i>with the leave of the Full Court</i> against his conviction
I. 31 (initial)	<i>After his conviction in March 2008</i> he received a sentence of five years' imprisonment
I. 33 (medial)	The issue <i>in the appeal</i> relates to the admission of hearsay evidence
I. 42 (initial)	<i>Before turning to the issue in the appeal</i> it is necessary briefly to summarise the evidence.
I. 45 (initial)	<i>On Friday 10 August 2007</i> the appellant sold him...some Diazepam for £ 5
I. 46 (initial)	<i>On Sunday 12th</i> the appellant returned
I. 46 (initial)	<i>On the following Wednesday, 15 August</i> the appellant visited him with another male
I. 52 (initial)	<i>if he, MC, did not pour the water over his own back himself</i> , the appellant would pour it over his head
I. 53 (initial)	<i>but fearing the appellant would pour it over his head</i> , he himself poured it over his back.
I. 55 (initial)	<i>The following day, when the extent of his injury became apparent</i> , the police were called.
I. 56 (medial)	He told his key worker <i>at the hostel</i> about what had happened
I. 60 (initial)	<i>Before turning to the evidence of the witness whose statement was read</i> , it is necessary to say what the remaining evidence was.
I. 67 (initial)	<i>When they got to the room</i> , Henry accused MC of stealing cannabis and cash.

I. 68 (initial)	<i>After Henry had left, the appellant asked MC about his jeans</i>
I. 71 (initial)	<i>To calm him down the appellant put on the kettle to make them both a cup of tea</i>
I. 75 (medial)	<i>There can be no doubt, without needing to categorise the evidence any more than this, that it was evidence of some importance</i>
I. 76 (medial)	<i>SD had made a statement on 16 August 2007 about what had happened the previous day</i>
I. 87 (medial)	<i>She then went on to say in her statement that the appellant said that MC had admitted taking the jeans</i>
I. 92 (initial)	<i>If I had not been I would not make this statement.</i>
I. 98 (initial)	<i>At that plea and case management hearing it was made clear that this witness, SD, was required to attend.</i>
I. 104 (initial)	<i>but when that was rung the phone was switched off</i>
I. 105 (medial)	<i>Those, as we understand it, were the grounds</i>
I. 108 (initial)	<i>In criminal proceedings a statement not made in oral evidence..is admissible as evidence</i>
I. 108 (medial)	<i>a statement not made in oral evidence in the proceedings is admissible as evidence</i>
I. 117 (initial)	<i>that although part of the statement we have set out referred to her fear for her safety, that no application was made on the basis of fear.</i>
I. 119 (medial)	<i>What appears to have happened before the court (and we are greatly indebted for the assistance we have received from Mr Wicks for the Crown) is that no evidence at all was called</i>
I. 125 (initial)	<i>on the basis of what had been asserted by counsel for the prosecution, it did not amount to the taking of such steps as was reasonably practicable.</i>
I. 130 (medial)	<i>What he then proceeded to say, after referring to the submissions made on behalf of the appellant, was:</i>
I. 132 (initial)	<i>on the other hand how early can one serve witness summonses on people?</i>
I. 136 (medial)	<i>she is, on the face of the evidence, quite clearly making herself scarce</i>
I. 138 (initial)	<i>Looking at 116, it is specifically 116(2)(d), the evidence can be read</i>
I. 141 (medial)	<i>So the provisions of section 116(2)(d) in my judgment are made out</i>
I. 147 (initial)	<i>After the admission of all the evidence to which we have referred the learned judge summed the case up to the jury</i>
I. 148 (initial)	<i>Although no specific complaint is made about the way in which the judge directed the jury in relation to how they should treat the statement of SD, we think it important to refer to one part of the summing-up which prefaced those remarks.</i>
I. 151 (initial)	<i>in this case you heard the evidence of [SD] read to you</i>
I. 154 (initial)	<i>in the last bit of information they have she is somewhere down in the West Country,</i>
I. 161 (initial)	<i>After the summing-up had been completed the jury retired</i>
I. 168 (medial)	<i>the point that arises simply in this case relates to the way in which the judge admitted the evidence</i>
I. 170 (initial)	<i>In the recent decision of this court in Horncastle [2009] EWCA Crim 964 the court dealt with the position of witnesses who were in fear.</i>
I. 173 (initial)	<i>As is clear, the right to confrontation is a longstanding requirement of the common law</i>
I. 178 (initial)	<i>Although the court was in that instance dealing with witnesses who were kept from court through fear, the principle applicable is the same in the case of a witness who is reluctant to come to court and absents himself.</i>
I. 187 (initial)	<i>in a case of this kind, unless there is a written agreed statement of facts, it is simply not possible to proceed to consider an application without evidence</i>
I. 191 (initial)	<i>If an agreed statement of facts had been produced in this case, it would have exposed the error in the approach of the learned judge</i>
I. 197 (medial)	<i>There was, because matters proceeded so informally before the judge, no</i>

	attempt to try and explore what steps the police had taken
I. 202 (medial)	Nor was there any evidence <i>when enquiries came to be made in the early part of 2008 and in the month or two before the trial</i> as to what information the witness's mother had about her location
I. 208 (medial)	it seems to us, <i>and in particular from the judge's remarks</i> , that there must be a suspicion that this kind of application is being dealt with far too informally.
I. 209 (initial)	<i>Given the importance of the right to confrontation under our law</i> , it is quite impermissible to proceed with an application of this kind informally.
I. 212 (medial)	It is to be hoped <i>in applications of this kind</i> that the facts can be agreed
I. 212 (initial)	<i>but, if not</i> , evidence must be called
I. 213 (initial)	<i>With respect to the judge in this case</i> , he did not make any findings.
I. 215 (medial)	There was no evidence <i>properly before the judge</i> on which he could have made any findings at all
I. 216 (initial)	<i>Secondly, even if the limited matters that had been relied on by the Crown had been facts upon which they had established by evidence</i> , it would have been hopeless to expect a judge to say that such steps as were reasonably practicable had been taken.
I. 221 (initial)	<i>In the result, therefore</i> , we are of the clear view that this evidence was wrongly admitted
I. 223 (initial)	<i>if the evidence was wrongly admitted</i> , the conviction cannot be considered safe
I. 224 (initial)	<i>In the circumstances, therefore</i> , we have no alternative but to quash this conviction.
I. 230 (initial)	<i>if a retrial -- if the Crown seek a retrial</i> then we have no objection to it.
I. 241 (initial)	<i>If there is an application for bail</i> , we will not deal with it.
Sammensatte præpositioner:	
I. 23	on behalf of
I. 24	on behalf of
I. 120	in relation to
I. 130	on behalf of
I. 149	in relation to
I. 213	with respect to
Komplekse substantivsyntagmer:	
I. 12	HIS HONOUR JUDGE MOSS QC □ (Sitting as a Judge of the Court of Appeal Criminal Division)
I. 23	Mr M Heyward (who did not appear at the trial)
I. 30	an offence under section 18 of the Offences Against the Person Act 1861 of causing grievous bodily harm with intent
I. 34	circumstances where a witness did not attend and the Crown contended that she could not be found
I. 39	the appellant who had forced him to do so
I. 40	the same hostel which was largely inhabited by those who had drug addictions
I. 44	a drug addict who had lived at the hostel for two and a half years.
I. 47	another male, identified as Henry.
I. 48	an argument during which the appellant accused MC of not paying sufficient for the drugs and stealing his clothes
I. 58	the account that MC had given
I. 60	the evidence of the witness whose statement was read
I. 61	medical evidence that dealt with the extent of the injuries which was not in dispute

I. 63	evidence which was in substantial conformity with what he had said in interview
I. 65	the person referred to as Henry
I. 73	SD, the witness whose statement was admitted under the CJA 2003
I. 86	the drugs that had been supplied.
I. 88	a pair of jeans which he then said were his
I. 89	another bag in the shed which the appellant then opened
I. 101	an address for her which had been given in Newton Abbott
I. 105	the grounds which formed the basis of the application under section 116(2)(d) of the CJA 2003 to read SD's statement
I. 108	a statement not made in oral evidence
I. 110	oral evidence given in the proceedings by the person who made the statement
I. 112	the person who made the statement
I. 113	any of the five conditions mentioned in subsection (2)
I. 115	such steps as it is reasonably practicable to take to find him
I. 117	part of the statement we have set out
I. 119	the assistance we have received from Mr Wicks for the Crown
I. 120	the steps taken which we have set out
I. 121	the facts which we have outlined
I. 122	counsel who was appearing for the appellant
I. 124	the outline of the facts given by counsel
I. 124	the argument from the appellant's then counsel
I. 126	the taking of such steps as was reasonably practicable
I. 130	the submissions made on behalf of the appellant
I. 140	such steps as are reasonably practicable
I. 143	Counsel for the appellant appearing at the trial
I. 144	the way in which the judge dealt with that matter
I. 145	reasons that will shortly become apparent
I. 147	the admission of all the evidence to which we have referred
I. 148	the way in which the judge directed the jury
I. 150	one part of the summing-up which prefaced those remarks
I. 165	the way the judge dealt with section 78 of the Police and Criminal Evidence Act 1984
I. 168	the way in which the judge admitted the evidence
I. 170	the position of witnesses who were in fear
I. 178	witnesses who were kept from court through fear
I. 179	the case of a witness who is reluctant to come to court
I. 181	the importance of the citizen's duty to give evidence
I. 185	The provisions of the Criminal Justice Act 2003, described in <u>Horncastle</u> as a carefully crafted code,
I. 187	a written agreed statement of facts,
I. 188	evidence as to the steps taken to find the witness
I. 191	an agreed statement of facts
I. 191	the error in the approach of the learned judge, which was to look at the matter
I. 193	the time when the police started to make enquiries
I. 194	the day she made the statement
I. 198	the well-known programme established for Witness Care
I. 201	no evidence...as to what steps it had taken
I. 201	any evidence...as to what information the witness's mother had about her location
I. 203	no evidence as to what enquiries had been made of social security

I. 205	no evidence as to whether any attempt had been made to trace her
I. 209	the importance of the right to confrontation under our law
I. 214	a summary of what he was told
I. 215	no evidence...on which he could have made any findings at all
I. 216	the limited matters that had been relied on by the Crown
I. 217	facts upon which they had established by evidence
I. 218	a problem with the cost of caring for a reluctant witness and finding her
I. 222	such steps as were reasonably practicable to find SD
I. 239	no reason why this can't be tried at Portsmouth
I. 246	an order restricting the reporting of the proceedings or anonymising them
I. 248	a point of some importance...relating to the conduct of these applications
I. 249	Those who are sitting diligently in front of us
Fagterminologi:	
I. 23	trial
I. 23	appellant
I. 24	the Crown
I. 29	appellant
I. 29	conviction
I. 30	Jury
I. 30	Offence
I. 32	conviction
I. 33	appeal
I. 34	the Crown
I. 34	to contend
I. 36	Jury
I. 39	appellant
I. 40	appellant
I. 42	appeal
I. 45	appellant
I. 46	appellant
I. 47	appellant
I. 48	appellant
I. 49	appellant
I. 51	appellant
I. 52	appellant
I. 53	appellant
I. 54	appellant
I. 62	appellant's
I. 63	appellant
I. 68	appellant
I. 71	appellant's
I. 71	appellant
I. 77	appellant
I. 80	appellant
I. 81	appellant
I. 82	appellant
I. 83	appellant
I. 85	appellant
I. 87	appellant

I. 88	appellant
I. 89	appellant
I. 93	appellant
I. 99	Trial
I. 110	proceedings
I. 120	the Crown
I. 122	appellant
I. 124	counsel
I. 125	appellant's
I. 125	counsel
I. 130	appellant
I. 133	Trial
I. 141	Trial
I. 141	provisions
I. 148	Jury
I. 149	Jury
I. 160	the defence
I. 161	Jury
I. 166	contention
I. 185	provisions
I. 194	Trial
I. 202	Trial
I. 223	conviction
I. 229	Retrial
I. 230	Retrial
I. 234	Retrial
I. 235	indictment
I. 235	indictment
I. 238	to direct
I. 239	be arraigned
I. 247	Retrial
juridiske kollokationer:	
I. 3	the Court of Appeal
I. 4	Criminal Division
I. 13	the Court of Appeal
I. 13	Criminal Division
I. 29	to appeal against...
I. 31	grievous bodily harm
I. 31	with intent
I. 32	to receive a sentence
I. 33	admission of evidence
I. 33	hearsay evidence
I. 37	grievous bodily harm
I. 38	the prosecution case
I. 39	the defence case
I. 58	to give evidence
I. 62	to be in dispute
I. 63	to give evidence

I. 76	to make a statement
I. 92	to make a statement
I. 98	a plea and case management hearing
I. 98	a plea and case management hearing
I. 101	a witness summons
I. 102	to serve a summons
I. 108	criminal proceedings
I. 108	oral evidence
I. 109	to be admissible as evidence
I. 110	to give oral evidence
I. 110	to make a statement
I. 111	to be admissible as evidence
I. 112	to make a statement
I. 121	the prosecuting counsel
I. 122	to make (no) submission
I.123	to call evidence
I. 125	counsel for the prosecution
I. 127	to make a ruling
I. 130	to make submissions
I. 132	witness summonses
I. 142	counsel for the appellant
I. 143	to appear at trial
I. 147	admission of evidence
I. 147	to sum up a case
I. 162	a guilty verdict
I. 163	the grounds of appeal
I. 164	counsel for the appellant
I. 164	a ground of appeal
I. 166	ground of appeal
I. 168	to admit evidence
I. 173	the common law
I. 182	to give evidence
I. 183	the common law
I. 187	a written agreed statement of facts
I. 191	an agreed statement of facts
I. 194	to make a statement
I. 212	to call evidence
I. 213	to make findings
I. 214	to make findings
I. 215	to make findings
I. 221	to admit evidence
I. 223	to admit evidence
I. 224	to quash a conviction
I. 225	to apply for retrial
I. 227	to be in custody
I. 229	to object to a retrial
I. 230	to seek a retrial
I. 230	to have objections to...
I. 232	to seek a retrial
I. 241	application for bail

I. 242	to make an application
I. 246	a representation order
Nominakonstruktionerne:	
I. 31	After his <i>conviction</i> in March 2008 (After he was convicted in March 2008)
I. 32	he received a <i>sentence</i> of five years' imprisonment (he was sentenced to five years' imprisonment)
I. 33	The issue in the appeal relates to the <i>admission</i> of hearsay evidence (The issue in the appeal relates to admitting hearsay evidence)
I. 48	There was an <i>argument</i> (They argued)
I. 64	His <i>account</i> was as follows (He accounted as follows)
I. 68	There was a quiet <i>discussion</i> (They discussed quietly)
I. 69	There was no <i>dispute</i> over the payment for the drugs and no <i>demand</i> for money (They did not dispute over the payment for the drugs and nor did X demand any money)
I. 73	He denied he had had any <i>conversation</i> with SD (He denied he had spoken/conversed with SD)?
I. 76	SD had made a <i>statement</i> on 16 August 2007 (SD stated on 16 August 2007)
I. 122	counsel who was appearing for the appellant made no <i>submission</i> that evidence should have been called (counsel who was appearing for the appellant did not submit that evidence should have been called)
I. 126	the judge then proceeded to make a <i>ruling</i> (the judge then proceeded to ruling)
I. 130	after referring to the <i>submissions</i> made on behalf of the appellant (after referring to what had been submitted on behalf of the appellant)
I. 144	<i>Complaint</i> is made about the way in which the judge dealt with that matter. (X complained about the way in which the judge dealt with that matter.)
I. 147	After the <i>admission</i> of all the evidence to which we have referred (After all the evidence to which we have referred had been admitted)
I. 148	Although no specific <i>complaint</i> is made about the way in which the judge directed the jury (Although nobody <u>specifically</u> complained about the way in which the judge directed the jury)
I. 176	The witness must be given all possible <i>support</i> (The witness must be supported in every way possible)
I. 229	you can't have any <i>objection</i> to a retrial? (you don't object to a retrial?)
I. 230	we have no <i>objection</i> to it (we don't object to it)
I. 241	You can make an <i>application</i> to the judge (You can apply to the judge)
Lix:	
3545 ord	
705 svære ord	
231 perioder	
A = 19,9	
B = 15,3	
Lix = (A+ B) = 35,2 (middelsvær)	



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England and Wales Court of Appeal (Criminal Division) Decisions

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Neutral Citation Number: [2009] EWCA Crim 1361

Case No: 200805620 D3

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM CROWN COURT AT CROYDON
Judge Ainley**

Royal Courts of Justice
Strand, London, WC2A 2LL
06/07/2009

B e f o r e :

**LORD JUSTICE SCOTT BAKER
MR JUSTICE KING
and
HIS HONOUR JUDGE MOSS QC**

Between:

THE QUEEN

Respondent

- and -

Tyrone Downer

Appellant

**J. Capon (instructed by South London Prosecution Service Croydon) for the Respondent
S.J Frame (instructed by Powell Spencer & Partners) for the Appellant
Hearing date: 10 June 2009**

HTML VERSION OF REASONS FOR DECISION

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Lord Justice Scott Baker :

1. On 10 June 2009 we allowed the appeal against conviction of Tryone Downer and directed that he be retried. We now give our reasons.
2. On 24 September 2008 in the Crown Court at Croydon before Judge Ainley and a jury Downer was convicted of aggravated burglary. He was later sentenced to five years detention in a young offender institution less 265 days he had spent on remand.
3. The issues on the appeal, which was with leave of the single judge, arose out of the judge's admission of the co-defendants' pleas of guilty.
4. The facts of the offences were in summary as follows. The appellant and the co-defendants are from Shepherds Bush in West London. James Adams, a drug user, lived in a flat in Sutton. He did not have a bank account and dealt largely in cash. On 15 April 2008 he was planning to move and his sister was helping him to clean up his flat. The appellant and the two co-defendants, Omisore and Broom went to Adams' premises and gained entry to his flat through the front door. The co-defendants were the first two in. Adams confronted them with a cosh. The appellant ransacked the bedroom and the lounge to see what he could find. During the burglary the co-defendants had a machete and a black handled knife. There was an attempt to extort money from Adams.
5. When the police arrived the appellant and the co-defendants were in Adams' bedroom. The machete and the knife were seized by the police. Broom's fingerprints were on the handle of the machete and the blade of the knife. So were the fingerprints of others, but not the appellant or Omisore. Adams had drug paraphernalia and a safe on the premises and a cosh by his bed. The place smelt of cannabis. When arrested and interviewed the appellant said "no comment."
6. The prosecution case against the appellant was that he went to Adams' address with his co-defendants and that they were armed with the machete and the knife in a joint enterprise. The appellant's case was that Adams was a drug dealer who had taken their money but failed to supply the drugs, and they went to get either the drugs or their money back. He never saw any weapons prior to or during the burglary and had no idea that weapons were involved. It was possible that the weapons were already at the flat and were picked up by his co-defendants. At the relevant time he was in different rooms from the co-defendants, searching for items to steal.
7. The grounds of appeal are in summary:
 - i) That no good reason was given for adducing the co-defendants' pleas of guilty;
 - ii) That the judge should have admitted the bases of the pleas, an error aggravated by the judge wrongly telling the jury that the co-defendants had pleaded guilty to the offence with which the appellant was charged;
 - iii) That evidence of the co-defendants' pleas of guilty should have been excluded under s.78 of the Police and Criminal Evidence Act 1984.
8. The indictment as originally drawn charged all three defendants with aggravated burglary contrary

to Section 10(1) of the Theft Act 1968, the particulars of offence alleging that having entered the premises as trespassers they attempted to steal therein and at the time of committing the burglary had weapons of offence namely a machete and a knife.

9. Section 10(1) of the Theft Act 1968 provides that a person is guilty of aggravated burglary if he commits any burglary and at the time has with him a weapon of offence etc. Burglary itself is defined in the previous section which describes two different types of burglary. The first, under s.9(1)(a), is entering a building or part of a building as a trespasser with intent to steal or commit another defined offence. The second, under s.9(1)(b), is having entered the building or part of a building as a trespasser committing or attempting to commit a theft or any of the other defined offences.
10. There are, therefore, within the s.10(1) two distinct types of aggravated burglary depending on which type of burglary was committed. Which it is, will emerge in the particulars of offence indicted (see Archbold 2009 Edition 20 – 130.) In the present case the original indictment charged an aggravated s.9(1)(b) type burglary against all three defendants. The two co-defendants pleaded guilty but the appellant pleaded not guilty.
11. Each of the co-defendants advanced a specific basis of plea in writing. Not everything in the bases of pleas is relevant to the present appeal. However, the following is. Broom contended that when he entered the premises he was not in possession of any weapon and as far as he was aware neither was Omisore or the appellant. He grabbed a kitchen knife to protect himself against Adams who was wielding a cosh. When he returned from the kitchen Adams had put down the cosh and one of the co-defendants was holding a machete which, as far as he was aware, had been picked up in the flat. Omisore contended that when he entered the premises he was not in possession of any weapon. On entering he saw Adams wielding a cosh and picked up a weapon to defend himself.
12. The prosecution was not prepared to accept the bases of plea and that remained the position at the time of the appellant's trial. It was left to the judge to decide, having heard the evidence in the appellant's trial, whether a Newton hearing was necessary. In the event no Newton hearing ever took place because the prosecution could not secure the attendance of the necessary witnesses. The co-defendants were therefore eventually sentenced on the bases on which they had pleaded guilty.
13. Before the appellant was tried the Crown sought and obtained leave to amend the indictment against him. The problems in this case stem from this. The new indictment contained two counts. The first was aggravated burglary under s.10(1) and the second simple burglary under s.9(1)(a). The appellant's plea of guilty to the second count was not accepted by the prosecution. By the amendments the Crown's case shifted from s.9(1)(b) type aggravated burglary to s.9(1)(a) type aggravated burglary. The particulars of the count on which the appellant was tried now alleged that he entered the premises with the weapons rather than had them inside when he was trying to steal. The particulars alleged that the appellant, with others, entered the premises as a trespasser with intent to steal and at the time of committing the burglary had with them weapons of offence namely a machete and a knife. So, said the Crown, this was a joint enterprise in which all three went to the premises armed with weapons.
14. We have considerable sympathy with the judge who acquired this case as a floater and accordingly would have had little time to read the papers in advance of the prosecution's applications to amend the indictment and adduce the pleas of the co-defendants under Section 74 of the Police and Criminal Evidence Act 1984.
15. When the prosecution sought to amend the indictment Mr Capon, for the prosecution, said, in the

context of the new indictment, that the only issue was whether the appellant was part of a joint enterprise as far as the weapons of offence were concerned.

16. Section 74(1) provides:

"In any proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in the United Kingdom.....shall be admissible in evidence for the purpose of proving that that person committed that offence, where evidence of his having done so is admissible, whether or not any other evidence of his having committed that offence is given."

Section 75(1) provides:

"Where evidence that a person has been convicted of an offence is admissible by virtue of section 74 above, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based –

(a) the contents of any document which is admissible as evidence of the conviction, and

(b) the contents of the information, complaint, indictment or charge sheet on which the person in question was convicted

shall be admissible for that purpose."

17. The argument before the judge focussed not so much on whether the co-defendants' pleas should be admitted but on whether the jury should be told the bases of them. As Mr Frame, for the appellant, put it:

"If the jury were aware that there was just the guilty plea, then they would inevitably end up speculating about the guilty plea and the guilty plea being on the full facts."

18. In the event the judge ruled the co-defendants' pleas could be admitted under s.74 but that "if you want to say that the facts of the case are those which are contended for by the other defendants in their bases of plea, then they have got to be called, unless the prosecution accept those bases of plea."

19. No one appears to have had in mind when the application to admit the pleas was made that the offence to which the co-defendants had pleaded guilty was a s.9(1)(b) type aggravated burglary and that the charge that the appellant was then facing was s.9(1)(a) type aggravated burglary. How, we ask, does it help to prove the Crown's case against the appellant that all three went into the premises armed with the machete and the knife in a joint enterprise, that the two co-defendants had admitted having the weapons when attempting to steal once they were in the premises?

20. It has been repeatedly stated in the authorities that where a conviction is admitted under s.74 its effect is by the terms of the statute that the person convicted did commit the offence to which he pleaded guilty. As Hughes L.J put it in *R v Smith* [\[2007\] EWCA Crim 2105](#) at para 13:

"If a person has admitted an offence, that is, obviously evidence that that person did it. The girl's plea of guilty was, accordingly, not only evidence that she had pleaded guilty but that she was guilty."

21. Under s.75(1) the contents of the indictment are admissible as evidence of the facts on which the conviction was based. Had the indictment to which the co-defendants pleaded guilty been put before the jury the particulars of the offence would have made it plain that what the co-defendants had admitted and pleaded guilty to was a s.9(1)(b) type aggravated burglary.
22. Mr Capon's argument is that the offence of aggravated burglary is indivisible; he relies on the wording of s.10. It does not matter that it can be committed in more than one way; there is just one offence of aggravated burglary. But his argument overlooks the fact that in order to find out what constitutes a burglary you have to go back to s.9 where the two types are described. We cannot accept Mr Capon's argument. Were Mr Capon's argument correct it would make no difference if the appellant was charged with going armed into the premises as a trespasser with intent to steal whereas the co-defendants went into the premises as trespassers armed themselves with weapons once inside and then caused unlawful damage to the building. On Mr Capon's argument all would be guilty of the same offence of aggravated burglary. Although the co-defendants have pleaded guilty to an aggravated burglary at the same premises and on the same date as the one with which the appellant was charged, it is not the same offence.
23. The appellant did not dispute that he burgled the premises. Indeed he tendered a plea to the second count in the indictment to that effect. The question arises whether the co-defendants' pleas had any probative value in the case against the appellant. He admitted a s.9(1)(a) burglary. The only issue was whether he entered with the machete and the knife either himself or as part of a joint enterprise with his co-defendants. It is difficult to see that the co-defendants' pleas had any probative value against the appellant on that issue. It seems to us, however, that the more important point is the prejudicial effect to the appellant of admitting the pleas in evidence.
24. As Hughes L.J. pointed out in *Smith* there is a line of cases beginning with *R v O'Connor* [1987] 85 Cr App R 88, helpfully distilled in *R v Kempster* [1990] 90 Cr App R 14 by Staughton L.J. They illustrate that s.74 should be sparingly applied because the evidence that a now absent co-defendant has pleaded guilty may carry enormous weight with the jury but cannot properly be tested in the trial of the remaining defendant. That is particularly so where the issue is such that the absent co-defendant who has pleaded guilty could not, or scarcely could, be guilty of the offence unless the present defendant was also. Hughes L.J. said that in both these situations the court needs to consider with considerable care whether the evidence of the conviction would have a disproportionate unfair effect upon the trial. Those circumstances have to be contrasted with those in which a co-defendant's evidence can properly be admitted to show the offence did occur, leaving the jury independently to consider whether the guilt of the present defendant is additionally proved. He added at para 17:

"It remains extremely relevant what the issue is in the case before the trial court. It remains of considerable importance to examine whether the case is one in which the admission of the plea of guilty of a now absent co-defendant would have an unfair effect upon the instant trial by closing off much or in some cases all, of the issues which the jury is trying."

And at para 18:

"However, it also remains true that such evidence may well be unfair if the issues are such that the evidence closes off the issues that the jury has to try."

25. Now the potential damage to the appellant in the present case was the jury's knowledge that the co-defendants had committed an aggravated burglary. The issue for the jury was whether they were

sure the appellant went in to the premises armed with a machete and a knife as part of a joint enterprise with the co-defendants. The co-defendants never admitted possession of the weapons before they went in; nor did their pleas imply that they had. Even if it was made clear to the jury that the co-defendants had pleaded guilty to a different offence (a s.9(1)(b) type aggravated burglary) it was going to be easy for the jury to jump to the conclusion that they must all have had, or been aware of, the weapons when they entered.

26. Even if the co-defendants' pleas to a different form of burglary had any probative value against the appellant we think there was a strong case for refusing to admit the pleas under Section 78 of the Police and Criminal Evidence Act 1984 on the ground that their admission would have such an adverse effect on the fairness of the proceedings that they ought not to be admitted.
27. What in the end, however, in our view proves fatal to the conviction in the present case is the manner in which the judge summed the case up. He drew no distinction between the offence to which the co-defendants had pleaded guilty and the offence with which the appellant was charged. Indeed, he treated them as one and the same. He said at 6 D:

"Another matter that I must bring to your attention is this. You know that the other two people with whom he is jointly charged have pleaded guilty to aggravated burglary, the very offence with which he is charged. The only reason you have been given that information is because it is evidence that goes to prove that that offence was actually committed and that those two men committed it."

28. The reference to "the very offence with which he is charged" suggests the co-defendants had pleaded guilty to an aggravated burglary that involved taking the machete and the knife into the premises, but they had not.
29. The error is compounded at 7 D when the judge says the essence of the prosecution's case is an aggravated burglary in which the three were jointly involved and it was a burglary with weapons. He follows this with reference to the particulars of the offence for which the appellant was being tried. Then at the bottom of page 7, he gave the standard direction on joint enterprise, and he said at 8 F:

"Let's say he knew while they were on the way to the scene that the other two were tooled up with those weapons and carried on taking part in the burglary, then plainly he would be guilty because he had the intention that the offence should be carried out and he took some part in it. It could be a different way of course. He might not have known until he was at the premises that there were weapons (that) were going to be used, but knowing that they were being used he then carried on and merrily goes into the other rooms and starts burgling them. Likewise, he would be guilty because he knows an aggravated burglary is going on and he takes part in it whilst the owner is being terrorised by the weapons."

This illustrates that the judge is drawing no distinction between the two types aggravated burglary, the one to which the co-defendants had pleaded guilty and the one for which the appellant was being tried.

30. At page 14 the judge refers to the confrontation outside the bedroom pointing out that all were agreed the other two defendants were the first two in and that they were the two holding the weapons. The judge then says:

"As you know they pleaded guilty to aggravated burglary. Now the defendant says:

"yes I was ransacking another room and the lounge but I never saw the weapons." That of course is a central issue for you to decide. Is that or may it be true?"

31. Mr Capon accepts that the conviction can only be upheld if the court accepts his submission that aggravated burglary is but one offence and it matters not that the co-defendants pleaded to the s.9(1)(b) version while the appellant was being tried for the s.9(1)(a) version. As we have explained, we are unable to accept Mr Capon's argument.
32. If the jury was left with the impression, which they may well have been from the way in which the judge summed the case up, that the co-defendants had pleaded guilty to taking the machete and the knife into the premises it is difficult to see how the appellant was not likewise guilty. It was common ground that all three went to the premises together and it would have been difficult, if not impossible, for the machete at any rate, to have been concealed from the appellant.
33. Returning to the grounds of appeal, the argument before the judge never really dealt with whether the pleas should be admitted under s.74, but rather with whether the jury should be told the bases of them. In our view it would have been helpful to concentrate on the fact that the co-defendants had pleaded guilty to a s.9(1)(b) type aggravated burglary whereas the appellant was charged with a s.(9)(1)(a) type aggravated burglary. The particulars of offence in each case demonstrated this. Had this been done there would have been a proper debate about the probative value, if any, of the co-defendants' pleas.
34. Argument about the jury being told the bases of the co-defendants' pleas was something of a red herring. What the jury needed to know, if the pleas were admitted in evidence, was the particulars of the offence to what the co-defendants had pleaded guilty (admissible by virtue of s.75). Where a co-defendant has pleaded guilty on a basis that the court has not accepted, it seems to us that if the plea is admitted in evidence against a co-defendant it is necessary, absent an admission, to call that co-defendant if it is desired to establish any departure from the particulars in the indictment to which he has pleaded guilty. However, it is unnecessary to decide this to determine the outcome of the present case.
35. As to the third ground of appeal, we think the pleas should have been excluded under s.78 of the Police and Criminal Evidence Act 1984, an error which was exacerbated by the way the judge dealt with them in his summing up.
36. This case, in our view, went down the wrong track when the prosecution sought and obtained leave to amend the indictment. Had the appellant been tried for the same offence to which the co-defendants had pleaded guilty their pleas would have been properly admissible and the issue would have been whether the appellant was a party to a joint enterprise with the weapons inside the property when the attempt to steal took place. Unfortunately it was not and a simple case became over complicated. The conviction in our view is not safe and accordingly we allowed the appeal.

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06 July 2009 Downer	
passiver:	
I. 26	Downer was convicted of aggravated burglary
I. 27	He was later sentenced to five years detention
I. 40	The machete and the knife were seized by the police
I. 43	When arrested
I. 43	and (when) interviewed
I. 48	weapons were involved
I. 49	the weapons...were picked up by his co-defendants
I. 52	no good reason was given for adducing the co-defendants' pleas of guilty
I. 54	an error aggravated by the judge
I. 56	the appellant was charged
I. 57	evidence of the co-defendants' pleas of guilty should have been excluded
I. 64	Burglary itself is defined in the previous section
I. 70	depending on which type of burglary was committed
I. 71	the particulars of offence indicted
I. 80	a machete which,..., had been picked up in the flat
I. 87	The co-defendants were therefore eventually sentenced on the bases on which they had pleaded guilty
I. 88	Before the appellant was tried
I. 91	The appellant's plea of guilty to the second count was not accepted by the prosecution
I. 93	The particulars of the count on which the appellant was tried
I. 105	as far as the weapons of offence were concerned.
I. 107	a person other than the accused has been convicted of an offence by or before any court
I. 110	evidence of his having done so is admissible
I. 110	whether or not any other evidence of his having committed that offence is given
I. 113	evidence that a person has been convicted of an offence
I. 113	Where evidence...is admissible
I. 115	the facts on which the conviction was based
I. 117	the contents of any document which is admissible as evidence
I. 120	the contents of the information, complaint, indictment or charge sheet on which the person in question was convicted
I. 121	...shall be admissible for that purpose
I. 122	whether the co-defendants' pleas should be admitted
I. 123	whether the jury should be told the bases of them
I. 127	the co-defendants' pleas could be admitted
I. 128	the facts of the case are those which are contended for by the other defendants
I. 129	then they have got to be called
I. 131	when the application to admit the pleas was made
I. 137	It has been repeatedly stated in the authorities that...
I. 137	where a conviction is admitted
I. 138	the person convicted
I. 143	the contents of the indictment are admissible as evidence
I. 143	the facts on which the conviction was based
I. 144	Had the indictment to which the co-defendants pleaded guilty been put before the jury
I. 148	it can be committed in more than one way

I. 150	where the two types are described
I. 152	the appellant was charged with going armed into the premises
I. 157	as the one with which the appellant was charged
I. 167	s.74 should be sparingly applied
I. 168	cannot properly be tested
I. 173	Those circumstances have to be contrasted with...
I. 174	those in which a co-defendant's evidence can properly be admitted
I. 175	the guilt of the present defendant is additionally proved
I. 189	Even if it was made clear to the jury that...
I. 196	they ought not to be admitted
I. 199	the offence with which the appellant was charged
I. 202	the other two people with whom he is jointly charged
I. 203	the very offence with which he is charged.
I. 203	you have been given that information
I. 204	that offence was actually committed
I. 206	the very offence with which he is charged
I. 209	The error is compounded at 7 D
I. 211	reference to the particulars of the offence for which the appellant was being tried
I. 216	the offence should be carried out
I. 219	but knowing that they were being used
I. 224	the one for which the appellant was being tried
I. 232	the conviction can only be upheld
I. 234	while the appellant was being tried
I. 236	If the jury was left with the impression
I. 236	they may well have been (left with the impression)
I. 240	for the machete...to have been concealed from the appellant
I. 242	the pleas should be admitted under s.74
I. 242	whether the jury should be told the bases of them
I. 244	the appellant was charged with a s.(9)(1)(a) type aggravated burglary.
I. 246	Had this been done...
I. 248	the jury being told the bases of the co-defendants' pleas
I. 249	if the pleas were admitted in evidence
I. 251	if the plea is admitted in evidence
I. 253	if it is desired to establish any departure from the particulars
I. 256	the pleas should have been excluded under s.78
I. 257	an error which was exacerbated
I. 260	Had the appellant been tried for the same offence
Adverbialer:	
I. 24 (initial)	<i>On 10 June 2009 we allowed the appeal against conviction</i>
I. 26 (initial)	<i>On 24 September 2008 in the Crown Court at Croydon before Judge Ainley and a jury Downer was convicted of aggravated burglary</i>
I. 33 (initial)	<i>On 15 April 2008 he was planning to move</i>
I. 37 (initial)	<i>During the burglary the co-defendants had a machete and a black handled knife</i>
I. 39 (initial)	<i>When the police arrived the appellant and the co-defendants were in Adams' bedroom.</i>
I. 43 (initial)	<i>When arrested and interviewed the appellant said "no comment."</i>
I. 49 (initial)	<i>At the relevant time he was in different rooms from the co-defendants</i>
I. 60 (initial)	<i>having entered the premises as trespassers they attempted to steal</i>

	therein
I. 61 (initial)	<i>at the time of committing the burglary</i> had weapons of offence namely a machete and a knife
I. 64 (medial)	and (if he) <i>at the time</i> has with him a weapon of offence
I. 65 (medial)	The first, <i>under s.9(1)(a)</i> , is entering a building or part of a building as a trespasser
I. 67 (medial)	The second, <i>under s.9(1)(b)</i> , is having entered the building or part of a building as a trespasser
I. 70 (medial)	There are, <i>therefore, within the s.10(1)</i> two distinct types of aggravated burglary
I. 72 (initial)	<i>In the present case</i> the original indictment charged an aggravated s.9(1)(b) type burglary
I. 75 (initial)	<i>when he entered the premises</i> he was not in possession of any weapon
I. 79 (initial)	<i>When he returned from the kitchen</i> Adams had put down the cosh
I. 80 (medial)	a machete which, <i>as far as he was aware</i> , had been picked up in the flat
I. 81 (initial)	<i>when he entered the premises</i> he was not in possession of any weapon
I. 84 (medial)	It was left to the judge to decide, <i>having heard the evidence in the appellant's trial</i> , whether a Newton hearing was necessary. ??
I. 85 (initial)	<i>In the event</i> no Newton hearing ever took place
I. 88 (initial)	<i>Before the appellant was tried</i> the Crown sought and obtained leave to amend the indictment
I. 91 (initial)	<i>By the amendments</i> the Crown's case shifted from s.9(1)(b) type aggravated burglary to s.9(1)(a) type aggravated burglary
I. 96 (initial)	<i>at the time of committing the burglary</i> had with them weapons of offence
I. 97 (initial)	<i>So, said the Crown</i> , this was a joint enterprise
I. 103 (initial)	<i>When the prosecution sought to amend the indictment</i> Mr Capon, for the prosecution, said
I. 103 (medial)	Mr Capon, for the prosecution, said, <i>in the context of the new indictment</i> , that the only issue was??
I. 107 (initial)	<i>In any proceedings</i> the fact that a person other than the accused has been convicted of an offence
I. 113 (initial)	<i>Where evidence that a person has been convicted of an offence is admissible by virtue of section 74 above, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based</i>
I. 122 (medial)	The argument <i>before the judge</i> focussed not so much on whether the co-defendants' pleas should be admitted
I. 125 (initial)	<i>If the jury were aware that there was just the guilty plea</i> , then they would inevitably end up speculating about the guilty plea
I. 127 (initial)	<i>In the event</i> the judge ruled the co-defendants' pleas could be admitted
I. 127 (initial)	<i>if you want to say that the facts of the case are those which are contended for by the other defendants in their bases of plea</i> , then they have got to be called,
I. 131 (medial)	No one appears to have had in mind <i>when the application to admit the pleas was made</i> that the offence to which the co-defendants had pleaded guilty was a s.9(1)(b) type aggravated burglary
I. 137 (initial)	<i>where a conviction is admitted under s.74</i> its effect is by the terms of the statute that the person convicted did commit the offence to which he pleaded guilty
I. 140 (initial)	<i>If a person has admitted an offence</i> , that is, obviously evidence that that person did it
I. 143 (initial)	<i>Under s.75(1)</i> the contents of the indictment are admissible as evidence
I. 144 (initial)	<i>Had the indictment to which the co-defendants pleaded guilty been put before the jury</i> the particulars of the offence would have made it plain that...

I. 149 (initial)	<i>in order to find out what constitutes a burglary you have to go back to s.9</i>
I. 151 (initial)	<i>Were Mr Capon's argument correct it would make no difference if the appellant was charged with going armed into the premises</i>
I. 155 (initial)	<i>Although the co-defendants have pleaded guilty to an aggravated burglary at the same premises and on the same date as the one with which the appellant was charged, it is not the same offence.</i>
I. 165 (initial)	<i>As Hughes L.J pointed out in Smith there is a line of cases beginning with R v O'Connor [1987] 85 Cr App R 88,</i>
I. 171 (initial)	<i>in both these situations the court needs to consider with considerable care whether the evidence of the conviction would have a disproportionate unfair effect</i>
I. 180 (medial)	<i>would have an unfair effect upon the instant trial by closing off much or in some cases all, of the issues</i>
I. 185 (medial)	<i>Now the potential damage to the appellant in the present case was the jury's knowledge</i>
I. 189 (initial)	<i>Even if it was made clear to the jury that the co-defendants had pleaded guilty to a different offence (a s.9(1)(b) type aggravated burglary) it was going to be easy for the jury to jump to the conclusion that they must all have had, or been aware of, the weapons</i>
I. 193 (initial)	<i>Even if the co-defendants' pleas to a different form of burglary had any probative value against the appellant we think there was a strong case for refusing to admit the pleas</i>
I. 197 (medial)	<i>What in the end, however, in our view proves fatal to the conviction</i>
I. 212 (initial)	<i>Then at the bottom of page 7, he gave the standard direction on joint enterprise</i>
I. 214 (medial)	<i>Let's say he knew while they were on the way to the scene that the other two were tooled up with those weapons</i>
I. 218 (medial)	<i>He might not have known until he was at the premises that there were weapons</i>
I. 226 (initial)	<i>At page 14 the judge refers to the confrontation outside the bedroom</i>
I. 229 (initial)	<i>As you know they pleaded guilty to aggravated burglary</i>
I. 234 (initial)	<i>As we have explained, we are unable to accept Mr Capon's argument.</i>
I. 236 (initial)	<i>If the jury was left with the impression, which they may well have been from the way in which the judge summed the case up, that the co-defendants had pleaded guilty to taking the machete and the knife into the premises it is difficult to see how the appellant was not likewise guilty</i>
I. 241 (initial)	<i>Returning to the grounds of appeal, the argument before the judge never really dealt with...</i>
I. 243 (initial)	<i>In our view it would have been helpful to concentrate on the fact</i>
I. 245	<i>The particulars of offence in each case demonstrated this.</i>
I. 246 (initial)	<i>Had this been done there would have been a proper debate about the probative value</i>
I. 249 (medial)	<i>What the jury needed to know, if the pleas were admitted in evidence, was the particulars of the offence</i>
I. 250 (initial)	<i>Where a co-defendant has pleaded guilty on a basis that the court has not accepted, it seems to us that...</i>
I. 251 (initial)	<i>if the plea is admitted in evidence against a co-defendant it is necessary...to call that co-defendant</i>
I. 252 (medial)	<i>it is necessary, absent an admission, to call that co-defendant</i>
I. 256 (initial)	<i>As to the third ground of appeal, we think the pleas should have been excluded</i>
I. 259 (medial)	<i>This case, in our view, went down the wrong track</i>
I. 260 (initial)	<i>Had the appellant been tried for the same offence to which the co-defendants had pleaded guilty their pleas would have been properly admissible</i>

Sammensatte præpositioner:	
I. 29	With leave of
I. 100	in advance of
I. 103	by virtue of
I. 149	in order to
I. 210	with reference to
I. 250	by virtue of
Komplekse substantivsyntagmer:	
I. 24	the appeal against conviction of Tryone Downer
I. 29	the appeal, which was with leave of the single judge,
I. 29	the judge's admission of the co-defendants' pleas of guilty
I. 44	The prosecution case against the appellant
I. 46	a drug dealer who had taken their money but failed to supply the drugs
I. 54	the bases of the pleas, an error aggravated by the judge wrongly telling the jury that the co-defendants had pleaded guilty to the offence with which the appellant was charged
I. 57	evidence of the co-defendants' pleas of guilty
I. 59	aggravated burglary contrary to Section 10(1) of the Theft Act 1968
I. 65	the previous section which describes two different types of burglary
I. 80	a machete which, as far as he was aware, had been picked up in the flat
I. 87	the bases on which they had pleaded guilty
I. 93	The particulars of the count on which the appellant was tried
I. 99	the judge who acquired this case as a floater and accordingly would have had little time to read the papers in advance of the prosecution's applications to amend the indictment and adduce the pleas of the co-defendants under Section 74 of the Police and Criminal Evidence Act 1984
I. 110	any other evidence of his having committed that offence
I. 117	the contents of any document which is admissible as evidence of the conviction,
I. 119	the contents of the information, complaint, indictment or charge sheet on which the person in question was convicted
I. 128	those which are contended for by the other defendants
I. 131	the offence to which the co-defendants had pleaded guilty
I. 133	the charge that the appellant was then facing
I. 138	the offence to which he pleaded guilty
I. 143	as evidence of the facts on which the conviction was based
I. 144	the indictment to which the co-defendants pleaded guilty
I. 165	a line of cases beginning with <i>R v O'Connor</i> [1987] 85 Cr App R 88, helpfully distilled in <i>R v Kempster</i> [1990] 90 Cr App R 14 by Staughton L.J.
I. 169	the absent co-defendant who has pleaded guilty
I. 173	those in which a co-defendant's evidence can properly be admitted to show the offence did occur
I. 178	one in which the admission of the plea of guilty of a now absent co-defendant
I. 180	much or...all, of the issues which the jury is trying
I. 184	the issues that the jury has to try
I. 185	the potential damage to the appellant
I. 185	the jury's knowledge that the co-defendants had committed an aggravated

I. 59	indictment
I. 59	to charge
I. 72	Indicted
I. 72	Charged
I. 74	appellant
I. 75	to advance
I. 76	Appeal
I. 78	appellant
I. 83	prosecution
I. 84	appellant's
I. 84	trial
I. 86	prosecution
I. 87	to be sentenced
I. 88	appellant
I. 88	to be tried
I. 88	the Crown
I. 88	indictment
I. 89	indictment
I. 89	Counts
I. 91	appellant's
I. 91	count
I. 91	prosecution
I. 92	amendments
I. 92	the Crown's
I. 93	appellant
I. 93	to be tried
I. 95	particulars
I. 95	appellant
I. 97	the Crown
I. 100	the prosecution's
I. 101	indictment
I. 101	adduce
I. 101	pleas
I. 103	indictment
I. 103	prosecution
I. 104	indictment
I. 104	appellant
I. 107	proceedings
I. 107	the accused
I. 108	offence
I. 113	offence
I. 115	conviction
I. 118	conviction
I. 119	indictment
I. 120	to be convicted
I. 122	pleas
I. 123	Jury
I. 124	appellant
I. 125	Jury
I. 127	to rule

I. 127	pleas
I. 129	prosecution
I. 131	pleas
I. 132	offence
I. 133	Charge
I. 133	appellant
I. 134	the Crown's
I. 134	appellant
I. 137	conviction
I. 144	conviction
I. 144	indictment
I. 147	offence
I. 149	offence
I. 152	appellant
I. 155	offence
I. 157	appellant
I. 157	offence
I. 158	appellant
I. 158	to dispute
I. 158	tendered
I. 158	a plea
I. 159	count
I. 159	indictment
I. 159	pleas
I. 160	appellant
I. 162	pleas
I. 163	appellant
I. 164	appellant
I. 164	pleas
I. 168	jury
I. 169	trial
I. 170	offence
I. 172	conviction
I. 173	trial
I. 174	offence
I. 175	jury
I. 180	trial
I. 181	jury
I. 183	jury
I. 185	appellant
I. 185	jury's
I. 186	jury
I. 187	appellant
I. 189	pleas
I. 189	jury
I. 190	offence
I. 191	jury
I. 193	pleas
I. 194	appellant
I. 194	pleas

I. 196	proceedings
I. 197	conviction
I. 198	offence
I. 199	offence
I. 199	appellant
I. 202	to be charged
I. 204	evidence
I. 209	the prosecution's
I. 211	appellant
I. 211	to be tried
I. 216	offence
I. 224	appellant
I. 225	to be tried
I. 232	conviction
I. 233	offence
I. 234	appellant
I. 234	to be tried
I. 236	jury
I. 238	appellant
I. 240	appellant
I. 242	the pleas
I. 242	jury
I. 244	appellant
I. 247	pleas
I. 248	jury
I. 249	pleas
I. 252	the plea
I. 253	the particulars
I. 253	indictment
I. 256	pleas
I. 259	Prosecution
I. 260	Indictment
I. 260	Appellant
I. 260	offence
I. 261	pleas
I. 262	Appellant
I. 264	Conviction
juridiske kollokationer:	
I. 3	the supreme court of judicature
I. 4	court of appeal
I. 4	criminal division
I. 5	crown court
I. 24	appeal against conviction
I. 26	The crown court
I. 27	to be convicted of...
I. 27	aggravated burglary
I. 27	to be sentenced to
I. 30	pleas of guilty
I. 44	prosecution case

I. 45	in a joint enterprise
I. 51	grounds of appeal
I. 52	pleas of guilty
I. 54	the bases of the pleas
I. 56	to plead guilty to...
I. 56	to be charged with...
I. 57	pleas of guilty
I. 59	aggravated burglary
I. 60	particulars of offence
I. 61	to commit burglary
I. 62	weapons of offence
I. 63	to be guilty of...
I. 63	aggravated burglary
I. 64	to commit burglary
I. 64	weapons of offence
I. 66	with intent to
I. 66	to commit an offence
I. 68	attempt to commit...
I. 70	aggravated burglary
I. 71	to commit burglary
I. 71	the particulars of offence
I. 73	an aggravated s. 9(1)(b) type burglary
I. 73	to plead guilty
I. 74	to plead not guilty
I. 75	basis of plea
I. 75	bases of pleas
I. 83	bases of pleas
I. 85	a Newton hearing
I. 85	a Newton hearing
I. 87	to plead guilty
I. 90	aggravated burglary
I. 91	plea of guilty
I. 92	s. 9(1)(b) type aggravated burglary
I. 92	s. 9(1)(a) type aggravated burglary
I. 93	the particulars of the count
I. 96	weapons of offence
I. 97	a joint enterprise
I. 104	a joint enterprise
I. 105	weapons of offence
I. 107	to be convicted of...
I. 109	to commit an offence
I. 110	admissible evidence
I. 111	to commit an offence
I. 113	admissible evidence
I. 113	to be convicted of...
I. 115	admissible evidence
I. 117	admissible evidence
I. 120	charge sheet
I. 125	a guilty plea
I. 126	a guilty plea

I. 126	a guilty plea
I. 129	bases of plea
I. 129	bases of plea
I. 132	to plead guilty
I. 132	s. 9(1)(b) type aggravated burglary
I. 133	s. 9(1)(a) type aggravated burglary
I. 135	in a joint enterprise
I. 138	to commit an offence
I. 139	to plead guilty
I. 140	to admit an offence
I. 141	plea of guilty
I. 141	to plead guilty
I. 143	admissible evidence
I. 144	to plead guilty
I. 144	to be put before the jury
I. 145	particulars of the offence
I. 146	to plead guilty
I. 147	s. 9(1)(b) type aggravated burglary
I. 147	aggravated burglary
I. 149	aggravated burglary
I. 152	to be charged with...
I. 154	unlawful damage
I. 155	to be guilty of...
I. 155	aggravated burglary
I. 156	aggravated burglary
I. 156	to be charged with...
I. 160	probative value
I. 160	s. 9(1)(a) burglary
I. 161	a joint enterprise
I. 163	probative value
I. 164	prejudicial effect
I. 168	to plead guilty
I. 170	to plead guilty
I. 174	to admit evidence
I. 177	the trial court
I. 179	a plea of guilty
I. 186	aggravated burglary
I. 187	in a joint enterprise
I. 190	to plead guilty
I. 190	s. 9(1)(b) type aggravated burglary
I. 193	probative value
I. 199	to plead guilty
I. 199	to be charged with...
I. 202	to plead guilty
I. 202	aggravated burglary
I. 203	to be charged with...
I. 204	to commit an offence
I. 206	to be charged with...
I. 207	to plead guilty
I. 207	aggravated burglary

I. 210	aggravated burglary
I. 211	the particulars of the offence
I. 221	aggravated burglary
I. 223	aggravated burglary
I. 224	to plead guilty
I. 229	to plead guilty to...
I. 229	aggravated burglary
I. 233	aggravated burglary
I. 234	to be tried for
I. 237	to plead guilty to...
I. 241	the grounds of appeal
I. 242	to be admitted
I. 244	to plead guilty
I. 244	s. 9(1)(b) type aggravated burglary
I. 244	to be charged with...
I. 245	s. 9(1)(a) type aggravated burglary
I. 245	the particulars of offence
I. 246	probative value
I. 249	to be admitted in evidence
I. 249	the particulars of the offence
I. 250	to plead guilty to...
I. 251	to plead guilty
I. 252	to be admitted in evidence
I. 254	to plead guilty to...
I. 256	ground of appeal
I. 260	to be tried for...
I. 261	to plead guilty to...
I. 262	a joint enterprise
I. 264	to allow an appeal
Nominalkonstruktionen:	
I. 30	The issues on the appeal,..., arose out of the judge's <i>admission</i> of the co-defendants' pleas of guilty (The issues on the appeal,..., arose because the judge admitted the co-defendants' pleas of guilty)
I. 38	There was an <i>attempt</i> to extort money from Adams (the appellant and the co-defendants attempted to extort money from Adams)
I. 77	he was not in <i>possession</i> of any weapon (he did not possess/have any weapon)
I. 81	he was not in <i>possession</i> of any weapon (he did not possess/have any weapon)
I. 84	at the time of the appellant's <i>trial</i> (when the appellant was tried)
I. 86	the prosecution could not secure the <i>attendance</i> of the necessary witnesses (the prosecution could not secure that the necessary witnesses attended (trial))
I. 96	at the time of committing the <i>burglary</i> (at the time of burgling Mr Adams' home)
I. 131	when the <i>application</i> to admit the pleas was made (when X applied to admit the pleas)
I. 133	the charge that the appellant was then facing was s.9(1)(a) type aggravated burglary (the appellant was to be charged with s.9(1)(a) type aggravated burglary)

I. 147	Mr Capon's <i>argument</i> is that the offence of aggravated burglary is indivisible (Mr Capon argued that the offence of aggravated burglary is indivisible)
I. 158	Indeed he tendered a <i>plea</i> to the second count in the indictment (Indeed he offered to plead guilty to the second count in the indictment)
I. 179	It remains of considerable <i>importance</i> to examine whether the case is one in which the <i>admission</i> of the plea of guilty of a now absent co-defendant would have an unfair effect upon the instant trial (It remains considerably important to examine whether the case is one in which the fact that a now absent co-defendant has pleaded guilty to the offence would unfairly affect the instant trial)
I. 188	The co-defendants never admitted <i>possession</i> of the weapons before they went in (The co-defendants never admitted to have possessed/had the weapons before they went in)
I. 196	their <i>admission</i> would have such a adverse <i>effect</i> on the fairness of the proceedings (if they were admitted it would adversely affect the fairness of the proceedings)
I. 198	He drew no <i>distinction</i> between the offence to which the co-defendants had pleaded guilty and the offence with which the appellant was charged (He did not distinguish between the offence to which the co-defendants had pleaded guilty and the offence with which the appellant was charged)
I. 216	he had the <i>intention</i> that the offence should be carried out (he intended to carry out the offence)
I. 223	the judge is drawing no <i>distinction</i> between the two types aggravated burglary (the judge does not distinguish between the two types aggravated burglary)
Lix:	
3766 ord	
883 svære ord	
169 perioder	
A = 23,4	
B = 22,3	
Lix = (A+ B) = 45,7 (svær)	



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England and Wales Court of Appeal (Criminal Division) Decisions

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Neutral Citation Number: [2009] EWCA Crim 1426

Case No: 200902145D5

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM CROWN COURT AT CAMBRIDGE
Mr Recorder Holborn**

Royal Courts of Justice
Strand, London, WC2A 2LL
20/07/2009

B e f o r e :

**LORD JUSTICE SCOTT BAKER
MR JUSTICE KING
and
HIS HONOUR JUDGE MOSS Q.C**

Between:

REGINA

Appellant

- and -

CHRISTOPHER TILLEY

Respondent

**(Transcript of the Handed Down Judgment of
WordWave International Limited
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Tel No: 020 7404 1400, Fax No: 020 7404 1424
Official Shorthand Writers to the Court)**

**Allister Walker (instructed by Department for Work and Pensions) for the Appellant
Angus Bunyan for the Respondent
Hearing date: 16 June 2009**

HTML VERSION OF JUDGMENT

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Lord Justice Scott Baker :

1. The prosecution apply for leave to appeal against a terminating ruling under Section 58 of the Criminal Justice Act 2003. We grant that leave.
2. The appeal arises in this way. Christopher Tilley (to whom we shall refer as the defendant) and Nicola Tilley face trial in the Crown Court at Cambridge. The indictment contains seven counts relating to fraudulent claims for social security benefits. Five of the counts are against Nicola Tilley and allege false representations to obtain benefit or failing to notify a change of circumstances that she knew would affect her entitlement to benefit. These are not the subject of this appeal. Counts two and four, which are the subject of this appeal, are against the defendant and allege offences under S.111A(1B) of the Social Security Administration Act 1992, as amended.
3. The statement of offence in each case is "causing or allowing another to fail to give a prompt notification of a change of circumstances." The particulars of offence in count two read:

"Christopher Tilley, between 1st January 2002 and 2nd March 2007, dishonestly caused or allowed Nicola Tilley to fail to give a prompt notification to the Department for Work and Pensions in the prescribed manner of a change of circumstances that he knew would affect Nicola Tilley's entitlement to Income Support, namely that he and Nicola Tilley were maintaining a common household."

The particulars in count four are similar, but the end date is 11 May 2007 rather than 2 March 2007, the person to be notified is the Bedford Borough Council rather than the Department for Work and Pensions and the benefit is housing benefit and council tax benefit rather than income support.

4. It was agreed by both sides in the Crown Court that rather than empanel a jury and call what was effectively agreed evidence, Mr Recorder Holborn should hear argument on the basis of agreed facts and give his ruling on the point of law which is now the subject of this appeal. In short the issue was and is the meaning of the word "allows" in s.111A(1B) and whether it requires in this case any positive act on the part of the defendant for the offence to be committed.
5. The Recorder said in his ruling that the substantive issue was the construction of the word "allows"; first what the Crown has to show and secondly whether on the agreed facts there was sufficient evidence to go to the jury. He accepted the reality was that the defendant did nothing in terms of any positive act towards the commission of the offence with which he was charged. He said, "perhaps turning a blind eye, he did nothing".

6. He concluded that the word "allows," in the absence of any further assistance in the statute by way of a duty imposed by Parliament, requires the Crown to prove that the defendant did something rather than just stood back and did nothing. There was, he said no evidence that the defendant did anything and that the Crown was in effect, asking him to read words into the statute that were not there. He said that in the absence of a clear expressed intention Parliament cannot have, in these circumstances, intended to impose criminal liability on an individual for a failure to act.
7. It is common ground that the Recorder's decision is a terminating ruling with the meaning of s.58 of the Criminal Justice Act 2003.
8. The undisputed facts are these. The defendant and Nicola Tilley maintain a common household. They are living together as man and wife and at least some of the defendant's wages are paid into a bank account in which some of Nicola Tilley's benefit is paid. The account is in her name. The defendant was said to be living rent free although there are no details about the ownership of the property in which they are living.
9. S.111A(1B) provides:

"A person shall be guilty of an offence if –

(a) there has been a change of circumstances effecting any entitlement of another person to any benefit or other payment or advantage under any provision of the relevant social security legislation;

(b) the change is not a change that is excluded by regulations from the changes that are required to be notified;

(c) he knows that the change effects an entitlement of that other person to such a benefit or other payment or advantage;
and

(d) he dishonestly causes or allows that other person to fail to give a prompt notification of that change in the prescribed manner to the prescribed person."

10. As the Recorder observed, four things have to be proved:

i) A change of circumstances effecting any entitlement of another person to any benefit. That is accepted in the present case.

ii) That the change is not a change that is excluded by regulations from the changes that are required to be notified. It is not suggested that the changes in this case are excluded by the regulations.

iii) That the defendant knows that the change affects an entitlement of that other person to such benefit or other payment or advantage. It is accepted that this too is met.

iv) That the defendant dishonestly causes or allows that other person to fail to give a prompt notification of that change in the prescribed manner to the prescribed person. There is no evidence that the defendant *caused* the failure on the part of Nicola Tilley and during the course of the

hearing below it was agreed that the words "caused or" should be deleted from the particulars of Counts two and four. The focus was therefore on the meaning of dishonestly allowing Nicola Tilley to fail to give the necessary prompt notification.

11. It is necessary to say a word about the structure of the social security fraud legislation. Section 16 of the Social Security Fraud Act 2001 ("the 2001 Act"), which is headed: "Offence of failing to notify a change of circumstances," brought new provisions into the Social Security Administration Act 1992 ("the 1992 Act"). Until the Social Security Administration (Fraud) Act 1997 ("the 1997 Act") the only specific offence relating to social security fraud was the summary offence of obtaining benefit by making a false statement or producing a false document (section 112 of the 1992 Act). The 1997 Act created a new offence, triable either way, of dishonestly making a false statement or producing a false document with a view to obtaining benefit (section 13 inserting section 111A of the 1992 Act). The new legislation also included offences of omission as well as commission e.g. dishonestly failing to report a change of circumstances (section 111A(1)(c)). This, according to the note in Current Law Statutes [2001] chapters 1 – 19, 11 – 31, was designed primarily to deal with claimants paid benefit by direct credit to their bank or building society account. In such cases there would be no signature of the claimant on which to base a prosecution for a false claim. The 1997 Act also inserted a parallel summary offence into the 1992 Act, (section 14 of the 1997 Act amending section 112 of the 1992 Act). That, however, was not end of the matter. It did not prove workable to define offences in terms of failing to comply with requirements under regulations. The 2001 Act introduced a new approach in defining offences as failing to report changes in circumstances affecting entitlement to benefit rather than failing to comply with requirements under regulations. That is the underlying concept that we are dealing with the present case. Section 16(2) of the 2001 Act inserted seven new subsections into section 111 of the 1992 Act as previously amended.
12. Section 111A(1A) is the reformulation of the offence of dishonestly failing to notify a relevant change of circumstances. The offence is committed when the claimant knows that a change affects benefit entitlement and dishonestly fails to give prompt notification of that change.
13. Section 111A(1B), with which the present case is directly concerned, is the reformulation of the offence of dishonestly causing or allowing another person to fail to notify a relevant change in circumstances. An example of the kind of situation this subsection is obviously designed to catch is where a claimant is in receipt of unemployed job seekers' allowance and has a partner in part time work and the latter's earnings increase but he does not tell the claimant. The change of circumstances in the present case is not however something that is unknown to the claimant; it is that she and the defendant are living in a common household, a fact of which both will be equally aware.
14. It is, we think, worth looking at the predecessor to s.111A(1B) to see how it was framed as this suggests that Parliament was not intending to extend the ambit of the liability of persons other than the recipient of the benefit, rather it was reformulating the offence in terms that were easier to establish in a criminal court. S.111A of the Social Security Administration Act as amended read:
 - i) If a person dishonestly –
 - a) Makes a false statement or representation;
 - b) Produces or furnishes, or causes or allows to be produced or furnished, any document or information which is false in a material particular;

- c) fails to notify a change of circumstance which regulations require him to notify; or
- d) causes or allows another person to fail to notify a change of circumstances which such regulations require the other person to notify with a view to obtaining any benefit or other payment or advantage under the social security legislation (whether for himself or for some other person),

he shall be guilty of an offence.

15. It will thus be apparent that the concept of dishonestly causing or allowing appeared in the previous legislation, not only in relation to the type of situation with which the present case is concerned but also in relation to producing a false document or information.
16. Section 111A(1C) and (1D) extend the ambit of the offence of dishonestly failing to notify a change in circumstances to third parties who have a right to receive payment of benefit on behalf of a claimant (e.g. appointees). Section 111A(1E) extends the third party offence of dishonestly causing or allowing a failure on the part of the claimant whose responsibility it is to notify the change of circumstances (see subsection (1B)) to the types of situation envisaged in subsection (1C) i.e. where somebody other than the claimant has the right to receive payments of benefit. It is unnecessary for present purposes to recite the remaining new subsections.
17. It is to be noted that the concept of "dishonestly causing or allowing," apart from appearing in the section under consideration and its predecessor, also appears in s.111A itself and s.111A(1E)(c) as does a dishonest failure in s.111(1D)(c).
18. The primary obligation to give prompt notification of a change of circumstances is on the person whose entitlement to benefit is liable to be reduced, in this case Nicola Tilley. Subsection 111A(1B) places on a third party, in this case the defendant, a secondary obligation which he owes not to the authority, but to the recipient of the benefit, in this case Nicola Tilley. It is an offence if he dishonestly causes or allows her to fail to give the appropriate notification.
19. But what is the extent of the obligation on him? Her obligation is to report a change of circumstances. His obligation is, in a sense, a negative one i.e. not to cause or allow her to fail in her obligation. Subsection 111A(1B) says nothing about the relationship between the person entitled to the benefit and the third party. Ordinarily, we imagine there would be likely to be some relationship between the two as, for example in the present case, living in the same household. But the subsection on its face does not require this.
20. To what kind of change of circumstances is s.111A(1B) directed? The answer is in subsections (b) and (c); it is any change that is not excluded from those required to be notified, and one which the third party knows affects the other person's entitlement. It is not limited to a change in the circumstance just of the third party on the one hand or just of the claimant on the other.
21. The position seems to us to be relatively straightforward where it is the third party's circumstances that have changed and this change affects the claimant's benefit. If the third party leaves the claimant unaware of the change so that the third party does not report it he is plainly allowing the third party not to give notification of the change and if he does so dishonestly he is guilty of an offence under s.111A(1B). He has the means to ensure she does not report the change by not giving her the relevant information e.g. that his wages have increased.
22. The position is more difficult where the change of circumstances is something of which the claimant is aware, without the need for the third party to tell her. Here the claimant's obligation to

report already exists without the necessity for the third party to tell her anything. In the present case Nicola Tilley's own circumstances were changed and changed, so it is alleged, to her knowledge because she was maintaining a common household with the respondent.

23. It is easy to envisage circumstances in which someone in the shoes of the defendant would be guilty of aiding and abetting Nicola Tilley's dishonest failure to give a prompt notification of a change of circumstances to the authorities. Why, therefore, is the s.111A(1B) offence necessary where the relevant information is already in the hands of the claimant? Nicola Tilley was, so far as we are aware, perfectly well able to tell the authorities she was living in a common household with the defendant.
24. One possibility is that Parliament intended to criminalise the conduct of someone who is well aware that a change has occurred that ought to be notified to the authorities and yet stands by and does nothing perhaps, as here, benefiting indirectly from the non-disclosure. If this is the correct interpretation, how can the section be construed so as not to criminalise the conduct of say a neighbour who has no relationship with the claimant and yet knows that a change in circumstances has occurred that ought to be reported? What the legislation does not do is to require anyone other than the recipient of the benefit to notify the authorities. The answer may be that you cannot be said to allow something that you have no means of preventing. That poses the question what could the defendant have done to get Nicola Tilley to report the change?
25. Another possibility is that s.111A(1B) is only directed towards a change of circumstances of which the third party, but not the claimant herself, is aware. However that is not the way in which the subsection is phrased and to construe it in this way would in our view do violence to the language used.
26. Ordinarily a person is not guilty of a criminal offence if he merely stands by with the knowledge that a third party is committing an offence. The question that seems to us to arise in the present case is whether, in the context of a criminal non notification by the recipient of the benefit, Parliament intended to make someone in the shoes of the defendant criminally liable in circumstances where his conduct falls short of aiding and abetting an offence by the person primarily obliged to notify a change of circumstances. It can of course be said that the position is rather different where two people are living in a common household. They, rather than the authority paying the benefit, are likely to be the people who know about a material change of circumstances and it is hardly surprising that Parliament should impose criminal liability on those who deliberately fail to see that the authority obtains the relevant information. Especially, it can be said, where no offence is committed by the third party under the section unless he acts dishonestly. A case can therefore be made out that if he dishonestly does nothing and the other criteria in the subsection are met he should be criminally liable for 'allowing' the claimant to fail to give notification of the change.
27. In focussing on the meaning of "allows" it is necessary to consider whether the defendant should have done something, and if so what. The judge concluded that turning a blind eye and doing nothing was not enough to establish criminal liability.
28. Mr Walker, for the appellant, submits that 'allows' necessitates the pre-requisite knowledge and an ability to prevent, falling short of actively preventing. He argues that there is an obligation on the defendant to seek to prevent a failure to notify and that in this regard the relationship between the defendant and the recipient of the benefit is crucial. Whereas many people have the requisite knowledge, only a limited number will be in a position to prevent a failure to report a change of circumstances. Whether in any case the defendant is in such a position is a question of fact. If a

third party in the shoes of the defendant is in a position to prevent the failure and does nothing about it there is a prima facie case of "allowing". The question therefore is: what should the defendant have done?

29. The judge put this question to counsel for the Crown asking what steps the defendant should have taken to avoid criminal liability. Counsel gave the following examples, emphasising that they were only examples:
 - i) Report his wife to the authorities;
 - ii) Instruct her to stop or withdraw from the household;
 - iii) Set up his own bank account.
30. The first suggestion of reporting Nicola Tilley to the authorities is not what the subsection is requires, and it would have been very simple for Parliament to have said so if this was what was intended. Indeed it is precisely what the recipient of the benefit (Nicola Tilley) is required to do when she knows of a change of circumstances effecting her entitlement. Parliament has deliberately under s.111A(1B)(d) focussed the third party's obligation not on requiring the third party to report a change to the authorities but on getting the recipient to do so.
31. Instructing Nicola Tilley to stop receiving an amount to which she is not entitled implies that the respondent has in some way control over her. The respondent might persuade but could not compel. We do not think it would be appropriate for the law to expect him to withdraw from the household in circumstances where, if he stayed, he would not be aiding and abetting any offence by her. Finally, we cannot see that setting up his own bank account would be of any relevance or make any difference. Accordingly, no appropriate step that the defendant should take was advanced to the judge or to us other than trying to persuade Nicola Tilley to comply with her legal duty.
32. We turn back to the words in the subsection "dishonestly causes or allows." The emphasis in the present case is, of course, on the word "allows" but it seems to us that the four words must be considered together. "Allows" plainly means something less than "causes". The judge said it required some positive act on the part of the respondent, but it is difficult to envisage a category of positive acts that would not fall within the description "causes." He noted the appellant's submission that "allows" should be construed as a failure to act or at least so as to include a failure to act, but he pointed out the Crown would normally be expected to prove an actus reus and mens rea. It is not a criminal offence, for example, to stand by and do nothing to prevent an assault or the continuation of an assault. That, however, is not a very helpful analogy because the defendant in the present case must have been dishonest.
33. The Recorder considered s.5 of the Domestic Violence, Crime and Victims Act 2004 which creates the offence of causing or allowing the death of a child. The Crown relied on this as an example of Parliament imposing criminal liability on someone who has failed to act. That legislation was, however, enacted in order to deal with a very specific problem namely where a child has died in a household in which one of two adults caused the death but it was impossible on the evidence to say which. As the judge pointed out, s.5(1)(d) set out with some precision the circumstances in which a defendant would be liable if it was not his act that caused the death. No assistance is therefore to be obtained from the meaning of "allows" in this Act.
34. We were also referred to *Vehicle Inspectorate v Nuttall* [1999] 1 WLR 629. That case was concerned with the owner of a coach business permitting drivers to exceed the maximum number of driving hours or distance. The court was concerned with s.96(11A) of the Transport Act 1968 as

amended, and the words "caused or permitted the contravention". It was held that permitting in the section meant failing to take reasonable steps to prevent contravention by drivers. Lord Steyn said at 635C:

"It is sufficient to consider the matter generally in regard to what constitutes the prohibited conduct *actus reus* and what is required to be proved in respect of the mental element *mens rea*. I deal first with the prohibited conduct. Section 96(11A) prohibits the employer of a driver from "causing" or "permitting" a driver to contravene the requirements of the applicable Community rules. Depending on the context the word "permit" is capable of bearing, on the one hand, a narrow meaning of assenting to or agreeing to or, on the other hand, a wider meaning of not taking reasonable steps to prevent something in one's power. But I am persuaded that the second or wider meaning best matches the context."

Lord Hobhouse of Woodborough said at 639G:

"This offence of permitting is a crime of omission which arises from the duty to act and involves the failure to perform that duty. What actual conduct will amount to the offence of permitting will be a question of fact depending on the circumstances of the particular case."

35. There are important differences between *Nuttall* and the present case. *Nuttall* was concerned with an employer's duty vis a vis the actions of his employees. Secondly, the *mens rea* in the present case requires that the defendant acts dishonestly. The material word in, the present case is 'allows' rather than 'permits'. Like 'permits' 'allows' is a word capable of a range of meanings and it has to take its meaning from its context, we do not find *Nuttall* of any assistance in the present case.
36. *Crabtree v Fern Spinning Co. Limited* (1901) 85 LT 549 was a case involving safety at work under the Factory and Workshop Act 1985. Darling J said at p552 it seemed to him that a man could not be said to allow something of which he is unaware or that which he cannot prevent. A little later he said that the defendants did not sanction or permit what had occurred. These observations seem to us to be a helpful starting point. Knowledge of a change that affects entitlement is a specific element of the offence in the present case (see s.111A(1B)(c)) and it is not in issue that the defendant had such knowledge. But was there anything the defendant could have done to make Nicola Tilley discharge her duty under s.111(1A), or to put it the other way round to prevent her from failing to give a prompt notification to the authorities of the change? The evidence does not suggest that there was. The position would be otherwise if the defendant had the means to ensure that Nicola Tilley did not report the change, for example by failing to tell her about a change in his circumstances that affected her benefit. But that is not this case.
37. The word 'causes' as we have said has been removed in the present case, and so we are looking at 'dishonestly allows'. The word 'allows' must have some meaning that is less than 'causes': so, is doing nothing sufficient, or is something more required that nevertheless falls short of "causing"?
38. It may be said that the word 'allows' in the present section imports the approval or sanction of the defendant. The appellant submits the mere fact that they are living together in the same household is sufficient, because the offence requires the mental element of dishonesty and dishonesty can be implied from the circumstances.
39. We think the critical question is whether there was evidence of anything the defendant could have done that would have prevented Nicola Tilley's failure to give notice, bearing in mind that the

obligation to give prompt notification was hers not his. No such evidence was before the court on the agreed facts.

40. It was apparently agreed before the Recorder that it was not appropriate to look at Hansard and no reference to Hansard was made in argument in the appeal before us. However, after the conclusion of the hearing we invited written submissions from the parties on the appropriateness of obtaining assistance from Hansard as to the true construction of the section. In *Thet v Director of Public Prosecutions* [2007] 1 WLR 2022 Lord Phillips of Worth Matravers C.J said at p. 227 para 15:

"I would, however, question the use of *Pepper v Hart* [1993] AC 593 in the context of a criminal prosecution. Mr Chalk was not able to refer the court to any case in which *Pepper v Hart* has been used in that context. If a criminal statute is ambiguous, I would question whether it is appropriate by the use of *Pepper v Hart* to extend the ambit of the statute so as to impose criminal liability upon a defendant where, in the absence of the Parliamentary material, the court would not do so. It seems to me at least arguable that if a criminal statute is ambiguous, the defendant should have the benefit of the ambiguity."

More recently in *R v JTB* [2009] UK HL 20 the House of Lords put weight on Parliamentary materials in concluding that Section 34 of the Crime and Disorder Act 1998 abolished not merely the presumption but the defence of *doli incapax*. Both Lord Phillips and Lord Brown of Eaton-Under-Heywood referred to the comparative rarity of utilising the *Pepper v Hart* principle.

41. We are quite satisfied that the word "allows" in s.111A(1B)(d) is not immediately clear in its meaning and while we agree that it would be inappropriate to use Ministerial statements in Hansard to conclude a wide meaning and thereby expose the defendant to criminal liability when on a narrower view he would not be liable, we think that in this case that is not the position. Observations by Baroness Hollis during the passage of the Bill through the House of Lords lend some support to the defendant's submissions. On 6 February 2001 see Hansard HL Vol 621 Col 1116 she said that:

"The liability occurs when the third party knows that the change affects benefit and causes or allows the beneficiary not to report the change. Third parties are not responsible if they do nothing and the claimant fails to report it."

This answer was made in response to a question whether professionals could be liable if they did not pass on information and we have some doubt therefore whether the Baroness had in mind circumstances such as those in the present case. She came back however to the point on 27 February 2001 (Hansard Vol 622 Col 1152) when she said:

"Finally, let me point out once more for the record that the offence in Clause 15 relating to "causing or allowing" a claimant to fail to notify a change of circumstances does not include third parties who merely learn of a change. To become guilty of an offence, a third party would have to be active in some way in the failure."

This seems to us to support our view that the respondent is not criminally liable in the present case on the basis that he simply did nothing and Nicola Tilley failed to report the change. He would, as the Baroness said, have to have been active in some way in the failure and there is no evidence that he was.

42. The actus reus of the offences alleged against the respondent in each of the two offences is causing or (as the charge now stands) allowing Nicola Tilley to fail to give a prompt notification to the

authorities of a change of circumstances that he knew that would effect her entitlement. The mens rea is doing so dishonestly. The actus reus is therefore allowing an act of omission by a third party. Such an actus reus is not readily to be found in the criminal law. In deciding what must be proved to establish "allowing" on the part of the respondent the wording of the subsection is important. Dishonestly causing or allowing indicates that there are two ways of committing the offence, but that in either case the respondent must have acted dishonestly. On any view "allowing" must mean something less than "causing". As was pointed out by Cussen J in *Gilbert v Gulliver* [1918] VLR 185, 189 – 190 the meaning of the word "allow" may vary according to the circumstances and the class of enactment in which it is found.

Conclusion

43. The change of circumstances relied on in the present case is that the defendant and Nicola Tilley were maintaining a common household. The primary obligation to report this was on Nicola Tilley as the recipient of the benefit (see s.111A(1A)). It is not suggested that the respondent did anything that "caused" her not to report this and if he had done any such thing he would probably be guilty of aiding and abetting an offence by her. In a case, as here, where Nicola Tilley was as aware as the defendant of the circumstances that needed to be reported in our view for the defendant to be liable under s.111A(1B) there had to be some action that he could have taken that would have resulted in Nicola Tilley discharging her obligation to report. As the agreed facts do not disclose anything that he could appropriately have done we think the judge was correct in the conclusions that he reached. This is not one of those cases in which the defendant unbeknown to the recipient of benefit is aware of circumstances that he knows affects the recipient's entitlement. Accordingly the appeal is dismissed and the terminating ruling stands. We direct the defendant's acquittal under s.61(3) of the Criminal Justice Act 2003.

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16 June 2009 Tilley	
passiver:	
I. 25	Allister Walker (instructed by Department for Work and Pensions)
I. 38	S.111A(1B) of the Social Security Administration Act 1992, as amended
I. 50	the person to be notified is the Bedford Borough Council rather than the Department for Work and Pensions
I. 53	It was agreed by both sides in the Crown Court that...
I. 54	what was effectively agreed evidence,
I. 57	for the offence to be committed
I. 62	the commission of the offence with which he was charged
I. 65	by way of a duty imposed by Parliament,
I. 74	at least some of the defendant's wages are paid into a bank account
I. 75	a bank account in which some of Nicola Tilley's benefit is paid
I. 76	The defendant was said to be living rent free
I. 80	there has been a change of circumstances
I. 84	the change is not a change that is excluded by regulations
I. 85	the changes that are required to be notified
I. 91	four things have to be proved
I. 93	That is accepted in the present case
I. 94	a change that is excluded by regulations
I. 95	It is not suggested that...
I. 95	the changes in this case are excluded by the regulations
I. 98	It is accepted that...
I. 98	this too is met
I. 102	it was agreed that...
I. 103	the words "caused or" should be deleted from the particulars
I. 107	Section 16 of the Social Security Fraud Act 2001 ("the 2001 Act"), which is headed...
I. 118	This...was designed primarily to deal with...
I. 127	section 111 of the 1992 Act as previously amended
I. 130	The offence is committed
I. 135	An example of the kind of situation this subsection is obviously designed to catch
I. 141	how it was framed
I. 145	S.111A of the Social Security Administration Act as amended
I. 148	allows to be produced or furnished, any document or information which is false
I. 164	the types of situation envisaged in subsection (1C)
I. 168	It is to be noted that...
I. 172	the person whose entitlement to benefit is liable to be reduced
I. 180	the person entitled to the benefit
I. 183	To what kind of change of circumstances is s.111A(1B) directed?
I. 184	it is any change that is not excluded
I. 184	those required
I. 184	to be notified
I. 198	Nicola Tilley's own circumstances were changed
I. 199	it is alleged
I. 210	how can the section be construed so
I. 217	s.111A(1B) is only directed towards a change of circumstances
I. 219	the way in which the subsection is phrased

I. 226	the person primarily obliged to notify a change of circumstances
I. 226	It can of course be said that...
I. 231	it can be said
I. 231	where no offence is committed by the third party
I. 232	A case can therefore be made out
I. 233	the other criteria in the subsection are met
I. 255	if this was what was intended
I. 256	what the recipient of the benefit (Nicola Tilley) is required to do
I. 261	an amount to which she is not entitled
I. 266	no appropriate step that the defendant should take was advanced to the judge
I. 274	"allows" should be construed as a failure to act
I. 275	the Crown would normally be expected to prove an actus reus and mens rea
I. 283	That legislation was, however, enacted
I. 287	No assistance is therefore to be obtained from the meaning of "allows"
I. 289	We were also referred to <i>Vehicle Inspectorate v Nuttall</i> [1999] 1WLR 629
I. 291	The court was concerned with s.96(11A)
I. 291	s.96(11A) of the Transport Act 1968 as amended
I. 293	It was held that...
I. 296	what is required
I. 297	to be proved
I. 312	<i>Nuttall</i> was concerned with an employer's duty
I. 320	a man could not be said to allow something of which he is unaware
I. 351	The word 'causes'...has been removed in the present case
I. 353	is something more required
I. 335	It may be said that...
I. 338	dishonesty can be implied from the circumstances
I. 343	It was apparently agreed
I. 344	no reference to Hansard was made in argument
I. 351	any case in which <i>Pepper v Hart</i> has been used
I. 375	This answer was made in response to a question
I. 388	the offences alleged against the respondent
I. 392	Such an actus reus is not readily to be found in the criminal law
I. 393	what must be proved to establish "allowing"
I. 397	As was pointed out by Cussen J
I. 399	the class of enactment in which it is found
I. 401	The change of circumstances relied on
I. 403	It is not suggested that...
I. 406	the circumstances that needed to be reported
I. 413	the appeal is dismissed
Adverbialer:	
I. 40 (initial)	The statement of offence <i>in each case</i> is "causing or allowing another to fail to give a prompt notification of a change of circumstances."
I. 42 (medial)	Christopher Tilley, <i>between 1st January 2002 and 2nd March 2007</i> , dishonestly caused or allowed Nicola Tilley to fail to give a prompt notification
I. 49 (medial)	The particulars <i>in count</i> four are similar
I. 53 (initial)	<i>rather than empanel a jury and call what was effectively agreed evidence</i> , Mr Recorder Holborn should hear argument on the basis of agreed facts
I. 57 (medial)	it requires <i>in this case</i> any positive act
I. 59 (medial)	The Recorder said <i>in his ruling</i> that the substantive issue was the

	construction of the word "allows"
I. 60 (initial)	whether <i>on the agreed facts</i> there was sufficient evidence to go to the jury
I. 64 (medial)	the word "allows," <i>in the absence of any further assistance in the statute by way of a duty imposed by Parliament</i> , requires the Crown to prove that...
I. 68 (initial)	<i>in the absence of a clear expressed intention</i> Parliament cannot have...intended to impose criminal liability...
I. 69 (medial)	Parliament cannot have, <i>in these circumstances</i> , intended to impose criminal liability on an individual for a failure to act
I. 91 (initial)	<i>As the Recorder observed</i> , four things have to be proved
I. 95 (medial)	It is not suggested that the changes <i>in this case</i> are excluded by the regulations
I. 102 (initial)	<i>during the course of the hearing below</i> it was agreed that the words "caused or" should be deleted from the particulars
I. 109 (initial)	<i>Until the Social Security Administration (Fraud) Act 1997 ("the 1997 Act")</i> the only specific offence relating to social security fraud was the summary offence of obtaining benefit by making a false statement or producing a false document
I. 117 (medial)	This, <i>according to the note in Current Law Statutes [2001] chapters 1 – 19, 11 – 31</i> , was designed primarily to deal with claimants paid benefit
I. 119 (initial)	<i>In such cases</i> there would be no signature of the claimant
I. 138 (medial)	The change of circumstances <i>in the present case</i> is not however something that is unknown to the claimant
I. 146 (initial)	<i>If a person dishonestly makes a false statement or representation; Produces or furnishes, or causes or allows to be produced or furnished, any document or information which is false in a material particular; fails to notify a change of circumstance which regulations require him to notify; or causes or allows another person to fail to notify a change of circumstances which such regulations require the other person to notify with a view to obtaining any benefit or other payment or advantage under the social security legislation (whether for himself or for some other person),</i> he shall be guilty of an offence.
I. 168 (medial)	the concept of "dishonestly causing or allowing," <i>apart from appearing in the section under consideration and its predecessor</i> , also appears in s.111A
I. 173 (medial)	Subsection 111A(1B) places on a third party, <i>in this case the defendant</i> , a secondary obligation
I. 178 (medial)	His obligation is, <i>in a sense</i> , a negative one
I. 189 (initial)	<i>If the third party leaves the claimant unaware of the change so that the third party does not report it</i> he is plainly allowing the third party not to give notification
I. 198 (initial)	<i>In the present case</i> Nicola Tilley's own circumstances were changed
I. 205 (medial)	Nicola Tilley was, <i>so far as we are aware</i> , perfectly well able to tell the authorities she was living in a common household with the defendant
I. 210 (initial)	<i>If this is the correct interpretation</i> , how can the section be construed so as not to criminalise the conduct of...
I. 218 (medial)	a change of circumstances of which the third party, <i>but not the claimant herself</i> , is aware
I. 223 (medial)	The question that seems to us to arise <i>in the present case</i> is whether...
I. 223 (medial)	The question that seems to us to arise in the present case is whether, <i>in the context of a criminal non notification by the recipient of the benefit</i> , Parliament intended to make someone in the shoes of the defendant criminally liable
I. 228 (medial)	They, <i>rather than the authority paying the benefit</i> , are likely to be the people who know about a material change of circumstances
I. 233 (initial)	<i>if he dishonestly does nothing and the other criteria in the subsection are met</i> he should be criminally liable

I. 236 (initial)	<i>In focussing on the meaning of “allows” it is necessary to consider whether the defendant should have done something, and if so what.</i>
I. 243 (initial)	<i>Whereas many people have the requisite knowledge, only a limited number will be in a position to prevent a failure to report a change of circumstances</i>
I. 244 (initial)	<i>Whether in any case the defendant is in such a position is a question of fact</i>
I. 245 (initial)	<i>If a third party in the shoes of the defendant is in a position to prevent the failure and does nothing about it there is a prima facie case of “allowing”.</i>
I. 264 (initial)	<i>in circumstances where, if he stayed, he would not be aiding and abetting any offence by her.</i>
I. 270 (medial)	<i>The emphasis in the present case is, of course, on the word “allows”</i>
I. 286 (initial)	<i>As the judge pointed out, s.5(1)(d) set out with some precision the circumstances</i>
I. 286 (medial)	<i>s.5(1)(d) set out with some precision the circumstances in which a defendant would be liable</i>
I. 293 (medial)	<i>permitting in the section meant failing to take reasonable steps to prevent contravention by drivers</i>
I. 301 (initial)	<i>Depending on the context the word “permit” is capable of bearing, on the one hand, a narrow meaning of assenting to...</i>
I. 315 (medial)	<i>The material word in, the present case is ‘allows’ rather than ‘permits’</i>
I. 321 (initial)	<i>A little later he said that the defendants did not sanction or permit what had occurred</i>
I. 331 (medial)	<i>The word ‘causes’ as we have said has been removed in the present case</i>
I. 335 (medial)	<i>It may be said that the word ‘allows’ in the present section imports the approval or sanction of the defendant</i>
I. 344 (initial)	<i>However, after the conclusion of the hearing we invited written submissions from the parties</i>
I. 347 (initial)	<i>In Thet v Director of Public Prosecutions [2007] 1 WLR 2022. Lord Phillips of Worth Matravers C.J said</i>
I. 352 (initial)	<i>If a criminal statute is ambiguous, I would question whether...</i>
I. 353 (medial)	<i>whether it is appropriate by the use of Pepper v Hart to extend the ambit of the statute</i>
I. 355 (initial)	<i>in the absence of the Parliamentary material, the court would not do so.</i>
I. 357 (initial)	<i>if a criminal statute is ambiguous, the defendant should have the benefit of the ambiguity.</i>
I. 359 (initial)	<i>More recently in R v JTB [2009] UK HL 20 the House of Lords put weight on Parliamentary materials</i>
I. 365 (initial)	<i>while we agree that it would be inappropriate to use Ministerial statements in Hansard to conclude a wide meaning and thereby expose the defendant to criminal liability when on a narrower view he would not be liable, we think that in this case that is not the position</i>
I. 368 (medial)	<i>Observations by Baroness Hollis during the passage of the Bill through the House of Lords lend some support to the defendant’s submissions.</i>
I. 369 (initial)	<i>On 6 February 2001 see Hansard HL Vol 621 Col 1116 she said that:</i>
I. 382 (initial)	<i>To become guilty of an offence, a third party would have to be active in some way in the failure</i>
I. 386 (medial)	<i>He would, as the Baroness said, have to have been active in some way</i>
I. 388 (medial)	<i>The actus reus of the offences alleged against the respondent in each of the two offences is causing or (as the charge now stands) allowing Nicola Tilley to fail to give a prompt notification</i>
I. 393 (initial)	<i>In deciding what must be proved to establish “allowing” on the part of the respondent the wording of the subsection is important.</i>
I. 395 (initial)	<i>in either case the respondent must have acted dishonestly</i>
I. 397 (initial)	<i>As was pointed out by Cussen J in Gilbert v Gulliver [1918] VLR 185, 189 – 190 the meaning of the word “allow” may vary</i>
I. 401 (medial)	<i>The change of circumstances relied on in the present case is that the</i>

	defendant and Nicola Tilley were maintaining a common household
I. 405 (initial)	<i>In a case, as here, where Nicola Tilley was as aware as the defendant of the circumstances that needed to be reported in our view for the defendant to be liable under s.111A(1B) there had to be some action that he could have taken</i>
I. 409 (initial)	<i>As the agreed facts do not disclose anything that he could appropriately have done we think the judge was correct</i>
Sammensatte præpositioner:	
I. 62	in terms of
I. 65	by way of
I. 123	in terms of
I. 158	in relation to
I. 159	in relation to
I. 161	on behalf of
I. 283	in order to
I. 295	in regard to
I. 297	in respect of
Komplekse substantivsyntagmer:	
I. 32	Christopher Tilley (to whom we shall refer as the defendant)
I. 33	seven counts relating to fraudulent claims for social security benefits
I. 35	a change of circumstances that she knew would affect her entitlement to benefit
I. 37	Counts two and four, which are the subject of this appeal,
I. 45	a change of circumstances that he knew would affect Nicola Tilley's entitlement to Income Support, namely that he and Nicola Tilley were maintaining a common household
I. 55	the point of law which is now the subject of this appeal
I. 57	any positive act on the part of the defendant for the offence to be committed
I. 62	terms of any positive act towards the commission of the offence with which he was charged
I. 71	a terminating ruling with the meaning of s.58 of the Criminal Justice Act 2003
I. 76	No details about the ownership of the property in which they are living
I. 80	a change of circumstances effecting any entitlement of another person to any benefit or other payment or advantage under any provision of the relevant social security legislation
I. 84	a change that is excluded by regulations from the changes that are required to be notified
I. 92	A change of circumstances effecting any entitlement of another person to any benefit
I. 94	a change that is excluded by regulations from the changes that are required to be notified
I. 104	the meaning of dishonestly allowing Nicola Tilley to fail to give the necessary prompt notification
I. 106	the structure of the social security fraud legislation
I. 107	Social Security Fraud Act 2001 ("the 2001 Act"), which is headed: "Offence of failing to notify a change of circumstances,"
I. 110	the only specific offence relating to social security fraud
I. 111	the summary offence of obtaining benefit by making a false statement or producing a false document
I. 113	a new offence, triable either way, of dishonestly making a false statement or

	producing a false document with a view to obtaining benefit
I. 118	claimants paid benefit by direct credit to their bank or building society account
I. 119	no signature of the claimant on which to base a prosecution for a false claim
I. 124	a new approach in defining offences as failing to report changes in circumstances affecting entitlement to benefit
I. 126	the underlying concept that we are dealing with the present case
I. 129	the reformulation of the offence of dishonestly failing to notify a relevant change of circumstances.
I. 133	Section 111A(1B), with which the present case is directly concerned,
I. 133	the reformulation of the offence of dishonestly causing or allowing another person to fail to notify a relevant change in circumstances
I. 135	the kind of situation this subsection is obviously designed to catch
I. 142	the ambit of the liability of persons other than the recipient of the benefit,
I. 149	any document or information which is false in a material particular
I. 150	a change of circumstance which regulations require him to notify
I. 152	a change of circumstances which such regulations require the other person to notify
I. 157	the concept of dishonestly causing or allowing appeared in the previous legislation, not only in relation to the type of situation with which the present case is concerned
I. 160	the ambit of the offence of dishonestly failing to notify a change in circumstances to third parties who have a right to receive payment of benefit on behalf of a claimant
I. 162	the third party offence of dishonestly causing or allowing a failure on the part of the claimant whose responsibility it is to notify the change of circumstances
I. 164	the types of situation envisaged in subsection (1C) i.e. where somebody other than the claimant has the right to receive payments of benefit
I. 171	The primary obligation to give prompt notification of a change of circumstances
I. 171	the person whose entitlement to benefit is liable to be reduced
I. 173	a secondary obligation which he owes not to the authority, but to the recipient of the benefit,
I. 184	any change that is not excluded from those required to be notified,
I. 185	one which the third party knows affects the other person's entitlement
I. 186	a change in the circumstance just of the third party on the one hand or just of the claimant on the other
I. 188	the third party's circumstances that have changed and this change affects the claimant's benefit
I. 201	circumstances in which someone in the shoes of the defendant would be guilty of aiding and abetting Nicola Tilley's dishonest failure to give a prompt notification of a change of circumstances to the authorities
I. 211	the conduct of say a neighbour who has no relationship with the claimant and yet knows that a change in circumstances has occurred that ought to be reported
I. 215	the question what could the defendant have done to get Nicola Tilley to report the change
I. 217	a change of circumstances of which the third party, but not the claimant herself, is aware
I. 221	the knowledge that a third party is committing an offence
I. 223	a criminal non notification by the recipient of the benefit
I. 225	circumstances where his conduct falls short of aiding and abetting an offence by the person primarily obliged to notify a change of circumstances.
I. 228	the people who know about a material change of circumstances
I. 230	those who deliberately fail to see that the authority obtains the relevant

	information
I. 241	An obligation on the defendant to seek to prevent a failure to notify
I. 242	the relationship between the defendant and the recipient of the benefit
I. 254	The first suggestion of reporting Nicola Tilley to the authorities
I. 257	a change of circumstances effecting her entitlement
I. 261	An amount to which she is not entitled
I. 266	No appropriate step that the defendant should take
I. 273	a category of positive acts that would not fall within the description "causes."
I. 280	s.5 of the Domestic Violence, Crime and Victims Act 2004 which creates the offence of causing or allowing the death of a child
I. 282	an example of Parliament imposing criminal liability on someone who has failed to act
I. 284	a household in which one of two adults caused the death
I. 286	the circumstances in which a defendant would be liable
I. 290	the owner of a coach business permitting drivers to exceed the maximum number of driving hours or distance
I. 291	s.96(11A) of the Transport Act 1968 as amended
I. 307	a crime of omission which arises from the duty to act and involves the failure to perform that duty
I. 310	a question of fact depending on the circumstances of the particular case
I. 322	Knowledge of a change that affects entitlement
I. 329	a change in his circumstances that affected her benefit
I. 345	written submissions from the parties on the appropriateness of obtaining assistance from Hansard as to the true construction of the section
I. 362	the comparative rarity of utilising the <i>Pepper v Hart</i> principle
I. 375	response to a question whether professionals could be liable if they did not pass on information
I. 377	circumstances such as those in the present case
I. 379	the offence in Clause 15 relating to "causing or allowing" a claimant to fail to notify a change of circumstances
I. 381	third parties who merely learn of a change
I. 388	The actus reus of the offences alleged against the respondent
I. 390	a change of circumstances that he knew that would effect her entitlement
I. 405	a case, as here, where Nicola Tilley was as aware as the defendant of the circumstances that needed to be reported
	Fagterminologi:
I. 3	Judicature
I. 5	Appeal
I. 16	Appellant
I. 18	Respondent
I. 19	Judgment
I. 26	Hearing
I. 28	Judgment
I. 30	prosecution
I. 32	Appeal
I. 33	Indictment
I. 37	Appeal
I. 37	appeal
I. 38	Offences
I. 41	count
I. 49	the particulars

I. 49	count
I. 56	appeal
I. 59	the recorder
I. 59	ruling
I. 61	jury
I. 65	the Crown
I. 67	the Crown
I. 71	recorder
I. 79	offence
I. 91	recorder
I. 102	hearing
I. 103	the particulars
I. 103	Counts
I. 107	fraud
I. 108	offence
I. 110	fraud
I. 110	offence
I. 111	fraud
I. 113	offence
I. 115	offences
I. 118	claimants
I. 119	claimant
I. 120	prosecution
I. 123	offences
I. 124	offences
I. 128	amended
I. 129	Offence
I. 130	offence
I. 130	claimant
I. 134	offence
I. 136	claimant
I. 138	claimant
I. 139	claimant
I. 142	liability
I. 143	offence
I. 156	offence
I. 160	offence
I. 162	claimant
I. 162	appointees
I. 163	claimant
I. 165	claimant
I. 175	offence
I. 187	claimant
I. 189	claimant's
I. 190	claimant
I. 192	offence
I. 196	claimant
I. 196	claimant's
I. 200	respondent
I. 204	offence

I. 205	claimant
I. 207	criminalise
I. 209	Non-disclosure
I. 210	criminalise
I. 211	claimant
I. 226	offence
I. 234	claimant
I. 248	counsel
I. 249	counsel
I. 262	respondent
I. 262	respondent
I. 263	the law
I. 265	offence
I. 267	Be advanced
I. 272	respondent
I. 274	appellant
I. 274	be construed
I. 275	the Crown
I. 280	recorder
I. 281	offence
I. 281	the Crown
I. 286	to be liable
I. 307	offence
I. 323	offence
I. 336	appellant
I. 337	offence
I. 342	the court
I. 343	recorder
I. 344	appeal
I. 345	hearing
I. 354	statute
I. 356	the court
I. 371	liability
I. 374	claimant
I. 375	to be liable
I. 379	offence
I. 380	claimant
I. 384	respondent
I. 388	offences
I. 388	alleged
I. 388	offences
I. 394	respondent
I. 395	offence
I. 396	respondent
I. 399	enactment
I. 404	respondent
I. 405	offence
I. 406	be liable
I. 414	acquittal

juridiske kollokationer:	
I. 4	court of appeal
I. 30	to apply for leave to appeal
I. 31	to grant leave
I. 33	to face trial
I. 34	fraudulent claims
I. 35	false representation
I. 40	the statement of offence
I. 41	the particulars of offence
I. 53	To empanel a jury
I. 54	call evidence
I. 54	agreed evidence
I. 54	to hear argumentation
I. 55	agreed facts
I. 55	to give a ruling
I. 57	a positive act
I. 58	the offence to be committed
I. 60	agreed facts
I. 62	positive act
I. 62	the commission of an offence
I. 62	to be charged with an offence
I. 69	to impose criminal liability on sby.
I. 71	a terminating ruling
I. 79	to be guilty of...
I. 111	a summary offence
I. 113	to make a false statement
I. 114	to produce a false document
I. 123	failing to comply with
I. 125	failing to comply with
I. 129	dishonestly failing to notify...
I. 144	criminal court
I. 147	to make a false statement
I. 156	to be guilty of...
I. 159	to produce a false document or information
I. 160	dishonestly failing to notify...
I. 161	third parties
I. 162	dishonestly causing or allowing...
I. 168	dishonestly causing or allowing...
I. 170	a dishonest failure
I. 171	primary obligation
I. 173	a third party
I. 173	secondary obligation
I. 175	dishonestly causes or allows
I. 178	a negative obligation
I. 180	a third party
I. 185	the third party
I. 186	the third party
I. 188	the third party's
I. 189	the third party
I. 190	the third party

I. 191	the third party
I. 192	to be guilty of...
I. 196	the third party
I. 202	to be guilty of...
I. 202	aiding and abetting
I. 218	the third party
I. 220	do violence to
I. 221	to be not guilty
I. 221	a criminal offence
I. 222	a third party
I. 222	to commit an offence
I. 223	a criminal non notification
I. 225	criminally liable
I. 225	aiding and abetting
I. 230	to impose criminal liability on sby.
I. 231	to commit an offence
I. 232	to act dishonestly
I. 238	criminal liability
I. 245	a question of fact
I. 245	a third party
I. 246	a prima facie case
I. 249	criminal liability
I. 258	the third party's
I. 259	the third party
I. 264	aiding and abetting
I. 268	legal duty
I. 269	dishonestly causes or allows
I. 272	a positive act
I. 273	positive acts
I. 275	failure to act
I. 275	failure to act
I. 276	actus reus
I. 276	mens rea
I. 276	criminal offence
I. 281	causing or allowing...
I. 282	to impose criminal liability on sby.
I. 282	to fail to act
I. 283	to enact legislation
I. 296	prohibited conduct
I. 296	actus reus
I. 297	the mental element
I. 297	mens rea
I. 298	prohibited conduct
I. 300	the applicable Community rules
I. 307	a crime of omission
I. 308	duty to act
I. 308	failure to preform
I. 314	mens rea
I. 314	to act dishonestly
I. 332	dishonestly allows

I. 337	mental element
I. 347	public prosecutions
I. 350	criminal prosecution
I. 352	a criminal statute
I. 354	to impose criminal liability on sby.
I. 357	criminal statute
I. 361	doli incapax
I. 363	the Pepper v Hart principle
I. 366	criminal liability
I. 367	not to be liable
I. 371	the third party
I. 373	third parties
I. 381	third parties
I. 382	become guilty of an offence
I. 382	a third party
I. 384	to be criminally liable
I. 388	actus reus
I. 389	as the charge now stands
I. 391	mens rea
I. 392	an act of omission
I. 392	a third party
I. 392	actus reus
I. 396	act dishonestly
I. 405	is guilty of
I. 405	aiding and abetting
I. 409	agreed facts
I. 413	the appeal is dismissed
I. 413	the terminating ruling stands
Nominalkonstruktioner :	
I. 36	Five of the counts are against Nicola Tilley and allege false representations to obtain benefit or failing to notify a change of <i>circumstances</i> that she knew would affect her entitlement to benefit (Five of the counts are against Nicola Tilley and allege false representations to obtain benefit or failing to notify that circumstances, which she knew would affect her entitlement to benefit, had changed)
I. 41	causing or allowing another to fail to give a prompt <i>notification</i> of a change of circumstances (causing or allowing another to fail to notify the Department for Work and Pensions promptly of a change of circumstances)
I. 44	Christopher Tilley dishonestly caused or allowed Nicola Tilley to fail to give a prompt <i>notification</i> to the Department for Work and Pensions in the prescribed manner of a change of circumstances (Christopher Tilley dishonestly caused or allowed Nicola Tilley fail to notify the Department for Work and Pensions promptly of a change of circumstances in the prescribed manner)
I. 55	Mr Recorder Holborn should hear argument on the basis of agreed facts and give his <i>ruling</i> on the point of law which is now the subject of this appeal (Mr Recorder Holborn should hear argument on the basis of agreed facts and rule on the point of law which is now the subject of this appeal)
I. 80	there has been a <i>change</i> of circumstances effecting any entitlement of another person to any benefit (circumstances which effects any entitlement of another person to any benefit have changed)

I. 86	he knows that the change effects an <i>entitlement</i> of that other person (he knows that the change effects what that other person is entitled to)
I. 89	he dishonestly causes or allows that other person to fail to give a prompt <i>notification</i> of that change in the prescribed manner to the prescribed person (he dishonestly causes or allows that other person to fail promptly to notify the prescribed person of that change in the prescribed manner)
I. 92	A <i>change</i> of circumstances effecting any <i>entitlement</i> of another person to any benefit (that circumstances effecting what another person was entitled to any benefit had changed)
I. 97	That the defendant knows that the change affects an <i>entitlement</i> of that other person (That the defendant knows that the change affects what that other person is entitled to)
I. 100	That the defendant dishonestly causes or allows that other person to fail to give a prompt notification of that change in the prescribed manner to the prescribed person (That the defendant dishonestly causes or allows that other person to fail promptly to notify the prescribed person of that change in the prescribed manner)
I. 101	There is no evidence that the defendant caused the <i>failure</i> on the part of Nicola Tilley (There is no evidence that the defendant caused Nicola Tilley to fail to...)
I. 104	The <i>focus</i> was therefore on the meaning of dishonestly allowing Nicola Tilley to fail to give the necessary prompt notification (The court therefore focused on the meaning of dishonestly allowing Nicola Tilley to fail to give the necessary prompt notification)
I. 116	dishonestly failing to report a <i>change</i> of circumstances (dishonestly failing to report that circumstances have changed)
I. 123	It did not prove workable to define offences in terms of failing to comply with <i>requirements</i> under regulations (It did not prove workable to define offences in terms of failing to comply with what was required under regulations)
I. 124	defining offences as failing to report <i>changes</i> in circumstances affecting entitlement to benefit rather than failing to comply with <i>requirements</i> under regulations (defining offences as failing to report that circumstances affecting entitlement to benefit have changed rather than failing to comply with what is required under regulations)
I. 131	the claimant knows that a change affects benefit <i>entitlement</i> and dishonestly fails to give prompt <i>notification</i> of that change (the claimant knows that a change affects the benefits that he/she is entitled to and dishonestly fails to notify of that change promptly)
I. 136	a claimant is in <i>receipt</i> of unemployed job seekers' allowance (a claimant is receiving unemployed job seekers' allowance)
I. 137	...and has a partner in part time <i>work</i> (and has a partner who works part time)
I. 150	fails to notify a <i>change</i> of circumstance (fails to notify that circumstances have changed)
I. 152	causes or allows another person to fail to notify a <i>change</i> of circumstances which such regulations require the other person to notify (causes or allows another person to fail to notify to notify that circumstances, which such regulations require the other person to notify, have changed)
I. 161	dishonestly failing to notify a <i>change</i> in circumstances (dishonestly failing to notify that circumstances have changed)
I. 163	dishonestly causing or allowing a <i>failure</i> on the part of the claimant whose responsibility it is to notify the change of circumstances (dishonestly causing or allowing the claimant, whose responsibility it is to notify the change of circumstances, to fail to...)

I. 171	to give prompt <i>notification</i> of a change of circumstances (to notify the Department for Work and Pensions promptly that circumstances have changed)
I. 177	Her <i>obligation</i> is to report a <i>change</i> of circumstances (she is obliged to report that circumstances have changed)
I. 191	he is plainly allowing the third party not to give <i>notification</i> of the change (he is plainly allowing the third party not to notify the authorities of the change)
I. 203	the defendant would be guilty of aiding and abetting Nicola Tilley's dishonest failure to give a prompt <i>notification</i> of a change of circumstances to the authorities (the defendant would be guilty of aiding and abetting Nicola Tilley's dishonest failure to promptly notify the authorities that circumstances had changed)
I. 212	...and yet knows that a <i>change</i> in circumstances has occurred that ought to be reported (...and yet knows that circumstances have changed which ought to be reported)
I. 222	if he merely stands by with the <i>knowledge</i> that a third party is committing an <i>offence</i> (if he merely stands by knowing that a third party is offending)
I. 223	in the context of a criminal non <i>notification</i> by the recipient of the benefit (in the context where the recipient of the benefit does not notify the authorities)
I. 226	where his conduct falls short of aiding and abetting an offence by the person primarily obliged to notify a <i>change</i> of circumstances (where his conduct falls short of aiding and abetting an offence by the person primarily obliged to notify the authorities that circumstances have changed)
I. 235	he should be criminally liable for 'allowing' the claimant to fail to give <i>notification</i> of the change (he should be criminally liable for 'allowing' the claimant to fail to notify the authorities of the change)
I. 241	He argues that there is an <i>obligation</i> on the defendant to seek to prevent a failure to notify (He argues that the defendant is obliged to seek to prevent a failure to notify)
I. 244	only a limited number will be in a position to prevent a <i>failure</i> to report a change of circumstances (only a limited number will be in a position to prevent someone else to fail to report a change of circumstances)
I. 257	when she knows of a <i>change</i> of circumstances effecting her entitlement (when she knows that circumstances that affect her entitlement have changed)
I. 274	He noted the appellant's <i>submission</i> that "allows" should be construed as a failure to act (He noted that the appellant had submitted that "allows" should be construed as a failure to act)
I. 294	It was held that permitting in the section meant failing to take reasonable steps to prevent contravention by drivers (It was held that permitting in the section meant failing to take reasonable steps to prevent drivers from contravening (the law/requirements))
I. 308	This offence of permitting is a crime of omission which arises from the duty to act and involves the <i>failure</i> to perform that duty (This offence of permitting is a crime of omission which arises from the duty to act and involves failing to perform that duty)
I. 327	to prevent her from failing to give a prompt <i>notification</i> to the authorities of the change (to prevent her from failing to promptly notify the authorities of the change)
I. 332	The word 'allows' must have some <i>meaning</i> that is less than 'causes' (The word 'allows' must meaning something that is less than 'causes')
I. 340	Nicola Tilley's failure to give <i>notice</i> (Nicola Tilley's failure to notice the authorities)
I. 341	bearing in mind that the obligation to give prompt notification was hers not his (bearing in mind that she, and not he, was obliged promptly to notify the

	authorities)
I. 381	to fail to notify a <i>change</i> of circumstances (to fail to notify the authorities that circumstances have changed)
I. 390	allowing Nicola Tilley to fail to give a prompt <i>notification</i> to the authorities of a change of circumstances (allowing Nicola Tilley to fail promptly to notify the authorities that her circumstances had changed)
I. 408	there had to be some <i>action</i> that he could have taken that would have resulted in Nicola Tilley discharging her obligation to report (there had to be something he could have done that would have resulted in Nicola Tilley discharging her obligation to report)
I. 414	We direct the defendant's <i>acquittal</i> (We direct that the defendant is acquitted)
Lix:	
3461 ord	
1465 svære ord	
230 perioder	
A = 42,3	
B = 15,0	
Lix = (A+ B) = 57,3 (meget svær)	



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England and Wales Court of Appeal (Criminal Division) Decisions

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Case No: 2008/4908/B2

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT SITTING AT INNER LONDON
His Honour Judge Mervyn Roberts
T20067506**

Royal Courts of Justice
Strand, London, WC2A 2LL
30 July 2009

B e f o r e :

**LORD JUSTICE MOSES
MR JUSTICE JACK
and
MR JUSTICE RODERICK EVANS**

Between:

Mark Whittington

Appellant

- and -

The Crown

Respondent

**Mr A Mitchell QC (instructed by Goldkorns) for the Appellant
Mr Q Hawkins (instructed by the Crown Prosecution Service) for the Respondent
Hearing dates: 7th July 2009**

HTML VERSION OF JUDGMENT

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Lord Justice Moses:

1. On 1 August 2008 at the Inner London Crown Court a confiscation order under the Proceeds of Crime Act 2002 was made against the appellant in the sum of £9,672,176.69 and he was ordered to serve ten years in prison in default. The issue in this appeal is whether the judge, in reaching the conclusion that that sum was the recoverable amount, applied the correct burden and standard of proof. This appeal, like so many before it, teaches the importance of a rigorous, step-by-step approach to the process of determining the recoverable amount for the purpose of s.6(5) of the Proceeds of Crime Act 2002 (the 2002 Act).
2. The appellant had pleaded guilty to entering into or becoming concerned in a money laundering arrangement contrary to s.328(1) of the Proceeds of Crime Act 2002, conspiracy to supply amphetamine contrary to s.1(1) of the Criminal Law Act 1977 and offences of possessing a prohibited weapon and permitting premises to be used for producing amphetamine. His total sentence was eight years' imprisonment. The sentence of ten years in default was ordered to be served consecutive to that sentence of eight years' imprisonment.
3. The benefit in issue between the appellant and the prosecution by the time of the hearing of the confiscation proceedings was the sum of £8,814,840. The judge concluded that the appellant had obtained cocaine to the value of £8,814,840, and that the appellant had failed to show that the available amount was less than the full amount of the benefit. The appellant submits that, in his ruling, the judge misdirected himself as to the burden and standard of proof and that there was no basis upon which he could properly conclude that he had benefited in that sum of £8,814,840.
4. The factual issues in the confiscation hearing concerned the results of the police search at the appellant's premises on arrest. On the day of his arrest he was found in possession of cash totalling £797,563. He had sought to launder the sum of £274,680 through three co-defendants. That sum was found in bags carried by two of them, when they were arrested. After the appellant had been arrested, the police found £174,475 and €409,125 in two bedrooms, elastic bands over the floor and a cash counting machine.
5. At the rear of his premises, police discovered an amphetamine production factory. By a process of calculation involving an assessment of the amount of mixing agent present at the premises and previously ordered by the appellant, the benefit of the appellant's production and supply of amphetamine was calculated to be £105,000. That left an existing amount of just under £700,000 unexplained. But that was merely the context in which a further important discovery was made on that day by the police.
6. At the premises the police found a notebook, in the appellant's handwriting, marked "Master Logg" and called exhibit RL/6. The prosecution, in its s.16 statement, relied upon Warren Gordon, a forensic accountant, who identified, on 5 pages of the notebook, the figure of 29,800. His opinion was that that represented the rate in pounds for the current wholesale price per kilo of cocaine. Other figures, alongside and underneath, he said, represented kilos. On one side of the page is the total value of kilos: on the first page, for example is the figure of 75. Beneath the figure of 75 is the figure of 54 next to the letters US and 21 next to the letters YOU. Multiplying the total figure for kilogrammes by the rate (i.e., 295.8 kilogrammes x 29,800) the total figure on five pages of the

notebook is 8,814,840. The prosecution, on the basis of Mr Gordon's opinion, contended that the figures represented sterling. It contended that £8,814,840 was the monetary value of cocaine which the appellant had obtained and distributed. We should note that in the s.16 statement the prosecution alleged benefit in a higher sum to include the current London selling price of cocaine. That is irrelevant for the purposes of this appeal.

7. In response, the defendant contested the analysis of RL/6. He said that he was asked by another person to prepare "the master logg" and was provided with the information with which to do so. He continued:-

"This document does not represent materials or money passing through his hands."

In response the prosecution repeated its contention that RL/6 was an accounting record for the purchase of 295.8 kilos of cocaine at the rate of £29,800. Accordingly, the issue for the judge was whether a benefit from a criminal lifestyle, to the value of £8,814,840, could be inferred from the contents of RL/6.

8. The *vade-mecum* for judges in confiscation proceedings under the 2002 Act is contained at §48 in the speech of Lord Bingham in *R v May* [\[2008\] 1 AC 1028](#) at 1044. The Committee advised that courts should focus very closely on the language of the statutory provision and, with a hint of despair, suggested that guidance should ordinarily be sought in the statutory language rather in the proliferating case law.
9. Clear analysis of the distinct questions which have to be resolved is also to be found in *R v Seager* and *R v Blatch* [\[2009\] EWCA Crim 1303](#) (in particular [39] and [72]). Blackstone's Criminal Practice (2009) has a useful guide to the separate stages (E.19.13 *et seq*). It is vital that the questions are kept distinct and that the court conducting the hearing resolves them as part of a sequential process. Laborious though this is, it reduces the risk of losing the way in the labyrinthine provisions and ensures that at each stage the particular issue which the judge is addressing is clear. In that way confusion over who has to prove what and to which standard may be avoided or, perhaps more realistically, there is a better chance of avoiding confusion.
10. The first question the court had to decide was whether this appellant had a criminal lifestyle pursuant to s.6(4)(a) and s.75. On this question, there was no dispute since the offences of money laundering and conspiracy to supply amphetamine were specified in Schedule 2 (s.75(2)(a)). The second question the court had to determine was whether the appellant had benefited from his general criminal conduct (s.6(4)(b)). General criminal conduct is all the defendant's criminal conduct whether the conduct occurred before or after the passing of the 2002 Act (s.76(2)(a)). To answer that question, the court had to answer a third question, namely whether the appellant had *obtained* property as a result of or in connection with his general criminal conduct (s.76(4)).
11. Lord Bingham, in *May* explained what is meant by *obtains*:

"(6) D ordinarily obtains property if in law he owns it, whether alone or jointly, which will ordinarily connote a power of disposition or control...Mere couriers or custodians or other very minor contributors to an offence, rewarded by a specific fee and having no interest in the property or the proceeds of sale, are unlikely to be found to have obtained that property. It may be otherwise with money launderers." (§48 F-H)"

12. It is necessary at this stage to identify the statutory quest on which the court has embarked. The court is concerned to identify property which either remains in a defendant's possession or which he has obtained in the past but which he no longer retains. Existing property presents fewer

problems; it may be ascertained, and valued. The question will then arise as to its source, at which stage the statutory assumptions in s.10 will be triggered. More problems arise in relation to property which the defendant has had but no longer exists, or, at least, which cannot be found. As Lord Bingham noted, the question whether a defendant has obtained property and its value

"...plainly calls for an historical enquiry into past transactions [48].

13. It is vital to bear in mind that it is for the prosecution to prove that the defendant has obtained the property in issue, which will either be known property he still possesses or which he has possessed. This issue as to proof of the existence of property must not be confused with proof of the source of that property. Subject to the particular, and confined exception, illustrated by *R v Briggs-Price* [2009] 2 WLR 1101, the prosecution must prove the existence of that property to the civil standard of proof (s.6(7)).
14. Thus, once a criminal lifestyle has been established, it falls to the prosecution, if it can, to prove, on the balance of probabilities, that the defendant has obtained property. The prosecution, as the first three assumptions in s.10 indicate, may do so by proving that property has been transferred to the defendant (s.10(2)), that he has obtained property (s.10(3)) or that he has incurred expenditure after the relevant day (s.10(4)).
15. Only when the prosecution has established that the defendant has held property in one of those three ways does any question of the source of that property arise. The prosecution may establish the possession of property or expenditure by any manner of means according to the civil standard of proof. But in one particular circumstance it has to do so to the criminal standard. If the prosecution can only establish that the defendant had obtained property in the past by proof of criminal offences other than those charged on the indictment, it must prove those criminal offences to a criminal standard. This was the decision of the majority in *R v Briggs-Price* (Lord Rodger [76-79], Lord Brown, [96], and Lord Neuberger [152]).
16. In *Briggs-Price* the appellant was a wealthy man with substantial interests from a hotel and other income-yielding properties. It was agreed that the assumptions regime should not be applied to his known existing assets and expenditure. In those circumstances the prosecution sought to prove the existence of past assets by proving past trafficking in cannabis which was not the subject matter of any charge on the indictment. The vital feature in *Briggs-Price* was that the prosecution could only prove that the defendant had obtained property in the past by proof of criminal offences with which he had not been charged [41] and [66]. The defendant had sought to contend that, since the prosecution had not relied upon the statutory assumption he could not seek to rely upon evidence of criminal activities with which he had not been charged. The relevance of those previous criminal activities is demonstrated in Lord Philips's response:-

"Where an issue is raised as to the source of property held by a defendant, it would be strange if the prosecution were precluded from countering the defendant's assertion that it had a legitimate source by relying on evidence that at the time the defendant was involved in drug trafficking. Mr Owen did not submit that any such restriction applied. Yet it is hard to see why *evidence of the defendant's criminal activities* should be admissible for the purpose of proving the source of assets but not *for the purpose of proving the existence of assets*." [20] (our emphasis)
17. Lord Brown recognised that *Briggs-Price* concerned a case where the Crown could only prove the existence of the assets by proving other offences but he recognised that there might be other means of establishing possession of property or the incurring of expenditure in the past:-

"Certain of your Lordships suggested it was strange that the Crown could rely on statutory assumptions and the reverse burden of proof to establish benefit by reference to demonstrable property held or expenditure incurred and yet not be entitled to prove drug trafficking and its likely benefits. I agree, but I agree only on the basis that, *unless the possession of property or expenditure can otherwise be established*, the Crown must indeed prove the offending, even if not formally charged, to the criminal standard, as in this very case." [96] (our emphasis)

18. The question whether the defendant had obtained property in the past was a logically prior question to the question of its source. There is a risk of confusion between the two separate questions, the one as to the existence of property and the other as to the source of that property, because in a case such as *Briggs-Pearce*, the evidence which establishes the existence of the property also establishes its source. Proof of the offence of trafficking in cannabis established both the existence of the property, obtained by the defendant in the past, and also its source. Indeed, once the prosecution had proved the existence of property by means of proof of the criminal offence, it had at the same time and by the same means proved that the source was criminal. There was no need to rely upon any assumption as to its source, even had the prosecution wished to do so. The assumptions have nothing whatever to do with proof that the defendant obtained property. Apart from the fourth, they are concerned only with proof of the source of property which the prosecution has proved the defendant has obtained or remains in his possession.
19. The judge, in his ruling, noted that there was no dispute but that the defendant had a criminal lifestyle and that he had benefited from it. He then analysed the exhibit RL/6 and observed that although Mr Gordon's evidence was not in dispute the inferences which the officer sought to draw from the notebook were contested. Having recalled that counsel for the defendant had cross-examined to the best of his ability, the judge continued:-

"The onus of the proof (*sic*) on the balance of probabilities, being on the defendant in this case, the defendant was called."

He then dismissed the defendant's account that he was asked to copy the pages and paid £3,000 to do so as being incredible. He said that it beggared belief. He concluded that he had obtained cocaine in the value of £8,814,840.
20. It is unfortunate that the judge failed to pose and then answer the questions identified in *May* in the order which the House of Lords proposed. Had he done so, he might have avoided a serious error.
21. The second question was whether the defendant had benefited from general criminal conduct. This was not disputed. The third question was whether the prosecution could prove that the defendant had obtained property or incurred expenditure in the past (see our [10] and [11] and s.76(4)). The answer to that question turned on the inferences to be drawn from RL/6.
22. It was important that the judge identified on whom the burden lay. The defendant denied that that which was written down in RL/6 represented either property transferred to or obtained by him or expenditure he had incurred. In short, he denied that the figures represented any property, be it drugs or cash, over which he had the power of disposition or control.
23. In the light of that dispute, it was for the prosecution to prove that the figures in RL/6 did represent property over which the appellant had a power of disposition or control. It was not for the defendant to disprove that factual proposition. The judge appears to have been under the mistaken impression that it was for the defendant to prove that the document did not represent materials or

money passing through his hands. It may be that the judge was confused by the opening words of s.10 of the 2002 Act once it had emerged that the defendant was not disputing that he had benefited from general criminal conduct:-

"(1) If the court decides under s.6 that the defendant has a criminal lifestyle it must make the following four assumptions for the purpose of –

- (a) deciding whether he has benefited from his general criminal conduct and
- (b) deciding his benefit from the conduct.

(2) The first assumption is that *any property transferred to the defendant* at any time after the relevant dates obtained by him –

- (a) as a result of his general criminal conduct, and
- (b) at the earliest time he appears to have held it.

(3) The second assumption is that *any property held by the defendant* at any time after the date of conviction was obtained by him –

- (a) as a result of his general criminal conduct, and
- (b) at the earliest time he appears to have held it.

(4) The third assumption is that *any expenditure incurred by the defendant at any time* after the relevant date was met from property obtained by him as a result of his general criminal conduct." (our emphasis)

24. The purpose of the first three assumptions within s.10 is to assist in the proof of the *source* of property obtained by the defendant. The assumptions have nothing to do with the logically prior question as to whether the defendant has or has had the property in issue. As Lord Mance put it at [104] in *Briggs-Price* in relation to a predecessor to s.10 (s.4(2) of the Drug Trafficking Act 1994):-

"The scheme operates by reference to the benefit made from drug trafficking and the value of the proceeds of drug trafficking. The assumptions, where they apply, do no more than assist to prove these matters. It is a fallacy to describe them as some form of separate assets-based recovery. They are means of proving the receipt of proceeds from drug trafficking by pointing to particular property or expenditure and requiring an explanation for its origin." [104].

25. The assumptions are not triggered unless and until the prosecution has proved that the defendant obtained the property which the prosecution contends goes towards the valuation of the defendant's benefit. The judge misdirected himself and imposed a burden on the defendant which it was not his responsibility to discharge. The prosecution had to prove that the figures in the notebook represented either cash or cocaine which he had obtained in the sense explained by Lord Bingham in *May* [48].
26. That was not the only serious misdirection, contends Mr Mitchell QC on behalf of the appellant. He submits that the judge applied the civil standard of proof. In reliance upon the decision of the majority of the House of Lords in *Briggs-Price*, he contends that the prosecution was required to

establish that the defendant had obtained cocaine to the value of £8.8 million to the criminal standard of proof.

27. There will be many cases in which the assets on which the prosecution relies to establish the value of the benefit will have long since disappeared (see Lord Mance [127]). There will be cases where benefit will be based on payments or rewards which the defendant has received even if he made no profit (see Lord Roger, [59]). As we have indicated, *Briggs-Price* is no authority for the proposition that the only means of establishing that a defendant has obtained property in the past is by proof of criminal offences. It merely teaches that when the Crown cannot establish that a defendant has obtained property in the past or incurred expenditure by means other than by proof of criminal offences, it must establish those offences according to the criminal standard of proof.
28. In the instant appeal, the prosecution sought to prove that the defendant had obtained either drugs or cash to the value of £8.8 million by reference to the figures in the notebook. It sought to establish that the figures did represent pounds sterling by reference to the wholesale value per kilo of cocaine. It was for that purpose it attached significance to the figures of 29,800 and figures which, it suggested, represented kilos. But in relying upon the expert, Mr Gordon, to show that 29,800 was the wholesale value in sterling for a kilo of cocaine, the prosecution was not seeking to prove criminal offences in order to prove that he had obtained property in the past. It was attempting to prove the existence of property, cash or drugs to the value of £8.8 million, which the defendant had obtained in the sense that he had the power of disposition or control over that property. That was a process which went to the decision whether he had benefited from his general criminal conduct by obtaining property (s.76(4)) and if so, the extent to which he had benefited (s.76(7)). Those questions had to be decided on a balance of probabilities (see s.6(7) of the 2002 Act).
29. Mr Mitchell contended that the evidence of Mr Gordon, combined with the inferences the prosecution sought to draw from the notebook, was "tantamount to an attempt to prove the offence of trafficking in cocaine". That was an assertion which had to be proved to the criminal standard. We do not agree. The prosecution was not attempting to prove a criminal offence for the purpose of establishing that he had obtained property in the past. It could prove that he had obtained property by analysis of the notebook.
30. In any case in which the prosecution assert that a defendant has obtained property in the past other than as a result of the offences with which he is charged, it might be said that that assertion is "tantamount" to an assertion that he has committed offences in the past. If the property was not obtained by means of the offences charged in the indictment, it follows that it must have been obtained by other criminal offences, not charged (unless, of course the defendant can rebut the assumption of a criminal source (s.10(6)(a) or the assumptions are disapplied (s.10(6)(b))).
31. But Mr Mitchell's contention proves too much. If his submission was correct, then a civil standard of proof would, in general, only apply to proof of source. It would have no application to proof that the defendant had held property in the past. If Mr Mitchell were right, inferences to be drawn from old bank statements or title deeds would all have to be established to a criminal standard, since reliance on such documents would be "tantamount" to attempting to prove other criminal offences. The implications of *Briggs-Price* cannot be carried so far. If the prosecution can prove that the defendant has obtained assets in the past other than by proof of previous criminal offences then the prosecution may do so on a balance of probabilities.
32. In cases where the prosecution can prove the defendant has obtained property in the past, previous criminal offences are only relevant to establish the source of that property. Once the prosecution

has proved that the defendant has obtained property, the assumptions in s.10 are triggered and the source of that property is assumed to be general criminal conduct unless the assumption is shown to be incorrect or there would be a serious risk of injustice if the assumption were made (s.10(6)). In the instant appeal, once the prosecution proved that the defendant had obtained property in the past by reference to the figures in RL/6 and other shredded documents, it was entitled, as its s.16 statement asserted, to rely upon the assumption that that property was derived from criminal activity. It did not need to rely upon the expert Mr Gordon to prove the source of the property; it needed only to rely upon s.10. As we have previously emphasised, Mr Gordon's evidence went to the issue of whether the figures in the notebook demonstrated that the defendant had obtained property in the past.

33. For those reasons we reject Mr Mitchell's submission that the prosecution was required to prove that the defendant had been guilty of trafficking in cocaine to a criminal standard of proof in order to establish that he had, in the past, obtained assets to the value of £8.8 million.
34. Nonetheless, we have identified a serious misdirection in the approach adopted by the prosecution. In those circumstances, Mr Mitchell contends there is no evidential basis on which this court could or should make an order under s.6(5). There is no basis upon which the amount of benefit can be calculated other than on the basis of existing and identified assets, most of which, if not all, are already held by the police. In order to resolve that issue it is necessary to return to the facts.
35. The starting point must be the undisputed facts as to the existing assets in the possession of the appellant. He had an unexplained amount of £700,000 in his possession. Further, it was not disputed but that he had procured others to launder cash he had obtained. It is in that context that we must consider his assertion that he had only written the figures in the notebook RL/6 at the request of others for the sum of £3,000. We must consider that assertion in the context of a further fact. Amongst the defendant's property, in the dining room, was a shredder which had shredded documents which were recovered and pieced back together. Shredded paper had been found in what was described as the defendant's "man bag".
36. Those documents showed, in the defendant's writing, figures as high as 359,090, with names written next to them and a calculation of "40 x 298,000: 1,192,000". The judge did not allow the prosecution to cross-examine. This was unfortunate. Whatever the view the judge had taken of the defendant's evidence-in-chief, he ought to have been given the opportunity to answer obvious questions in cross-examination. The judge himself did, however, ask the defendant about the shredded paper and the defendant's response was "Oh, that was a few weeks before".
37. In our judgment, the evidence taken as a whole of the existence of £700,000, which could not be explained by virtue of the amphetamine production, coupled with the notebook and shredded pieces of paper, demonstrate that the appellant had obtained assets to the value of £8.8 million at some stage before he was arrested. His very possession of those pieces of paper and the notebook contradict his assertion that he was merely making notes for someone else. The contents of the notebook demonstrate, to our satisfaction, that the appellant had a power of disposition or control, for the purposes of the 2002 Act, over cocaine or cash to the value of £8.8million. The words in the notebook plainly refer to distribution in the distinction drawn between "us" and "you" on the pages of the notebook on which the defendant has written.
38. We are satisfied, on the balance of probabilities, that the prosecution has proved that the defendant had obtained property to the value of £8.8 million of benefit to be added to the undisputed balance, making a total of £9,672,176.92. Once the appellant's evidence is rejected, then the assumptions contained in s.10 are triggered and, in the absence of any further evidence, we conclude that the

defendant has benefited from his general criminal conduct to the amount of £9,672,176.92. The assumption has not been shown to be incorrect nor have we identified any serious risk of injustice if the assumption is made.

39. The next question is whether the defendant has shown that the available amount was less than the amount of the benefit for the purposes of s.6 and ss.7(1) and (2) of the 2002 Act. The defendant asserted that his available amount of free property was £266,066.55. He contended that he would not be capable of concealing assets valued at millions of pounds particularly after a thorough investigation by an experienced Financial Investigations Unit officer. He suggested that he was living a relatively modest lifestyle and the conclusion that he had hidden assets available to meet the amount of benefit was based on an erroneous interpretation of exhibit RL/6 (see his response to the statement of information, §19). No further argument as to the available amount was advanced before us on the appeal.
40. Once we have concluded that the appellant benefited to the amounts revealed in the documents to which we have referred, then in the absence of any evidence as to what has happened to those benefits, or how much profit they represented to him, we are compelled to conclude that the available amount is no less than the amount of the benefit. That, after all, is the purpose of shifting the burden of establishing that the available amount is less onto a defendant. If a defendant chooses to give no explanation or no acceptable explanation of benefits identified by the court he has only himself to blame for the failure to discharge the burden of establishing that a lesser amount is available. This is the risk a defendant runs in disputing the amount of benefit, once the prosecution succeeds in establishing a figure which he disputes.
41. We wish to stress the importance of following the statutory process for establishing the recoverable amount for the purposes of s.6 of the 2002 Act. This process, set out in *May* in its end note, which we have tried to repeat, not only ensures that the court avoids misdirection but also that it sets out its reasons for its conclusion. Unless it does so, this court is faced with the difficulty of identifying the reasons for the court's conclusion and whether it is justified.
42. In this case, the judge did misdirect himself as to the burden of proving whether the defendant had obtained property to the value of £8.8 million. But there was ample evidence to prove that the defendant had done so and the defendant has chosen to give no explanation as to what has happened to the assets he obtained. In those circumstances, we uphold the order made by the judge and dismiss this appeal.

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30 July 2009 Mark Whittington	
passiver:	
I. 24	a confiscation order under the Proceeds of Crime Act 2002 was made against the appellant
I. 25	he was ordered to serve ten years in prison
I. 35	The sentence of ten years in default was ordered to be served consecutive to that sentence of eight years' imprisonment.
I. 44	On the day of his arrest he was found in possession of cash totalling £ 797,563
I. 45	That sum was found in bags carried by two of them
I. 46	when they were arrested
I. 46	After the appellant had been arrested
I. 51	the benefit of the appellant's production and supply of amphetamine was calculated to be £ 105,000.
I. 53	a further important discovery was made on that day by the police
I. 68	he was asked by another person to prepare "the master logg" and was provided with the information with which to do so
I. 74	whether a benefit from a criminal lifestyle, to the value of £ 8,814840, could be inferred from the contents of RL/6
I. 79	guidance should ordinarily be sought in the statutory language rather in the proliferating case law
I. 81	Clear analysis of the distinct questions which have to be resolved is also to be found in <i>R v Seager</i> and <i>R v Blatch</i>
I. 87	confusion over who has to prove what and to which standard may be avoided
I. 88	there is a better chance of avoiding confusion
I. 90	On this question, there was no dispute
I. 90	since the offences of money laundering and conspiracy to supply amphetamine were specified in Schedule 2 (s.75(2)(a))
I. 99	Mere couriers or custodians or other very minor contributors to an offence, rewarded by a specific fee and having no interest in the property or the proceeds of sale, are unlikely to be found to have obtained that property
I. 106	it may be ascertained, and valued.
I. 107	the statutory assumptions in s.10 will be triggered
I. 108	property... which cannot be found
I. 114	This issue as to proof of the existence of property must not be confused with proof of the source of that property
I. 117	once a criminal lifestyle has been established
I. 119	that property has been transferred to the defendant
I. 131	It was agreed that the assumptions regime should not be applied to his known existing assets and expenditure
I. 135	criminal offences with which he had not been charged
I. 137	evidence of criminal activities with which he had not been charged
I. 138	The relevance of those previous criminal activities is demonstrated in Lord Philips's response
I. 140	Where an issue is raised
I. 144	Yet it is hard to see why <i>evidence of the defendant's criminal activities should be admissible</i> for the purpose of proving the source of assets but not for the purpose of proving the existence of assets
I. 154	unless the possession of property or expenditure can otherwise be established
I. 155	the Crown must indeed prove the offending, even <i>if not formally charged</i> , to the

	criminal standard
I. 158	There is a risk of confusion between the two separate questions
I. 162	the property, obtained by the defendant
I. 171	the inferences which the officer sought to draw from the notebook were contested.
I. 176	the defendant's account that he was asked to copy the pages and paid £ 3,000 to do so
I. 179	the questions identified in May in the order which the House of Lords proposed
I. 182	this was not disputed.
I. 183	The answer to that question turned on the inferences to be drawn from RL/6.
I. 185	that which was written down in RL/6
I. 186	property transferred to or obtained by him
I. 200	any property transferred to the defendant at any time after the relevant dates obtained by him
I. 204	any property held by the defendant at any time after the date of conviction was obtained by him
I. 208	any expenditure incurred by the defendant at any time after the relevant date was met from property obtained by him
I. 212	property obtained by the defendant
I. 216	the benefit made from drug trafficking and the value of the proceeds of drug trafficking
I. 234	benefit will be based on payments or rewards which the defendant has received
I. 252	Those questions had to be decided on a balance of probabilities
I. 256	That was an assertion which had to be proved to the criminal standard
I. 261	the offences with which he is charged
I. 261	it might be said that...
I. 262	If the property was not obtained by means of the offences charged in the indictment
I. 263	it follows that it must have been obtained by other criminal offences, not charged
I. 265	or the assumptions are disappplied
I. 268	inferences to be drawn from old bank statements or title deeds would all have to be established to a criminal standard
I. 270	since reliance on such documents would be "tantamount" to attempting to prove other criminal offences
I. 271	he implications of <i>Briggs-Price</i> be carried so far
I. 276	the assumptions in s.10 are triggered and the source of that property is assumed to be general criminal conduct
I. 277	unless the assumption is shown to be incorrect
I. 277	or there would be a serious risk of injustice if the assumption were made
I. 292	on the basis of existing and identified assets, most of which, if not all, are already held by the police
I. 300	documents which were recovered and pieced back together
I. 300	Shredded paper had been found in what was described as the defendant's "man bag"
I. 302	with names written next to them
I. 308	the existence of £ 700,000, which could not be explained by virtue of the amphetamine production
I. 309	the evidence taken as a whole of the existence of £ 700,000
I. 311	before he was arrested
I. 318	property to the value of £ 8.8 million of benefit to be added to the undisputed

	balance
I. 319	Once the appellant's evidence is rejected
I. 319	the assumptions contained in s.10 are triggered and
I. 321	The assumption has not been shown to be incorrect
I. 323	if the assumption is made.
I. 327	a thorough investigation by an experienced Financial Investigations Unit office
I. 329	the conclusion that he had hidden assets available to meet the amount of benefit was based on an erroneous interpretation of exhibit RL/6
I. 331	No further argument as to the available amount was advanced before us on the appeal.
I. 335	how much profit they represented to him
Adverbialer:	
I. 24 (initial)	<i>On 1 August 2008 at the Inner London Crown Court</i>
I. 24 (medial)	a confiscation order <i>under the Proceeds of Crime Act 2002</i> was made against the appellant
I. 27 (medial)	The issue in this appeal is whether the judge, <i>in reaching the conclusion that that sum was the recoverable amount</i> , applied the correct burden
I. 28 (medial)	This appeal, <i>like so many before it</i> , teaches the importance of a rigorous, step-by-step approach
I. 37 (medial)	The benefit in issue between the appellant and the prosecution <i>by the time of the hearing of the confiscation proceedings</i> was the sum of £ 8,814,840
I. 40 (initial)	The appellant submits that, <i>in his ruling</i> , the judge misdirected himself as to the burden and standard of proof
I. 43 (medial)	The factual issues <i>in the confiscation hearing</i> concerned the results of the police search
I. 44 (initial)	<i>On the day of his arrest</i> he was found in possession of cash
I. 46 (initial)	<i>After the appellant had been arrested</i> , the police found £ 174,475 and €409,125 in two bedrooms
I. 49 (initial)	<i>At the rear of his premises</i> , police discovered an amphetamine production factory
I. 49 (initial)	<i>By a process of calculation involving an assessment of the amount of mixing agent present at the premises and previously ordered by the appellant</i> , the benefit of the appellant's production and supply of amphetamine was calculated to be £ 105,000.
I. 53 (initial)	<i>But that was merely the context in which</i> a further important discovery was made
I. 55 (initial)	<i>at the premises</i> the police found a notebook
I. 56 (medial)	The prosecution, <i>in its s.16 statement</i> , relied upon Warren Gordon
I. 57 (medial)	a forensic accountant, who identified, <i>on 5 pages of the notebook</i> , the figure of 29,800.
I. 58 (medial)	Other figures, <i>alongside and underneath, he said</i> , represented kilos
I. 58 (initial)	<i>On one side of the page</i> is the total value of kilos
I. 60 (initial)	<i>on the first page</i> , for example is the figure of 75
I. 60 (initial)	<i>Beneath the figure of 75</i> is the figure of 54
I. 62 (medial)	the total figure <i>on five pages of the notebook</i> is 8,814,840
I. 63 (medial)	The prosecution, <i>on the basis of Mr Gordon's opinion</i> , contended that...
I. 65 (initial)	We should note that <i>in the s.16 statement</i> the prosecution alleged benefit in a higher sum
I. 76 (medial)	The vade-mecum for judges <i>in confiscation proceedings under the 2002 Act</i> is contained at §48
I. 78 (initial)	and, <i>with a hint of despair</i> , suggested that guidance should ordinarily be sought

	in the statutory language
I. 85 (initial)	<i>Laborious though this is</i>
I. 86 (initial)	ensures that <i>at each stage</i> the particular issue which the judge is addressing is clear
I. 94-95 (initial)	<i>to answer that question</i> , the court had to answer a third question
I. 103 (medial)	It is necessary <i>at this stage</i> to identify the statutory quest on which the court has embarked
I. 106 (medial)	<i>at which stage</i> the statutory assumptions in s.10 will be triggered
I. 108 (initial)	As Lord Bingham noted, the question whether a defendant has obtained property and its value plainly calls for an historical enquiry into past transactions
I. 115 (initial)	<i>Subject to the particular, and confined exception, illustrated by R v Briggs-Price [2009] 2 WLR 1101</i> , the prosecution must prove the existence of that property
I. 117 (initial)	<i>Thus, once a criminal lifestyle has been established</i> , it falls to the prosecution...
I. 117 (medial)	it falls to the prosecution <i>if it can</i> , to prove...
I. 118 (medial)	it falls to the prosecution..to prove, <i>on the balance of probabilities</i> , that the defendant has obtained property
I. 118 (medial)	The prosecution, <i>as the first three assumptions in s.10 indicate</i> , may do so
I. 122 (initial)	<i>Only when the prosecution has established that the defendant has held property in one of those three ways</i> does any question of the source of that property arise.
I. 125 (initial)	<i>But in one particular circumstance</i> it has to do so to the criminal standard.
I. 125 (initial)	<i>If the prosecution can only establish that the defendant had obtained property in the past by proof of criminal offences other than those charged on the indictment</i> , it must prove those criminal offences
I. 130 (initial)	<i>In Briggs-Price</i> the appellant was a wealthy man
I. 132 (initial)	<i>In those circumstances</i> the prosecution sought to prove the existence of past assets
I. 134 (medial)	The vital feature <i>in Briggs-Price</i> was that the prosecution could only prove that the defendant had obtained property
I. 136 (initial)	The defendant had sought to contend that, <i>since the prosecution had not relied upon the statutory assumption</i> he could not seek to rely upon evidence of criminal activities
I. 140 (initial)	<i>Where an issue is raised as to the source of property held by a defendant</i> , it would be strange if the prosecution were precluded from countering the defendant's assertion
I. 142 (initial)	relying on evidence that <i>at the time</i> the defendant was involved in drug trafficking
I. 154 (initial)	but I agree only on the basis that, <i>unless the possession of property or expenditure can otherwise be established</i> , the Crown must indeed prove the offending
I. 163 (initial)	Indeed, once the prosecution had proved the existence of property by means of proof of the criminal offence,
I. 164 (medial)	it had <i>at the same time and by the same means</i> proved that the source was criminal.
I. 167 (initial)	<i>Apart from the fourth</i> , they are concerned only with proof of the source of property
I. 169 (medial)	The judge, <i>in his ruling</i> , noted that...
I. 171 (initial)	He then analysed the exhibit RL/6 and observed that <i>although Mr Gordon's evidence was not in dispute</i> the inferences which the officer sought to draw from the notebook were contested.
I. 172 (initial)	<i>Having recalled that counsel for the defendant had cross-examined to the best of his ability</i> , the judge continued
I. 174 (initial)	<i>The onus of the proof (sic) on the balance of probabilities, being on the defendant in this case</i> , the defendant was called

I. 180 (initial)	<i>Had he done so, he might have avoided a serious error.</i>
I. 189 (initial)	<i>In the light of that dispute, it was for the prosecution to prove that the figures in RL/6 did represent property</i>
I. 196 (initial)	<i>If the court decides under s.6 that the defendant has a criminal lifestyle it must make the following four assumptions</i>
I. 217 (medial)	The assumptions, <i>where they apply</i> , do no more than assist to prove these matters
I. 229 (initial)	<i>In reliance upon the decision of the majority of the House of Lords in Briggs-Price, he contends that...</i>
I. 236 (initial)	<i>As we have indicated, Briggs-Price is no authority for the proposition that...</i>
I. 239 (initial)	It merely teaches that <i>when the Crown cannot establish that a defendant has obtained property in the past or incurred expenditure by means other than by proof of criminal offences</i> , it must establish those offences according to the criminal standard of proof.
I. 241 (initial)	<i>In the instant appeal, the prosecution sought to prove that...</i>
I. 245 (initial)	<i>But in relying upon the expert, Mr Gordon, to show that 29,800 was the wholesale value in sterling for a kilo of cocaine, the prosecution was not seeking to prove criminal offences</i>
I. 260-261 (initial)	<i>In any case in which the prosecution assert that a defendant has obtained property in the past other than as a result of the offences with which he is charged, it might be said that that assertion is "tantamount"</i>
I. 262 (initial)	<i>If the property was not obtained by means of the offences charged in the indictment, it follows that it must have been obtained by other criminal offences,</i>
I. 266 (initial)	<i>if his submission was correct, then a civil standard of proof would, in general, only apply to proof of source.</i>
I. 268 (initial)	<i>If Mr Mitchell were right, inferences to be drawn from old bank statements</i>
I. 271 (initial)	<i>If the prosecution can prove that the defendant has obtained assets in the past other than by proof of previous criminal offences then the prosecution may do so on a balance of probabilities.</i>
I. 274 (initial)	<i>In cases where the prosecution can prove the defendant has obtained property in the past, previous criminal offences are only relevant to establish the source of that property.</i>
I. 275 (initial)	<i>Once the prosecution has proved that the defendant has obtained property, the assumptions in s.10 are triggered</i>
I. 279 (initial)	<i>In the instant appeal, once the prosecution proved that the defendant had obtained property in the past by reference to the figures in RL/6 and other shredded documents</i>
I. 280 (medial)	it was entitled, <i>as its s.16 statement asserted</i> , to rely upon the assumption that that property was derived from criminal activity.
I. 283 (initial)	<i>As we have previously emphasised, Mr Gordon's evidence went to the issue of whether the figures in the notebook demonstrated that the defendant had obtained property in the past.</i>
I. 286 (initial)	<i>For those reasons we reject Mr Mitchell's submission that the prosecution was required to prove that...</i>
I. 288 (medial)	that he had, <i>in the past</i> , obtained assets to the value of £ 8.8 million
I. 290 (initial)	<i>In those circumstances, Mr Mitchell contends there is no evidential basis</i>
I. 292 (medial)	on the basis of existing and identified assets, <i>most of which, if not all, are already held by the police</i>
I. 293 (initial)	<i>In order to resolve that issue it is necessary to return to the facts.</i>
I. 299 (initial)	<i>Amongst the defendant's property, in the dining room, was a shredder</i>
I. 302 (medial)	Those documents showed, <i>in the defendant's writing</i> , figures as high as 359,090,
I. 304 (initial)	<i>Whatever the view the judge had taken of the defendant's evidence-in-chief, he ought to have been given the opportunity to answer</i>

I. 308 (initial)	<i>In our judgment</i> , the evidence taken as a whole of the existence of £ 700,000...
I. 313 (medial)	The contents of the notebook demonstrate, <i>to our satisfaction</i> , that the appellant had a power of disposition or control
I. 314 (medial)	the appellant had a power of disposition or control, <i>for the purposes of the 2002 Act</i> , over cocaine or cash to the value of £ 8.8million
I. 317 (medial)	We are satisfied, <i>on the balance of probabilities</i> , that the prosecution has proved.
I. 319 (initial)	<i>Once the appellant's evidence is rejected</i> , then the assumptions contained in s.10 are triggered
I. 320 (initial)	<i>in the absence of any further evidence</i> , we conclude that the defendant has benefited from his general criminal conduct
I. 333 (initial)	<i>Once we have concluded that the appellant benefited to the amounts revealed in the documents to which we have referred, then in the absence of any evidence as to what has happened to those benefits, or how much profit they represented to him</i> , we are compelled to conclude that the available amount is no less than the amount of the benefit.
I. 337 (initial)	<i>If a defendant chooses to give no explanation or no acceptable explanation of benefits identified by the court</i> he has only himself to blame for the failure to discharge the burden
I. 345 (initial)	<i>Unless it does so</i> , this court is faced with the difficulty of identifying the reasons
I. 347 (initial)	<i>In this case</i> , the judge did misdirect himself
I. 350 (initial)	<i>In those circumstances</i> , we uphold the order
Sammensatte præpositioner:	
I. 107	in relation to
I. 151	By reference to
I. 163	by means of
I. 216	by reference to
I. 228	on behalf of
I. 229	in reliance upon
I. 242	by reference to
I. 243	by reference to
I. 272	by proof of
I. 280	by reference to
I. 287	in order to
Komplekse substantivsyntagmer :	
I. 37	the benefit in issue between the appellant and the prosecution
I. 42	basis upon which he could properly conclude that he had benefited in that sum of £ 8,814,840.
I. 49	a process of calculation involving an assessment of the amount of mixing agent present at the premises and previously ordered by the appellant
I. 50	the benefit of the appellant's production and supply of amphetamine
I. 53	the context in which a further important discovery was made
I. 55	a notebook, in the appellant's handwriting, marked "Master Logg" and called exhibit RL/6
I. 56	Warren Gordon, a forensic accountant, who identified the figure of 29,800
I. 72	an accounting record for the purchase of 295.8 kilos of cocaine at the rate of £ 29,800

I. 81	Clear analysis of the distinct questions which have to be resolved
I. 84	the court conducting the hearing
I. 85	the risk of losing the way in the labyrinthine provisions
I. 86	the particular issue which the judge is addressing
I. 87	confusion over who has to prove what and to which standard
I. 89	the first question the court had to decide
I. 90	the offences of money laundering and conspiracy to supply amphetamine
I. 91	the second question the court had to determine
I. 99	Mere couriers or custodians or other very minor contributors to an offence, rewarded by a specific fee and having no interest in the property or the proceeds of sale,
I. 103	the statutory quest on which the court has embarked.
I. 104	property which either remains in a defendant's possession or which he has obtained in the past but which he no longer retains
I. 108	property which the defendant has had but no longer exists, or, at least, which cannot be found
I. 109	the question whether a defendant has obtained property and its value
I. 111	the property in issue, which will either be known property he still possesses or which he has possessed
I. 113	This issue as to proof of the existence of property
I. 114	the particular, and confined exception, illustrated by R v Briggs-Price [2009] 2 WLR 1101
I. 130	a wealthy man with substantial interests from a hotel and other income-yielding properties
I. 133	past trafficking in cannabis which was not the subject matter of any charge on the indictment
I. 135	Proof of criminal offences with which he had not been charged [41] and [66]
I. 137	evidence of criminal activities with which he had not been charged
I. 140	the source of property held by the defendant
I. 141	the defendant's assertion that it had a legitimate source
I. 142	on evidence that the defendant was involved in drug trafficking.
I. 147	a case where the Crown could only prove the existence of the assets by proving other offences
I. 148	other means of establishing possession of property or the incurring of expenditure
I. 157	The question whether the defendant had obtained property in the past
I. 158	a risk of confusion between the two separate questions, the one as to the existence of property and the other as to the source of that property
I. 160	the evidence which establishes the existence of the property
I. 161	Proof of the offence of trafficking in cannabis
I. 161	both the existence of the property, obtained by the defendant in the past, and also its source
I. 167	proof of the source of property which the prosecution has proved the defendant has obtained or remains in his possession
I. 171	the inferences which the officer sought to draw from the notebook
I. 176	the defendant's account that he was asked to copy the pages and paid £ 3,000 to do so
I. 179	the questions identified in <i>May</i> in the order which the House of Lords proposed
I. 187	any property, be it drugs or cash, over which he had the power of disposition or control
I. 190	property over which the appellant had a power of disposition or control
I. 216	reference to the benefit made from drug trafficking and the value of the proceeds of drug trafficking

I. 223	the property which the prosecution contends goes towards the valuation of the defendant's benefit
I. 226	cash or cocaine which he had obtained in the sense explained by Lord Bingham in <i>May</i> [48].
I. 233	many cases in which the assets on which the prosecution relies to establish the value of the benefit will have long since disappeared
I. 234	cases where benefit will be based on payments or rewards which the defendant has received even if he made no profit
I. 248	the existence of property, cash or drugs to the value of £ 8.8 million, which the defendant had obtained in the sense that he had the power of disposition or control over that property
I. 250	the decision whether he had benefited from his general criminal conduct by obtaining property
I. 256	an assertion which had to be proved to the criminal standard
I. 260	In any case in which the prosecution assert that a defendant has obtained property in the past other than as a result of the offences with which he is charged
I. 274	In cases where the prosecution can prove the defendant has obtained property in the past
I. 281	the assumption that that property was derived from criminal activity
I. 284	the issue of whether the figures in the notebook demonstrated that the defendant had obtained property in the past
I. 286	Mr Mitchell's submission that the prosecution was required to prove that the defendant had been guilty of trafficking in cocaine to a criminal standard of proof in order to establish that he had, in the past, obtained assets to the value of £ 8.8 million
I. 290	no evidential basis on which this court could or should make an order under s.6(5)
I. 291	no basis upon which the amount of benefit can be calculated other than on the basis of existing and identified assets, most of which, if not all, are already held by the police
I. 308	the evidence taken as a whole of the existence of £ 700,000, which could not be explained by virtue of the amphetamine production, coupled with the notebook and shredded pieces of paper,
I. 343	This process, set out in <i>May</i> in its end note, which we have tried to repeat,
Fagterminologi:	
I. 25	appellant
I. 28	the appeal
I. 31	appellant
I. 33	offences
I. 37	appellant
I. 37	prosecution
I. 37	Hearing
I. 41	Ruling
I. 41	misdirect
I. 56	the prosecution
I. 84	Hearing
I. 86	provisions
I. 90	offences
I. 127	indictment
I. 134	indictment

I. 147	the Crown
I. 150	the Crown
I. 155	the offending
I. 163	prosecution
I. 169	Ruling
I. 172	Cross-examined
I. 205	conviction
I. 214	predecessor
I. 225	discharge
I. 228	misdirection
I. 238	the Crown
I. 254	inferences
I. 262	offences
I. 263	offences
I. 263	indictment
I. 264	Rebut
I. 289	misdirection
I. 294	undisputed
I. 296	Dispute
I. 304	Cross-examine
I. 305	Evidence-in-chief
I. 306	Cross-examination
I. 322	injustice
I. 339	discharge
I. 340	Dispute
I. 341	Dispute
I. 344	misdirection
I. 347	misdirect
juridiske kollokationer:	
I. 25	be ordered to
I. 26	in default
I. 27	standard of proof
I. 31	plead guilty
I. 36	in default
I. 37	the benefit in issue
I. 38	confiscation proceedings
I. 41	standard of proof
I. 43	factual issues
I. 43	confiscation hearing
I. 44	in possession of
I. 63	on the basis of
I. 76	Vade-mercum
I. 76	confiscation proceedings
I. 78	statutory provision
I. 80	case law
I. 83	et seq
I. 85	a sequential process
I. 93	criminal conduct

I. 93	criminal conduct
I. 94	criminal conduct
I. 103	statutory quest
I. 107	statutory assumptions
I. 116	civil standard of proof
I. 117	it falls to...
I. 118	on the balance of probabilities
I. 124	civil standard of proof
I. 125	the criminal standard
I. 128	a criminal standard
I. 131	the assumptions regime
I. 137	statutory assumption
I. 137	rely upon evidence
I. 138	to be charged with
I. 141	precluded from
I. 143	rely on evidence
I. 151	statutory assumptions
I. 151	Reverse burden of proof
I. 171	to be in dispute
I. 174	the onus of the proof
I. 177	to beggard belief
I. 179	to propose an order
I. 181	General criminal conduct
I. 182	to dispute something
I. 191	factual proposition
I. 198	General criminal conduct
I. 206	General criminal conduct
I. 210	General criminal conduct
I. 229	the civil standard of proof
I. 238	proof of criminal offences
I. 240	the criminal standard of proof
I. 241	an instant appeal
I. 247	criminal offences
I. 250	General criminal conduct
I. 252	on a balance of probabilities
I. 256	the criminal standard
I. 257	a criminal offence
I. 261	to be charged with
I. 264	criminal offences
I. 266	civil standard of proof
I. 267	proof of source
I. 269	a criminal standard
I. 270	criminal offences
I. 272	criminal offences
I. 273	on a balance of probabilities
I. 275	criminal offences
I. 277	General criminal conduct
I. 279	an instant appeal
I. 287	a criminal standard of proof
I. 290	evidential basis

I. 313	power of disposition or control
I. 317	on the balance of probabilities
I. 318	undisputed balance
I. 321	General criminal conduct
I. 335	to be compelled to
I. 336	to shift the burden
I. 342	statutory process
I. 350	to uphold an order
I. 351	Dismiss an appeal
Nominalkonstruktion er:	
I. 27	whether the judge, in reaching the <i>conclusion</i> that that sum was the recoverable amount, applied the correct burden and standard of proof. (whether the judge, when he concluded that that sum was the recoverable amount, applied the correct burden and standard of proof.
I. 41	In his <i>ruling</i> (when he ruled)
I. 44	On <i>arrest</i> (when he was arrested)
I. 44	On the day of his <i>arrest</i> (on the day that he was arrested)
I. 44	He was found in <i>possession</i> of (he was found to possess)
I. 50	By a process of calculation involving an <i>assessment</i> of the amount of mixing agent present at the premises (By a process of calculation which involved X assessing the amount of mixing agent present at the premises)
I. 51	the benefit of the appellant's <i>production</i> and <i>supply</i> of amphetamine was calculated to be £ 105,000 (the benefit of the amphetamine that the appellant had produced and supplied was calculated to be £ 105,000)
I. 53	But that was merely the context in which a further important <i>discovery</i> was made...by the police (But that was merely the context in which the police discovered something further important)
I. 72	the prosecution repeated its <i>contention</i> that RL/6 was an accounting record for the purchase of 295.8 kilos of cocaine (the prosecution once more contended that RL/6 was an accounting record for the purchase of 295.8 kilos of cocaine)
I. 90	On this question, there was no <i>dispute</i> since the offences of money laundering and conspiracy to supply amphetamine were specified in Schedule 2 (this question was not disputed since the offences of money laundering and conspiracy to supply amphetamine were specified in Schedule 2)
I. 104	The court is concerned to identify property which either remains in a defendant's <i>possession</i> or which he has obtained in the past (The court is concerned to identify property which the defendant still possesses or which he has obtained in the past)
I. 126	If the prosecution can only establish that the defendant had obtained property in the past by <i>proof</i> of criminal offences other than those charged on the indictment, it must prove those criminal offences to a criminal standard (If the prosecution can only establish that the defendant had obtained property in the past by proving that the defendant has committed other criminal offences than those charged on the indictment, it must prove those criminal offences to a criminal standard)
I. 128	This was the <i>decision</i> of the majority in <i>R v Briggs-Price</i> (This was decided by the/a majority in <i>R v Briggs-Price</i>)
I. 133	the prosecution sought to prove the existence of past assets by proving past <i>trafficking</i> in cannabis (the prosecution sought to prove the existence of past assets by proving that the defendant had previously trafficked cannabis)
I. 148	the Crown could only prove the <i>existence</i> of the assets by proving other offences (the Crown could only prove that the assets existed by proving other

	offences)
I. 149	there might be other means of establishing <i>possession</i> of property (there might be other means of establishing that the defendant possessed property)
I. 155	the Crown must indeed prove the <i>offending</i> (the Crown must indeed prove that the defendant had offended)
I. 159	There is a risk of confusion between the two separate questions, the one as to the <i>existence</i> of property and the other as to the source of that property (There is a risk of confusion between the two separate questions, the one as to whether any property exists and the other as to the source of that property)
I. 162	Proof of the <i>offence</i> of trafficking in cannabis established both the <i>existence</i> of the property, obtained by the defendant in the past, and also its source (Proof that the defendant had offended by trafficking in cannabis established both that property existed, which had been obtained by the defendant in the past, and also its source)
I. 168	...that the defendant has obtained or remains in his <i>possession</i> (...that the defendant has obtained or that he still possesses)
I. 169	In his ruling (when he ruled)
I. 171	the <i>inferences</i> which the officer sought to draw from the notebook were contested (what the officer sought to infer from the notebook was contested)
I. 205	any property held by the defendant at any time after the date of <i>conviction</i> was obtained by him (any property held by the defendant at any time after the date on which he was convicted was obtained by him)
I. 229	In reliance upon the <i>decision</i> of the majority of the House of Lords in <i>Briggs-Price</i> (In reliance upon what the majority of the House of Lords decided in <i>Briggs-Price</i>)
I. 248	It was attempting to prove the <i>existence</i> of property, cash or drugs to the value of £ 8.8 million (It was attempting to prove that property, cash or drugs to the value of £ 8.8 million existed)
I. 254	the <i>inferences</i> the officer sought to draw from the notebook were contested (what the officer sought to infer from the notebook was contested)
I. 255	an attempt to prove the <i>offence</i> of trafficking in cocaine" (an attempt to prove that the defendant had offended by trafficking cocaine)
I. 259	It could prove that he had obtained property by <i>analysis</i> of the notebook. (by analysing the notebook, It could prove that he had obtained property)
I. 262	he has committed offences in the past (he has offended in the past)
I. 272	by <i>proof</i> of previous criminal <i>offences</i> (by proving that the defendant had offended on previous occasions)
I. 294	the existing assets in the <i>possession</i> of the appellant (the existing assets possessed by the appellant)
I. 295	He had an unexplained amount of £ 700,000 in his <i>possession</i> (He possessed an unexplained amount of £ 700,000)
I. 311	His very <i>possession</i> of those pieces of paper and the notebook contradict his assertion that he was merely making notes for someone else (the fact that he possessed those pieces of paper and the notebook contradict his assertion that he was merely making notes for someone else)
I. 313	The contents of the notebook demonstrate, to our <i>satisfaction</i> , that the appellant had a power of disposition or control (We are satisfied that the contents of the notebook demonstrate that the appellant had a power of disposition or control)
I. 328	He contended that he would not be capable of concealing assets valued at millions of pounds particularly after a thorough <i>investigation</i> by an experienced Financial Investigations Unit officer (He contended that he would not be capable of concealing assets valued at millions of pounds particularly after having been thoroughly investigated by an experienced Financial Investigations

	Unit officer)
I. 331	No further <i>argument</i> as to the available amount was advanced before us on the appeal. (Nothing further was argued regarding the available amount before us on the appeal)
I. 349	the defendant has chosen to give no <i>explanation</i> as to what has happened to the assets he obtained (the defendant has chosen not to explain what has happened to the assets he obtained)
Lix:	
4550 ord	
1458 svære ord	
214 perioder	
A = 32,0	
B = 21,3	
Lix = (A+ B) = 53,3 (svær)	