

## A pie in your face



There seems little doubt that the phone hacking scandal will become the subject of many future academic dissertations. Despite being such a tempting subject area, this article is intent on focusing upon the attack at a House of Commons hearing, when a foam pie was thrust into the face of media tycoon Rupert Murdoch.

### **Throwing a pie resulted in speedy justice.**

While the police may have been slow in reacting to some phone hacking events, there is no doubt that justice was speedy when comedian Jonathan May-Bowles (known as Jonnie Marbles) threw a foam pie in Rupert Murdoch's face. Indeed, within less than two weeks, of throwing the foam pie, he was charged and sentenced to 6 weeks in prison (serving 3 weeks in jail, with a £15 victim order and £250 costs). If only those phone hacking arrests could result in such speedy justice.

What is interesting about the foam pie throwing case is that it illustrates the difficulties that Judges face when determining an appropriate sentence. It also serves to outline, as this article will demonstrate, the processes undertaken in sentencing.

### **Issues - in determining an appropriate sentence.**

Firstly, the foam pie case was a reasonably straightforward summary case heard in the Magistrates Court. The defendant Jonnie Marbles had pleaded guilty to the s.4a Public Order offence of intentionally causing harassment, alarm, or distress, which carries a maximum sentence of six months imprisonment and/or a fine not exceeding level 5 on the standard scale.

In determining sentence, a Judge (in this case it was District Judge Daphne Wickham) needs to have regard to the maximum sentence set by law and the sentencing guidelines, as produced by the Sentencing Council, together with any mitigating or aggravating facts. Obviously, we are not privy to the actual case details since they will be confidential, but we can consider the more general issues. For example, there are **aggravating factors** that would make a harsh

sentence seem likely. Amongst these aggravating factors would be issues such as disrupting (in front of millions of TV viewers) the dignity of proceedings in the Palace of Westminster, attacking and intentionally humiliating/distressing/frightening an 80 year-old man. Having said such, it is also clear that in **mitigation**, this was a politically comical act undertaken by a comedian and that 'slapstick and pie throwing is a recognised form of protest' that is not designed to be violent. What is more, on being arrested, there was no effort to escape or violence evident. Thus, in his favour, the defendant had acted without violence and had pleaded guilty.

Given that the Judge needed to weigh up such aggravating/mitigating factors (and knowing that the eyes of the media throughout the world were upon her) it must have been a very difficult decision to decide upon the correct level of sentence. Certainly, there is a need for a deterrent sentence, since obviously the Courts would not like to see foam pies being frequently thrown into well-known faces. On balance therefore, a six-week prison sentence may have seemed to be reasonable (i.e. spending 3 weeks in jail), since any lesser sentence may give out a message of soft justice.

### **Bail was refused.**

Perhaps not surprisingly the defendant's legal team requested 'bail', while they sought to appeal against sentence. This request for bail was refused by District Judge Wickham, which meant that a less than amused Jonnie Marbles was sent to prison while his lawyers appealed against sentence to Southwark Crown Court. The decision to refuse bail seemed to be harsh, given that Jonnie Marbles had previously been on bail before the Magistrates Court hearing and had attended the court showing good behaviour. He was hardly a huge security risk who would flee the country. Nevertheless, the Judge obviously felt that she had sentenced him to prison and he should not be granted bail while he appealed.

### **Press and media reaction.**

While some in the media thought the prison sentence of six weeks (serving 3 weeks in prison) for throwing a foam pie was reasonable, others clearly disagreed. Indeed, left wing journals were quick to allege inconsistency in sentencing by Judge Wickham. They pointed out that Jonnie Marbles had been sent to prison, for throwing the foam pie, while in an earlier case the same Judge had given 150 hours of unpaid work to a police officer who had pushed a teenager through a shop window. A comparison was also made to a 'caution' given, by another Judge, to a woman who (in front of TV cameras) had thrown green custard over Lord Peter Mandelson in a third runway protest.

### **Appeal against sentence.**

Just a few days later, the appeal against sentence (there could be no appeal against a finding of guilt, because the defendant had pleaded guilty) was heard at Southwark Crown Court. At the appeal, Judge Anthony Pitts reviewed the written record of the facts, and listening to the arguments of both the Crown and the defendant. He determined that, in the Magistrates' Court, Judge Wickham had not given enough credit to Jonnie Marbles for pleading guilty and as a result the sentence was reduced from a six-week prison sentence to a four-week prison sentence. In doing so, Judge Pitts remarked: "The defence counsel has sought to persuade us that this was something of a slapstick event, a custard pie throwing have been used in all sorts of comedy situations, which is correct. That might be funny or have an element of comedy about it in a different situation, but not in this situation. It was intended to cause fear and it must have caused fear."

### **Even judges can get a metaphorical pie in their face.**

In conclusion, what the article demonstrates is that in determining sentence Judges need to operate within the legal framework for the crime charged and within the parameters of sentencing laid down by the Magistrates Association. They need to weigh up both mitigating and aggravating factors and that it is not easy to get the balance right.

The outcome shows that even the most experienced of Judges can find that even after a careful and balanced judgement, grounds for appeal can exist. Indeed, the successful appeal demonstrates that even an experienced and respected judge, like Judge Daphne Wickham, can end up with a metaphorical pie in their face.

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