

STATE OF TASMANIA v CHRISTOPHER RICHARD STEVENSON 5 MARCH 2020
COMMENTS ON PASSING SENTENCE

BRETT J

Mr Stevenson, you have pleaded guilty to two counts of unlawfully injuring property.

These crimes consist of two separate acts of sabotage committed by you against the Banjos franchise in Huonville. The first was committed on 25 January 2016 and the second between 13 and 15 April 2017. On the first occasion, you accessed and cut wires in the electrical switchboard applicable to the business premises. The wires were cut in a way which made repair difficult. On the second occasion, you pre-cut the switchboard lock on 13 April 2017 and then returned on 15 April to cut wires in the switchboard. On this occasion, you were recorded on infrared CCTV wearing a mask in order to disguise your appearance.

On each occasion, the damage required a full day to repair. The business was unable to operate on that day and suffered consequent loss. Employees suffered loss of wages. You had targeted the attacks to coincide with days of expected high turnover. The first crime forced the business to close on Australia Day and the second on Easter Sunday. It is clear that this timing was deliberate and selected to cause maximum loss and inconvenience to the business.

It seems that your conduct was motivated by a desire for vindictive revenge against the owners of the business. This motive relates to your former wife's involvement with the business, and a takeover of the franchise by the franchisor at the end of 2015. The existence of this motive is consistent with the premeditated and targeted nature of your conduct.

A matter of significant concern is the danger inherent in the damage caused by you. I have heard evidence concerning the extent of this risk. I should say at the outset that I found the opinions expressed by Mr Branch and Mr Hopper to be more reliable than those expressed by Mr Cragg. I accept their evidence where it differs to his. However, in the end, I think that, for relevant purposes, there is little significant difference in the expert opinion. On any view, your actions created a real risk of injury or even death to others. I am satisfied on the basis of Mr Branch's evidence that on the first occasion, you cut most, he estimated about 90%, of the wires in the switchboard. This included the earth and neutral wires, as well as active wires, although the main earth and neutral cables were untouched. The premises were unoccupied when you did this, and Mr Branch's assessment is that you probably had the power off when you were causing the damage. This would have been safer for you and because nobody was there, the fact that you had turned off the power would not alert anyone to your presence. You replaced the protective panel after you finished.

On the second occasion, however, there was someone working inside the bakery at the time that you inflicted the damage. I am satisfied that you knew this. Mr Branch's opinion is that the power was left on while you were cutting the wires. His opinion about this is based on evidence of cut wires which have shorted, as well as marks on the insulated cutters found nearby. The marks are consistent with, and support his view, that wires have shorted as you have cut them, and this would establish that the power was on at the time. The fact that the power was left on is consistent with your knowledge that the premises were occupied. You would have appreciated that, had you turned the power off at the main switch, the person inside would have been immediately alerted to your presence. What you did not know is that Mr Branch had installed an infrared camera inside the switchboard after he conducted its repair after the 2016 crime, and the employee inside the bakery saw you on this camera. That employee called another who immediately travelled to the business and interrupted you. You fled when

interrupted without completing your sabotage, but also without replacing the protective panel. This left the switchboard in a particularly vulnerable and unsafe condition.

While the damage caused a theoretical risk of electrocution to anyone inside the bakery, including workers and members of the public, it seems to me that the most significant risk arose from the possibility that a worker might check the switchboard upon realising that there was a problem with the electricity supply. Common sense would indicate that the problem caused by the damage inflicted by you, or simply by the main power switch being turned off, would be quickly noticed by a worker inside. It was a highly foreseeable risk that that person would then access the switchboard to investigate the problem, for example to check the main power switch and the safety switches. I am satisfied on the basis of the evidence of Mr Branch and Mr Hopper that the damage had the potential to cause a real risk of electrocution to anyone touching the switchboard. This was the case whether or not the protective panel was in place. Although you did replace the protective panel on the first occasion, it was not replaced on the second because you fled when interrupted. This increased the risk to anyone accessing the switchboard, because there were damaged wires left in an exposed condition. Those wires had the potential to become live if the main power was switched on by the person accessing the switchboard.

There were further risks arising from the damage. For example, there was a risk that shorting and arcing may cause a fire. Mr Hopper, an experienced electrical inspector, also noted a significant risk that the damage could cause problems associated with electrical shocks and electrocution in other premises, because of malfunctions in the network due to the damage. Although Mr Cragg disputed this, he is an electrical contractor from New Zealand. His expertise does not relate to the operation of the wider network. I have no hesitation in preferring Mr Hopper's evidence about this question. He has significant and relevant expertise in respect of the network, particularly in the Tasmanian situation. I also reject Mr Cragg's evidence concerning the limited risk of electrocution arising from the cutting of the wires in the switchboard. His evidence was based largely on the identification of the damage by looking at photographs. In particular, he concluded that, on the first occasion, the earth and neutral wires had not been cut, and this is directly contradicted by Mr Branch's evidence. Mr Branch's evidence is demonstrably more reliable. He actually inspected the damage on both occasions, and I accept his evidence about what he saw.

Fortunately, the risks were not realised. On each occasion, staff members did access the switchboard, but quickly adopted a cautious approach and sought assistance from Mr Branch. This prudent action promptly and adequately obviated the risk. However, the prudent action on the part of those persons does not mitigate nor reduce your moral culpability. You interfered with and caused significant damage to electrical infrastructure when you knew that staff members were inside the business or would shortly be starting work. On each occasion, you put them at risk. You had no way of knowing how they would respond, and the potential of a dangerous and casual response was very real. You are not to be sentenced on the basis that you intended to cause harm to any person, because such an intention would be an element of a different and more serious crime with which you were not charged. However, you must have realised that your actions would create significant risk. The way in which you inflicted the damage indicates that you had some familiarity with electrical infrastructure and your counsel has told me that although you are not a qualified electrician, you have qualifications in engineering and telecommunications. Common sense would suggest that interfering with electrical infrastructure as you did involves significant risk. When regard is had to your qualifications, the only reasonable conclusion is that you must have appreciated this. At the very least, there is no suggestion that you took any step towards the mitigation of risk, apart

from replacing the protective panel on the first occasion. As I have already noted, on the second occasion, you did not even do this. The dangerous and reckless nature of your actions significantly aggravates your culpability.

You are 57 years of age. You have no prior convictions apart from a few speeding infringements. You have a good industrial record and a history of community contribution. You are single but have two daughters with whom you have regular contact. Your 15 year old daughter suffers from conditions which affect her mental health and she relies on you for support. She will obviously suffer as a result of your incarceration but it is not suggested that this amounts to an exceptional circumstance. It is of some concern that you conducted yourself in this way notwithstanding your obligation to her and your family generally.

Your counsel submits that you are remorseful, but there is little evidence that you have demonstrated remorse in a relevant way. The fact that you committed these two acts a year apart, and with clear premeditation and planning, suggests that any feelings of regret you have at the moment are more likely to originate from the predicament in which you find yourself, rather than from true remorse. However, you have now pleaded guilty. The plea was indicated at a very late stage in the proceedings, after the matter had been listed for trial, but, on the other hand, it was indicated soon after the prosecution advised that they would not proceed with a third charge against you. You are entitled to some credit for the plea.

I will also take into account in your favour the question of delay. It is almost 3 years since you committed the second crime. I was not told anything about the cause of this delay, and I do not attribute blame for it to anyone. However, I accept that you have had this hanging over your head for a considerable period of time, and that that must have caused you to suffer significant anxiety. I am told also that you have endured a considerable amount of public speculation about your actions, and consequent humiliation. I will take all of these matters into account as adverse consequences already suffered by you as a result of your own conduct.

However, it must be clear from my comments that I regard the objective seriousness of this offending, together with your moral culpability for it, as very high. It was dangerous and reckless conduct carried out on a premeditated and repeated basis for vindictive reasons. I think that general deterrence, denunciation and vindication of the victims, and I include among them, the employees of the business, are significant sentencing considerations. Although you had no prior convictions, you were well and truly old enough to appreciate the wrongfulness of your conduct. For this reason, and because of the deliberate and repeated nature of the conduct, I think that specific deterrence also has an important role to play.

Christopher Stephenson, you are convicted of the crimes to which you have pleaded guilty and sentenced to imprisonment for a global term of 21 months, which will be backdated to 28 February 2020. In view of your pleas of guilty and your prior good character, I order that the last nine months of that sentence be suspended for a period of two years, on condition that you not commit another offence punishable by imprisonment during that period. In respect of the operative sentence of 12 months, I order that you not be eligible for parole until you have served one half of that period. This sentence results in an actual term to be served in prison before you become eligible for parole, of six months.

I make a compensation order in favour of Banjos Corporation Pty Ltd in a sum to be assessed, and I adjourn assessment sine die.