

**STATE OF TASMANIA V ROBERT ALAN SHEARING
COMMENTS ON PASSING SENTENCE**

**ESTCOURT J
12 JUNE 2020**

The defendant in this matter, Robert Alan Shearing, who was 36 years of age at the time, has pleaded guilty to four counts of assaulting a police officer contrary to s 114(1) of the *Criminal Code*.

I have also agreed to deal with an associated summary offence of resisting police.

The complainants are Senior Constable Shaun Pedder, Constable Shane Leek and Constable Hailey Sinclair.

On 8 December 2018 at 7:59pm, Tasmania Police received an emergency call from the defendant's partner, Hannah Smith. Ms Smith told police that the defendant had assaulted her and that she required urgent assistance. The address provided to police was the home of the defendant at the time.

Senior Constable Pedder and Constable Sinclair travelled to the address. On arrival the defendant answered the door. He was intoxicated.

Senior Constable Pedder took the defendant's personal details and asked him what had occurred. The defendant told Senior Constable Pedder that he and Ms Smith had had an argument which had "gotten physical". At this point Senior Constable Pedder told the defendant he was under arrest. The defendant said "You're not going to arrest me in front of my kids".

Senior Constable Pedder asked the defendant to turn around, which he did, and he put a handcuff on the defendant's left wrist. At this point the defendant turned around, threw his body around and waved around his right arm, refusing to keep it behind his back as he had been asked. That is the component of the offence of resisting police.

At this point, Constable Sinclair came out of the house and tried to place the defendant's right arm behind his back. The defendant continued to throw his body around and hold his right arm away from the officer's reach. Senior Constable Pedder tried to get the defendant on the ground but was unable to do so due to the small amount of space on the porch, where he and the defendant were standing.

Constable Leek arrived at about this point. He saw the other two officers struggling with the defendant. Senior Constable Pedder was calling out for assistance. The defendant punched Constable Leek to the back of the head. That is the first count of assault.

Senior Constable Pedder took hold of the defendant's right arm. As he tried to place it behind the defendant's back the defendant looked at him and head-butted him to the right side of his face. That is the second count of assault.

The defendant picked up a metal lantern from the porch with his right hand, raised it above his head and waved it around in a threatening manner. Constable Sinclair grabbed hold of it, and pulled it away from the defendant. That is the third count of assault.

Constable Sinclair was standing directly in front of the defendant at this point, with her back facing towards the stairs which led off the porch onto the driveway below. The defendant spat a large amount of saliva at her face which landed directly in her open right eye. That is the fourth count of assault.

The defendant was arrested and at the conclusion of an interview by police he was charged and bailed.

During the course of the investigation the defendant told police that he was a carrier of, Hepatitis C. The defendant voluntarily undertook testing to confirm that infection. That testing also revealed that the disease was in its actively infectious stage at the time.

Each officer underwent medical treatment for their injuries as a result of the incident. Two of them also undertook testing for Hepatitis C infection. Senior Constable Pedder had soreness to his right cheek. Constable Leek had soreness to his head and was tested for Hepatitis C. The tests returned were negative. Constable Sinclair was tested for Hepatitis C. Again, the tests returned were negative.

Once Constable Sinclair returned to the Bridgewater Police Station, she felt very upset and angry about being spat on. Earlier in 2018 she had a female spit in her face, who was Hepatitis C positive. She was therefore aware of the blood tests and the changes to her lifestyle that would be required for a number of months following this incident. Her blood tests for the previous incident had concluded only three weeks before this assault and she felt angry that she had been put in a position where she would again have to go through this process.

Constable Leek suffered a lot of stress, not only for himself, but also for his family. He was initially told that the testing period would only be 3 months, and during this time he found it difficult to get to sleep and in general became tired which then effected his personal and work life. Not only did it affect his sleep patterns but it also changed the way that he had to have dealings with his wife, children and grandchildren.

The defendant identifies as Aboriginal and reported that he "grew up poor" in the Bridgewater area, and did not know his father. He was raised by his mother and maternal grandparents, and has a twin sister and two half-brothers.

The defendant reported he has been in a relationship with his partner for approximately 12 years and they remain in a committed relationship. They have two children together aged seven and eleven, and a third older child born to a previous relationship of his partner. He enjoys a sound relationship with their children. He has had numerous arguments with his partner over the years, and in one instance in August 2018, that is the day of this current offending, it escalated to common assault.

The defendant has maintained employment for approximately twelve months through Aus Labour, a Recruitment Company, and he is currently contracted to work for Acrow. His work hours can vary between 30 to 40 hours a week.

Prior to his employment at Acrow, the defendant had been unemployed for approximately three to four years. In regards to substance abuse, the defendant advised he commenced drinking alcohol from 14 years of age.

During adulthood he had problematic levels of drinking, consuming at times in excess of ten standard drinks in a sitting. Since the commission of the current offending he has reduced his consumption of alcohol to "no more than a few beers twice a week" and he does not become intoxicated. He did this subsequent to identifying the correlation between his alcohol consumption and his anti-social and criminal behaviour.

The defendant was first charged with an offence at 15 years of age for stealing, resulting in a diversionary conference. In the following years, his offending escalated and remained consistent, being charged with numerous aggravated burglary, stealing and traffic related matters, particularly driving a motor vehicle while exceeding the prescribed alcohol limit. As I have just said, in 2019, he was convicted of common assault in a family violence context. This was his first conviction for any offence of violence and is of course related to the current offending.

As to the current offending, the defendant had been drinking excessively consuming alcohol, describing himself as having "a gut full", trying to cope with the stress of caring for his unwell grandmother who was regularly not lucid and suffering from incontinence, symptomatic of her dementia diagnosis. Additionally, the defendant had a negative and defiant predisposition towards police, consequent upon a difficult upbringing.

I am told that the defendant, upon hearing the victim impact statement of the victims, stated that he felt immediate remorse, stating that he was sorry for how his actions not only affected the police officers', but also the impact it had on their families; he said "if it was me it was happening to, and I went to work and something happened, and I was waiting around for months (for a diagnosis), I'd be pretty upset".

I accept that the defendant is remorseful and notwithstanding the timing of the two documents, I accept the observation of Crown counsel, Mr Ogden, that remorse or insight by the defendant should be assessed against statements made to the author of the pre-sentence report, which amount to denials that the conduct the subject of counts 2 and 4 on the indictment was purposeful or intentional. I note that counsel for the defendant, Ms Graves, states on behalf of the defendant that he fully accepts that his actions were purposeful and intentional, and tempered by those statements made to the author of the pre-sentence report. I accept his remorse.

These crimes are very serious assaults because they were committed on police officers acting in the course of their duty. Police must be protected by the Courts by the imposition of heavy sentences for such offending. There can be no more self-evident proposition. It requires no elaboration. Members of the community must know and appreciate this.

The defendant has been deemed suitable for home detention save that his employment is such that he cannot provide the monitoring authorities with his work schedule in advance. This poses a difficult sentencing problem. Ordinarily in such circumstances I would have imposed a sentence of imprisonment in a case such as this if the defendant did not consent to home detention unconditionally. However in this case I am impressed by the defendant's efforts to modify his behaviour, and it is clear that his employment is central to his continued rehabilitation. I also note his lack of prior offending for violence before 8 December 2018. Another person in the defendant's position but with more certain times and places of employment could be dealt with by the imposition of

home detention. It seems unfair that the defendant can't be sentenced to home detention because of his job but to send him to prison would result in him losing his job. Again, in part at least due to his employment, he has been deemed unsuitable for community service.

Nonetheless a heavy sentence is called for, particularly in view of the insidious nature of the assault by spitting when the defendant was Hepatitis C positive.

The defendant is convicted on all counts and is sentenced to 12 months' imprisonment, which I wholly suspend on condition that the defendant commit no offence punishable by imprisonment for a period of three years, and he is fined the sum of \$3,000.