

**STATE OF TASMANIA v PAUL LANCE BROAD
and STEVEN ANTHONY DUNNE
COMMENTS ON PASSING SENTENCE**

26 AUGUST 2020

BRETT J

Mr Broad and Mr Dunne, you have each pleaded guilty to one count of wounding. You were charged with this crime conjointly with another man. He is currently awaiting trial.

The crime was committed on 17 June 2019. On the evening of that day, you and your co-accused travelled by car to the complainant's house. Your intention was to conduct a vehicle manoeuvre outside the house, which would cause noise and smoke and annoy those in the house. The background to this was bad blood between Mr Dunne and the complainant's son, which had arisen some years ago as a result of issues to do with Mr Dunne's relationship. It is not relevant to canvas those matters now, but they had given rise to an ongoing feud, characterised by mutual restraint orders and what seems to be the regular mutual practice of performing burnouts outside each other's residence. It is asserted by you that the complainant's son had used his vehicle in a provocative way outside Mr Dunne's residence earlier in the day. You had both been consuming alcohol and clearly decided that it would be a good idea to seek retribution. The immaturity of this nonsense is beyond belief. However, on this occasion, events escalated and resulted in the commission by each of you of a serious crime.

The events which took place after your arrival were largely captured on CCTV. Apparently, the camera had been installed because of earlier incidents of provocation which included burnouts. You claim to have believed that the complainant's son was living at and present at his parents' house. It seems that he did not actually live there, but the prosecution accepts that you may have genuinely held that belief. In any event, such a belief could not possibly amount to mitigation. On the contrary, the fact that you were acting in this way as a perceived form of retribution for what you understood to be a grievance, would seem to me to aggravate the seriousness of your subsequent conduct.

Further, you were both aware that the house was in fact the home of the complainant and his wife. The complainant is 57 years of age and his wife 55. They had resided in that home for 23 years. They were both present in the house when you arrived.

The CCTV record depicts your vehicle arriving in front of the house and, almost immediately, a great deal of smoke emanating from the tyres of the car. It is obvious that the vehicle was being deliberately operated in a manner which produced smoke and noise. An un-identified person walks to the back of a vehicle parked in the complainant's driveway and strikes it a number of times with an implement that looks very much, at least from what can be seen as he is moving away, like a log splitter or large axe. After this man retreats, but while the burnout is still being conducted, the complainant runs down his driveway carrying a small baseball bat. He approaches your car and appears to strike the vehicle with the bat. He is followed by his wife. After this, two men enter the complainant's property, pursuing him and his wife, who are then running back to the house. One of the men is carrying the log splitter. It seems clear enough that the two men are Mr Broad and the co-accused, and that the co-accused has the log splitter. The complainant stands his ground, is confronted by the co-accused, and then Broad steps around the co-accused and physically engages the complainant. The co-accused attacks the complainant's truck with the weapon. Mr Dunne then arrives at the scene, takes the log splitter from the co-accused and strikes the complainant to the legs a number of times. The complainant falls to the ground and Dunne strikes him to the abdomen with the log splitter on at least two occasions. Broad still has hold of the complainant while Dunne is hitting him. The complainant

then gets to his feet, still holding the small bat. You both attack him again, Broad wrestling with him over the bat and Dunne striking him to the upper body with the weapon. On at least one occasion, Dunne strikes him to the head. It can be inferred from his injuries, which I will discuss shortly, that at least one blow has landed in the complainant's face. The co-accused eventually takes the baseball bat from the complainant and strikes him with it. While this is happening, Dunne strikes the complainant to the legs and then to the back again, with the log splitter. You both then withdraw, although the co-accused causes further damage to the complainant's vehicle as he leaves the premises. I note that you have not been charged with unlawfully injuring property, and, accordingly, neither of you will be punished for that aspect of the co-accused's conduct.

After the attack, the complainant was transported by ambulance to hospital. He suffered the following wounds: lacerations to his lips, dental avulsions from the left lower teeth, left and right parietal scalp lacerations and a laceration to his left lower abdomen. He also suffered fractures of the transverse process of a lumbar vertebrae, a left scapular body fracture and an injury to his abdominal cavity. The scalp and abdominal lacerations were closed by sutures and the lip lacerations and dental avulsions were repaired surgically. A dentist has opined that the complainant has also suffered several broken and concussed teeth. At least six teeth will have to be removed as soon as possible because of potential infection and pain, and three other teeth may need root canal treatment in the future.

I have been provided with an impact statement from the complainant. He describes the terror of the experience and his fear for his welfare and that of his wife. Understandably, he believed that you were trying to kill him and that you might succeed. He remembers seeing the log splitter coming for his face and then having to spit out teeth. He feels keenly the damage to his teeth and the embarrassment and cosmetic consequences resulting from the dental damage. He describes the very significant financial impact, particularly that related to the required dental work. He also describes the significant psychological and emotional impact of this experience. He and his wife no longer feel secure in their home of 23 years. He believes that his wife is, in his words, "struggling almost more than me". Both have been having counselling. This impact in all respects is understandable and what would one would reasonably expect as a result of a serious attack of this nature.

Mr Broad, you are 28 years of age. You are in a relationship and have no dependents. Your criminal record contains a number of varied offences, many of which are related to traffic and dishonesty. You also have a significant criminal history for acts of violence. In 2016, you were sentenced by a judge for one count of assault. There are some obvious parallels between your conduct on that occasion and this crime. You attacked and assaulted a neighbour on his property because of a perceived grievance. You were dealt with leniently on that occasion, by way of imposition of a suspended sentence. In 2017, you were again sentenced by this Court for the crime of assault. On this occasion, you were affected by alcohol. You brutally assaulted a man with whom you had been drinking. You spent time in prison for this crime. There are other convictions for common assault on your record.

It is clear, and your counsel concedes, that excessive consumption of alcohol has been a significant problem for you. That is of some relevance to your conduct on this occasion, because it is also conceded that you were heavily intoxicated when you committed this crime. This, of course, does not mitigate your moral culpability for what you did, but it is a factor relevant to the determination of sentence, particularly with respect to the considerations of personal deterrence and the need to protect others from your drunken violence. Your counsel

submits that your actions on this occasion have caused you to reflect on your relationship with alcohol. I would suggest that that is probably something you should have done when you were sentenced for the crime in 2017. I will take into account, however, that you may now have developed some insight, and have at least expressed a commitment to reform. I accept your plea of guilty as consistent with that insight and commitment.

In respect of your involvement in the relevant events, the most that can be said in your favour is that you did not actually have possession of or use a weapon at any time. However, it is clear that you were closely involved in the attack on this man, and well aware of, and complicit in, the use of the weapon by Dunne. You are one of the first two men to enter the property in pursuit of the complainant and you actually initiated the physical attack after the complainant turned and stood his ground, which he was, of course, perfectly entitled to do in protection of his property. On at least one occasion, you hold the complainant while Dunne strikes him with the log splitter. There cannot be any real doubt that as you continued your attack you were well aware of what Dunne was doing with the log splitter.

Mr Dunne, you are 27 years of age. You have four children, including a 15-month-old daughter and a new born son. Your two oldest children were in your care pursuant to court order until your imprisonment in respect of this matter. They are now being cared for by their mother. You are in receipt of a disability support pension for cystic fibrosis.

Your criminal history is less extensive than that of Mr Broad, but still includes a number of serious offences, including convictions for drink-driving, firearms offences and drug matters. There are also two breaches of family violence orders but I am told that neither of these relate to the perpetration of actual violence. There is no other conviction for violent offending on your record.

You also were intoxicated when you committed this crime. Your counsel asserts that you did not get out of the car immediately when the other two did, and it was one of them that took the log splitter to use as a weapon. It is clear, however, that you joined the attack relatively quickly, took the weapon from the co-accused and then used it throughout the attack. You accept that your use of the weapon caused most, if not all, of the complainant's injuries. Your direct use of the weapon seriously aggravates the objective seriousness of, and your moral culpability for, this crime.

Your counsel also asserts that you thought the complainant was in fact the complainant's son. I do not think that this would have any mitigatory value, but in any event the prosecution accepts only that you might have initially thought this to be the case, but then you must have realised that you were, in fact, dealing with his father. You had known the complainant since childhood because you and the complainant's son had gone to school together, and you had been to their house at that time. Counsel indicated that I should determine this matter based on inferences from the information I have been given during the sentencing hearing. As you claim this fact in mitigation, the onus is on you to satisfy me of it on the balance of probabilities. I think it is highly improbable that you did not realise who you were dealing with, at least early in the relevant events. You are physically close to the complainant throughout, and often looking directly at him. You must have realised who it was. I intend to proceed on this basis, but, in any event, as I have already said, I think this matters little with respect to your culpability for this crime.

In summary, the attack perpetrated by you both was brutal, cowardly and sustained. It was carried out in a group against a single victim, for no good reason and it resulted in severe injury. The injuries, as bad as they are, could easily have been far worse. The prosecution case against you both proceeds on the basis that you were subjectively reckless with respect to the causation of the wounds, that is you appreciated that the result of the attack was likely to result in the causation of a wound, but you proceeded with the attack nevertheless. While this is generally regarded as a less serious basis for criminal responsibility for this crime, in the circumstances of this case and, particularly given the repeated use of the weapon and the nature of the blows administered by Mr Dunne, it seems to me that the distinction between this mental element and the intentional infliction of the wounds in terms of your moral culpability, is minimal. Further, the fact that the attack occurred at the complainant's home and on his property significantly aggravates the seriousness of the crime. He and his wife were understandably terrified and have been, and will continue to be, significantly affected by this experience. Although you did not actually enter the building, the attack occurred on their property, a place where they were entitled to feel safe and secure. I suspect that they will never enjoy that feeling again. Conduct such as this has no place in our community. General deterrence, denunciation of your conduct and vindication of the victims are the most important sentencing considerations.

In respect of the question of your individual culpability for this crime, I am satisfied that there is no legitimate basis for any significant distinction in that regard between you. I am not satisfied that either of you went to this house on the night for the purpose of assaulting this man, or indeed anyone. However, you both clearly intended to act provocatively, and I have no doubt that you both knew that the log splitter was in the car, because I am also satisfied that it was intended that one of the three of you would use it as a weapon to cause damage to property at the house as part of the provocation. Once the victim had given you the slightest reason to physically attack him, which he did by hitting your car with his bat, I am satisfied that you both enthusiastically joined in the group attack upon him. Although Mr Dunne hesitated for a short time, he proactively took the weapon off the third man in order to attack the complainant with it. Broad initiated the physical attack and was aware of and inextricably bound up in Dunne's attack on the complainant with the weapon. I have also observed that you are both being sentenced for the same mental element in relation to the crime of wounding. Having regard to these matters, I do not think I should distinguish between you in terms of the head sentence. To the extent that a claim can be made that Broad is less culpable because he did not actually have possession of the weapon when the wounds were being inflicted, the resultant difference in culpability is minimal and is balanced out well and truly by the fact that he has a significantly worse criminal history for acts of violence, than does Dunne. However, it is appropriate to distinguish in the fixing of the respective non-parole periods, given the difference in the prior criminal history of each of you. In Broad's case, the history of violent offending increases the need for an emphasis on specific deterrence. A further point of distinction will relate to Mr Dunne's promise to give evidence against the third member of the group. I will comment on this in a moment.

Mr Broad, you are convicted of the crime to which you have pleaded guilty and sentenced to two years and six months' imprisonment. You have been in custody since your arrest and, accordingly, your sentence is backdated to commence on 19 June 2019. I will provide for the possibility of release on parole but in view of your criminal record, I consider that the minimum time you should spend in custody should be longer than the minimum non-parole period. Accordingly, I order that you not be eligible for parole until you have served 18 months of that sentence.

Mr Dunne, you are convicted of the crime to which you have pleaded guilty. But for your promise to give evidence against the third man, I would also have imposed a sentence of two years and six months on you. However, you have, through your counsel, indicated that you will give evidence for the prosecution against the co-accused still awaiting trial. Prosecuting counsel concedes that your evidence is likely to be of assistance and will be of importance to the strength of the prosecution case against that man. I consider it appropriate, for reasons of public policy, to provide for a specific discount to take into account your promised co-operation with the authorities, although when I compare your culpability with that of the co-accused, I think that the discount should be relatively modest. I will therefore reduce the sentence by 20% for this reason. Accordingly, you are sentenced to imprisonment for a term of two years, which will be backdated to commence on 9 July 2020. You will not be eligible for parole until you have served one half of that sentence. In fixing the non-parole period at this length, that is, the minimum length, I have taken into account your plea of guilty, your lack of prior violent offending, and the possibility that your condition of cystic fibrosis may make your time in custody more difficult than would otherwise be the case.