

STATE OF TASMANIA v LUKE DAVID BUCK
COMMENTS ON PASSING SENTENCE

21 SEPTEMBER 2020
BLOW CJ

Mr Buck has been found guilty by a jury on a charge of aggravated assault. On the afternoon of 20 February 2019 he was driving along a street in Warrane when he stopped and committed this crime by pointing a firearm through his window at an acquaintance who happened to be on the street, assisting another man who was repairing a motorcycle. He spoke angrily to the man at whom he was pointing the weapon. That man feared for his safety, left the scene, went inside a house, and phoned 000. Mr Buck drove off, and was arrested by police officers within the hour. He no longer had the weapon, but shotgun ammunition was found in his possession.

I will make some findings of fact for sentencing purposes. First of all, I am satisfied beyond reasonable doubt that the weapon was a shotgun. I make that finding on the basis of the evidence of two passers-by who saw the weapon, as well as an assertion by the victim in his 000 call that Mr Buck had just pointed a sawn-off shotgun at him.

I am unable to make a finding as to whether the weapon was loaded or not. However it is significant that Mr Buck had shotgun ammunition on him when he was arrested.

The victim gave evidence that when Mr Buck pointed the gun he said, "You want me to shoot you?" The victim did not mention in his 000 call that Mr Buck had spoken of shooting him, nor did he say anything about that to the police at the time. A police officer took a statutory declaration from him, but there was no such assertion in it. There was certainly evidence of a heated conversation. One of the passers-by said that he heard words like "You dog". I regard it as quite plausible that the victim heard Mr Buck say something about shooting him, and failed to include that detail when describing what happened shortly afterwards. I am satisfied beyond reasonable doubt that Mr Buck did not just point the gun and speak angrily, but also spoke of shooting the victim.

I am satisfied beyond reasonable doubt that Mr Buck was intoxicated at the time, probably as the result of using some sort of illicit substance. He and the victim had known each other for years, but the victim gave evidence, which I accept, that Mr Buck kept asking who he was, even after he identified himself. The victim's mother saw Mr Buck and said that he was clearly agitated, and that his eyes looked like they were going to pop out of his head. The arresting officer said that his eyes were really wide, that he was very agitated, that he was very dry around the mouth, and that he appeared to her to be under the influence of some sort of substance. After he had been placed in a divisional van he was in such an agitated state that detectives considered that it was not safe for them to engage in conversation with him.

There was no evidence of Mr Buck having any motive for committing this crime. In summary, he was driving along a suburban street at about 4pm on a February afternoon whilst intoxicated and equipped with a shotgun and shotgun ammunition when, for no apparent reason, he stopped his vehicle, pointed the shotgun at an acquaintance, spoke angrily to him, and spoke of shooting him. It was an extremely dangerous situation.

I was provided with a victim impact statement. As I have said, the victim feared for his safety. Some 18 months later, he has problems with hypervigilance, anxiety about his safety, and intrusive recollections.

Mr Buck was 35 years old on the day in question and is now 37. He has a long criminal record, with many convictions for crimes and offences involving violence, disorderly conduct, threatening police officers, and the carrying of weapons including knives and machetes. He has been sentenced to imprisonment several times, both for crimes of violence and for other offences. His first prison sentence was in 2010 when he was sentenced to 12 months' imprisonment for assault after breaking an innocent man's jaw. In 2012 he was sentenced to a total of 4 years 9 months' imprisonment in relation to four separate violent incidents. When he committed this crime he was on bail on several charges, including a charge of wounding relating to an incident when he bit off part of a man's ear. He has been in custody for at least 11 months, serving sentences in relation to other crimes and offences. He is currently serving a sentence of 3 years' imprisonment in relation to charges arising from the ear-biting incident. After it, he will have to serve two cumulative sentences – one of 3 months and one of 9 months – in relation to an episode in August of last year when, amongst other things, he assaulted two police officers. Subject to the sentence that I will shortly be imposing, he would be eligible to apply for parole on 28 June 2022. If not paroled his earliest release date, with remissions, would be 28 March 2023 and his latest release date, without remissions, would be 28 September 2023.

Because the sentence that I will impose will come on top of those other prison sentences, the "totality principle" requires me to take a somewhat more lenient course than would otherwise be appropriate.

I have been told that Mr Buck has a chronic pain problem as a result of some work-related knee injuries and a subsequent motor vehicle accident. The best pain medication is medication that the prison authorities will not make available to him. I understand it to be addictive, and quite popular amongst prisoners. Mr Buck has had drug and alcohol problems, and has expressed a desire to work towards rehabilitation so that he does not return to prison after his release. However a number of common mitigating features are absent in this case. Mr Buck is not a youthful offender. He is not a first offender. He did not plead guilty. He has not expressed remorse.

The only appropriate penalty in this case is a significant sentence of imprisonment. To give effect to the totality principle, I will make the first two months concurrent with another sentence, and impose the shortest possible non-parole period.

Luke David Buck, I convict you and sentence you to 2 years' imprisonment, 2 months of which will be concurrent with the sentence of 9 months' imprisonment imposed upon you in the Magistrates Court on 26 February 2020, and the balance of which will be cumulative with your other sentences. You will not be eligible for parole until you have served 12 months of this sentence.