

STATE OF TASMANIA v MARCK BARTHOLOMEW LEWIS
STATE OF TASMANIA v RENEE PAULA TROJAN
COMMENTS ON PASSING SENTENCE

16 October 2020
ESTCOURT J

The defendants Marck Bartholomew Lewis, aged 32 and Renee Paula Trojan, aged 28, have pleaded guilty to aggravated robbery. At the time of the commission of the crime the defendants were in a relationship.

On Friday 12 July 2019 the complainant, Ghirmay Asmamaw, checked into room 22 at the Martin Cash Motel on Main Road Glenorchy, where he was staying.

At around 6pm on Saturday 13 July, the complainant went to the Carlyle Hotel, located across the road from the Martin Cash Motel. He spent time in the gaming room, having a few drinks and playing the poker machines. The defendants were also at the Carlyle Hotel at this time in the gaming room.

A short time later the defendant Trojan approached the complainant, started talking to him and stood behind him watching him play the poker machines. The defendant Lewis watched this interaction for a short amount of time before leaving the hotel for about an hour, leaving the defendant Trojan with the complainant in the gaming room. At 9:31pm he returned briefly, but approximately one minute later left via the front doors and waited outside the hotel.

At this time the defendant Trojan was still with the complainant in the gaming room. At about 9:33pm she and the complainant left the hotel together via the front door. The defendant Trojan saw the complainant had a room key from the Martin Cash Motel and told the complainant that she was staying there as well.

A few seconds later the defendant Lewis came back briefly into the front foyer of the Carlyle Hotel, before walking back out the front doors and walking in the same direction as the complainant and the defendant Trojan had.

The complainant and the defendant Trojan walked over the road to the Martin Cash Motel, and the defendant Lewis followed.

The complainant opened the door to his room and the defendant Trojan asked whether she could come in for a drink, and the complainant agreed.

A few minutes later there was a knock at the door and the complainant went to answer it. The defendant Lewis punched the complainant to the head and ribs, and held him by his jumper beneath his neck, saying "*where is the money, where is the money*"?

The defendant Lewis then pushed the complainant down onto the ground near the end of the bed, and used his left foot to push the complainant down by his stomach.

The defendant Trojan then bent down and pulled the complainant's wallet out of his back right jeans pocket. The wallet contained about \$600. She also removed his mobile phone from his front right pocket and his room key from his front left pocket.

Both defendants then got off the complainant and left the room, taking his property with them. The defendant Lewis took the complainant's phone charger out of the wall on the way out, and said "*don't call or go outside or I will kill you*".

The complainant was so scared that he locked the door and stayed inside for the rest of the night.

The following morning at around 9am the complainant went to reception and called the police. As a result of the incident he sustained a lump on his head and a small cut to his cheek.

As a result of the incident he had \$600 in cash stolen as well as his mobile phone and phone charger, and a number of cards. None of the property has been recovered.

The Crown assert the defendants formed a plan to rob the complainant together in a joint criminal enterprise. Fortunately the complainant's injuries were relatively minor, however I have had read to me a victim impact statement, and the incident has left him feeling constantly stressed. He has a lot of trouble sleeping and feels scared to go out. He has been caused to feel a lot of fear and anxiety as a result of the incident.

The defendant Trojan's plea of guilty to the indictment and summary charges came after negotiations between prosecution and defence over the past few months. She has never denied the offending generally. The issues for resolution concerned the particulars and facts upon which she would plead guilty. She is entitled to a discount for the utilitarian benefit of that plea.

Her biological parents have effectively abandoned her, and did so some years ago. She has two children aged 4 and 5, both are in the care of the Secretary of the Department of Communities. Her eldest child was taken from her when 12 hours old and her second child was removed after 13 months. I am informed that she suffered sexual abuse when aged 16 at the hands of her mother's then partner. She has begun to deal with this and last year attended the SASS on two occasions. She has no employment history of any length and her main focus over the past four years has been to try and maintain a connection with her children. She has already organised visits with her children for when she is released.

A perusal of her pre-sentence records, I am told, reveal that she was admitted to the psychiatric unit of the Royal Hobart Hospital in late 2017, and on discharge did not follow-up appointments with her psychiatrist. However, she now wants to pursue mental health and drug and alcohol abuse support.

Her criminal history when she lived in northern New South Wales began in 2013. She met the defendant Lewis on her return to Tasmania and although her criminal history in the past 6 years is lengthy, and includes offences of dishonesty and assault, she has no prior convictions for robbery. This is the first time that she has been dealt with in the Supreme Court.

She has spent 233 days in custody in respect of this offence, and the defendant Lewis has spent 430 days in custody in respect of the offence.

His plea of guilty also came after negotiations with the Crown as to a factual dispute and is entitled to credit for that.

He is the eldest of six children in his family and has a long history of substance abuse and offending commencing in the children's court in Tasmania at the age of 12. He has used a variety of illicit drugs and illicit use of prescription drugs from a very early age. It is clear that he has suffered from mental health conditions from a young age including, I am told, bi-polar disorder and ongoing depression for which he has self-medicated with illicit drugs. This was exacerbated after suffering injuries in a car accident requiring hospitalisation.

The defendant Lewis is the biological father of an infant daughter, with the defendant Trojan and has also been a father figure to Ms Trojan's son. The children are currently on an 18 year care and protection order, and the defendant Lewis has been proactive in participating in all court proceedings relating to the children, even when in custody. A major motivation for his rehabilitation is his desire to be a decent role model to his children and to be a reliable and responsible partner in the future to Ms Trojan.

At the time of the current offending the defendant Lewis was homeless. He has been using amphetamines on a daily basis, including on the day and evening of the robbery, and at that time was under the influence of methylamphetamine. He has engaged in work with prison counsellors and psychologists to address his long-term drug addiction in respect of his recidivist offending. He has been accessing pharmacotherapy within the prison, and plans further treatment in community rehabilitation with the alcohol and drugs service at St John's Park and the Salvation Army Bridge Program.

Unlike the defendant Trojan, Mr Lewis has a record of prior convictions which is also lengthy. His record, unlike Ms Trojan, involves many convictions for aggravated burglary and one for aggravated armed robbery in 2008 for which he was sentenced to 30 months' imprisonment.

He was currently then serving an immediately effective sentence of two years and 3 months' imprisonment for offences of aggravated burglar, stealing, motor vehicle stealing and assault. The sentencing judge said at that time that the explanation for the defendant's criminal conduct was his abuse of alcohol and drugs, and more recently drugs alone.

To my mind this is serious case of aggravated robbery in respect of which there are no mitigating factors. I do not accept that there was no element of pre-planning from the time the defendants commenced to observe the complainant at the hotel. There is little to distinguish between them in terms of their criminal culpability, although I note their respective ages, roles and records. Neither of them, of course, are to be punished for their records. I note both were on bail at the time of this offending which is an aggravating circumstance.

The Crown seeks a compensation order pursuant to s 68(1) of the *Sentencing Act* in favour of Ghirmay Asmamaw in the sum of \$600, and I make that order against both defendants.

Both defendants are convicted. The defendant Trojan is sentenced to 16 months' imprisonment, backdated to 25 February 2020, with parole eligibility after serving half of that sentence. The defendant Lewis is sentenced to 20 months' imprisonment, backed to 14 August 2019, with parole eligibility after serving half of that sentence.

On my calculations that makes both defendants immediately eligible for parole.