

STATE OF TASMANIA v ROBERT MICHAEL CUMMINGS 25 NOVEMBER 2020
COMMENTS ON PASSING SENTENCE ESTCOURT J

The defendant, Robert Michael Cummings aged 31, has pleaded guilty to one count of assault. I have also agreed to deal with a related summary offence, being a charge of a breach of family violence order on complaint 50661/2020.

At the time of the commission of the crimes the defendant and the complainant had been in a significant relationship for approximately four years. They have two children together, aged 3 and 2, who reside with the defendant's mother.

There is a significant history of family violence between the parties, who separated around 1 January 2020. At the time of this incident there was a family violence order in place protecting the complainant, which had been ordered by a magistrate on 28 August 2019. A condition of that order was that the defendant not directly or indirectly threaten, assault or abuse the complainant.

On 12 February 2020 the complainant was outside her mother's house when she saw the defendant approaching her direction across a paddock. The defendant saw the complainant and walked up to her. He seemed intoxicated. He told the complainant he was going to a friend's house next door.

While there they argued. During the course of the argument the defendant became increasingly angry with the complainant. She fell to the floor and the defendant got on top of her. He was saying things about her phone and was trying to take it from her.

He removed the complainant's phone, put it on the ground and then put both his hands around the complainant's throat, choking her. The complainant tried to scream but was unable to. He then hit the complainant's head into the ground, causing a lump to form on the back of her head.

He suddenly then stopped what he was doing, got up and ran out of the bathroom. The complainant gathered her belongings and went next door to her mother's house.

I have seen a victim impact statement from the complainant. She says that prior to the assault, she was already suffering with anxiety and depression, but this has made it much worse. She is waiting to see a psychiatrist for her anger which has developed since the event. She says that there had been assaults before, but this time was by far the most violent, and was the first time she had thought she was actually going to be killed. She has since then been on edge all the time. Typically, after the assault, her throat was sore and this lasted for a couple of weeks. She could not speak properly, and for around the same amount of time, it hurt when she breathed and it was a struggle to eat.

The defendant was arrested and has been in custody since 13 February 2020. However during that time he has served two separate sentences, and in respect of the present matters, any sentence of imprisonment should be backdated to 9 August 2020. The defendant is currently pursuing a drug and alcohol rehabilitation course while in prison, and a course aimed at the deterrence and reduction of family violence. He wants to break out of the cycle of falling back on using drugs and going in and out of custody. He has formerly done the EQUIPS course and wants to implement the techniques he learned as a result, when he is released from prison.

In 2019, the defendant suffered the trauma of his then-partner, the complainant, giving birth prematurely to the couple's child. The child died shortly after. This was a traumatic period for him.

The defendant is healthy but is medicated for depression, anxiety and paranoia. However he was prescribed new medication when taken into custody, which he has found extremely helpful, and will be continuing this medication upon his release. As I said in *Director of Public Prosecutions v Foster* [2019] TASCCA 15, in recent times Courts have recognised the need to condemn family violence and have emphasised the importance of deterrence, denunciation, punishment and the protection of victims and also the community in the sentencing process. Significant deterrent sentences are warranted, as family violence offences inherently involve a breach of trust and are typically committed against vulnerable complainants.

Further, choking can cause loss of consciousness and can cause death very quickly. It has been suggested that death can occur within seven to fourteen seconds of choking. Additionally, underlying injuries caused by the pressure applied to the throat can cause swelling which may develop gradually over days, which seems in fact to have happened here. It can also cause airways obstruction and delayed death.

The defendant has an appalling record of prior convictions, including many breaches of family violence orders, including against the same complainant. While I take into account his plea of guilty and his desire to rehabilitate, there are no real mitigating circumstances.

The defendant is convicted of both offences to which he has pleaded guilty and I impose a single sentence of 15 months' imprisonment, backdated to 9 August 2020. The defendant is not to be eligible for parole until he has served half of that sentence.

Pursuant to s13A of the *Family Violence Act 2004* I do direct that the offences be recorded on the defendant's criminal record as a family violence offences.