

STATE OF TASMANIA v JOHN SAETHER
COMMENTS ON PASSING SENTENCE

19 APRIL 2021
ESTCOURT J

The defendant John Saether has pleaded guilty to 1 count of attempted armed robbery, 3 counts of aggravated assault, 1 charge of unlawfully possess dangerous article in a public place, 1 charge of common assault and 1 charge of being unlawfully armed in public. I have agreed to deal with the summary offences under s 385A of the *Criminal Code* and I have proceeded on the basis of the acceptance of pleas through counsel.

At around 8:55am on 15 April 2020 the defendant approached the front doors of the Guardian Pharmacy at Rosetta. At 9am, the pharmacist opened the pharmacy and the defendant walked to the counter and passed a sticky note which said "*I want everything on this list, I have a knife and I am not messing around*". The note contained a list of prescription drugs, including Morphine oral liquid, Oxycodone oral liquid, Hydro morphine oral liquid and dexamphetamine.

Although not seeing the knife, the pharmacist took the threat seriously and looked around the counter area to locate the duress button. The defendant told him "*I wouldn't do that if I were you mate*". The pharmacist picked up the note and walked around to the dispensary section. On his way he managed to press the duress button. He remained in the dispensary area for a short time, collecting the drugs, which he put in a paper bag. As he walked back to the counter, he saw a police officer had arrived and was entering the pharmacy.

Constable Kevin Smith arrived alone, having responded to the duress alarm. He asked the pharmacist and another employee if they were okay and as he did so, the defendant produced a knife, pointed it towards him and said "*Here we go*". The knife was about 35cm long. Constable Smith told the defendant to put the knife down and immediately took a step backwards.

Whilst Constable Smith was moving backwards the defendant continued to advance towards him, pointing the knife out towards him. Constable Smith withdrew his firearm and called for urgent assistance. He continued to try to create room between himself and the defendant by moving backwards but the defendant walked towards him and followed him. Constable Smith continued to retreat backwards, through the doors of the pharmacy and outside. He continually told the defendant to drop the knife. The defendant responded by telling Constable Smith to shoot him.

As Constable Smith continued to move backwards he tripped and fell, injuring himself. He deployed capsicum spray but it had no effect on the defendant.

By this time, further police officers had arrived in marked cars. The defendant walked out on the street, still holding the knife out in front of him. By this time there were a number of civilians in the area in very close proximity watching what was happening.

All police officers present were attempting to surround the defendant and continued to tell him to drop the knife. The defendant ignored all instructions and advanced towards the officers, holding the knife out in front of him. The defendant started walking towards Constable Joe Mizzi, who sprayed more capsicum spray, which again had no impact on the defendant. The defendant was pointing the knife towards Constable Mizzi as he walked towards him, and the Constable retreated behind a parked car.

The defendant then turned his attention to Constable Cameron Brown, and held the knife out in front of him, towards that officer.. At this moment, a Ms Nyrelle Suhr inadvertently drove through the scene, coming to a stop when she saw the commotion occurring in front of her. She was alone in her blue Hyundai vehicle. As soon as she stopped in the middle of the road way, the defendant approached the passenger side of her vehicle and attempted to open the door with one hand with the knife outstretched in the other.

Police yelled at Ms Suhr to lock her car door and could see that Ms Suhr was terrified. The defendant again turned his attention to Constable Brown and advanced towards him with the knife.

At this time, two police officers arrived at the scene in an unmarked police vehicle, with their emergency lights and sirens activated. The officers on foot were attempting to create a cordon around the defendant however he continued to advance towards them with the knife pointed at them. Despite being told to drop the knife, the defendant continued holding the knife out and telling the officers to shoot him.

Given the deployment of OC spray had been unsuccessful in subduing the defendant, the only other force options available to the officers on the ground was the use of their firearms as the defendant continued to approach them with the knife. Constable Brown shouted out to Sergeant Horne, who was driving the unmarked police vehicle, to use the vehicle to manoeuvre the defendant off the road way.

At this time the defendant was walking around Ms Suhr's car and then in between her car and the unmarked police vehicle. The defendant started walking back around the unmarked vehicle so Sergeant Horne reversed the car back in line with the defendant, with the intention of blocking him and using the car to create a barrier between the defendant, the police officers and Ms Suhr's vehicle.

However the defendant walked back to the front of the unmarked vehicle and stabbed the driver's side window twice. The defendant turned back towards the police officers at which time Sergeant Horne used the police vehicle to nudge the defendant. This was successful in subduing him, he was knocked to the ground but was sitting up on his knees, still holding the knife.

Sergeant Horne knocked the defendant with the vehicle again. He fell to the ground and dropped the knife in front of him. The police officers on the road were able to gain possession of the knife whilst others attempted to get the defendant's hands behind his back. There was difficulty in immediately securing the defendant's hands and as a result he was struck to the head/top of his back three times in an effort to release his arm from underneath his body. Police were able to secure both the defendant's arms and placed him in handcuffs.

The defendant was taken to the Hobart Police Station. Upon talking to the defendant's mother it was ascertained that he had taken a large amount of medication. An ambulance was called to the remand centre and the defendant was taken to the Royal Hobart Hospital where he was treated.

The defendant was released five hours later and taken back to the police station. He participated in an interview. Under caution he told police that he suffered from bipolar disorder and in the past few weeks he had been withdrawing from non-prescribed drugs. The day before the incident he took the last opioid he had and knew he would start withdrawing. Out of panic

and impulsively, as a result of his bipolar, he decided to rob a pharmacy. He was feeling suicidal. He caught a bus to Glenorchy. He wrote a note which had a number of drugs on it.

He told police he went to the pharmacy and waited for it to open. He told the pharmacist that he had a knife and handed the note over and said he needed the drugs. He saw the pharmacist walk away and press the panic button, but he said he really did not care. He did not pull the knife out at any stage up until that point, and left it under his shirt. He "sort of gave up" at the point the panic button was pushed and stood there waiting for police to arrive.

As soon as a police officer walked into the pharmacy he pulled the knife out. He said that he never intended to hurt anyone, he was just in a "bad place". The police officer backed out onto the street and he followed him. He was told to put the knife down or he would get shot. He said he kept following the police officer because he then wanted to get shot. The officer sprayed him with capsicum spray which he described as "unpleasant" but he was so "dedicated in trying to kill himself" that he just kept pushing through.

The defendant said he did not have a good memory of what happened next as he hit his head. He said he had a memory of a number of police around him, yelling at him to put the knife down and he was running around trying to scare one of them enough to pull their trigger. He recalled he was holding the knife out and walking towards them.

He said he did not recall approaching a lady who was inside her stationary car. He believed that if the police didn't hit him with the car and disarm him he would have turned the knife on himself. He recalled yelling out a few times for the police to shoot him.

At the conclusion of the interview, the defendant was charged and detained to appear in court. He made an application for bail which was refused, and as a result has been in custody since the 16 April 2020.

I have seen a Victim Impact Statement from Constable Smith. During the course of this crime he had a genuine belief that he was about to die. He stumbled and suffered an injury to his left leg, which was later diagnosed as a torn Achilles tendon. This has caused ongoing difficulties for him. He is no longer able to wear normal footwear and his gait is affected. He now has a limp on that side. This has impacted on his chosen sport of mountain biking. The main impact of this crime though has been the emotional and psychological toll it has taken on him. He has been diagnosed with PTSD and doubts his ability to continue as a police officer.

The defendant has no prior convictions.

His background circumstances which are elaborated on by psychiatrist Dr Michael Jordan in a report provided to me are that he has had mental health problems from an early age. He was seeing a therapist as early as nine years old. He has been exposed to traumatic experiences in his life. He was bullied quite severely at school. One of his sisters sexually abused him at a young age and his father was violent and subjected him to physical beatings.

He was prescribed medication for mental health issues as early as 12 years of age, and in his teenage and later years he engaged in suicidal and self-harming behaviour. His mental health crisis affected his schooling, and he moved between schools and eventually his mother attempted to home school him for a number of years. He is educated to a year 11 level and has had a brief period of employment, having two six-month contracts with a wildlife conservation organisation.

And at the time of this crime, he had commenced a bridging course at the University of Tasmania with the intention of studying psychology. He had completed about a year of that course at the time of these crimes, and at the end of 2017 it was, he was referred to Community Mental Health Services due to ongoing mental health concerns.

Around 2018 that he started experimenting, with over the counter medications, including Codeine and Panadeine Forte and a particular type of cough syrup. He would take them all in excess of their dosage requirements for the affect that they would give him.

He also used something called Phenibut, which is an addictive anti-anxiety drug and as Dr Jordan noted, this was criminalised some three months after Mr Saether had begun using it. Dr Jordan described a period where the defendant was addicted to oxycodone and another opiate, for some period of months, but he overcame those addictions at some stage, experiencing powerful withdrawal symptoms.

He also had a period in which he accessed research chemicals online from the dark web and from overseas suppliers, some of those being hallucinogenic in form. And prior to this crime he was taking his medication provided by Community Mental Health Services, but at the end of March 2020, shortly before these events, and with the onset of the COVID-19 restrictions, he had become unwell. He was required to self-isolate. In that period he had run out of his prescribed medications and as a consequence he began to self-medicate again, which is what he did to try to utilise to control his mental health issues and the mood that he found himself in as a result.

Shortly before this crime he had taken a supply of what was called Pregabalin greatly in excess of the dosage requirements. That drug can affect mood and cognition and can cause confusion and agitation. He took this medication the night before the crimes. Dr Jordan of course described it a pharmacological overdose and his resultant behaviour as irrational. I have seen video footage of part of the events leading up to his arrest and he certainly does appear to be heavily affected by some intoxicant.

I am told without demur that it was never intended to use the knife against anyone and he did not reveal the knife to Mr Wallace in the pharmacy. Whilst he held the knife in front of him in relation to Constable Smith's approach, and whilst it is referred to in the facts that he continued to approach Constable Smith, at the same time and as an explanation for that behaviour, it is submitted that Mr Smith had just come from the entrance and the defendant was trying to leave. So, he was going in that direction in any event, that is, towards Constable Smith.

It is submitted, again without demur that the defendant's intention was to leave the pharmacy and when it was apparent that that was not going to occur he thought that he would die by police shooting him.

Dr Jordan states that the showed some distress about his arrest and expressed remorse for his actions. Dr Jordan cites bipolar affective disorder and unipolar depression and opines that along with his complex mental health status, the abuse of both prescribed and illicit substances was significant in his offending.

Counsel for the defendant, Ms Mainwaring submits that the section in Dr Jordan's report, which addresses the *Verdins* principles, although not extensively detailed in relation to each limb, nonetheless she says, enlivens limbs B, D and E, "to an extent".

I do not read Dr Jordan's report as supporting a causal link between the defendant's diagnosed psychiatric disorder and his offending, although of course I recognise that absent that disorder he may not have been self-medicating or have overdosed in the way he did. This provides context for the very much out of character nature of these crimes for which the defendant has accepted responsibility, pleaded guilty and expressed remorse. I also acknowledge that, he is a relatively young offender of prior good character.

The defendant is convicted of each of the offences to which he has pleaded guilty and I impose a single sentence of two years' imprisonment, backdated to 15 April 2020. The defendant is not to be eligible for parole until after he has served half of that sentence, which, of course he already has.