

STATE OF TASMANIA v BRENDAN EDWARD COTTER
COMMENTS ON PASSING SENTENCE

28 MAY 2021
BRETT J

Mr Cotter, a jury has found you guilty of one count of committing an unlawful act intended to cause bodily harm.

I am required to determine the factual basis of the sentence. The jury's verdict establishes that you were the perpetrator of the crime, and further that you had the requisite intention. The specific facts and circumstances surrounding the crime can be derived from the statements made by the complainant to the police, and inferences which can be drawn from the forensic and medical evidence. I accept the truth of the representations made by the complainant to police shortly after the crime, as recorded in the body worn camera footage, and in the statement that she made in the hospital later that night. I note also that apart from your denial that you were the perpetrator of the crime, a claim clearly not accepted by the jury, there was no real challenge by you to the complainant's description of what was done to her. In any event, her version is substantially consistent with the objective and circumstantial evidence.

On the basis of the whole of the evidence, I am satisfied beyond reasonable doubt of the following facts. The crime was committed on 11 December 2019. In the days leading up to it, you had been looking for the complainant. She had stayed with you for a short time until about 1 week earlier. It is clear from your statements to police during the interview that, after she left your premises, you formed the belief that she had stolen your car. However, you also told police that you had recovered the car, although in a damaged state. When I have regard to this and to your subsequent actions when you found her, it is clear that your purpose in looking for her was not to recover the property, this had already occurred, but because you harboured a grievance against her because of what you believed she had done, and wanted to seek retribution. I am satisfied that this was your motive for committing this crime.

I infer that at some point before the crime, you became aware of the whereabouts of the complainant. She had been homeless after leaving your residence, but had been offered accommodation for a couple of days with the occupier of a unit at Moonah. At the time, you were wearing an electronic (smart tag) device which had been fitted as a condition of a family violence order relating to another woman. On the basis of the data transmitted by that device, it can be determined, and I am satisfied, that your movements on 11 December were as follows. You left your home at Claremont at 5:42pm and drove via an address at Lutana to the unit complex where the complainant was staying. You arrived there at 6:36pm. You immediately entered the unit and attacked the complainant. She was sitting on a couch in the living room and clearly was not expecting your arrival. You were carrying a thick wooden stick in the nature of a wooden baton. I am satisfied that you had brought this with you with the intention of using it as a weapon to attack the complainant. You hit her with the baton on the top of her head and forehead several times. You also hit her on the leg and to the arms. I suspect that the blows to the arms were delivered as she was attempting to defend herself. It is clear that the blows were delivered with considerable force, in particular the blows to the head. Immediately before starting to hit her, you said words to the effect of "I told you I'd fucking find you".

The complainant was taken and admitted to hospital that night. Her injuries included multiple lacerations to the top of the head and forehead, a large welt on her thigh and bruising of the forearm on both sides. There were three separate lacerations to her forehead which required surgical repair. This was done under general anaesthetic and she remained in hospital for three days. One of the lacerations was 10 cm in length extending from the forehead to the middle of

her skull and another on the top of the head was 4 cm in length. One of the lacerations had penetrated through to the covering of the bone of her scalp. Fortunately, when the staples were removed from her head about a month later, the wounds were found to be well healed. The medical evidence does not indicate any ongoing physical consequence.

I have, however received an impact statement from the complainant. She states that she continues to suffer ongoing headaches and neck, shoulder and back pain but there is no independent medical evidence to identify the cause of this pain. It is relevant, of course, that the complainant believes that these symptoms have originated from your attack on her. She also describes ongoing anxiety and other general psychological consequences. These consequences are entirely consistent with what would be expected from an intrusive and violent attack of this nature.

Notwithstanding the absence of independent evidence of ongoing physical harm, I consider this to be a very serious example of this crime. I am satisfied that consistent with the jury's verdict, your intention was to cause serious injury in the nature of grievous bodily harm to the complainant. This intention and your consequent actions were premeditated, deliberate and callous. This is the only possible conclusion available from your actions in searching for the complainant, and, when you found her, taking a weapon with you, clearly intending to use it to attack her and cause serious injury. This was a sustained attack with a blunt wooden object against the complainant's head. Her injuries were serious enough, but the consequences could easily have been far worse. You did this in the home of another person and in the presence of others. After the attack, you callously left the complainant injured and bleeding and returned to your vehicle and then your home. I accept the evidence of the witness who saw you as you were leaving. I am satisfied that that witness heard the complainant screaming, and then heard you laughing as you left the unit. Premeditated serious violence of this nature is abhorrent and of great concern to the community. Denunciation, general deterrence and vindication of the complainant are important sentencing considerations.

You are 45 years of age. Your counsel has detailed your difficult childhood, which included the perpetration against you of abuse within the home and institutions during your teenage years. You have had problems with drugs and alcohol during your life. I am told that despite these difficulties, you have a reasonable work ethic and history. You are currently gainfully self-employed in multiple businesses, one of which has a number of employees. You are in a relationship and your partner is expecting your child.

You also have a lengthy criminal history. This includes crimes committed in a number of States. Your Tasmanian record commences in 2005. You have a number of prior convictions for common assault, including some committed in a family violence context. You have also been convicted on several occasions of breaching police family violence orders. The crime with which I am dealing was not a family violence offence, but it was a crime of violence perpetrated against a woman who was defenceless, and as an act of retribution. It was perpetrated by you despite the fact that you were subject to a family violence order and wearing the electronic device. You were also subject to a bail order at the time. Your commission of the crime in these circumstances, taken together with your prior history, indicates a propensity for violent criminal conduct, and an ongoing disregard of the law and lawful restrictions. Having regard to all of these considerations, I am satisfied that specific deterrence is also an important sentencing consideration.

There are no mitigating factors available to you. There is no suggestion of any remorse or insight in respect of your conduct.

In my view, the only appropriate penalty is a significant sentence of imprisonment. I will make provision for early release on parole, but having regard to the seriousness of your conduct and your prior criminal history, I am satisfied that you should spend a period in actual custody which is greater than the statutory minimum.

Brendan Cotter, you are convicted of the crime of which you have been found guilty and sentenced to 5 years' imprisonment. That sentence will commence from 26 May 2021. You are not eligible for parole until you have served 3 years of the sentence.