

STATE OF TASMANIA v JOHN DAVID CLINTON
COMMENTS ON PASSING SENTENCE

28 MAY 2021
MARTIN AJ

Mr Clinton, you have been convicted by a jury of cultivating a controlled plant for sale. That plant was cannabis and your cultivation occurred between October 2018 and January 2019.

I am required to sentence you on a basis that is in accordance with the verdict of the jury and on a basis of facts that I find proved beyond reasonable doubt.

At the time of your offending, you owned a property at Bridport Road, Georgetown. It was a substantial bush property of approximately 63 acres on which you had built a house and a large shed. That property was subsequently sold in 2020.

Your engagement in cultivation was discovered on 8 January 2019 when police attended at your property and found 5 areas in which cannabis was being successfully cultivated. Those areas have been referred to as compounds.

By way of background, police had attended the day before at two properties adjacent to Barnboughle Road, Bridport approximately 50 kms from your property. They found three compounds of healthy cannabis and installed surveillance cameras that were activated by movement.

Across the five compounds of cannabis at your property, 170 cannabis plants were growing successfully. They were a few weeks from maturity and it is obvious that they had been well looked after.

The compounds on your property and the three compounds on the other properties were all fenced with chicken wire attached to steel droppers. Electric fencing had been installed on some of the compounds to deter predators. All of the compounds were concealed by the bush so that they could not be seen, and from your property they could not be seen even from the driveway, the shed or the second storey of your house.

When interviewed by police, you denied any knowledge of the cannabis. It must be said that your false denials were given in what might be described as a an outwardly frank and down to earth response to questions. As a later interview well demonstrated, when you were questioned by police you lied convincingly.

After you arrest, you were released on bail. It is apparent from surveillance footage at the other properties, that you visited at least one of those three compounds on 10 January. The camera caught you, and another person, at one of the compounds. When interviewed by police you denied that you were depicted in the photograph, but when you gave evidence before the jury you admitted that you had attended and that it was you in the photograph. You falsely claimed in evidence that the other person had told you that he had found something in the scrub and took you there to have a look. It appears likely that the other person was involved in the cannabis venture, but I am unable to be satisfied as to the nature and extent of that person's involvement.

Police returned to the other properties on 14 January 2019. It was on that occasion that police recovered the surveillance cameras and, subsequently, found your image.

The three compounds on the other properties were set up in a very similar way to the compounds on your property. An additional feature of those compounds was the existence of automated watering systems, which included the use of solar power.

Two hundred and sixty three plants were growing successfully in these compounds. Most were at a similar stage of development to those found on your property.

When police attended at your property on 8 January 2019, they found a Ford Fairlane, registered to you, parked adjacent to the house. In the rear seat of that car was a quantity of camouflage netting, very similar or identical to camouflage netting found at one of the compounds on your property. In addition, scattered in the boot were a number of items that were obviously linked to the infrastructure of the compounds on your property. Although you claimed in evidence that you did not know anything about these various items, and that other people had access to and borrowed your vehicle in which the keys were simply left in the ignition, the items found in your car provided significant evidence of your connection to the cannabis compounds on your property.

At two of the compounds on your property, your DNA was found on a cable tie and an open bag of cable ties. In evidence you said that cable ties were lying around in your shed and the argument was advanced that, unknown to you, others could have taken the cable ties from the shed and used them in the construction of the compounds. The jury obviously rejected that suggestion, as do I.

In addition to the surveillance photo of you attending one of the compounds on 10 January 2019, from two of those compounds on the other properties your DNA was found on a plastic water bottle in a backpack, and the handle of a car battery. You had no explanation for how your DNA could have been found on the plastic water bottle because, as you said in evidence, you do not buy water contained in plastic bottles because you consider they are a "rip off". As to the handle of the battery, you said in evidence that you bought old wrecks and repaired them and that many batteries were lying around. That much of your evidence appears to be true, but the presence of your DNA on the battery handle provided further evidence of a significant connection between you and the compounds on the other properties.

Like the jury, I am satisfied that this was a single cannabis growing venture across all compounds found on the three properties. This was a specific question put to the jury and the jury answered the question in the affirmative on a unanimous basis. It must be said that it was a relatively sophisticated venture, as is demonstrated by the nature of the compounds, including the construction of the fences, the electrification of fences and the watering systems found on three of the compounds on the other properties. Each compound was well concealed. The cannabis was healthy and, if the cannabis had grown to fruition and been harvested, it would have been sold for many thousands of dollars.

As to your role, the jury answered a question as to whether they were satisfied that you merely allowed your property to be used or whether you were an active participant. The jury found, and I am satisfied that you were to some extent, an active participant. But as the evidence given at trial, and more particularly provided to me since the trial demonstrates you have significant health problems. I am satisfied that you knowingly allowed your property to be used and that you were actively involved to the extent of providing assistance by way of forms of infrastructure. Precisely what you did remains unknown. I doubt that you would have been physically capable of, for example, carrying into these sites steel droppers and rolls of fencing,

but you were perfectly capable of making that sort of material available or, for example, carrying a battery into the premises. You were perfectly capable of assisting with fencing.

So both the jury and I are satisfied that you played an active role but the extent of that active role is something I cannot determine. Nor can I determine who else was involved but plainly there were others involved. Perhaps it was just one other person, but more likely more than one person was also involved. I cannot determine whether you instigated the activity or whether it was instigated by somebody else. I cannot determine what profit you would have received if the cannabis had been harvested and sold. These are matters that are simply unknown to me and this is not uncommon for a sentencing judge. I must sentence you for the activities that I find proven and I have explained those. I sentence you for the offence of the cultivation based on your role as far as I am able to determine it.

Unfortunately, this is not the first time you have been involved with cannabis. In 1995 you were fined \$1000 for growing and possessing a plant. In 2010 you were found guilty by a jury of trafficking in cannabis for which you received a suspended sentence of 5 months' imprisonment. The sentencing judge made the following remarks when sentencing you:

"The evidence established that you were the Master of an island vessel and you brought into Bridport a carton containing 2.66kg of cannabis. You put the carton in your motor vehicle and police stopped you and found the cannabis just as you were leaving Bridport. Your explanation to the police was that you were doing a favour for a man you did not know and in accordance with the arrangement you had made you intended to drop the carton off to an unknown person at Pipers Rivers. You claimed you did not know there was cannabis in the carton. The jury did not accept that explanation. I find for sentencing purposes that you were involved in the chain of distribution in the cannabis from the grower to the ultimate user. You are guilty as a person involved in the transportation. I cannot make a finding that you intended to sell the cannabis, all I can find is that you had knowledge that it was destined for sale."

As to matters personal to you, born on 22 April 1943, you are now aged 78. You have had a long and, speaking broadly, distinguished working career primarily in the fishing industry. Your childhood was marked by violence in the family home which obviously made life very difficult for you as a child. As counsel put it, you experienced a sense of helplessness in not being able to protect and assist your mother.

Initially it was an itinerate life, and from the age of about 17 your father became involved in commercial fishing. You worked with him for a couple of years, then you struck out on your own. It is fair to say that you have been somewhat of a pioneer in the fishing industry. In particular, in the scallop industry. At the age of 27 you owned your first boat. You have trained countless others and in the years from about 1964 to 1990 you operated five different vessels, including a large 45 foot vessel. You became involved in commercial dredging. Significantly, you developed a seafood export business which led to the creation of a scallop processing factory in Georgetown, which is still operating today.

In the 1990's you sold your vessels and entered into other areas associated with the maritime industry, including transportation and you assisted in the laying of the Bass Link by operating a vessel in connection with that operation. You have been involved in shipping freight between Islands. In more recent times you have been engaged in dismantling boats and the buying and selling of vehicles. So, you have been a very hard worker and the references that have been

supplied demonstrate that you have earned a good reputation amongst many people who know you. That is a reputation for being a kind and generous person who readily assists others. You go out of your way to visit people who are ill and in hospital to provide them with some comfort and solace.

Many years ago you were called upon by the police to engage in a rescue operation in Bass Strait. That operation was conducted in appalling weather and at great risk to you and your crew, but you willingly took on that task when requested, and successfully saved that other vessel and its crew. As the police officer who called upon you has said in a reference, the rescue was only possible due to your excellent seafaring experience and knowledge.

More recently, you demonstrated this good side of your character when you came across a 90 year old who had driven off the road and needed assistance. When nobody else stopped, you went to the aid of that person but left without leaving any knowledge as to your identity which gives an indication of the type of person that you are. The family of that elderly gentleman went onto Facebook and, successfully, contact was made with your family and you were identified as the person who went to the aid of the elderly man.

To many people you are a person of good character and a fine member of the community.

But then, Mr Clinton, there is the other side isn't there? You have been involved with cannabis before and you got involved again on this occasion. I do not know why you gave into the temptation on this occasion, but I can only assume that you sought to gain some financial gain which appears to be the only obvious motive for you to become involved.

So, Mr Clinton, people like you place a sentencing judge in a very difficult position. You have committed a serious offence and deterring people from committing these types of offences is an important feature of the sentencing that must be undertaken by a judge. The seriousness of your crime, bearing in mind your previous offending, requires the imposition of a sentence of imprisonment. But your record of a good worker and member of the community pulls in the other direction, and you are entitled to the benefit of that good record in deciding whether you should be required to serve a sentence of actual imprisonment. This is where you make the difficulty because you committed the crime.

Significantly in connection with question of whether you should be required to serve a sentence of imprisonment is your state of health and that of your daughter. You are separated from your wife, but I accept your evidence that you visit her from time to time and that you and your wife have an amicable relationship. I am told that relationship continues today and that you have been staying with your wife at her residence. That is very generous of her.

You have three children and, of particular note, is your daughter who is aged 49, and in 2019 was diagnosed with a terminal illness. Very helpfully your daughter answered some of my questions today directly. She was quite frank in saying that previously you did not get on that well together; of course that is not an uncommon feature in cases of marriages that fall apart for one reason or another. However, she also told me that you and she have become very close since she was diagnosed and it is obviously a matter of great distress to you. When your daughter was diagnosed in October 2019 it was thought that the average duration of survival was less than 2 years. She has been undergoing intensive palliative chemotherapy and it is unnecessary to go into the details of the treatment or the particular illness. But she told me today that it has been spreading and enlarging.

Your own health has been described in reports provided to me as involving multiple malignant melanoma skin cancers and solar keratosis, bowel cancer, iron deficiency and depression. You were first seen in September 2017 and diagnosed with multiple melanomas and the bowel cancer operation was in 2018. Follow-ups showed that you were suffering from a severe iron deficiency. As your counsel explained it from your perspective, you have had countless operations and you are living on the edge knowing that in time the cancers will come back and you will face the battle again.

In addition to those physical conditions you are now suffering from depression. Obviously the breakdown of your marriage and the condition and prognosis for your daughter has been significant, but also the court case plainly exacerbated your mental state. In March 2021 you were seen by a psychologist who describes that you have a long history of complex post-traumatic stress disorder, major depressive disorder and severe chronic pain symptoms against the background of extreme and prolonged childhood abuse and neglect. You experience currently frequent depressed and agitated mood including disturbance to appetite and sleep as well as concentration, motivation and memory difficulties, and you described to the jury the difficulties that you experience with your memory. You are experiencing intense and overwhelming feelings of grief and loss in relation to the imminent death of your daughter, and your complex post-traumatic stress symptoms include hyper-vigilance, regular and overwhelming anxiety and dissociative episodes in reaction to a wide variety of trauma triggers. Your psychologist also describes your history of numerous closed head injuries associated with serious motor vehicle accidents. You have long standing problems with emotion regulation, decision-making, problem-solving, impulse control, behavioural inhibition and the maintenance of personal boundaries. As a consequence of these issues you have experienced difficult relationships in the past. You are also suffering from severe and chronic neuropathic head and facial pain.

You have now undertaken a program of psycho-therapy for the management of your issues, and you are attending training sessions to assist with the emotion regulation and impulse control skills. The clinical psychologist has discussed in some detail your current psychological treatment which it is unnecessary to set out.

Mr Clinton, I need to put all of these things into the scales. On the one hand there is a need to impose a sentence that reflects the seriousness of your offending and the disapproval of the community. Of course there are those within our community who believe that cannabis should be decriminalised. That is a debate that can take place in the community and ultimately be resolved by Parliament. However, I am required by law to follow the law and apply the law as it is today, regardless of any personal view that I might hold (and I give no indication as to any personal view). So, as the law stands today I am required to express the community's disapproval by imposing an appropriate sentence. Also a sentence that will act as a deterrent to others who are tempted to engage in this type of conduct. On the other hand, there are strong personal factors which call upon the exercise of a degree of leniency. It is a matter of finding the right balance.

In normal circumstances, make no mistake that, a person who cultivates this quantity of cannabis, particularly a person who has previously offended against the drug laws and received the benefit of a suspended sentence, could expect to go to gaol and serve some part of a sentence. However, I have decided that yours is an exceptional case by reason of the combination of all of the matters to which I have referred. This is a case in which the

combination of circumstances, in my view, justifies the suspension of the sentence that I am about to impose. I repeat, the combination gives rise to an exceptional case for suspension.

You are convicted, and I impose a sentence of imprisonment for 2 years but that sentence is wholly suspended. So you will be free to leave today. I impose a condition of the sentence that within 28 days from today you pay a fine of \$2500.

Mr Clinton, make no mistake, you are very lucky not to be going to gaol. You have had a tough life and you are still having a tough life in many respects, but make the most of the opportunity that you have been given. Goodluck.

His Honour made an order amending the sentence for John David CLINTON.

His Honour notes that the sentence of imprisonment of 2 years is wholly suspended on conditions that:

- a) Within 28 days Mr Clinton pays a fine of \$2,500.00
- b) That Mr Clinton commits no offence punishable by imprisonment for a period of 12 months.