

STATE OF TASMANIA v LUKE MATTHEW JOHN CHATTERS 30 AUGUST 2021
COMMENTS ON PASSING SENTENCE GEASON J

Mr Chatters you have pleaded guilty to a charge of assault and a charge of committing an unlawful act intended to cause bodily harm. These offences occurred in November 2019.

At the time of the offence he lived with his mother in Bellerive. You have known him for a number of years. During the course of your friendship you have been dominant over him and he has been submissive towards you out of fear of being physically hurt. On 12 November 2019 you phoned him and asked to be collected from North Hobart and driven to an address in Clarendon Vale so you could visit family. He agreed and at around 5.30pm told his mother he was going out and would be home later that evening. He drove his utility vehicle to North Hobart where he collected you. He drove you to the Clarendon Vale address but no one was home. After waiting for about an hour you asked the complainant to take you to another address nearby to visit an associate. He drove you there. You both went inside and stayed there for the night. You purchased and injected a quantity of Ice. Neither of you slept that night.

At around 6am the following day you left Clarendon Vale and returned to the Condell Place carpark in North Hobart. When you arrived there you told the complainant to come with you to a nearby unit. When you got there you took his keys. You both spent a number of hours there and each of you used more Ice during that time. At about 1pm you told the complainant to leave with you, which he did. Two other males not known to him accompanied you. He did not know where you were going or why. You all walked to where his utility was parked. As you did, you and the other two men began to argue. He moved closer to see what the issue was. As he did this you said to him, "you know what I told you earlier, if you don't get in the back it is going to happen".

He feared he would be hurt by you so he climbed in to the rear tray of the ute and placed himself under its tarpaulin cover. You hooked the tarpaulin down. There were a number of other items in the tray including a lawnmower, a brush cutter and a chainsaw.

After approximately an hour the vehicle was started and driven away. The complainant was still in the tray under the tarpaulin and unable to see who was in the ute, who was driving or where it was going. When he called out and made a noise the vehicle would stop and you would get out and yell through the tarpaulin, telling him, if he did not shut up you would kill him. This went on for a number of hours. Each time the vehicle stopped but was never turned off. Because it wasn't turned off, the complainant would be overwhelmed by the vehicle's exhaust fumes.

The complainant is a type 1 diabetic. He requires insulin four times a day. By around 7pm he was dehydrated and in extreme pain from being knocked around in the back of the utility. He was unable to tell where he was. He sent you a text message asking how long he had to stay in the tray for and saying that he had "learned to know his place".

You did not respond and the vehicle continued to be driven around. At about 7.50pm he sent you a second text message saying that he was in a lot of pain and asking whether he could get out soon. Again you did not respond.

Shortly after that the complainant's phone rang. He did not answer. The ute was pulled over, and you took the phone from him. The utility drove off again. After dark, the complainant could

see through the tailgate that the vehicle was travelling over the Tasman Bridge. It travelled towards Rosny. He could feel the vehicle doing burnouts and driving over rocks. He became angry and managed to push the tarpaulin up high enough to pull out the middle tonneau and hit the tailgate with it in an attempt to get someone's attention.

When he did this the vehicle was stopped and you got out and walked to the rear of the ute. You partially opened the tarpaulin and told the complainant to stick his leg out, and to bite onto something. He took this as a threat that if he did not quieten down you would break his legs. You returned to the vehicle and it commenced moving again.

By this time the complainant's mother was trying to contact him as he had not returned home when he said he would. After having no success she contacted Tasmania Police and reported him missing. He continued to make noise in the tray of the ute in the hope that someone would hear him. As a result the vehicle was stopped again and you got out and pulled the tarpaulin back and said "I told you to be fucking quiet", and using a large tyre iron you hit the complainant twice to the feet and struck him on the hands through the tarpaulin a number of times. You threatened the complainant that if he made any more noise or if police were alerted he would severely regret it.

The vehicle began moving again before becoming bogged near the Tasman Bridge. The engine was turned off. You got out and told the complaint that you had driven him to the edge of a very large cliff where the water was deep, and you told him that you were going to push the car over the edge with him in it. He found a pair of scissors and tried to cut his way out of the tarpaulin. When you saw this you pulled the tarpaulin back and struck him multiple times to the head arms and body with the tyre iron.

He believes he passed out. When he regained consciousness he sat up and grabbed hold of the bar until you punched him in the head. He was bleeding, crying out for help and begging to be released. He had urinated in the tray of the ute numerous times. You told him that he was not going to live to see the end of the day, and that he was not going to live long enough to worry about his injuries anyway. He laid back down in the tray and you did the tarpaulin back up. At around 5.40am on 14 November 2019, a member of the public was on a morning walk when she noticed tyre marks on the walking track that runs alongside the river's edge below Rosny Esplanade. Minutes later she saw the complainant's utility bogged and she approached it. You were sitting in the driver's seat and the complainant was still in the tray. You told the complainant to be quiet and if the woman heard him he would regret it. She continued on her walk but she phoned police.

Shortly after that you let the complainant out of the tray, and you told him that you would drop him home and then dump his car in the bush. Minutes later police arrived. They found both of you near the ute. They observed blood on your hands and large amount of blood on the complainant's head, neck and clothing. They observed a weeping wound on the complainant's head and swelling and bleeding to his mouth. He was taken by ambulance to the Royal Hobart Hospital.

At the scene you told police that you had forced the complainant into the tray of the ute on 13 November at around 1pm. You said that you had a fight with him the night before and hit him with something at an unknown location. You then drove the vehicle to where it was found and you remained there. You said that you took the complainant against his will and forced him into the rear tray hitting him with a metal bar. You said you had taken Ice which gave you the

courage to act as you did. You said that the complainant had done nothing to provoke the incident.

You were arrested and taken to the Hobart Police Station. You were given a number of opportunities to participate in a formal interview but become aggressive each time. Police became concerned that there would be physical violence if you were not left alone. You were processed by force and the remainder of the charge process was completed in your absence because of your demeanour. You were remanded in custody.

The complainant suffered a number of injuries, including a single broken tooth which was extracted and requires replacing, a laceration to the left lip, dilacerations to the right side of the head, bruising and a two centimetre laceration to eye region, a two centimetre puncture wound to the left leg, multiple lacerations on his right hand, stressed facet joints in the neck, stressed spinal discs, bruises and abrasions over his body.

By reason of him not having received insulin for his diabetic condition, he required emergency medical attention which was administered upon his admission by way of intravenous fluid therapy followed by an insulin infusion and blood sugar and ketone monitoring.

I have read and considered his victim impact statement. I note that he says that he believed that he was going to be killed by you. As a result of your behaviour he has trouble leaving the house, he has panic attacks and spends a lot of time in his room. It has brought back memories of his own father's murder. His health is not as good as it used to be, and because he cannot leave the house to exercise it has deteriorated. He used to work doing lawn mowing but cannot do that anymore. His car was trashed as a result of the incident and he cannot afford to have it fixed. It is not roadworthy and it would cost more to fix than it is worth. His sleep is affected. He describes only getting a couple of hours sleep a night because of the dreams and the physical pain. He may require further surgery as a result of having the tooth removed which was shattered during your assault.

I have received a report from Mr Minehan in relation to you. I have read it and considered it. It relates an incident when you were 13 where you suffered significant spinal injuries as a result of a soccer goal falling on you. The injury caused by the goalpost was exacerbated by a bystander's attempt to assist you. You spent nine months' in hospital and six years' in a wheelchair as a result of that incident. As a result of that injury you became dependent upon opiate medication and the use of opiates took off from there. You used compensation funds to buy a home, a vehicle and a motorcycle and you commenced a relationship and had children. But since then a nomadic lifestyle is reported, and you have travelled throughout Australia with periods of time spent here and in other places. After the death of your mother your alcohol consumption increased significantly, and in your 30's you began using methamphetamines including "Ice".

Mr Minehan's opinion is that you do not present with a diagnosable mental illness and that mental illness did not contribute to your offending behaviour. You meet the diagnostic criteria for an anti-social personality disorder and substance use disorder. You have multiple medical issues. You have spent much of your life surrounded by anti-social people and substance users. His opinion is that this offending arose out of your anti-social traits, your association with anti-social peers, your past experience of that sub-culture, mistrust on your part and perceived fears for your own safety compounded by methamphetamine intoxication.

I requested a home detention assessment report. I did that at the urging of your counsel and I have regard to its contents more generally. Whilst you did not offer a suitable address for home detention, having considered the seriousness of the offending I have decided that a home detention order would have been wholly inappropriate in the circumstances of this offending anyway.

This is a serious example of the crime of committing an unlawful act intended to cause bodily harm. The conduct was prolonged, and reinforced by a series of threats including threats of death; you kept your victim imprisoned in the boot of the vehicle knowing he was afraid, and you offered no assistance when he was able to communicate that fear to you. Instead you threatened him and delivered physical punishment when you considered it necessary.

Whilst you are not be punished again for your prior convictions, you present with a poor history for offences involving violence to others.

The only appropriate sentence for this conduct is a sentence of imprisonment. That sentence should be long enough to punish you, and to deter others from behaviour such as this. It must vindicate your victim. I will discount the sentence I would otherwise would have imposed by 20% in recognition of the utilitarian benefit of your plea of guilty. Whilst I accept the thrust of the submissions made on your behalf by Ms Graves a long sentence cannot be avoided. The pre-sentence report suggests that you would benefit from structured support in relation to substance abuse issues, but I have decided that I will make a parole order rather than make a community corrections order – I cannot do both, and the Parole Board can determine appropriate orders at the time.

Mr Chatters this was a brutal act of violence inflicted over a long period upon another person, a person vulnerable to your aggression who suffered a medical condition which placed him at a risk of even more serious harm than ensued, and for whom you showed absolutely no regard over the course of this episode. To mark the seriousness of your offending, I imprison you for a period of 5 years. That sentence is backdated to November 2019 when you were taken into custody. I direct that you not be eligible for parole until you have served three years' and 10 months' of that sentence. As I have indicated, if you are successful in gaining parole at that point the Board can determine appropriate conditions for your ongoing supervision and treatment for substance abuse issues.