

COMMENTS ON PASSING SENTENCE

BLOW J

Mr Bradshaw has pleaded guilty to two charges of committing an unlawful act intended to cause bodily harm. He has also been found guilty by a jury on a charge of aggravated burglary. These charges relate to an incident on the night of 21 October last when he broke into the home of his former partner through her bedroom window, got a knife from her kitchen, stabbed her twice to the right side of her abdomen, moved away from her, and, after a short interval, returned to her and stabbed her twice to the left side of her abdomen. The verdict of the jury in relation to the aggravated burglary charge indicates that they were satisfied beyond reasonable doubt that, at the time Mr Bradshaw climbed through the window, he intended to assault someone. For sentencing purposes, I need to consider whether he intended to assault anyone in particular, and whether he intended a stabbing to take place.

Mr Bradshaw has also pleaded guilty to a number of summary offences which I will deal with pursuant to the *Criminal Code*, s385A. Those charges comprise five charges of breaching a bail condition, one charge of breaching a family violence order, three firearms charges, and a charge of using a controlled drug, namely amphetamine.

Mr Bradshaw's counsel indicated that he disputed various factual assertions made by the Crown in relation to the charges to which he has pleaded guilty. I took the view that only two of the disputed issues were sufficiently important to warrant the taking of sworn evidence. One of those issues was whether the complainant's young daughter was next to her when all of the stab wounds were inflicted. The other was whether, some weeks before the night in question, Mr Bradshaw had made a comment to the complainant about knives in the drawer that he could use instead of shooting her. The Crown called the complainant to give evidence as to those matters. Mr Bradshaw elected not to give evidence as to them.

Mr Bradshaw cohabited with the complainant at her home in Queenstown for over a year until shortly before the night in question. The complainant's daughter also lived in the house. She was seven years old when her mother was stabbed. Mr Bradshaw had psychological problems and a drug problem.

On 8 September 2007 the complainant went to a netball dinner against the wishes of Mr Bradshaw. He became angry and somewhat violent towards her after the dinner. He was arrested and charged, and was granted bail by a magistrate. The order for bail included a condition requiring him not to approach the complainant directly or indirectly. In breach of that condition, he resumed sleeping with the complainant on his return to Queenstown. I will sentence him on count 2 on complaint 59566/07 for breaching the relevant bail condition by sleeping with her on the first such occasion.

Mr Bradshaw subsequently obtained a copy of a statement that the complainant had made to police officers following the incident after the netball dinner. In that statement she said something about Mr Bradshaw having firearms. Mr Bradshaw spoke to her about that. She gave evidence that she told him that she was scared that he had a gun, and that he responded, "Well, why do you think I need a gun to kill you Kristi when you've got a hundred knives in your drawer?" That piece of evidence was neither challenged nor contradicted. I am satisfied that Mr Bradshaw uttered words to the effect of those attributed to him. The idea of him stabbing the

complainant with one of her kitchen knives had crossed his mind, and he had spoken to her about it, weeks before he did that very thing.

On 14 October 2007 the complainant terminated the sexual relationship between Mr Bradshaw and herself. Mr Bradshaw was not happy with that decision. In fact he has wanted her to reverse that decision ever since.

On the night of 20 October 2007 the complainant met up with a Mr Hamill at a hotel, spent a long time talking to him, took him home, and spent the night with him. Mr Bradshaw learned of that the next day, and was disturbed by that news. As a result, he visited the complainant at her home on at least four occasions on the night of 21 October, including the visit when he stabbed her. Each time he visited her, he contravened the bail condition that prohibited him from approaching her. On that basis, I will sentence him on counts 3, 4, 5 and 6 of the complaint that is before me.

On 22 January 2007 in the Court of Petty Sessions at Queenstown, a family violence order had been made against Mr Bradshaw. It was still in force on 21 October. That order required him not to damage the premises at the complainant's address. By breaking the window, he contravened that family violence order. That offence is the subject of count 8 on the complaint that is before me.

At some stage during the evening, before the stabbings, Mr Bradshaw injected himself with amphetamine. That offence is the subject of count 13 on the complaint – a charge of using a controlled drug.

During one of his visits prior to the stabbings, Mr Bradshaw told the complainant that he was going to kill himself, and left her house. She rang two of his friends. He returned about 20 minutes later. The complainant saw him with his rifle in his mouth. His friends subsequently arrived and took him away. He has pleaded guilty to three firearms charges – counts 10, 11 and 12 on the complaint before me. Count 10 is a charge of possessing firearms when not the holder of a firearm licence of the appropriate category. It relates to a .22 Magnum bolt action rifle and a double barrel shot gun. He had them at his home that night. Count 11 is a charge of possessing ammunition when not the holder of the appropriate firearm licence. That charge relates to four rounds of ammunition for his rifle, which he had that night. Count 12 is a charge of possessing a loaded firearm in public when not the holder of a firearm licence. It relates to him having his rifle, loaded, in the street outside the complainant's home on the night in question.

Before the stabbings, Mr Bradshaw spent some time looking for Mr Hamill at a number of different addresses in Queenstown, without success. Mr Hamill had gone to visit the complainant. Mr Bradshaw's enquiries took him to a house within walking distance of the complainant's home. No one was home there. Until then, Mr Bradshaw had been travelling in his car. Its engine made a loud distinctive noise. He decided to go to the complainant's house again, thinking that Mr Hamill might be there. He chose to walk, rather than driving his car. He arrived at the house silently. He was empty handed. Through a front window, he glimpsed Mr Hamill and the complainant in bed together. Without hesitation he smashed the window and climbed through it. Mr Hamill and the complainant fled to different parts of the house. Mr Hamill, fearing for his safety, fled to the bathroom and held its door firmly closed. The complainant ran past her cordless phone, picked it up, and rang 000 from the lounge room. A recording of that phone call was tendered by the Crown. It was during that call that Mr

Bradshaw stabbed the complainant – twice on the first occasion, and twice on the second occasion.

There are a number of facts and circumstances that strongly suggest that Mr Bradshaw intended quite serious violence if he found Mr Hamill at the complainant's home. He approached silently on foot, when all his earlier visits had involved arriving in his noisy car. He had been looking for Mr Hamill for some time. As he walked to the house, he had time to think about what he would do if he found Mr Hamill there. Using a kitchen knife as a weapon was something that he had thought about in the last weeks of his relationship with the complainant. He had injected amphetamine. He had been so disturbed that he had contemplated suicide. Once he got through the bedroom window, the evidence suggests that he made for the kitchen knives without delay. Having regard to those matters, I am satisfied that Mr Bradshaw walked to the house because he intended to launch a violent surprise attack if he found Mr Hamill there. I am satisfied beyond reasonable doubt that, when he climbed through the window after having seen Mr Hamill, he had already made up his mind to arm himself with a kitchen knife and use it as a weapon if he could. However I am not able to make a finding as to whether, at the time he climbed through the window, he had reached the stage of deciding whether he intended to attack the complainant, or Mr Hamill, or both of them.

The complainant gave evidence that all four stab wounds were inflicted when she was sitting on a lounge, with her daughter sitting right beside her, pushing up against her. Before I invited the Crown to call evidence from the complainant as to the presence of her daughter, Mr Bradshaw's counsel said he was instructed that his client did not see the daughter until after the first two stab wounds were inflicted, and that the daughter was not in his field of vision when the final two wounds were inflicted. However the complainant's evidence was unshaken and uncontradicted. On the recording of the 000 call, Mr Bradshaw can be heard shouting, "Let go of her!" The complainant gave evidence that Mr Bradshaw was directly in front of her each time she was stabbed. I am satisfied that she was a witness of the truth. I am satisfied beyond reasonable doubt that, when each stab wound was inflicted, her daughter was sitting hard up against her left side, and that Mr Bradshaw knew exactly where the child was.

The complainant was taken to the hospital in Queenstown and then airlifted to the Royal Hobart Hospital for treatment. The higher wound to the left side was particularly serious. The knife had bruised a rib, pieced the lining of the abdominal cavity, passed into and through the stomach, and pierced the other side of the stomach. That wound would have been fatal without treatment. Surgeons saved the complainant's life. She spent five nights in hospital. She was in pain for weeks. She was incapacitated for months. She has been left with scars from the four stab wounds and a very long surgical scar. She continues to suffer from psychological symptoms. She had to leave her job and obtain social security benefits. Because she lives in Queenstown, travelling for counselling and psychological treatment has cost her a lot of money. Her daughter was terrified by the experience. Not surprisingly, the child has had a range of psychological symptoms, and has had to receive counselling.

Mr Bradshaw has just turned 31. He has been to prison once before, for dangerous driving. For that crime he was sentenced to three months' imprisonment, of which two months were suspended, in June 2005. He received some suspended sentences in 1999 for assault, and for being drunk in charge of a weapon. He has a lengthy record of relatively minor convictions for quite a variety of offences.

He has a long history of depression, anxiety, obsessive tendencies, jealousy, insecurity in relationships, and polysubstance abuse. He has received treatment from a clinical psychologist from time to time.

He has shown a significant degree of remorse in relation to the stabbing ever since the night in question. He returned to the scene of his crimes within minutes, after the police had arrived and parked outside, to enquire after the complainant and to give himself up. When interviewed by police officers the morning after the stabbings, he made significant admissions. To a small degree, he must be given credit for pleading guilty to the two most serious charges, and to the various summary offences. Although there still had to be a jury trial, and although the complainant still had to give evidence, the pleas of guilty resulted in the trial being a short one, and the complainant's time in the witness box being shorter than it would otherwise have been.

This is a particularly serious case. If the wound that pierced the complainant's stomach had been a little higher up her body, the knife could have passed through her heart. The most serious wounds were inflicted after Mr Bradshaw had already stabbed the complainant, and walked away from her. He decided to go back and do her further harm. He inflicted all these wounds right in front of her hysterical seven year old daughter. He was not deterred by the fact that the complainant was on the phone to the police when he inflicted these wounds. Going to the house involved breaches of both a bail condition and a family violence order. He went there with violence in mind. Attacks like this can have terrible psychiatric consequences. Sometimes long-term psychiatric problems do not develop until months or years afterwards. There remains some risk that either the complainant or her daughter or both will have long-term psychological symptoms as a result of Mr Bradshaw's violence. Because of all those matters, the only appropriate penalty is a long prison sentence.

I will make an order permitting Mr Bradshaw to be paroled before the completion of his sentence, mainly because I think he should be supervised by a parole officer when first released from prison. Because of the seriousness of his crimes, the non-parole period will be well above the minimum. I convicted Mr Bradshaw on the three charges under the *Criminal Code* on 7 May. I will now proceed to convict him of the summary offences, and to impose penalty in respect of all charges.

Benjamin John Bradshaw, I convict you on counts 2 to 6, 8, and 10 to 13 on complaint 59566/07 from the Burnie Court of Petty Sessions. In relation to counts 1, 2 and 3 on the indictment, together with those counts on that complaint, I impose a global sentence of six years' imprisonment with effect from 22 October 2007. You will not be eligible for parole until you have served four years of that sentence. You are required to pay victims of crime compensation levies of \$230. I order that you pay that amount within 28 days after your release from prison.