

STATE OF TASMANIA v LEE MARK PHILLIPS
COMMENTS ON PASSING SENTENCE

25 FEBRUARY 2022
ESTCOURT J

The defendant, Lee Mark Phillips aged 35 years at the time of his offending, has pleaded guilty to one count of aggravated assault, one of possessing a stolen firearm and one count of recklessly discharging a firearm, possessing a shortened firearm, possessing ammunition, possessing a firearm and possessing dangerous articles.

The complainant Rajwinder Kaur who was 26 years of age at the time, was not known to the defendant.

At that time the complainant worked at Bridgewater McDonalds, located on the corner of Boyer Road and the Midland Highway.

The defendant is not the holder of a firearms licence of any category, nor has he ever held a firearms licence in Tasmania.

On the evening of Friday 28 May 2021, the defendant was at home with his wife, his step-daughter, and his daughter.

On 29 May 2021, the complainant was working at Bridgewater McDonalds. She commenced her shift at 12:00am.

Two other employees were on duty overnight, namely Vatsal Langalia and the Manager, Matthew Ditton. Bridgewater McDonalds operates 24/7, however the store closes at 10pm and is open for drive through only after that time.

The defendant left his house sometime after midnight on 29 May 2021 and walked to Bridgewater McDonalds. He was armed with a 12 gauge sawn-off shotgun.

At approximately 1.05am the defendant approached the main entry of McDonalds Bridgewater. He attempted to open the front door, which was locked, and then left again.

At approximately 1.09am he jumped over a glass partition, entering the playground area and then spent a number of minutes attempting to force entry to the store.

At 1.20am he entered the loading dock of the store wearing a balaclava. Two minutes later the he walked back around to the rear of the premises entering the drive-through area.

At approximately 1.32am he walked behind a blue Ford Focus that was in the drive-through waiting to collect an order. Once the driver collected their order and drove away, the defendant walked up to the drive-through window and tapped on the glass. He was still wearing a balaclava, and he was holding the sawn-off shotgun in his right hand down by his side.

He tapped on the window a second time with his hand, before tapping on the window with the shotgun itself, and again with his hand, attempting to draw the attention of staff.

At approximately 1.34am the complainant was cleaning behind the counter when she heard a knocking sound on the drive through window. She noticed that there was a man near the window who appeared to be hiding.

She walked up to the window and was less than one metre away when the defendant held up a gun.

The complainant turned around and ran away towards the office yelling "*he's got a gun, he's got a gun.*" As she was running away she heard a loud bang as the defendant discharged the firearm through the drive-through window. There was less than three seconds between the complainant approaching the window and the defendant discharging the firearm in her direction.

The Manager, Mr Ditton, told the complainant and Mr Langalia to hide at the back of the store.

The defendant walked out of the drive-through and into the carpark towards the Midlands Highway. As he was walking he turned back around, lifted the sawn-off shotgun with his right hand, and discharged the firearm a second time, with pellets striking a glass partition at the front of the store. He then crossed the Midlands Highway.

Members of Tasmania Police attended and at approximately 2.00am, the defendant was located and arrested.

The firearm produced by the defendant was a 12 gauge Baikal, an under and over model. It was loaded with two 12 gauge cartridges.

A search was conducted of the firearms licencing database and it was ascertained that the shotgun was stolen from a property in Elderslie on 28 October 2016.

The charge of shot perforated the glass pane of the drive-through window with pellets striking the top right side edge of a partition wall behind the service counter, and a television monitor directly behind the partition wall.

The path of the pellets through the drive-through window was 1.14 metres from the floor, meaning that they would have struck around the upper chest area of the complainant had she remained in her initial position at the window.

Further damage was located to a glass partition at the front of the store. Some pellets had impacted the glass pane but had not perforated the glass. This damage was consistent with a shotgun being discharged in a slightly downward direction from an area near the exit point of the drive-through.

Following the arrest of the defendant a search warrant was executed at his residence. During the course of the search police located a Jack Daniels bag in the pantry cupboard containing 10 rounds of red and orange 12 gauge shotgun cartridges.

The defendant participated in a video recorded interview at the Hobart Police Station under caution on 29 May 2021. During the course of that interview he stated that he left his house at about 1am on 29 May, and before leaving he had had 3 or 4 cans of Wild Turkey and half a gram of cannabis.

I have heard a victim impact statement from the complainant. She is a student visa holder who is alone in this country. Now it is hard for her to leave her home. If she sees someone in black clothing she starts to cry. She has flashbacks about what happened. She didn't sleep much at all for 5-6 days after the event, and now she often wakes up and cannot get back to sleep. She keeps thinking about what happened and how she nearly died .

Pursuant to s 68(1) of the *Sentencing Act* 1997, a compensation order is sought in favour of Bridgewater McDonalds in an amount to be assessed. I make that order and adjourn the assessment.

Pursuant to s 11(1) of the *Crime (Confiscation of Profits) Act* 1993, an order is sought, pursuant to s 16 of the Act, that the firearm used by the defendant in the offending be forfeited to the State of Tasmania. For the purpose of s 16(4) the Crown asserts that the value of the firearm is approximately \$600. There is no quarrel with that amount and I make that order.

The defendant was in custody from his arrest on 29 May 2021. The defendant has no relevant prior convictions.

While growing up, did not have a positive relationship with his parents. His father was violent and abusive towards him and his mother was an alcoholic. He has not spoken to parents for over 10 years. He has 2 older brothers and 1 younger sister but has no contact with them.

He did not have a proper education and was suspended at times from St Paul's primary and suspended frequently from Bridgewater High School.

He had a previous relationship when he was approximately 18 years of age which was volatile, and it was during that three year period that he started consuming alcohol excessively and abused prescription medication.

He met his current partner at 21 years of age. They have been together for 15 years now and married for 13 years. They have a 13 year old daughter together and Mr Phillips is also the father figure to his step-children who are aged 17 and 20. He has a strong and positive relationship with them.

Until he suffered a workplace injury in 2018 he was the primary income earner for the family. Due to that incident, his wife had to take over that role. This caused significant distress to the defendant.

His cannabis consumption increased drastically. He would become easily irritated if he did not have cannabis. A few days before the incident, he told his wife that he felt hopeless and useless being at home without being able to provide for the family.

The basis of the defendant's plea of guilty to aggravated assault, which is accepted by the Crown, is that his conduct in firing into the window amounted to a reckless threatening gesture.

His offer to plead guilty came immediately upon the Crown's acceptance of a proposal to resolve this matter. It is submitted and not disputed that his guilty plea is also evidence of his remorse for his crimes, and I am told that he accepts full responsibility for his actions.

The defendant's offending is very serious. The complainant could have been injured or even killed had she not been so quick to act, and even then it was fortunate that she was not struck by a pellet or pellets from the illegally shortened firearm.

This sentence has caused me some difficulty. Were it not for the defendant's early plea of guilty (and very importantly the basis upon which the State has accepted that plea to the most serious of the charges), were it not for the bizarre and almost inexplicable nature of the offending, his lack of any relevant prior convictions, and the 192 days he has already spent in custody, I would have sentenced him to a prison sentence. Instead I ordered an assessment of his suitability for

home detention. The defendant was assessed as being a suitable candidate for a home detention order.

The defendant is convicted of all charges to which he has pleaded guilty and I impose a single sentence of 18 months home detention.

All of the core conditions contained in s 42AD(1) of Part 5A of the *Sentencing Act* 1997 are imposed.

Under s 42AD(1)(g) and (h), of the Act, the following conditions are added to the Order:

- 1 You must, during all of the operational period of the order submit to electronic monitoring, including by wearing or carrying an electronic device.
- 2 During the period that you are required to submit to electronic monitoring:
 - (a) you must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring;
 - (b) you must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring;
 - (c) you must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring, including in relation to the installation, attachment or operation of a device, or a system, used for the purposes of electronic monitoring by:
 - i a police officer;
 - ii a probation officer or prescribed officer; or
 - iii another person whose functions involve the installation or operation of a device, or a system, used for the purposes of electronic monitoring.

The following special conditions are also included in the Order:

- 1 You must, during the operational period of the order, remain at [address specified] all times unless approved by a probation officer;
- 2 You must attend the Community Corrections office at Glenorchy for induction onto this order, as soon as you leave Court this morning.
- 3 You must, during the operational period of the order, maintain in operating condition an active mobile phone service, provide the contact details to Community Corrections and be accessible for contact through this device at all times;
- 4 You must submit to the supervision of a Community Corrections officer as required by that officer;

- 5 You must not, during the operational period of the order, take any illicit or prohibited substances. Illicit and prohibited substances include:
- (a) Any controlled drug as defined by the Misuse of Drugs Act 2001;
 - (b) Any medication containing an Opiate, Benzodiazepine, Bupropion, Hydrochloride or Pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed the relevant medication.