

STATE OF TASMANIA v MARK NOEL BENNETT
COMMENTS ON PASSING SENTENCE

4 MAY 2022
WOOD J

Mark Noel Bennett has pleaded guilty to the crime of aggravated carjacking contrary to s 240(2)(b) of the *Criminal Code* and related summary offences, evade police (aggravated circumstances), drive while exceeding prescribed alcohol limit and common assault.

On 31 March 2021 at approximately 2:20 am, the defendant ordered a taxi to pick him up from Tamboon Road in Berriedale. The complainant, Raja Zain Talat, a taxi driver, collected the defendant in a taxi, a Toyota Camry.

The defendant got into the rear of the taxi and asked to go to Spring Street, Claremont. The complainant began driving there. After turning onto the Brooker Highway, the complainant felt something sharp on the right side of his body, near his ribs. The defendant told the complainant to stop the car immediately, that this is a robbery and that he had a knife. He kept pushing the object into the complainant's body whilst the complainant began to slow the vehicle down. The defendant told the complainant he would hurt him if he didn't stop the taxi. The complainant stopped the taxi, on the Brooker Highway near the Abbotsfield Road, Claremont slip lane. As he did so, he pressed the taxi's emergency alarm, located near the steering wheel. He ran from the taxi and the defendant drove north on the Brooker Highway.

The police were notified and became aware of the whereabouts of the taxi because it was fitted with a GPS tracker. As the defendant passed the intersection of Main Road, Granton and Brooker Highway, a marked police car with headlights and emergency lights on, pulled out behind the taxi. The defendant did not stop and continued right at the Granton roundabout towards the Bridgewater Bridge. Police activated their emergency siren. The defendant continued driving on the causeway for approximately 300 metres then slowed, indicated to the left and came to a stop.

Police arrested the defendant and when questioned about what he was doing driving the taxi, he replied "I robbed it." A set of pliers were located on the front passenger seat.

He submitted to a breath analysis and produced a reading of .177 grams of alcohol per 210 litres of breath.

When interviewed by police he made full admissions. He told police he had consumed a large amount of alcohol and that he had found a set of pliers on the lawn before getting into the taxi and he had used those to threaten the driver. He told police he was sorry for his actions, he had just lost his father and was having trouble dealing with that.

The defendant was 31 years at the time of offending. He has prior convictions but not many and not for offending as serious as this. He has one prior conviction for stealing committed in 2017, one resist a police officer in 2012, one for threaten a police officer in 2011 and two convictions for common assault, one in 2010 and one committed in 2008.

The defendant was very intoxicated at the time of offending, but that provides no excuse or mitigation for his wrong-doing. He has a background of mental health difficulties and a history of alcohol abuse as an adult. He has experienced a number of traumatic events. His best friend died in a motor vehicle accident at age 17 and the defendant was attacked and badly assaulted as a young man. He has experienced social anxiety, panic attacks and periods of depressed mood since early adulthood. His mental health has given rise to six presentations at hospital

and he has been admitted to the psychiatric ward on three occasions, a particularly severe deterioration coinciding with the anniversary of his friend's death.

His father died approximately three months before his offending in March 2021 and they had had a close relationship. The defendant used alcohol after his father's death as a way of coping with his grief, drinking heavily on a regular basis. On the night of the carjacking, he had had a drinking session at a friend's house and had become depressed and sad about his father's death.

As he told police, he had picked up the pliers and put them in his pocket. In the taxi he used them on an impulse. He did not then, and does not now, understand why he did that. He did not want to hurt anyone, he had money to pay for the taxi fare, he had nothing to gain from taking control of the car and did not know where he was driving to.

Mr Bennett has expressed remorse for his conduct, saying he would always feel guilty about what he did and was worried about the driver's well-being and felt he had every right to feel safe at work.

I have a report from forensic psychiatrist Dr Evenhuis. He notes that it appears that the defendant has used alcohol as a way of managing his anxiety but then becomes acutely distressed whilst intoxicated, experiencing feelings of frustration and hopelessness. He states that the defendant would probably have met the criteria for panic disorder, social anxiety disorder or post-traumatic stress disorder. Dr Evenhuis states there is perhaps the possibility of major depressive disorder. He notes that the defendant now expresses significant remorse in terms of how his behaviour could have affected the taxi driver based on his own experience of having been traumatised.

Dr Evenhuis expresses the opinion that the fact that the defendant was as intoxicated as he was partly reflects his grief response. The fact that he was grieving and his background issues with anxiety and low mood contributed to the way alcohol affected him and he became sad and angry after consuming alcohol. His difficulties with emotional regulation made it more difficult for him to reflect upon his actions when he was distressed and intoxication appears to have led to increased impulsivity. Dr Evenhuis opines that, to some extent, his emotional state and personality vulnerabilities might be considered to decrease his moral culpability. I accept that was so, to a degree. I also accept what Dr Evenhuis states, in that the defendant's background issues with low mood, social anxiety and residual post-traumatic symptoms would make a prison environment more challenging for Mr Bennett than for an individual without those difficulties.

The main issue leading to Mr Bennett's criminal behaviour was his very high level of intoxication. Given this factor, it is relevant that Mr Bennett has begun to address his alcohol abuse, acknowledging as he does that it is time for him to take charge of the situation.

The defendant's actions have been a "wake up" call and brought home to him that he needed help with his alcohol abuse. He began attending alcohol and drug treatment with Anglicare in May 2021 and has attended a number of sessions. He has engaged well and is demonstrating positive steps towards his goals. He has completed a relapse prevention plan and has expressed interest in continuing with counselling in the future. He has attended a psychologist both in the past and recently.

He is currently unemployed but has various qualifications and a history of employment. He is engaged with an employment agency. Mr Bennett is undertaking an online course to become a youth support worker and hopes to find work in this field.

Currently, the defendant is in a stable relationship and he is step-father to his partner's three children. His partner remains supportive of him.

Aggravated carjacking is a serious crime, it causes community alarm and is a terrifying experience for the driver. The panic that a driver would experience could easily result in a dangerous situation on the road. The aggravated component of carjacking is being armed with a dangerous weapon, in this case a set of pliers. That component of the crime adds considerably to the terror and fear that a driver would experience. I take into account that the crime was unplanned, it was an impulsive and completely irrational act, carried out against a background of mental health issues. Further, I take into account that you are remorseful and ashamed of your conduct. You are committed to addressing your alcohol abuse and you have made good progress in that regard in the past 12 months.

Ordinarily, a term of imprisonment would be warranted however, in this case, matters in your personal circumstances and concerning your mental state are deserving of weight and point to a more lenient penalty that focusses on your rehabilitation. You are someone who has assumed responsibility for your conduct and you have taken active steps towards your reform and I am satisfied that you will co-operate with court ordered intervention to further promote your reform.

In relation to the crime of aggravated carjacking I impose a community correction order for a period of two years from today. The statutory core conditions apply for that period. These include that you must not, during that period, commit an offence punishable by imprisonment. You must report to a probation officer at 114 Bathurst Street Hobart before 5pm today. You must report as required by your probation officer and comply with the reasonable and lawful directions of a probation officer or a supervisor.

I also impose the following special conditions to be in place for the same period of two years from today:

- You must submit to the supervision of a probation officer as required by the probation officer.
- You must submit to medical, psychological or psychiatric assessment and treatment as directed by a probation officer.
- If directed by a probation officer, you must attend, participate in, and complete the EQUIPS Aggression Program as directed.
- If directed by a probation officer, you must attend, participate in, and complete the EQUIPS Addiction Program as directed.

I impose a period of 15 months' licence disqualification and your licence is suspended.

The summary offence of common assault is closely connected to this crime, I record a conviction with respect to it. No additional penalty is required given the nature of the sentence I have imposed with respect to the aggravated carjacking.

For the summary offence of evade police (aggravated circumstances) I impose the minimum penalty for a first offence, which is of itself a substantial penalty, a fine of \$3460 and a concurrent period of disqualification of two years. Your licence is suspended. Your offence of evade is aggravated by virtue of the fact that you had alcohol in your system in excess of .05.

For the offence of exceed 0.05 with an alcohol reading of .177 I impose the minimum penalty for a first offence. I impose a fine of \$865 and a term of disqualification from driving for 12 months which is concurrent. Your licence is suspended. That means that the total effect of those three periods of disqualification is a period of two years from today and your licence is suspended.