

STATE OF TASMANIA v SEAN DESMOND HAWKES
COMMENTS ON PASSING SENTENCE

18 OCTOBER 2022
PORTER AJ

Mr Hawkes, the defendant, has pleaded guilty to one count of burglary and one of stealing. These crimes were committed at his place of his employment, McDonalds Bridgewater, on 7 February 2020. The defendant had been employed there since 2013, and was promoted to the position of Shift Manager in September 2016, at which time his primary role was that of night shift manager with working hours between 12 midnight and 8 am. His duties included dealing with cash takings and depositing cash in a safe in an office in the store. That safe had what was described as a "safeguarding drop-in feature". Items were deposited by opening the safe, then by inserting items into a letterbox style slit, which could not be accessed without either unlocking it or obtaining some sort of tool that could reach into it. Unlocking it required two keys, one was in the company's possession and the other in the possession of the security company responsible for collecting the cash. The defendant's criminal activity was mostly captured on CCTV. At about 2.10 am, he is seen walking towards the store, dressed in black with a black hoodie and a mask concealing his face, and carrying a large black bag. On the day before, the defendant had moved a milk crate into a position next to a wall in the loading dock. He used this on the morning to help him get onto the premises after scaling the wall. He entered the loading dock at the rear of the building, and spray painted the CCTV camera with silver paint before entering the store itself through the rear access door, which was unlocked. He then approached a staff member, Mohammed Kamruzzaman (who I will call the complainant) and directed him to the office, guiding him with his left hand. The complainant initially thought the defendant was playing a prank but quickly realised this was not so. Another staff member was able to see what was going on. The defendant and the complainant entered the office. The defendant aggressively guided the complainant towards the corner of the office and told him to face the wall and not to watch, but the complainant could essentially see what was happening. The defendant used a flexible shaft claw pickup tool to remove four cash deposit bags from inside the drop safe as well as the store float. The total amount was \$11,307.15. The defendant was in the office for approximately 85 seconds before leaving the store through a side door, leaving at 2.14 am. Of importance to the subsequent investigation was that the offender was seen to be left handed. Police inquiries led to a statement being taken from the defendant, in which he asserted that there was a suspicious male loitering near the store during his shift the day before. That statement was investigated with police concluding that the man referred to was intoxicated and not involved in the incident.

On 10 February 2020, the defendant was interviewed under caution. He denied any responsibility for the offence but said he sold a motorbike a few months earlier for \$4,300 and was driving a Nissan vehicle which he was paying off. He also admitted he wrote left-handed. After the interview police checked his mobile phone. Items of interest included a recent purchase of an 85 mm flexi-shaft pickup tool matching the one that was used to take the money, a recently viewed item on eBay described as a "black skull mask ghost face mask" which matched the mask worn by the offender as seen on CCTV, and an internet search for "Hobart police scanner" at 2.52 am on 7 February 2020. The defendant was arrested while additional investigations were made. A search of the defendant's brother's house revealed burnt debris in a fire pit in the back garden, amongst which were coins, deposit slips and bags matching those used by McDonalds Bridgewater, and a spray paint canister appearing to contain silver paint. When further interviewed on the same day, he maintained his denial in relation to the offending. He agreed he had gone to his brother's place but said he did not have anything to do with the fire. He admitted to buying the flexi-shaft pickup tool, but said he did so in order to get spark plugs out of a motorbike that he was working on. He could not say where the tool was. He said he was not sure why he had searched for the Hobart police scanner and could not give a reason for searching for masks on the same day he bought the pickup tool.

The defendant was originally charged with robbery. The trial was due to start on Monday, 15 August 2022 but was resolved over the weekend with the matter being adjourned to the next day. In the meantime a nolle prosequi was filed in relation to the robbery and a fresh indictment was filed containing the two counts to which the defendant pleaded guilty. There is no victim impact statement from the complainant but I was told that, not surprisingly, he was shocked and traumatised. No money has been recovered.

The defendant is now 28 years old. He has a limited recorded history of offending, the only matter of any note being convictions for trespass and destroying property. They were family violence offences committed in September 2019 and for which he was fined in January 2020. I have the benefit of counsel's submissions, as well as a home detention assessment report, dated 6 October 2022. The defendant seems to have had a relatively uneventful upbringing although he was diagnosed with ADHD as a child and his parents separated when he was in high school. He obtained employment at a McDonalds store immediately after completing Grade 12. He was there for two years before moving to the Bridgewater store and was given a

managerial position in 2016 when he was 21. He had supervisory duties over a number of people and was in a position of trust in relation to cash takings. Until this offending, he was viewed as a reliable, valued and trustworthy employee. Before the offending, he had been in a long term relationship with a woman whom he met at school. They have three daughters now aged 8, 5 and 1. As I understand it, the relationship broke down some months before this offending. He has a history of poor mental health in the form of depression. He suffered as a result of a breakdown, and contributed to by the "party house" environment in which he was living, he took to substance abuse. That included alcohol and MDMA. He attributes his offending to poor decision making and a lack of judgment, resulting from the substance abuse, alcohol intoxication and poor mental health. He reports that working night shift for several years caused him stress and affected his sleeping patterns. All of this took a significant toll on his mental health and well-being. He reports being under the influence of MDMA and alcohol at the time of the offending. He told the probation officer that he now abstains from illicit drugs. For some twelve months or so now, he has been in full time employment with a concreting contractor from whom I have a reference. He is described as hard working and dedicated and has been given a role of overseeing and assisting with the co-ordination of day to day operations that involve in excess of 25 employees. He is a well-respected figure of seniority within the company. He expressed to his employer disappointment in himself and remorse for his behaviour. The employer told Community Corrections that he was prepared to do whatever it took to keep the defendant as an employee, saying he was an integral part of the business and could not be faulted on any level. I note that the defendant has been properly and regularly financially supporting his children.

Clearly, this is a serious matter as it involved offending against an employer, and it is a grave breach of trust. As such, factors of general deterrence and denunciation are important. But this is not a simple theft from an employer in the sense that fellow employees were exposed to emotional trauma; one person in particular. In terms of other aggravating factors, there is some debate about the degree of pre-meditation. The Crown asserts the planning can be seen to extend back to December 2019 when the flexible pick-up tool was obtained. The prosecution planned on rebutting the defendant's explanation that it was to be used on a motorbike by calling evidence from a motor mechanic. But the mechanic's statement, whilst casting doubt on the potential suggested use, does not exclude the possibility. The defendant does not dispute that the offending can properly be described as planned and pre-meditated. A high level of planning is self-evident from the facts. I do not see that attempting to determine the precise

length of the planning process will assist much. I note that the defendant has offered no explanation in relation to any particular need for money. As to mitigation and the pleas of guilty, resolution, of course, came at the last minute. The Crown asserts a bowing to the inevitable. It was a relatively strong circumstantial case but of course the pleas came to an amended indictment with the issue having been the causal connection between whatever low level of force was used, or more particularly perhaps, the threat of force, and the removal of the money. Taken in that context, the pleas have some utilitarian value and can be taken as an indication of a willingness to facilitate the course of justice. I take into account that the defendant is still a relatively young man with no relevant recorded history. He seems to have rehabilitated himself from the situation he was in at the time. His present employment circumstances and the weight of his employer's support are significant matters. I am satisfied this incident was out of character. He has been assessed by Community Corrections as unsuitable for home detention due to his history of mental health, issues with self-harm, and with his poor mental health contributing to the offending. There is concern about the effect of isolation and restriction on him. He has been assessed as suitable for community service and as requiring a medium level of supervision by Community Corrections. However, rather curiously, the report states the defendant "advised of limited risks or needs requiring targeted support, but for his mental health concerns", and, "as such a community corrections order is not recommended".

Taking all matters into account, I take the view that the public interest is better served by encouraging the defendant's rehabilitation and attempting to maintain the role he presently appears to have as a contributing member of the community. The defendant has a history of mental health issues and substance abuse. In all of the circumstances, I do not think it appropriate to immediately expose him to the corruptive and corrosive influence of imprisonment as such, nor do I think it appropriate to make a home detention order contrary to Community Correction's recommendation. The offending warrants a term of imprisonment to mark the seriousness of it, but the suspension of the whole term is justified. However, there will be some immediate impact on the defendant as the suspension will involve community service.

Mr Hawkes, I have set out the facts and what I see to be the relevant considerations that operate both for and against you. As I have indicated, this was a serious matter and warrants a term of imprisonment but I have decided to suspend it on conditions, one of which is the performance of community service. You are convicted of the crimes and sentenced to 12 months'

imprisonment, the execution of which is suspended on conditions; first that you commit no offence punishable by imprisonment for a period of two years and second, that you satisfactorily perform 130 hours of community service. The operational period of the resultant order is 30 months. You will have to report to a probation officer at 114 Bathurst Street, Hobart by 5.00 pm tomorrow. In light of the terms of the Community Corrections report, I will make no further order. I need to explain the operation of the orders I have made. I have sentenced you to a term of imprisonment, suspended on conditions. If you breach either of those conditions, you can be brought back to this Court and an application can be made to activate that sentence of 12 months. The law is that a judge must activate it unless it is unjust to do so. So you need to be very careful about complying with the conditions that I have imposed on the suspension.