

STATE OF TASMANIA v BRADLEY LAWRENCE MYKAEL GEE 18 NOVEMBER 2020
COMMENTS ON PASSING SENTENCE

PEARCE J

Bradley Gee, you were found guilty by a jury of persistent family violence. It follows from the verdict that the majority of the jury was satisfied beyond reasonable doubt that between 1 May 2018 and 7 June 2019 you committed offences involving violence on at least three occasions against Emily Batchelor, a person with whom you were in a significant relationship. At trial, the State identified eight occasions on which it alleged offences were committed. On six of those occasions the offence alleged was assault. On two occasions the offence alleged was wounding. I invited the jury to identify the occasions found by the majority to have been proved, if it agreed. There was no agreement, from which I infer that some members of the majority had a reasonable doubt about whether some of the acts alleged by the State occurred. Thus, subject to consistency with the verdict, it is for me to find the facts for sentencing purposes. I may only make findings adverse to you if satisfied beyond reasonable doubt they have been proved, and I may only make findings of fact in your favour if they are proved on the balance of probabilities.

The relationship between Ms Batchelor and you began towards the end of 2017. At the time she was 25 and lived in Wynyard with her son aged nearly 3 from a previous relationship. She was in contact with her mother and father who also lived in Wynyard. After a few weeks you moved into Ms Batchelor's home. Over time you assumed a role as a father figure for her son. The case against you depended substantially on the truth and reliability of Ms Batchelor's account. She said that, when the relationship was a few months old, you and she began to argue in private, with increasing frequency, although, when in company, any conflict would not have been apparent to others. She described mutual "trust issues". She gave evidence that during the course of your relationship you and she talked often, but occasionally you would withdraw and then become angry and boil over. She said that, on many such occasions you became violent towards her. Often, when you were together in the car, you would punch her arm or thigh. She did not complain to anyone else, lied to her mother and father when they noticed anything, and wore clothing to hide the bruises.

She described the eight occasions of violence relied upon by the State. She said that the first time you struck her was when you and she were in the course of moving house from Wynyard to Wilmot in May 2018. You were both in the car. You struck the side of her face with the back of your hand. It gave her a fat lip for a few hours but she did not tell anyone about it.

The second occasion also occurred at Wilmot. It was a rural property and you and she were out wallaby shooting. She had the firearm and you were spotting for her with a cylindrical steel torch. You argued and she called you a "fuckwit". You approached her from behind and struck the top of her head with the butt of the torch. She did not know what she had been struck with until she asked you when you had both returned to the house. The blow caused a significant laceration although she did not seek medical treatment or report the matter to anyone. She applied pressure to the wound with a cloth but it bled for about an hour. She could not see the wound and so she asked you to take a photo of it on her phone. The photograph shows a nasty cut about, as far as can be determined from the photo, 5 to 6 centimetres long in a semi-circular shape reflecting the shape of the torch. I am satisfied from the nature of the wound that significant force would have been required to cause it. Later photographs show the scar which remains.

The third occasion she described as having occurred in the lounge room at Wilmot. She said that an argument started in the backyard and continued into the house. You grabbed her around her

around her throat with your hand and slammed her down, causing her to strike her head on the hearth. She ended up in a foetal position on the floor. You stood over her shouting, and punched her to the head, arm and belly. You then picked her up and threw her backwards onto the front of the couch. She said her son was also in the lounge room and was crying. The violence caused bruises and lumps and bumps but she did not tell anyone.

The fourth occasion occurred after having returned to Wilmot together in the car from Ulverstone. You argued. Her son was in the car seat in the back. When you arrived home you told her to get into the wire dog cage attached to one of the outbuildings. You were carrying her hunting knife which had been left in the car. She complied in the hope of pacifying you and you locked the gate. When you threatened to burn the car with her son inside she forced her way out, grabbed her child and returned with him inside the cage, at which time you secured the gate with rope and turned the garden hose on them both. You did not let them out until sometime later, after you had calmed down.

The fifth occasion occurred on Christmas Eve in 2018. It was a planned trip to her father's house, but you argued when you arrived. After her son had gone inside, you butted your cigarette out on her upper chest on the right side. It caused a burn. When her father later noticed the burn he asked her if you had done it. Ms Batchelor told her father that she had dropped the hot part of her own cigarette.

The sixth occasion described by Ms Batchelor is said to have occurred at Wilmot. She said that, after a prolonged series of arguments, she was doing the dishes in the kitchen. From behind, you punched her in the back and struck the back of her head with your elbow. She fell to the floor. Thinking she may vomit she walked to the toilet. You followed her, knocked her down and then, when she was on the floor beside the toilet bowl, kicked her abdomen and arm.

The seventh occasion occurred at the home of your brother in Burnie. Ms Batchelor said that, after another heated argument, you pushed a key into her hand causing the skin to break and for it to bleed.

The eighth and final specified occasion is said to have occurred on 7 June 2019, after Ms Batchelor and you moved to Somerset. In the lead up to that day Ms Batchelor and her son had been ill with a gastric complaint, which you then caught. She took the linen to the laundromat in Ulverstone intending to give it a thorough wash, and to give you some peace and quiet. However you became angry when she was gone longer than expected. You accused her of talking to others on her phone all day, which you did not approve of. You approached her and placed your hands around her throat for a couple of seconds, momentarily impacting on her breathing. Fearful of what might happen, she went outside, sent a phone message to her mother asking her to call the police, and hid behind a tree in the neighbour's yard. When you found her you threw her down by grabbing her hair. You then grabbed and dragged her by the arm. She felt her shoulder "pop", causing immediate pain.

I do not share the doubt apparently experienced by at least some of the jury of Ms Batchelor's account of any of these events. I accept the truth of her evidence in all essential respects. In important ways it was supported by other evidence. It was not disputed that she suffered the laceration to the head as a result of being struck by the torch. I have no hesitation in excluding as a reasonable possibility that there was some innocent explanation for the wound, for example the suggestion at trial, unsupported by evidence, that the torch was accidentally dropped by you from a tree. I am satisfied that she did in fact suffer a cigarette burn to her chest, and reject the

possibility that what was seen by her father was the result of some other ailment. I find that what she said to her father when confronted about it was an obvious lie aimed at protecting you. Her mother gave a persuasive account of having seen suspicious bruises on her daughter's body which were explained away as being the result of skylarking. Again, in light of all of the evidence, I have no doubt that Ms Batchelor's explanation for the bruises was a lie she told to protect you. I accept her evidence that she wore clothing to conceal bruises. I am satisfied of the truth of her account of the dog cage incident. She gave a convincing and persuasive account, without overstatement. I regard it as inherently implausible that the detail she gave would be fabricated. The nature and extent of the injury she suffered to her shoulder corroborates the truth of her account of the events of 7 June 2019, and adds to her credibility generally. Her mother observed the effect of the injury when she arrived at the house immediately after it occurred. Ms Batchelor consulted her general practitioner, Dr Berryman, on 19 July 2019. He is an experienced GP with additional training in orthopaedics. He had been her general practitioner since she was a child. In his evidence he described her as having presented in severe shoulder pain with greatly restricted movement. His examination and investigations disclosed that she had suffered a full thickness tear to the largest shoulder tendon, consistent with how she described to him that the injury had occurred.

Before the jury, you contended that Ms Batchelor's account should be doubted for reasons including the relative absence of evidence of observation of her injuries, her lies to her parents, her failure to complain to anyone else, her failure to mention to the police on 7 June 2019 the specifics of what she later said occurred on that day, her delay in presenting to Dr Berryman, and the absence of any apparent injury to her shoulder in the police camera images of her taken on 7 June 2019. Ms Batchelor also lied in her evidence about a continuing relationship with you after you had been taken into custody. She did not tell the jury of her affectionate letters to you written between March and July 2020 when you were in prison, or the phone conversations which were recorded on the prison system. It was contended that her continuing affection for you is inconsistent with the violence she described having been perpetrated against her on multiple occasions. It was suggested that she was motivated to lie from the possibility of financial compensation, or from jealousy. These matters do not lead me to doubt her account. Each of the majority of the jury must have been satisfied that violence was perpetrated on at least three of the occasions. The majority of the jury must have been satisfied of the truth of at least some of the essential parts of her account. I also accept the prosecution contention, made at trial, that your post-offence conduct is probative of your guilt. In phone calls made from prison you made repeated attempts to persuade Ms Batchelor to withdraw her allegations, assert that the allegations were made "under duress", or to not appear in court. I reject as a reasonable possibility that your persistent attempts were a means to escape allegations which were not true. To me, they were obvious attempts to hide the truth. The tone and context of your statements make clear to me that, despite your awareness that the phone calls were being recorded, you knew what was alleged and understood that if Ms Batchelor were to persist with the allegations and give evidence in accordance with them, you would more likely be found guilty. You made obvious attempts to have her avoid making incriminating statements.

I am satisfied of the truth of Ms Batchelor's evidence. I am satisfied that her attempts at times to hide the truth about your violent and abusive behaviour, arose from her wish to placate you, to avoid conflict so as preserve and maintain the relationship, for reasons of continuing affection and emotional and economic security, and for the sake of preserving the relationship between you and her child which she valued.

I am satisfied that the occasion on which you struck Ms Batchelor on the head with the torch amounts to the crime of wounding. I am not satisfied that you intended to wound, but I infer from the force and location of the blow, and the object with which the blow was struck, that you appreciated the likelihood that a wound would be caused and acted despite the risk. I am satisfied that you applied the key to Ms Batchelor's hand with sufficient force to cause a wound, but in that case the evidence does not persuade me that you either intended injury or were reckless as to the risk. On that occasion you committed an assault.

You are now aged 30. You were aged between 27 and 28 at the relevant time. Your parents separated when you were a child. You claim to have been subjected to physical violence during your childhood. You completed year 10 and have a reasonable industrial history as an adult, working mostly in fishing and labouring. A significant factor in sentencing is your criminal record, particularly for violence and family violence. Your record for breaching family violence orders stretches back more than a decade. On 28 October 2013 you were sentenced to a partly suspended term of six months for assault, firearm offences, dishonesty and breaches of family violence and bail orders. In December 2013 you were imprisoned for 20 months for causing grievous bodily harm. That was not a family violence offence. In 2016 you were sentenced to imprisonment for 15 months for four counts of assault and 16 counts of breaching a family violence order, as well as driving and firearm offences. Those offences involve a different complainant. On two separate occasions during 2019 you were sentenced to terms of imprisonment for breaching orders in force to protect Ms Batchelor. Your presence at her home on 7 June 2019 was in breach of such an order. The offences for which you were sentenced on 6 November 2019 to imprisonment for nine months from 14 August 2019 included emotional abuse and intimidation including by threatening to have her child removed from her, by threatening that you would have her cable-tied to a chair, have her tongue cut out and beaten and tortured. Most of those offences post-date this crime, and the sentences are not prior convictions for sentencing purposes, but they make clear a complete absence of remorse for your conduct and a particular need for specific deterrence.

You are not entitled to the mitigation a plea of guilty would have attracted. Subject to totality and proportionality, I should impose the same sentence if the identified acts of violence were separately charged and committed in the context of regular offending of that nature. The seriousness of domestic violence has been repeatedly emphasised by this Court. It is insidious and a matter of great community concern. The sentence must also acknowledge the element of persistent violence for more than a year, thereby adding to the complainant's trauma and your criminality. The offences themselves are overlaid with ongoing emotional abuse, controlling conduct and intimidation. You abused the trust inherent in domestic relationships. Some of the attacks involved especially cruel, demeaning and humiliating conduct. The dog pen incident is a good example. Reasonable members of society would be appalled by such acts. One of the assaults involved a short period of strangulation, a particularly dangerous form of attack, indicative of the exercise of power and control. It is aggravating that some of the conduct occurred in the presence of her son. The highly damaging impact that exposure to family violence may have on children is now well understood. The physical and psychological impact of your conduct on the complainant is described in her victim impact statement. She still has shoulder pain. She has scars on her hand and head. She has nightmares and other complex psychological symptoms for which she has received psychiatric treatment and counselling. It is possible that some of her trauma results from an earlier abusive relationship, but I have little doubt from the nature of your conduct that you added to it considerably.

For all of those reasons, a sentence is required to punish you, to mark society's condemnation of family violence, to protect the public, to vindicate the victim and to make clear the consequences of such acts in the hope of deterring you and others from such conduct in the future. I will allow for parole but only after the minimum period that justice requires you to serve.

Bradley Gee, you are convicted. In accordance with the *Family Violence Act 2004*, s 13A, I direct that the crime be recorded on your criminal record as a family violence offence. It is agreed that you would have been released on 28 February 2020 so the sentence I impose will commence then. You are sentenced to imprisonment for five years from 28 February 2020. I order that you not be eligible for parole until you have served three years of that sentence.