

**STATE OF TASMANIA v JAI LAWRENCE RAINBIRD
STATE OF TASMANIA v KURT STANLEY JAMES
COMMENTS ON PASSING SENTENCE**

13 MAY 2011

EVANS J

Kurt James is convicted on his plea of guilty to a charge of committing an unlawful act intended to cause bodily harm.

Consistent with the jury's verdict, Jai Rainbird is convicted of the same crime. He is in addition convicted on his plea of guilty to a charge of unlawfully injuring property.

A little after midday on 29 May 2010, Jai Rainbird was hooning in a vehicle in Lamprill Circle, Herdsman's Cove. The road was wet and his behaviour caused concern to some of those who had children in the vicinity and cars parked on that road. Rebecca Launer resides in Lamprill Circle. She, her partner Malcolm Menzies, his brother Robert, and Robert's partner, were standing near Robert's utility. Malcolm Menzies was concerned for the safety of the utility and a number of children. He shouted at Jai Rainbird who stopped and left his vehicle to confront Mr Menzies. They exchanged abuse. Mr Rainbird returned to his vehicle and drove about 40 metres along the road to where a recently arrived vehicle, containing a number of his friends, had parked.

At different times in the course of what ensued Mr Rainbird threatened members of the Menzies group when in front of Ms Launer's residence.

Mr Rainbird called to his friends in the recently arrived vehicle to get their weapons. A passenger in that vehicle was Kurt James. He came out with a shotgun, the barrel and butt of which had been shortened. Mr Rainbird called on him to "shoot up the Ute". Rebecca Launer heard this and saw the shotgun. She ran for the safety of her residence. As she did so, Malcolm Menzies emerged from her residence armed with a sheathed Samurai sword. She shouted to him, "they've got a gun", and he turned to follow her back into her residence. At this time Mr Rainbird shouted to Mr James words to the effect of "shoot him, get him". Mr James lowered the shotgun, aimed it in the direction of Malcolm Menzies, and fired. Mr Menzies was struck predominantly to the left side of his body, left arm, left and right inside upper thighs, back and right armpit. Rebecca Launer, who was just in front of him, was not hit. She was 5½ months' pregnant at the time.

In the course of his police interview Mr Rainbird made assertions to the effect that he thought Mr James had a blank firing starter's pistol and that he only wanted to scare the Menzies group. I reject this and find that he knew that Mr James was armed with the shotgun and that he exhorted Mr James to shoot in the expectation that he would do so.

Malcolm Menzies sustained at least 18 separate pellet wounds to his body. Some of the pellets were removed under general anaesthetic on two separate occasions, however the majority remain in situ as the harm that might flow from their removal is considered to be greater than the risk of leaving them in place. It is extremely fortunate that none of the pellets penetrated his spinal cord, struck a spinal vertebrae, or damaged a vital organ or structure. Nevertheless, he has been left with significant ongoing physical and psychological problems. In his victim impact statement he expresses the wish that the perpetrators could experience the pain and loss they have caused him.

Following the firing of the shotgun, Mr James left the scene as a passenger in the vehicle in which he had arrived. Mr Rainbird also departed, but as he did so, he halted his vehicle alongside the utility of Raymond Menzies and smashed its driver's side window with a meat mallet. It is ordered that Mr Rainbird pay compensation to be assessed in respect of this damage.

Jai Rainbird is 22. His extensive record includes the following offences that involve an assault, committed on the dates specified:

21 August 2004 – aggravated assault (two)

6 December 2004 – common assault

10 June 2005 – assault a police officer

5 September 2005 – common assault

1 January 2007 – common assault (three)

4 February 2007 – common assault (two)

1 January 2010 – common assault.

He has four convictions for unlawfully setting fire to property, four convictions for injuring property, and six convictions for destroying property. He has many convictions for crimes involving dishonesty, traffic-related offences, and breaches of bail and the like. He has received many sentences of imprisonment, the most recent of which was imposed on 7 January 2011.

His childhood was difficult and his life was disrupted by the death of his father when he was 10, the death last year of an uncle with whom he resided when brought up by his grandmother, and the death last year that grandmother. He, in part, attributes the conduct for which he is to be sentenced, to the impact on him of his uncle's death. More generally, a report provided to the Court is to the effect that he attributes his extensive criminal record on his problems with cannabis over the past 14 years.

He has a six month old child and he is in an ongoing relationship with the child's mother.

He was educated to Year 10 and has attained a number of trade-related certificates. He has had occasional employment.

He has been in custody since 3 June 2010. While in custody he has undertaken a variety of self-improvement programs. The facilitators of two of these programs have provided reports on the impressive manner in which he completed the programs. One of the reports records that Mr Rainbird recognises the importance of abstaining from the use of drugs. It is to be regretted that as recently as 12 April 2011 he tested positive to cannabis and amphetamine use.

In order to take into account time spent in custody in relation to the crimes for which he is now to be sentenced, his sentence will be backdated to 22 October 2010.

Kurt James is 26. He has a conviction for assaulting a police officer committed on 14 September 2008, and convictions for common assault committed on 23 September 2006,

1 April 2009 and 13 May 2010. He has many convictions for offences involving dishonesty, and convictions for offences involving illicit drugs, traffic, breaches of bail or failing to appear, and injuring or destroying property. He has been sentenced to imprisonment on a number of occasions, the most recent of which was 25 November 2010. He has been in custody since 30 June 2010. In order to take into account time spent in custody in relation to the crime for which he is now to be sentenced, his sentence will be backdated to 18 November 2010.

For the purposes of the sentencing of Mr James, I note that it is accepted by the prosecution that his belief was that the Samurai sword held by Malcolm Menzies was not sheathed and that he fired the shotgun twice.

In his formative years Mr James was regularly beaten by his mother's then male partner, to the point that that man was imprisoned for the violence he inflicted on Mr James. In consequence, by the age of 10, Mr James was diagnosed to be suffering from a post-traumatic stress disorder and attention deficit hyperactivity disorder. At the age of 11 he began living on the streets, where he was introduced to intravenous drug use, and he ceased attending school. He has since had an itinerant lifestyle. Nonetheless, he can read and write. It is to his credit that over a period of some seven years he has been able to obtain irregular employment as a tree planter.

The explanation proffered for his criminal conduct on the day in question is that he was affected by morphine and speed, was not thinking, and got carried away.

There are many differences in the circumstances of each defendant and their involvement in the primary crime. As to that crime, Mr James is entitled to the benefit of his plea of guilty. Mr Rainbird bears sole responsibility for damaging the utility. Notwithstanding the differences, on balance I consider that the sentence to be imposed on each defendant should be the same. Each defendant is sentenced to four years' imprisonment. In the case of Mr Rainbird it is to date from 22 October 2010, and in the case of Mr James it is to date from 18 November 2010. I order that each defendant be eligible to apply for parole after serving two-thirds of his sentence.

I make appropriate orders against each defendant under the Victims of Crime Compensation Act.