

STATE OF TASMANIA v MATTHEW JOHN DAVEY
COMMENTS ON PASSING SENTENCE

WOOD J
3 MAY 2019

The defendant, Matthew John Davey, has been found guilty of one count of stealing a firearm or firearm part contrary to s 234A(1) of the *Criminal Code*.

On 25 January 2016, Matthew Davey and two others, David John Eaton and Daniel Cure, stole 14 firearms from a shed at a residential property in Blackstone Heights in Launceston. The firearms were secured in a gun safe, within a walk-in steel safe, which was inside a locked shed. The firearms were mainly pistols and handguns and a few larger firearms such as rifles and a shotgun, as well as associated items such as magazines and ammunition, valued at approximately \$25,284.00. The three were principal offenders and all took part in the theft. The defendant was the main offender, he led the enterprise and it was his initiative.

Firearms were the target of the theft and the defendant's sole objective. The defendant had received information, at least a week or two before the theft, about the presence of firearms and their location. In the days beforehand he received information that the homeowners would be away over the Australia day long weekend. At the time of the theft he had information about the precise location of firearms inside the shed. I accept that he did not have information about the number of firearms that were located there. The commission of the crime involved a significant amount of effort, planning and preparation on the defendant's part. Illustrative of his effort and planning is that in the days before the theft he had instructed his co-offenders on how to use oxy-acetylene equipment in preparation for the stealing.

The defendant and his co-offenders, Daniel Cure and David Eaton, travelled to Launceston together on 23 January, reaching Ross before the trip was aborted having attracted the attention of police. Immediately the defendant began planning another trip to Launceston for the purpose of committing the crime. On 24 January, he drove to Launceston, returning to Hobart later that same day to meet his bail obligations while his two co-offenders remained in Launceston with the purpose of committing the crime that night. The evidence before the jury included recordings of telephone conversations between the defendant and the other two co-offenders. The recordings reveal that the two co-offenders were at the Blackstone Heights property, and were running into difficulties in carrying out the necessary preparation and seeking direction from the defendant. Clearly the defendant was in charge. During various telephone conversations the defendant urged them on when they were inclined to abandon the enterprise. It is noted that the recordings reveal that the defendant was aware of the possibility that he was under police surveillance and yet he was undeterred. His conversations used code, and he spoke in oblique terms.

The following day, 25 January, the defendant drove to Launceston again and that afternoon the three offenders committed the crime together. Once the 14 firearms were stolen it was the defendant who took control and possession of them. Within a very short time he had disposed of 12, which have not been recovered. I have no doubt that he was indiscriminate about how he disposed of them and to whom, and whether the recipient or recipients were legally entitled to possess firearms.

Only two of the 14 firearms have been recovered, one was a Ruger 22 calibre pistol recovered by police soon after it left the defendant's possession, and the recipient was intercepted by police. The other was an STI International 9mm calibre pistol and magazine, which was under his control buried on St Virgil's College school grounds. Unlike some other offenders that come before the courts, the defendant cannot claim in mitigation that he provided police with information which might have enabled firearms at large to be recovered.

Sentencing the defendant requires consideration of the principle in the High Court case of *De Simoni* (1981) 147 CLR 383. The three defendants were not charged with the attempted burglary or the burglary of the shed preceding the theft involving the use of oxy-acetylene equipment to gain entry. Because of the High Court principle, the defendants cannot be punished for either the attempted burglary or the burglary and these crimes cannot be taken into account as aggravating factors of the stealing. However, I may take into account that the crime of stealing a firearm or firearm part was a crime that was premeditated and involved significant planning and preparation.

The *De Simoni* principle has application in another respect. While the jury heard a significant amount of evidence relating to the defendant's conduct in disposing of the firearms, I cannot sentence the defendant for his conduct that falls within the crime of trafficking in firearms. Such a charge was not included in the indictment before the jury. (I have been informed that there is in fact a charge of trafficking in firearms on a different indictment that includes the firearms the subject of the charge before the Court today.) The defendant's sentence would have been significantly heavier if he was to be sentenced not just for the stealing of firearms, but also for trafficking in the firearms that he stole. While I may not take into account as aggravating factors that he engaged in a commercial transaction concerning any of the 14 firearms, or even that he profited from his crime of stealing, I may properly take into account findings about his purpose at the time he stole the firearms. I make a finding that his purpose was financial gain and I take that into account as an aggravating factor.

The defendant was 32 years of age at the time he committed this crime. He has four children who are in the care of their mother. The defendant is on amicable terms with her and he has been actively involved in his children's upbringing when not in custody. He hopes to continue that involvement in the future. He has a lengthy history of managing, with a relative, a floor sanding business. Employment in that business will be available to him when he is released from custody.

At the time the defendant committed this crime, he was on bail for crimes of violence committed in 2015. Subsequently in April 2018, he was sentenced to a term of 15 months' imprisonment for the crimes of committing an unlawful act intended to cause grievous bodily harm, and assault. That sentence together with activated terms of four weeks and six weeks' imprisonment were backdated to the date he was remanded in custody, 27 February 2017. The defendant was eligible to be released for those crimes on 29 July 2018. Since then he has been held on remand pending the trial of this matter and another outstanding matter.

The defendant has relevant prior convictions for dishonesty, including convictions for aggravated burglary, stealing and motor vehicle stealing, resulting in terms of imprisonment. He has prior convictions for firearms offences: illegal possession of firearms, possession of ammunition when not the holder of the appropriate firearm licence, and possession of a loaded firearm in a public place. He was subject to a current firearms prohibition order issued by the Commissioner of Police at the time of committing this crime, which obviously held no deterrent for him.

Matthew John Davey, this is a serious example of the crime of stealing a firearm or firearm part. It was a targeted theft of firearms, resulting in a significant haul and involving considerable planning, and covert and determined efforts by you. The motive was profit, and the firearms were disposed of indiscriminately. You have shown no remorse. A heavy sentence is required. The deterrence of you and other like-minded offenders is a priority; firearms represent a valuable commodity to criminals unable to obtain them legally. Sentencing courts have emphasised that this crime when it involves firearms likely to enter the black market, should attract harsh penalties. Ultimately, deterrent sentences are necessary in order to protect the community.

I have taken into account the length of time you have spent in custody in serving a sentence and on remand.

I record a conviction and I impose two years and six months' imprisonment to be served cumulatively to the sentences imposed on 18 April 2018 for: committing an unlawful act intended to cause bodily harm, and assault (15 months imprisonment), and breaches of suspended sentence (four weeks and six weeks), to be served cumulatively commencing 27 February 2017.

In relation to the sentence I have imposed of two years and six months' imprisonment, I order that you are not to be eligible to apply for parole until you have served a minimum of 21 months.

I make the forfeiture and restitution orders as sought by the State.