

Mr Buttress, a jury has found you guilty of one count of persistent family violence.

It is clear from the verdict that the jury accepted the complainant as an honest and reliable witness. I also am of that opinion. Of course, her recollection of certain events needs to be considered within the context of any relevant surrounding evidence, but in substance, I am satisfied that she gave an honest and reliable account of the critical events. My findings of fact will be informed by that approach to the complainant's evidence.

You and the complainant had commenced your relationship in May 2017. You did not live together but it was at trial common ground that this was a significant relationship within the meaning of the relevant legislation. You spent most of your time together, often staying at each other's residence and were generally known by friends and family to be a couple. There was an exclusive sexual aspect to the relationship. You each had children from prior relationships. You had a son who at the relevant time was around 12 years old, and the complainant had a son who was then aged around 7.

The complainant's evidence is that the relationship started well but soon deteriorated. She described your regular outbursts of anger, during which you would become verbally abusive and threatening towards her and throw or otherwise attack pieces of property. However, it is not alleged that you had engaged in direct physical violence towards her until the first occasion relied upon to constitute this crime. This occasion occurred around Christmas 2018. You and the complainant were doing some work at your property. You became angry with her after she refused to drive you to Devonport to collect some prescribed drugs. She got into her vehicle in an attempt to leave, but you used your tractor, which was equipped as a forklift, to lift her vehicle off the ground, thereby preventing her from driving it away. You did this by sliding the forks under the rear of the vehicle. The complainant was in the driver's seat at the time. She was left hanging in the air and you shook the car for some time before placing it back on the ground. She used her mobile telephone to call the police and as she did so, you punched the windscreen of her vehicle, causing damage to it. The use of the forks also damaged the underside of the vehicle. Your actions in my view, constituted an arrogant and violent expression of dominance and power over the complainant. She was understandably terrified, and had no idea what you intended to do. Your arrogance and lack of remorse for your conduct and its impact on the complainant was vividly demonstrated subsequently when police came to question you about this event, in consequence of the 000 call made by the complainant. It seems to me that you were boasting to the police with some pride about your capacity to prevent the complainant from driving off.

The next occasion of family violence occurred around Easter 2019. Again, you were both at your property, and on this occasion were jointly preparing a meal. One or both of the children was present. You became angry because of the way that the complainant was doing her work, and you expressed this anger by throwing a chicken carcass at her. It was thrown with force and narrowly missed her. This was put by the prosecution as an attempted assault. I will give you the benefit of the doubt on the question of your intention to strike her with the bird, but it does not matter much. Even if you did not intend to hit her, it was a violent and aggressive expression of your anger, and provides context for what happened next. The complainant tried to leave but you

physically restrained her from doing so. You grabbed her by the arms and head-butted her in the face. The blow struck her forehead, made her dizzy and caused pain.

The final two occasions occurred in June 2019. They both happened in the complainant's apartment at different times. On the first occasion, you became angry with the complainant. She went into her son's room in an attempt to get away from you but you followed her and, in front of the child, pushed her causing her to fall against a bedframe. She suffered a significant bruise to her back as a result of the impact.

The final occasion occurred a couple of weeks later and involved a protracted course of violence perpetrated by you against the complainant. On this occasion, the complainant had fallen asleep on her couch after a day spent working on your property, followed by some alcoholic drinks with her sister. You had also consumed some alcohol. The complainant was woken by you screaming at her. Her son came out of his bedroom and told you to leave his mother alone. You verbally abused him by saying "Fuck off you little bastard, it's got nothing to do with you". You then attacked the complainant in a protracted course of violence. You grabbed her by the throat, and threw her around the premises, including into a clothes horse and then onto a table. On at least two separate occasions, you held her down by the throat and strangled her. After a short break, you pinned the complainant to the ground and continued to strangle her. While you were doing this, you were also hitting the back of her head into the tiled floor. The complainant estimated that you hit her head into the tiles 5 or 6 times. She attempted to resist you for a while, and was continually pleading with you to stop. The complainant's evidence was that she thought that she was going to die. Throughout this period, you also caused some damage to the complainant's property. When this course of violent conduct finally came to an end, you forced her into the bedroom and tried to have her enter a tent that you had, somewhat bizarrely, set up there. She refused and then you forced her onto the bed. You held her so that she could not move. She had stopped struggling by this point and you both fell asleep. When you woke the next day you touched her on the vagina and made it clear to her that you wanted to have sex. She refused and you did not persist with this. The complainant was eventually able to leave the house, and seek assistance from her sister.

The complainant suffered significant bruising and pain as a result of this attack. I have also received an impact statement from her which sets out the significant and ongoing psychological and emotional effects of the conduct she experienced at your hands. I accept what she says about that. It is well recognised consequence of violent conduct such as this, particularly when it is perpetrated in a family violence context where it destroys hopes that, instead of being dealt with in a violent and aggressive way, of being nurtured and regarded as somebody who is loved and of importance. I accept what she says about the impact on her.

You are 34 years of age. You have six children aged between 19 years and two years. You have part-time contact with them all. You are not currently employed but are a carer for your father, who has some serious illnesses including cancer. You also have a significant criminal history. There are two aspects of this history that I think are significant. Firstly, it is consistent with what I am told is a long-standing problem that you have with alcohol and illicit drugs. On 31 May 2018, you were placed on a drug treatment order. You have now successfully completed that order, and it has come to an end. The second aspect, which is significant to sentencing in this case, is that your criminal history also includes a number of convictions for offences of family violence. This includes several convictions for assault and breaching family violence orders. This history relates to former partners and you have previously received sentences of actual

imprisonment for family violence offences committed against those people. On 31 May 2018, a wholly suspended sentence of four months imprisonment was imposed on you for the offence of assault. This was a serious family violence assault perpetrated against a former partner. The crime of which you have now been convicted was committed during the period of suspension and an application has been made for that sentence to be activated. I am required to activate that sentence unless I am of the opinion that it would be unjust to do so. I am not of that opinion and, accordingly, the sentence must and will be activated. The prosecutor has also submitted that the custodial period of the drug treatment order, which was in force at the time of this offending, should be activated. In my view, given that that order has now been completed and I infer cancelled, it is my opinion that I do not have the power to activate that sentence and I will not do so.

The family violence perpetrated by you by commission of this crime was serious and sustained. You manifested a formerly held propensity to violently attack your partner when things were not going the way that you wanted them to. All of the violence was serious but the last occasion is particularly concerning. The acts of strangulation could easily have resulted in serious injury or death. You clearly did not have the capacity in your rage to judge or moderate the force being applied by you and the dangerous nature of such conduct is now well-established and accepted by the courts. It was also extremely dangerous to forcefully hit the complainant's head against a hard surface. Further, your conduct on this and other occasions is aggravated by the presence of one or both of the children. On the last occasion, the complainant's son was a direct recipient of your violent aggression, notwithstanding that you did not physically assault him. Family violence is never acceptable, and when it is of the seriousness of that perpetrated by you in this case, it must be condemned and punished by the court. General deterrence and denunciation are primary sentencing considerations. I am also satisfied in this case given your history of family violence generally and the fact that you committed this crime while subject to a suspended sentence for other violent offending, that personal deterrence is also a sentencing consideration of importance. There is nothing which mitigates your moral culpability. You have not demonstrated any remorse or insight and you are not entitled to the benefit of plea of guilty. The only possible sentence is a significant term of imprisonment.

The orders I make are as follows:

- a. You are convicted of the crime of which you have been found guilty;
- b. The suspended sentence of 4 months imprisonment imposed on 31 May 2018 is activated. It will be backdated to 10 February 2023. You are not eligible for parole until you have served one half of that sentence.
- c. In respect of the crime of persistent family violence, you are sentenced to a term of imprisonment for a period of 5 years, which will be served cumulatively upon the activated suspended sentence. You are not eligible for parole until you have served 3 years of that sentence.
- d. Pursuant to s 13A of the *Family Violence Act*, I direct that the crime of persistent family violence be recorded on your criminal record as a family violence offence.
- e. For the purposes of S 92A(3) of the *Sentencing Act*, I specify that:

- a. The total term of imprisonment that you are liable to serve in respect of all of the above sentences is five years and four months commencing on 10 February 2023.
- b. The total period that you must serve before you become eligible for parole is the aggregate of the non-parole periods relating to the said sentences, which is a total period of 3 years and 2 months.