

Todd Apted, you were found guilty by a jury of assault and perverting justice. The assault was committed on Tompsons Lane in Newnham just after midday on Sunday 9 August 2020. At the time you were a serving police officer although you were not working on that day. Your teenage son phoned you to tell you that as he drove past a man walking on Tompsons Lane the man had abused him and punched the driver's window of his car. You were concerned about this because a year earlier your son had been the victim of an armed robbery while working at a supermarket and had developed PTSD. You drove to Tompsons Lane. Your son had driven back there. The man, who was Juma Obeid then aged 24, was still walking up Tompsons Lane with a female friend in the direction of where the two cars were parked. High quality CCTV obtained from an adjacent house provides cogent evidence of what happened next. After getting out of your car you said to Mr Obeid "what the fuck is your problem you fuckin piece of shit" and advanced upon him. He backed off down the road away from you but you continued to advance upon. You kicked out at him, shaped to fight and then began to throw punches. About five punches were thrown. One or two made contact but were only glancing blows. You then wrestled him to the ground where you held him down. When you stood up you held his leg in the air so he couldn't get up. It is those acts which constitute the assault. A fight occurred between you and Mr Obeid after you let him up but no charges arise from that interaction.

The police investigation of the incident resulted in you being interviewed by internal investigation officers about three weeks later on 1 September 2020. At the commencement of that interview you read a prepared statement in which you asserted that Mr Obeid approached you and your son, invited your son to fight and then, after you informed him that you were a police officer, he threatened to "cut you and throw hands". You told the police that you believed the man was affected by drugs, may have had a knife, and that you were under imminent threat of death or injury, and that when attempts at negotiation were exhausted you had no option but to use restraint or striking. You claimed in the interview and in your evidence that the words you said were used by Mr Obeid when out of the view of the CCTV camera and not captured on the audio recording.

The jury was unanimously satisfied that the force you applied to Mr Obeid was not justified by self-defence. I am satisfied beyond reasonable doubt, as I think the jury must have been, that you did not act defensively at all, either to defend yourself or your son. Your account was completely inconsistent with what can be seen and heard on the CCTV. It follows from the verdict on the pervert justice charge that a majority of the jury was satisfied beyond reasonable doubt that your statements to the police that Mr Obeid had threatened to cut you and that you were forced to defend yourself for fear of imminent threat or serious injury were not only untrue, but were deliberate falsehoods intended to divert the investigating police from prosecuting you for assault. I find that your actions were motivated by your belief about how Mr Obeid had conducted himself towards your son before your son phoned you. You went to Tompsons Lane looking for the person your son had complained about intending to confront that person. Whilst what happened to your son earlier may have been unsettling for him, to any reasonable observer it was a relatively trivial incident which did not justify you going there at all, still less responding in a violent way. I reject your evidence that you agreed to meet your son at home but happened upon him parked in Tompsons Lane. Your account that he had stopped because he was unable or unwilling to drive past Mr Obeid because he was throwing rocks at the car is so implausible that it can be dismissed as a reasonable

possibility. The evidence establishes that Mr Obeid did throw at least one small rock up Tompsons Lane. I regard it as most likely that he was not throwing rocks at your son's car at all even if you thought he was. In any event, there was nothing stopping either of you from simply driving away.

You are aged 52. You are married with three adult children. You have been a police officer for 24 years but have now resigned. You have no relevant prior convictions. You are not entitled to the mitigation a plea of guilty would have attracted. In the normal course, findings of serious criminal conduct against a police officer would be career ending. That is particularly so for a charge of perverting justice. I was given a report from a forensic psychiatrist, Dr David Kutlaca, which describes that, before this incident, you were diagnosed with PTSD as a result of the cumulative effect of traumatic events experienced by you as a police officer. According to Dr Kutlaca this is a work related condition which permanently incapacitates you from return to operational police duties independently of the result of these criminal proceedings. You are treated for your mental health conditions by your general practitioner, by a psychiatrist and a psychologist and medication is prescribed. During the past couple of years you have experienced a number of episodes requiring in-patient care at a hospital and there has been one suicide attempt. Dr Kutlaca does not say that your condition had any link to why you assaulted Mr Obeid. However, after the first sentencing hearing I was provided with a report by your treating clinical psychologist, Mr Freeman. Mr Freeman expresses the opinion that your PTSD leads to your self-report of symptoms including hypervigilance for, and strong reaction to, perceived threats. He discusses the chance that your condition may have affected both your perception to the situation confronted by your son and your behaviour in response to it. Notwithstanding that Mr Freeman's opinion is expressed in terms of a chance that your condition may have affected you in this way I am prepared to accept that your moral culpability for the assault may be marginally reduced but it makes no effective difference in light of the course that I have decided to adopt. Compared with many instances of assault which come before this court this is not a serious example of that crime. It was not long lasting or particularly violent and Mr Obeid suffered no serious or lasting injury. It was upsetting for him and, not surprisingly, undermined his trust in the police. In the fight which followed the assault you came off far worse and suffered a serious injury to your facial bones around your eye which has an ongoing effect. The charge of assault may properly be dealt with by a fine.

The perverting justice charge is the more serious aspect of your offending. Neither Dr Kutlaca nor Mr Freeman say anything to suggest that your condition was causally linked to your decision to lie about the assault to the investigating officers. That was not a decision made in the heat of the moment. Perverting justice is regarded as serious because it undermines the integrity of the justice system. Persons who are convicted of the crime are almost always sentenced to imprisonment, not only for punishment, but to send a message to those who might be tempted to act as you did that prison is the likely outcome. That is so even if, as in this case, the attempt was completely unsuccessful although the fact it was unsuccessful is relevant. For both crimes, but particularly for perverting justice, the fact that you were a police officer is an aggravating factor. The community is entitled to expect that police officers will uphold the law, not act to undermine it.

For perverting justice I would have imposed home detention as an alternative but you have been assessed as unsuitable by reason of concerns expressed by your mental health treating practitioners about the possible effect of such an order. I regard a term of imprisonment as the only appropriate sentence but I will allow you the opportunity to avoid having to actually

serve any part of the term by wholly suspending it on conditions. One condition will require performance of community service.

Todd Apted, you are convicted on both counts. On count 1 on the indictment, the assault, you are fined \$1500. I order that sum to be paid within 28 days from today but you may apply to enter into a repayment arrangement. On count 2 you are sentenced to a term of imprisonment of six months wholly suspended for two years from today. It is a condition of that order that while it is in force you do not commit any offence punishable by imprisonment. If you breach that condition then a court must order that you serve that term unless it is unjust. I impose a further condition that, within the operational period of the order you perform 84 hours of community service. The conditions which the law imposes on that order include that you must report to a probation officer at 111-113 Cameron Street, Launceston on or before 5.00 pm on 20 April 2023, you must, during the operational period of the order, report to a probation officer as required by the probation officer and comply with the reasonable and lawful directions of a probation officer or a supervisor, you must not, during the operational period of the order, leave, or remain outside, Tasmania without the permission of a probation officer and you must, during the operational period of the order, give notice to a probation officer of any change of address or employment before, or within two working days after, the change. If you breach any of those conditions you may be brought back to court and re-sentenced.