

STATE OF TASMANIA v DAMIEN PAUL FORD
COMMENTS ON PASSING SENTENCE

21 APRIL 2023
WOOD J

Damien Paul Ford has pleaded guilty to one count of wounding and a summary charge on complaint of common assault.

The defendant's partner was Pepita-Jayne Challis. She is the mother of Kenzey Lynema and the ex-wife of Kelvin Lynema, the complainants. On 20 August 2021 Ms Challis was at a unit in Glenorchy where she was living with the defendant. In the afternoon, the complainants drove to the unit with Miss Lynema's two children. Ms Challis was going to look after them.

The complainants went to the front door while the children waited in the car.

The door was answered and Ms Lynema entered the unit. The defendant was asleep on the couch and Ms Challis asleep in a bedroom. When Ms Lynema tried to wake her mother, the defendant woke up and became extremely agitated. He spoke abusively to Mr Lynema who was standing at the front door of the unit demanding to know what he was doing there. He pushed past Ms Lynema and approached Mr Lynema. He tried to punch him multiple times but the punches did not connect. Mr Lynema backed into the railing of the balcony outside the unit. He grabbed the defendant's arms and held them by his side to prevent the defendant from punching him.

The defendant held Mr Lynema over the balcony and lunged at his neck and bit the left side of his neck. Mr Lynema felt pain and his neck started bleeding. He saw the defendant with a large chunk of skin hanging from his mouth. Miss Lynema saw the defendant turn his head and appear to spit.

Mr Lynema heard the children in distress and went to the car to check on them.

The defendant went back inside the unit and took his shirt and jumper off and paced around the unit. Ms Lynema was inside the unit near the front door and the defendant walked towards her. He kicked her to the stomach and, as he did, he had his hands on the pillars of the front door and pushed off the pillars for extra force.

The kick forced Miss Lynema into the balcony railing, and she instantly felt sick. The defendant approached her and placed his arm over her neck while she was pushed up against the railing. He went inside the unit and came back outside again and punched her to the face. She was unable to see and had ringing in her ears.

Mr Lynema told the defendant to stop and assisted Ms Lynema to the car. By this time, the children were outside the car. The defendant approached the complainants at the car and said, "That fucking dog can give me a lift now that I've punched his head in." He said to the children, "Have fun sleeping tonight, girls, I'll shoot you both". Mr Lynema told the defendant he was trying to leave and attempted to get into the car.

The defendant kicked the car doors and grabbed the mirrors of the car. He walked back to the balcony and said, "I'll fucking kill your Dad and I'll kill you, too."

The police were called and the defendant ran to a nearby oval where he was arrested.

Mr Lynema was taken by ambulance to the Royal Hobart Hospital. The wound he sustained to his neck was 12 cm in length and required surgery for it to be repaired and stitched. The damage did not extend to the deeper structures below the skin. He was discharged from hospital the next day. Fortunately, he has made a full physical recovery.

Ms Lynema attended the hospital for assessment. She sustained swelling to her nose and bruising under both of her eyes.

The defendant participated in an interview with police. He told police he takes temazepam and said he had no recall of the incident. He told police he got on well with Kelvin Lynema and when shown a photograph of his neck, he said he would never do that. He denied assaulting Ms Lynema and even denied seeing her.

He was remanded on bail but that was suspended on 4 December 2021 when he was charged with wounding. He pleaded not guilty to the new matter and he has been discharged with respect to that matter. He was granted bail on this matter on 19 September 2022. He has spent 290 days in custody attributable to this matter.

Mr Ford has a history of violent offending. In 1993, he received a partially suspended sentence for wounding and assault. In the following year, this Court imposed four years' imprisonment for armed robbery, causing grievous bodily harm and aggravated assault. In 2000, he was sentenced to two years and nine months' imprisonment for armed robbery, assault, and stealing. He committed assaults in 2005, 2009 and 2010. In 2016, he received a sentence of three years' imprisonment for causing grievous bodily harm. Just 10 days before committing the violence before the Court today, he committed a common assault upon a female victim, resulting in three months' imprisonment. As well as these Tasmanian convictions, he has been convicted in Victoria of aggravated burglary and intentionally causing serious injury resulting in a five year period of imprisonment in 2007, and an offence of recklessly causing injury in 1999, which resulted in a period of imprisonment of five months.

The defendant is 50 years of age. A common theme of his history of violence is intoxication. I have a report from a psychiatrist, Dr Victoria Jackson, dated 8 December 2022. Mr Ford has been diagnosed with complex post-traumatic stress disorder, alcohol abuse disorder, and illicit substance abuse disorder, as well as attention deficit and hyperactivity disorder. Dr Jackson's clinical findings are that his psychopathology and associated behaviour largely results from the intersection of his complex PTSD and ADHD, potentiated, or made worse, by his abuse of alcohol.

Mr Ford grew up in an harmonious and stable family environment, however, he was subject to appalling abuse when in grade one in a school environment. There was a later occasion on a school camp perpetrated by another teacher. The consequential trauma impacted on his development and is considered to have led to his condition of complex post-traumatic stress disorder.

According to Dr Jackson's report, the symptoms of this condition impact on his relationships and include pervasive disturbances in emotional regulation, avoidance of thoughts and feelings about his abuse through the use of alcohol, and chronic irritability with repeated episodes of aggression, hypervigilance, and hyperarousal. His PTSD symptoms contribute to his interpersonal problems of suspicion and distrust of most people. He has had lifelong difficulties with regulating affect and tolerating distress, resulting in alcohol abuse which has

further compromised his capacity to inhibit his aggressive response and manage generally. He uses cannabis and amphetamine to self-medicate.

His alcohol use is chronic and harmful, and correlates with his early life trauma. It directly contributes to his disinhibited and aggressive behaviour.

While alcohol and alprazolam, which he had consumed before the incident, may account for his poor memory of the events of his offending, neither account for his aggressive behaviour other than in the sense that they are both disinhibiting and, in the context of his complex PTSD, these substances are likely to have lessened Mr Ford's capacity to control his impulses and moderate his behavioural response. As noted, inherent symptoms of his complex PTSD include heightened threat perception, hyperarousal, and affective instability

Dr Jackson notes that his untreated psychiatric conditions put him at increased risk of future violence as they predispose him to reactive and aggressive behaviour and diminish his capacity to inhibit violence and put him at increased risk of future violence. Significantly, though, Dr Jackson regards his psychiatric conditions as eminently treatable.

Dr Jackson states the defendant needs evidence-based psychological and pharmacological management, and if he were to receive that treatment his violent behaviour will lessen. She adds that his personality and behavioural adaptations, which have developed as a result of his condition, will require longer-term psychological therapy, but if Mr Ford commits to this process, in other words, commits to therapy with a psychologist, there is every reason to expect him to successfully realise positive change. She makes recommendations in the event he receives a non-custodial disposition, including that he attains abstinence from alcohol use and participates in psychological counselling. She says he needs treatment that is presently not available through public psychological services in Tasmania but it is noted by her that he should be eligible for NDIS support and therefore should have access to a private psychologist.

Given the treatable nature of his conditions, a critical question is Mr Ford's preparedness to engage with treatment and whether he understands the importance of that. Relevantly, Dr Jackson notes that over the course of her assessment, the defendant demonstrated a capacity for reflection and insightful acknowledgment of psychiatric and substance-related issues relevant to his offending.

In addition to this comprehensive psychiatric report, I have a report from Dr Joseph Poznanski dated 18 July 2022, which provides a psychological assessment for medico-legal purposes arising from his childhood trauma. His opinions as to the cause of Mr Ford's psychiatric conditions and what is now required in terms of a range of specialist therapies are consistent with those expressed by Dr Jackson.

For the last few years, Mr Ford was in a relationship that was positive and supportive. Indeed, it was as a result of his partner's support that he disclosed his experiences of childhood trauma. This was a recent critical development and led to Mr Ford making some progress with his alcohol and drug addictions, and to specialist assessments last year that revealed the underlying causes of his psychiatric conditions and the need for treatment.

His partner died unexpectedly in January of this year. Mr Ford has been deeply affected by her death. His general practitioner, I note, has prepared a mental health care plan and referred him to a psychologist for grief counselling, stating that he has depression and anxiety.

Mr Ford, I accept, is genuinely remorseful for his conduct, expressing to Dr Jackson that he feels sadness and regret, stating that the victims are, to quote, "family".

He has pleaded guilty to the charges, which has saved the complainants the stress of giving evidence and the community the expense of a trial, albeit at a late stage.

He has an understanding of the gravity of his alcohol and substance dependence and made enquiries himself about the Salvation Army Bridge Program and Missiondale residential program. Of his own initiative, Mr Ford has been engaging with a day program with the Salvation Army to prepare him for admission to the Bridge Program as soon as a place becomes available.

Mr Ford, these are appalling and irrational acts of violence, resulting from a complete loss of control. This was a terrifying experience for the complainants. Their injuries were significant and, in each case, it was the kind of violence that could easily have resulted in life-threatening harm. Fortunately, both have recovered physically. The children were traumatised by witnessing your violence upon their mother and grandfather, and they were themselves subjected to your threats and your chaotic aggression.

This criminal conduct and your prior convictions reveal that if you do not reform and if you do not address the underlying causes of your behaviour and receive the treatment that you need, you are an ongoing danger to the community.

You are at a critical stage. For the first time in your life, the necessary supports and therapies have been identified and are now in place to address the underlying causes of your offending, your long-standing psychiatric conditions which have not been treated, and your history of alcohol and substance dependence, which have plagued your life. You have insight and understanding regarding the need for specialist intervention and other measures such as the Bridge Program. You have demonstrated that you will co-operate with the specialists and the services that will support your reform. Mr Ford, I am satisfied after very careful reflection and consideration that, in your case, a very unusual course is appropriate. While a lengthy term of imprisonment is required to reflect the gravity of your conduct, I am persuaded to suspend this period wholly on conditions of your good behaviour and compliance with interventions all designed to promote your reform. Of course, your reform is not only in your interests but in the interests of your community, and although this is a most exceptional course to take, I regard you as someone who has shown that you are likely to make the most of this chance. If I am wrong about this, there will be heavy consequences.

In relation to the crime of wounding, I would have imposed three years' imprisonment. for the summary offence of assault, I would have imposed the maximum gaol sentence of one year imprisonment as a cumulative term, so four years. I would have reduced the four-year term to three years, allowing for the time you have spent in custody and making some allowance for parole eligibility. I will now impose three years' imprisonment but wholly suspend it on strict conditions.

For the crime of wounding, I record a conviction and I impose 2 years and 6 months' imprisonment. For the offence of common assault, I record a conviction and I impose 6 months' imprisonment. Both terms are wholly suspended for two years and six months from today, on condition that you do not commit an offence punishable by imprisonment during that period

and, also, that you comply with the conditions of the community correction order that I now impose.

This community correction order will include conditions that have been recommended by Dr Jackson, and also Community Corrections. I now impose a community correction order for a period of two years and six months. The statutory core conditions are imposed. These include that you must not, during that period, commit an offence punishable by imprisonment. You must report to a probation officer at 75 Liverpool Street, Hobart before 5pm on Monday. You must report as required by the probation officer and comply with all of the reasonable and lawful directions of a probation officer or a supervisor.

I am also going to impose the following special conditions, which will be in place for the same period of two years and six months from today:

- You must submit to the supervision of a probation officer as required by the probation officer.
- You must comply with all directions to attend psychological or psychiatric treatment or counselling.
- You must attend, participate in and complete the EQUIPS Addiction Program as directed.
- You must attend and participate in and complete the EQUIPS Aggression Program as if directed.
- You must undergo assessment and treatment for drug dependency as directed by a probation officer.
- You must undergo assessment and treatment for alcohol dependency as directed by a probation officer.
- You must comply with all directions regarding alcohol abuse, including completion of a residential program such as the Salvation Army Bridge Program or the Missiondale Residential Rehabilitation program, as well as attending the Alcohol and Drug Service for counselling and treatment.
- You must submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.
- You must comply with medical treatment and a mental health care plan as recommended by your treating general practitioner, or as directed pursuant to an assessment under the National Disability Insurance Scheme.
- You must comply with referrals to community organisations to provide support as recommended by your probation officer.