

STATE OF TASMANIA v STEPHANIE OAKFORD
COMMENTS ON PASSING SENTENCE

15 August 2023
ESTCOURT J

The defendant, now aged 37, has pleaded guilty to unlawfully setting fire to property, namely a couch, contrary to section 269 *Criminal Code Act 1924*.

On 18 June 2020 the defendant and her partner, a Mr Rawnsley, were at home together at 4/3 Dew Drop Court in Glenorchy when the defendant became agitated and upset after a phone call with one of her children.

The defendant moved to the couch in the lounge room and used a cigarette lighter to set fire to a cushion. Mr Rawnsley put the flames out with his hands. The defendant set fire to the same cushion twice more and Mr Rawnsley again put the flames out, receiving minor injuries as a result.

As a result of the defendant's conduct, Mr Rawnsley called triple zero at 10:15pm. He then left the house and as he was walking away, he heard fire trucks and made an assumption that they were heading to his house. The defendant's sister, Ms Oakford, rang him and said the house was on fire and she had called the fire brigade. The defendant had told her sister that she was going to light the couch. Ms Oakford could hear the defendant flicking a lighter.

During their final call at around 11:10pm, Ms Oakford heard the smoke alarm in the background. She could hear the defendant frantically asking for help as the couch was on fire and she did not know what to do. Ms Oakford again called the fire brigade.

A neighbour, Kylie Cowen, heard the defendant screaming for help, so she went to see what was happening. She saw a glow from within the defendant's house so ran towards it. She stood at the front door and could see through the open door that the couch was on fire. She immediately went back to look for a garden hose.

At this time, the defendant ran into the house and quickly ran back out. The fire started to take hold. She ran back into the house and was followed by her dog. Ms Cowen grabbed the defendant by her jumper and tried to drag her out. The fire, at this stage, was out of control. The defendant was still trying to get back into the house by holding on to the front door. The two struggled with each other before the defendant shut the front door.

As a result of the fire, the house (the property of Housing Tasmania) was completely destroyed. Housing Tasmania incurred costs of \$216,840.00 in relation to the fire. Mr Rawnsley's property was also inside the residence and was destroyed, with an approximate value of between \$5,000 - \$10,000.

The State's position is that the defendant deliberately set fire to the cushion of the couch but the State accepts that the defendant did not foresee or intend for the house to catch fire and be destroyed. The State makes application for a compensation order in favour of Housing Tasmania. I note that application and adjourn any further proceedings in relation to it to a date to be fixed.

The defendant has no relevant prior convictions. She is a single woman with six children however, none of her them are in her care. She is currently engaged with OnTrack Tasmania

and living in their Barrack Street premises. OnTrack is a registered NDIS provider and provides NDIS funded support for participants with a plan.

The defendant suffered the death of her baby daughter in 2011 as a result of Sudden Infant Death Syndrome. The infant was only four months old. I have a thorough report from psychiatrist Dr Michael Jordan in which he states that since the death of her daughter, the defendant's mental health has declined. She has had over 30 admissions to the psychiatric inpatient services at the Royal Hobart Hospital, there being no evidence of significant psychopathology or psychiatric diagnosis prior to the death of her child. She has a longstanding diagnosis of borderline personality disorder. She also has been diagnosed at various times with mild neurocognitive disorder and other diagnoses including post-traumatic stress disorder and various forms of substance use disorder.

As to the offending I am told, without demur, that the defendant was taken off guard with the couch catching fire as quickly as it did. She made moves to extinguish it but was overcome with panic as the fire took hold. She frantically called for help. Her plea of guilty is accepted on the basis that the defendant acted recklessly with the lighter on the cushion. I am satisfied that she did not foresee the couch catching fire uncontrollably or that the house would catch fire.

The defendant has suffered considerable distress and personal loss because of the fire. She was detained in custody for a period of 26 days before being granted bail, and I take that into account, as I take into account her plea of guilty. Since the fire, she has actively tried to overcome her alcohol dependency and has engaged in the residential Bridge Program. Her own personal circumstances have also been tragic and resulted in a recent suicide attempt.

The defendant pleads guilty on the basis of subjective recklessness, that is, that she was aware that there was a risk the couch would catch alight if she flicked a cigarette lighter on the cushion, and proceeded to do so, despite the risk. She is to be punished for unlawfully setting fire in circumstances where she had foresight that the couch may catch fire and, in fact, resulted in the couch catching fire.

It is not open to sentence her on the basis that she either intended to set the house on fire, or foresaw that the house would catch on fire, as that would amount to the crime of arson. The defendant was not, of course, indicted on the charge of arson, and she is not to be sentenced for a crime more serious than that for which she is convicted.

The State concedes that limbs 1, 2, 3, 4 and 6 of the Verdins principles are enlivened, affecting moral culpability, the kind of sentence imposed, the moderation of general and specific deterrence and the serious risk of imprisonment having a significant adverse effect on the defendant's mental health.

In all of the circumstances, the defendant is convicted of the crime of unlawfully setting fire to property and is sentenced to six months' imprisonment, which sentence I wholly suspend on condition that the defendant commit no offence punishable by imprisonment for a period of 12 months.