

STATE OF TASMANIA v MICHAEL KEVIN DAVIS
COMMENTS ON PASSING SENTENCE

29 AUGUST 2023
GEASON J

On Saturday 4 June 2022, you were at the Exeter Hotel on Main Road in Exeter. At this time you were apparently being argumentative and annoying towards some of the patrons. Some of them left the hotel building and you followed them. Shortly after there was a physical confrontation between you and the unknown patrons. You then entered your Toyota Landcruiser which was parked facing a picnic table out the front of the table. You accelerated forwards and collided with the picnic table which pushed it into the front of the hotel building. A bystander jumped out of the way to avoid being crushed between the front of your car and the picnic table, and as a result of the impact considerable damage was caused to the building. That damage is the subject of count 1 on complaint 35035/2022.

You then reversed from the table and drove in the direction of other bystanders. This caused the bystanders to flee inside the hotel. One of the witnesses stated that she saw headlights coming towards her and that she did not know if you were going to continue towards her or turn. You then accelerated harshly towards a group of people standing in the supports of the drive through bottle shop narrowly missing them. They believed that you were either going to roll your car or collide with other parked cars when making the manoeuvre. You then drove in a circular motion through the carpark accelerated again back to the where the incident took place. You drove through the bottle shop undercover area at which point the group of people had taken cover behind the supports of the bottle shop.

At this point you left the hotel via the Main Road, though you returned a short time later, drove slowly through the car park and then again left on the Main Road.

Your driving conduct occurred both on the main street of Exeter and within the Exeter Hotel car park and I accept that car park constitutes a public street for the purposes of s 3 of the *Traffic Act 1925*.

Police were called by the hotel patrons. They intercepted you shortly after. You stated to police that you had been assaulted and you had the "shit" kicked out of you. However, you did not provide police with any details as who had done that. Police state that when interacting with you, you were difficult to converse with. Police then left you and spoke to the witnesses at the hotel and on 2 August 2022 you were spoken to by police at your home. An appointment was made for an interview to be conducted the next day. On 3 August 2022, you attended the Exeter Police Station and participated in an electronically recorded interview and during the interview you stated to police that you had roughly two to three drinks at the hotel. You did not remember an altercation outside the hotel but that you remembered the altercation when speaking to police later. You said that during the altercation you had the "shit" kicked out of you, you agreed that you drove the Landcruiser with a bullbar, you said that when the allegation was put to you at the time you could not recall, that you had an adverse reaction to medication that you were taking and you had no particular memory of the incident.

You did indicate to police that you were pretty sure that you had missed your medication that day but you were not completely sure about and when asked when if the medication mixed well with alcohol you replied that it did not, and at the conclusion of the interview you were advised that you would receive a summons in relation to the matter.

You are now 40 years of age. At age 14 you were diagnosed with bi-polar disorder and apparently over a long period of time you have self-medicated with alcohol. Only in recent years you have been prescribed medication consistently and this has produced a significant change in you. You have begun addressing your alcohol problems. You have attended the in-patient unit in Hobart and attended Serenity House at Burnie for a period of five days. You spent four days at Missiondale and you have engaged with Anglicare. I have documentary materials supporting those engagements. I also have a letter from your medical practitioner. It appears from all the information that has been provided to the Court that you have developed an insight into your issues and you have also participated in cognitive behavioral therapy for the psychological problems that you have experienced. This is all aimed at addressing the resultant alcohol issues and directed towards avoiding a repetition of the type of conduct which brings you before the Court today. You are to be commended for that effort.

You present with an industrious background and have family support and a good relationship. You are not presently working due to uncertainty in respect of the ultimate disposition of this matter. You have prior convictions but these are most probably the result of the addiction you are now addressing but they do exhibit an irresponsible attitude to motor vehicle use.

I accept that this particular case is in a very different category from the normal dangerous driving case. Your driving was erratic and dangerous and no doubt created considerable fear in those patrons who witnessed it. By the same token, it was of short duration and at low speed. Though you accept by your plea the dangerous qualities of it. Your plea is an acknowledgement of the danger you created and acceptance of your wrongdoing. Parliament has emphasised the importance of general deterrence in respect of this type of offending and I must uphold that policy. I must also deter you and punish you for your behaviour and deter others from behaving in a similar fashion.

I have received a home detention assessment report. I obtained that report because I was satisfied a term of imprisonment was an appropriate sentence a prerequisite to making such order. Having regard to the circumstances of your offending your continued efforts of rehabilitation and so as to not interrupt that process, I have decided to make a home detention order. I consider that this is a case in which an individualised sentencing response is appropriate. It is well established that such order has a personal and general deterrent effect and relevant sentencing considerations as I have said.

I convict you and sentence you to 12 months home detention, subject to the core conditions prescribed by the Act and the additional recommended conditions.

Those additional recommended conditions are directed towards addressing alcohol addiction. I direct that if directed by a probation officer you must attend, participate in and complete the Equips addiction program.

I further order that you are to complete 80 hours of community service over the next 24 months and make you subject to a supervision order for a period two years. Again that supervision order is addressed to providing you with support to address the alcohol addiction you have described.

I further disqualify you from holding or obtaining a drivers licence for a period to two years.

On the complaint I record a conviction noting that you have repaired the damage you caused.

Mr Davis, you will need to attend at Community Corrections in order for arrangements to be made to give affect to the home detention order that I have made. I remind you that the conditions of that order are onerous. In addition to being resident at [address specified] during the period of the order, you must not consume alcohol and you must not consume any illicit or prohibited substances.

All of the conditions that attach to the home detention order will be provided to you. They are set out in the sentencing report that you have had read to you.