

**TASMANIA v RAD JOHN PEARSALL, AYDEN MICHAEL JAMES SPAULDING,
ANNABELLE VANESSA MILLHOUSE
COMMENTS ON PASSING SENTENCE**

**4 OCTOBER 2023
PORTER AJ**

The three defendants were jointly tried on one count of committing an unlawful act intended to cause bodily harm; that is, with intent to maim, disfigure or disable, or cause grievous bodily harm to Jamie Cantrell, they did actual bodily harm to him. That charge arose out of an incident of violence at Ms Millhouse's home unit on 2 July 2020. Mr Pearsall was found guilty of the crime as charged, Mr Spaulding was found not guilty but guilty of assault, while Ms Millhouse was found not guilty but guilty of causing grievous bodily harm. I need to make findings of fact consistent with the jury's verdicts. I proceed on the basis that the evidence of the complainant, Jamie Cantrell, must have been accepted to a substantial degree. Late in the afternoon of 2 July 2020 there was message contact between Mr Cantrell and Ms Millhouse who he had only met a few weeks earlier. An arrangement was made for him to go to her unit in order to share some methylamphetamine. When he arrived he perceived she was offering sex for drugs. He gave her a small amount of the drug around which time Mr Cantrell had a shower and the two went to the bedroom. There was some sexual activity between the two the true extent and nature of which it is not necessary to decide. Mr Cantrell's evidence was that they had unsuccessfully attempted sexual intercourse, after which Ms Millhouse performed oral sex on him. That was interrupted by a knock on the door. Ms Millhouse went to answer it and Mr Cantrell started to get dressed in the bathroom. When he came out Mr Pearsall was there talking with Ms Millhouse. Mr Pearsall asked him about getting drugs. Mr Cantrell gave him .1 of a gram, which Mr Pearsall ingested. There was then some talking between Mr Pearsall and Ms Millhouse which Mr Cantrell could not hear and then one of them made a phone call. There was friendly talk for a few minutes and then another knock on the door. Ms Millhouse opened the door and at about the same time Mr Pearsall attacked Mr Cantrell aggressively, first with punches to the face, and then with a baseball bat. Mr Cantrell was struck around the body attempting to block the blows with his arms. At this point, he was in a corner of the kitchen area near to where it opened into the living room which is accessed directly from the front door. Mr Pearsall struck Mr Cantrell with a baseball bat many times; he estimates 30 to 40. It may not be quite that many but I am satisfied it was a considerable number. Mr Cantrell was crouching in the corner of the kitchen pleading loudly for Mr Pearsall to stop, asking him why he was doing that and telling him that he did not have to. At this point Mr Spaulding and Ms Millhouse were present. At a stage where Mr Cantrell had been injured to a fair degree, and as he put it, "sort of submitted" Mr Pearsall suggested Mr Spaulding join in. When Mr Spaulding said that he did not want to, he was threatened with the bat. He then punched Mr Cantrell to the face and body and kicked him to the head. He also tried to stomp on his head but that was blocked by the victim. It is not possible to determine how many blows Mr Spaulding was responsible for. Mr Cantrell says 10 to 15 times, but I am more inclined to the lower end of that range. According to Mr Cantrell, up to this point Ms Millhouse was sitting on the couch facing everything that was happening, naked, and touching herself on the vagina, at one point saying to Mr Pearsall that "it was hot and that it was turning her on". After this Mr Cantrell said the beating from Mr Pearsall got a bit more aggressive and violent. Mr Cantrell said that Ms Millhouse also became involved by kicking and punching him. I will return to that issue. Mr Pearsall continued with the beating at one point turning the bat around and using the handle end to poke it through Mr Cantrell's hands he was holding up in front of his face to protect him. The handle struck him around the eyes two to three times. A medical practitioner gave evidence that the observed injuries to Mr Cantrell's eye area were consistent with this type of attack. Mr Cantrell had managed to put his clothes back on but during the incident Mr Pearsall removed his jeans and appeared to be searching for drugs. Mr Cantrell was then wearing only a T-shirt.

When they were looking through his pants for drugs they could not find anything, and suggested they were going to look inside him. He said he had some drugs at home that he could get, and said, in attempt to defuse the situation, that he could go and get it. Mr Cantrell had continued to plead loudly and Mr Pearsall told Ms Millhouse to turn the music up, no doubt in order to attempt to drown out his pleas. Ms Millhouse turned the music up. Mr Pearsall put him on an office type chair and tied his right arm to the chair, attempted to tie his left arm before Mr Cantrell started to defend himself by pulling his arm while attempting to use the chair and a table to block further assault. The table was damaged by blows from the bat. At one point, Mr Pearsall took a knife from a drawer and put it on a bench, in an implied threat. While continuing to try to protect himself there was another knock on the door. This was the police, having been called by neighbours due to the noise. Ms Millhouse answered the door to the police while Mr Pearsall dragged Mr Cantrell by his arm out through the backdoor where he let go of him, at which point Mr Cantrell jumped the side fence and sought refuge in a nearby service station. He was found severely injured and naked from the waist down. The police officers were deflected and Mr Spaulding was taken away in relation to a different matter. Police later returned to the unit having connected Mr Cantrell at the service station with the call to the unit. Mr Pearsall and Ms Millhouse were still there. As to the involvement of the respective defendants, Mr Pearsall's role is clear. He was a principal offender and actually committed the crime as charged. I am satisfied that Mr Spaulding should be sentenced on the basis that he himself punched and kicked Mr Cantrell a few times during the course of the attack by Mr Pearsall, not that he aided or abetted Mr Pearsall but with a lesser state of mind than intending to cause grievous bodily harm. The situation with Ms Millhouse is a little more complex. The evidence of two women, mother and daughter, who lived in a property behind Ms Millhouse's unit is important. The younger woman said that she heard yelling and screaming coming from the units. She and her mother went outside and went closer to see what was going on. She could hear three voices, a male voice crying for help, another male voice saying shut up and a female voice also saying shut up. She recognised the female voice that of Ms Millhouse. She heard hitting noises with Ms Millhouse continuing to say shut up. Her mother gave similar evidence. She heard a male voice wailing quite loudly, heard something that sounded like someone being hit and heard Ms Millhouse say shut up, but she only heard that once. I did not understand the State to press this point but I am not satisfied beyond reasonable doubt that Ms Millhouse actually kicked or punched or otherwise struck Mr Cantrell. Mr Cantrell's allegations about that did not appear in either of two statements he made to police, one the day after the incident and another in August 2021. They did not emerge in any form until shortly before the trial, and then it was only punching that was alleged. Mr Cantrell admitted that the first mention of kicking came in his evidence. Additionally I have a reasonable doubt about the allegations of masturbation about which Mr Cantrell gave evidence. First, I would agree with what Ms Millhouse's counsel argued to the jury. If Ms Millhouse was on the couch in the lounge room, it is at the very least reasonably possible she would not have been able to see what was going on at the point in the kitchen where Mr Cantrell was being beaten. I also note that the first mention of him having a shower, and of her being naked came in his evidence. I am not satisfied that actually witnessing masturbation is not an embellishment. However, I am satisfied on all of the evidence that she said something along the lines that what Mr Pearsall was doing was making her "hot". The only reasonable inference is that she intended to encourage, and on the basis of Mr Cantrell's evidence which can be accepted on this point, Mr Pearsall was in fact encouraged. I am satisfied that the acts of aiding were turning the music up when asked to do so, and by repeatedly telling Mr Cantrell, effectively, to be quiet so as to avoid attracting attention. In my view, Ms Millhouse should be sentenced on the basis that she aided and abetted Mr Pearsall in those ways and, clearly, on the basis that she was reckless as to whether grievous bodily harm was caused to Mr Cantrell.

Mr Cantrell sustained quite serious head injuries. On first examination he was found to have bi-lateral swelling and bruising around the eyes, laceration to his right eyebrow and tenderness to his face, legs, shoulder and elbow. It was determined that he had multiple bi-lateral fractures to his face; in particular, fractures to the lower part of the left eye socket, into the side area and quite deep into the face. Surgical intervention was required to internally fix a complex fracture around the left eye and reconstruct the fractured orbital floor. This involved inserting a metal plate screwed in place and the insertion and fixing of mesh into the floor of the eye socket. I have a victim impact statement from Mr Cantrell dated 6 September 2023. He said that he was not sure if he was going to come out of the house alive. He was scared for his life. He experienced significant swelling to his head area for a time and pain and numbness, and severe headaches for a few weeks after the assault. He was unable to sleep properly because of the pain. He still has some numbness in one cheek. He was bedridden for about three to four days afterwards and then become very socially withdrawn. He had nightmares for a few months with sleep disturbance. He finds that he suffers increased anxiety which did settle for a while but increased before the trial. He says that his partner now feels unsafe because of what has happened to him.

The defendant Pearsall is now 35 years old. He had a most unfortunate and disrupted upbringing, experiencing family violence at a young age both as a direct victim and witnessing such acts. As a result he tendered to avoid school. He first came to the attention of police as an 11 year old and was mixing with older drug-prone offenders who introduced him to cannabis and alcohol and ultimately to methamphetamine. His schooling ended in grade 10. He has had periods of employment as a labourer since that time. Those periods have been punctuated by periods of unemployment due to his drug use. He has a lengthy record which covers a miscellany of offence types, these involve illicit drugs, traffic and drink driving offences including one conviction for dangerous driving and there are convictions for dishonesty. He has convictions for summary assaults in 2009, 2011 and 2019. On 22 May 2020 he was dealt with for a range of offences; the one that attracted the major penalty was driving with a prescribed illicit drug present in oral fluid for which he was sentenced to three months' imprisonment suspended on conditions for two years. This offence puts him in breach of the condition of that suspension and I have been asked to activate it. Also on that date he was dealt with for assaulting a police officer and resisting a police officer for both of which convictions were recorded. I was told that since he was released from custody in respect of this matter on 10 November 2020 he has managed to be abstinent in respect of all illicit drugs. He has started a new relationship; that is a positive and supportive one. There are children in the relationship who he has been parenting. Counsel submitted that while there was a history of low level violence, this was something that was out of character in terms of its degree. In particular, I was asked to take note of his recent successful attempts to avoid substance abuse. Since this present crime he has been dealt with on one occasion for four breaches of an interim family violence order committed on 4 May 2023, but they attracted a single large fine. Otherwise there is nothing recorded.

The defendant Spaulding is now 25 years old. He has a lengthy history of offending commencing in late 2017, the vast bulk of which relates to various forms of dishonesty. The very first entry is one of destroying property in May 2016 for which he was sentenced to a short term of imprisonment only part of which was suspended. There are a number of occasions of which he has appeared to be re-sentenced and he has been a beneficiary of drug treatment orders on two occasions; first in August 2018 and then in June 2020. It is plain he has a drug addiction problem. There is nothing in his record that demonstrates any propensity for violence;

although he does have one conviction for assault. That was in late 2017 when he was first dealt with for a large number of matters, and the particular offence simply attracted a conviction recorded. He is a single man. He did not complete secondary school but went into an alternative learning program. His parents separated when he was 15 years old, but both his father who lives in Tasmania and his mother who lives interstate remain supportive of him. He started experimenting with cannabis in third year high which caused his schooling to suffer and by the final year he was no longer able to cope with mainstream schooling. His substance abuse increased before becoming addicted to methamphetamine and he accepts that substance abuse has been at the core of his offending from the start. At the time of his arrest on 3 July 2020 he was a subject of a drug treatment order. As a result of this matter and a charge of unlawfully setting fire to property he withdrew his consent to that order, and was re-sentenced on 22 September 2020. He was sentenced to nine months' and two weeks' imprisonment. He remains in custody in relation to the current matter as well as in relation to some summary offences. Relevant time in custody commences on 19 October 2022, with none of that time having been attributed to any other matter.

The defendant Millhouse is now 43 years old. The first appearance in a court was in this Court in October in 2001 when she was sentenced to a short term of imprisonment wholly suspended on conditions on dishonesty charges. Since then there have been numerous convictions for offences of dishonesty and driving and drug related matters. Before 2017 she was given the benefit of a number of suspended terms of imprisonment some of those being on re-sentencing following breaches for two separate earlier suspended sentences. Significantly, in July 2017 she was convicted of wounding and sentenced to 12 months imprisonment with a non-parole period of one half.. The wounding arose from an altercation over a drug deal where she had sold drugs to the eventual complainant. It seems the defendant made a threat concerning the complainant's mother and stabbed him in the left chest with a knife or a similar object when he became angry. Since the commission of this offence she has convictions for breaching bail and two charges of possessing methylamphetamine in August 2021 and September 2022 for both of which she was fined relatively small amounts. The defendant completed matriculation and has a diploma in business administration. She suffers from major depression for which she takes regular medication and is in receipt of a disability support pension. She has had psychiatric treatment for borderline personality disorder. Counsel did not submit that these issues were such as to warrant leniency based on the mental impairment principles, but they are relevant as background. I was told she lives a solitary existence; mostly staying in her unit. Her father is supportive and she sees him regularly and also volunteers at a local charity shop. She has had significant past issues with substance abuse which started when she was 21 years old. At that time she was a complainant in a sexual assault allegation. After the acquittal of the accused she took to illicit substances. Plainly she has addiction issues but I was told that she has now been drug free for almost a year and is committed to staying that way.

In simple terms, it is clear that Mr Cantrell was invited to the unit by Ms Millhouse after some text messaging, Mr Pearsall arrived shortly after and then called Mr Spaulding to come. Apart from that, it is simply not possible to make any positive findings about the level or extent of any pre-planning or organisation, or whom may have been involved. The State has not urged that I take a particular view. I am satisfied that the motivation for the attack was to take drugs from Mr Cantrell. He said that he took a bag of about half a gram of methamphetamine to the unit and I am satisfied that one way or the other it was taken from him. It may or may not have eventually found its way to the police. It goes without saying that as an attack involving a number of people – to one degree or another – on a defenceless man with a use of a baseball bat and with the serious facial injuries he suffered, this crime warrants strong condemnation.

That factor, and the need to deter others from similar conduct, are weighty considerations. Fortunately, Mr Cantrell seems to have made a reasonable physical recovery. Of course, I need to differentiate between the defendants given the different crimes of which they have been found guilty and their respective roles, together with their individual personal circumstances. None of the defendants can claim the benefit of a plea of guilty.

Mr Pearsall, the crime of which you have been found guilty is generally regarded as a very serious one in the range of violent offences. It is so because it involves a specific intention; in this case, one to maim or disable or cause grievous bodily harm. Almost invariably it results in lengthy prison terms. You were responsible for a prolonged and very violent attack using a baseball bat as a weapon. Mr Cantrell suffered facial injuries requiring surgery. You were motivated by obtaining drugs. In relation to the suspended sentence I do not consider it unjust to activate it. Although the offence that gave rise to that sentence was not one of violence, there is a common thread of methylamphetamine. This crime was committed a little over a month into the two year suspension period. The condition of suspension that you not commit any offence punishable by imprisonment means what it says; it is designed to ensure lawful behaviour, not to make people selective criminals. I take into account your personal circumstances and your recent efforts at rehabilitation. I activate the suspended sentence of three months; that will commence on 7 May 2023. You are convicted of the crime and sentenced to four and a half years' imprisonment cumulative to the activated sentence. I order that you not be eligible for parole until you have served on half of that latter sentence.

Mr Spaulding, albeit it reluctantly, in a cowardly way you joined in an attack on a man who was being beaten and was already suffering. You kicked and punched him to the head and body. Of course you are not be punished as though you had committed a more serious crime than that of assault and there is no evidence to prove that what you did had any real effect or did any real damage to the victim but you obviously contributed to his pain and suffering and to his overall state. There is nothing to suggest that you were truly compelled to stay and participate as you did. You may not have known about intended violence when you were called to the unit, but I am in little doubt that the enticement was access to drugs. I take into account that your record of offending shows little by way of violence but you are a persistent offender and there is nothing in your background to warrant leniency due to your drug addiction. You are convicted of the crime of assault and sentenced to six months' imprisonment; that will commence on 19 October 2022.

Ms Millhouse, you are to be sentenced on the basis that you aided and abetted Mr Pearsall's violent attack but that you were reckless as to whether grievous bodily harm was caused to him or not. That is, you realised that there was a real chance of Mr Cantrell being grievously injured and you aided and encouraged what was happening nonetheless. I have set out the considerations that need to be taken into account. I also take into account of your personal circumstances including your mental health issues. You have previously been in prison for drug related violence of some seriousness, and your illicit drug use seems to have continued after this incident. However, some prospects of your rehabilitation seem to remain. You are convicted of the crime of causing grievous bodily harm and sentenced to 15 months' imprisonment to commence on 13 September 2023. In all of the circumstances I am prepared to again allow you the maximum parole opportunity and I order that you not be eligible until you have served one half of that sentence.