

STATE OF TASMANIA v JAYDEN JAMES WEBB
COMMENTS ON PASSING SENTENCE

26 OCTOBER 2023
JAGO J

Mr Webb, you have pleaded guilty to one count of strangulation contrary to s 170B of the *Criminal Code*, and one count of assault contrary to s 184 of the *Criminal Code*. The complainant was your ex-partner. You and she had been in a relationship for approximately two years before separating in August 2022. The two of you continued to live together under the one roof with your child that had been born to the relationship.

On 4 March 2023 each of you had gone out separately for the evening with groups of friends. Both of you consumed a considerable quantity of alcohol. During the course of the evening, you were intimate with another female. Apparently the complainant saw this and it upset her. Around 3.30 am, the following morning, the complainant returned to the residence where you were both living. You were already home. She confronted you in the bedroom about what she had observed. An argument ensued. The argument escalated and became quite heated. Both of you were sitting on the end of your bed, facing each other. You grabbed her by the shirt and pushed her backwards onto the bed. You then manoeuvred yourself so that you were above her and straddling her. You held her in this position for approximately a minute and continued to argue with her. This behaviour amounts to the crime of assault. You then placed both of your hands around her throat and squeezed. Initially, the complainant was still able to talk but you continued and squeezed harder, resulting in the complainant having difficulty in both breathing and talking. Whilst you were strangling her, you said "You know you deserve this." You also called her by derogatory terms. The complainant felt panicked. She fought back and eventually was able to push you off her.

There was a further struggle. At some point during this struggle, the complainant hit her head on the wooden bed frame. It is not suggested this was a deliberate act on your behalf. After this, you left the room and then left the house. The complainant described feeling strange and had difficulty in speaking.

She messaged your father telling him that she was scared. She also contacted police. Later that morning police attended and observed a red mark and bruising on the complainant's neck. Photographs were taken of it. I have seen those photographs. It is quite a pronounced mark. Police later arrested you at your work place. You participated in a record of interview. You told police that both you and the complainant had been out drinking. You agreed that you were both intoxicated. You suggested the complainant was particularly intoxicated. You said that when she came home, she abused you and there was a verbal argument and some "pushing and shoving". You denied that you had strangled her or otherwise physically assaulted her. You suggested that the marks on the complainant may well have been self-inflicted. At that point you showed no remorse nor any preparedness to take responsibility for your actions.

Following the incident, a police family violence order was put in place. There is no suggestion that you have breached the terms of that order. You have no relevant prior convictions.

You are now 24 years of age. You are in full time employment. You are well regarded in that employment. Since these crimes were committed you have worked hard at bettering yourself. You have undertaken counselling in respect to both your alcohol use and anger management. You have also worked hard at rebuilding an amicable relationship with the complainant given you parent a child together. You and the complainant have been able to negotiate care arrangements for your child and you have regular contact with your child.

I accept the behaviour you displayed on this occasion is out of character for you. There is nothing to suggest violence was a characteristic of the relationship you shared with the complainant. The weeks leading up to this incident had been difficult ones for both you and the complainant. You had separated but continued to live under the one roof. This placed each of you under considerable emotional stress. On this night, both of you had consumed a considerable quantity of alcohol. I accept you had gone home and were not expecting any further interaction with the complainant. She came into your bedroom and I am told, without challenge, that she made a number of derogatory comments towards you. It was against this background that the incident occurred. Your violent reaction however was entirely unwarranted. Your consumption of alcohol provides no excuse for your behaviour but it does perhaps explain why this unwonted behaviour occurred.

I note the act of assault and the act of strangulation were both relatively short lived. Nevertheless, they were very serious acts of physical violence. The application of any pressure to the neck is an inherently dangerous act. Your behaviour could easily have resulted in far more serious injury. In many ways the danger associated with your behaviour was exacerbated by your level of intoxication. Your ability to control your actions, or weigh up with any precision the amount of pressure you were applying, or respond to any distress displayed by the complainant was impaired by your alcohol consumption. Moreover, these crimes occurred in the home where the complainant lived- a place where she was entitled to feel safe and protected.

It has long been recognised by the courts that any application of pressure to the neck or throat area, particularly when it impacts upon or impairs the victim's breathing, is a most grave act. It involves not only a physical impairment and the risk associated with that, but it is also a form of dominance and control, which has the potential to cause significant psychological harm aside from any physical impact. Parliament have recently moved to recognise the seriousness of any act of strangulation by making it a discrete indictable crime. That evidences a legislative intent to convey a very clear message that persons who commit such crimes should expect to receive a heavy sentence. That being said, it is, of course, always necessary to assess the level of criminality associated with the act itself. Here, I accept the act of strangulation was relatively short lived and, although it resulted in some immediate impairment to the complainant's breathing, and left her with redness and bruising to the neck area, there does not appear to have been any long term consequences flowing from your act.

Family violence crimes are always serious. They inherently involve a breach of trust. Courts have emphasised time and time again the need to condemn such violence. It is all too common, and is properly a matter of concern to the broader community. In sentencing such matters, general deterrence, denunciation, punishment and protection of victims are paramount sentencing considerations.

There is no doubt in my mind that the seriousness of your conduct warrants the imposition of a sentence of imprisonment. The only real question is whether some or all of that sentence should be suspended. Violence is not something for which you have shown a propensity in the past. You have as noted no prior history of acting in this way. Although you initially showed no remorse nor acceptance of responsibility for your behaviour, you have it seems, subsequently developed insight into the seriousness of your conduct. You have pleaded guilty. That counts in your favour. The plea retains a mitigatory value because it provides vindication for the complainant, and importantly saves her the trauma of having to give evidence about

what was undoubtedly a distressing experience for her. You have undertaken counselling in an endeavour to ensure there is not a repeat of this type of behaviour. I am satisfied the risk of reoccurrence is low. That is relevant to the role specific deterrence needs to play in the sentencing exercise.

After balancing all relevant considerations, I am persuaded I should suspend the whole of the period of imprisonment I intend to impose.

I make the following orders. The defendant is convicted of the crime of strangulation and the crime of assault. I impose one sentence. You are sentenced to a period of imprisonment of 14 months. The whole of that sentence will be suspended for a period of two years from today's date on the condition that you are not to commit another offence punishable by imprisonment during that period.

I need to explain to you Mr Webb, that if you do breach the terms of the suspended sentence an application can be made requiring you to serve that period of imprisonment. The law is that a judge must activate the sentence unless it is unjust to do so.