

STATE OF TASMANIA v SHANE JOHN BARRETT
COMMENTS ON PASSING SENTENCE

26 MARCH 2024
JAGO J

Mr Barrett, you have pleaded guilty to one count of committing an unlawful act intended to cause bodily harm, one count of aggravated burglary and two counts of unlawfully injuring property. You have also pleaded guilty to some related summary offences, namely six counts of breach of family violence order. The charges arise from an incident that occurred on 31 January 2023. The complainant is your wife, from whom you were estranged. You and the complainant had been in a relationship for several years. You were married in October 2021 and up until a few days prior to this incident, had resided together, along with the complainant's son from a previous relationship.

On 29 July 2022 you were issued with a Police Family Violence Order which had protective orders in favour of the complainant. This order was issued following an incident which had occurred between you and the complainant on 28 and 29 July 2022. Following that incident you were charged with offences of common assault and injure property. You appeared in the Burnie Magistrates Court on 18 November 2022 in respect to those charges. You entered pleas of guilty and were bailed. You were therefore on bail for those offences when these crimes occurred. During that same court appearance, the Magistrates Court also made a Family Violence Order with protective conditions in favour of the complainant. That order was operative as at 31 January 2023. It included conditions that you not directly or indirectly threaten or abuse or assault the complainant and that you not damage any property owned or possessed by her. Your behaviour on the 31 January breached those conditions in a number of ways.

You and the complainant separated on 28 January 2023. You went to stay at a caravan park. There had been difficulties in the relationship in the lead up to the separation, predominately concerning your excessive consumption of alcohol. On 31 January 2023 you telephoned the complainant and asked her to assist you with an awning that had broken within the camper in which you were staying. The complainant agreed to assist you. She travelled to the caravan park. Upon her arrival, she observed your demeanour to be "okay" but also observed that you were affected by alcohol. Because the camper required repair work it was decided to take it to a workshop at South Road in Penguin.

The two of you took the camper to that workshop and then returned and collected your utility from the caravan park. You both then returned to the workshop at South Road. By this time it was approximately 6.50pm. The complainant began to assist you to unpack the camper so the repairs could be undertaken. You became agitated when she did not perform a task that you considered she should. You began to swear at her and she walked away. She went and got into her motor vehicle. You followed her. It was at this point your behaviour began to become very aggressive and abusive. You grabbed hold of the driver's side door of her vehicle, opened it and leaned in. You were yelling at the complainant. You took the keys out of the ignition and threw them away. The complainant was understandably fearful. She closed the door and locked herself inside. She rang triple O for assistance. Whilst she was on the phone to the operator, you were banging loudly on the driver's side of the utility where the complainant was seated. You were yelling abuse at her, calling her things like a "slut", and taunting her. At one point, you retrieved the keys that you had earlier thrown away and tried to use them to enter the vehicle. You told the complainant that you would ram her vehicle with your vehicle. You yelled at her "It's too late now, too fucking late, open the door or fucking drop dead. Open the door now or I'm ramming it". The complainant was still on the triple O

call. I have heard that call. She was clearly petrified during this incident and, quite frankly, your behaviour towards her was appalling.

You then entered your vehicle and drove it towards the complainant's vehicle at pace. You stopped your vehicle slightly short of her vehicle and before there was any collision, but as you drove at pace towards her vehicle, she must have believed that you were going to hit her vehicle with yours. You then got out of your vehicle, walked to the camper and picked up an axe. You walked back to the complainant's vehicle brandishing that axe. The complainant was still locked inside her vehicle. I have seen photographs of the axe. It is a full sized axe, the type usually used to chop wood. You yelled at the complainant to "fucking open the door you whore. You're a fucking slut. You're a fucking cunt....I'm gunna kill you". You then proceeded to strike the driver's side window repeatedly with your hand and then with the axe. The complainant was still on the line to the 000 operator. She can be heard on that call screaming in fear. One of the strikes to the window with the axe caused it to break. As the axe penetrated the window, the sharp edge of it struck the complainant to her right hand as she was gripping the steering wheel. This caused a wound. The glass that had shattered from the window also covered her.

You then reached into the utility and grabbed the mobile phone the complainant was using to communicate with the triple O operator. You threw it to the ground and then struck it with the sharp end of the axe, destroying it. Not only does this amount to the charge of destroying property, it is behaviour in my view that was clearly undertaken to further intimidate and frighten the complainant as it resulted in her being unable to communicate with anyone to get help.

As the complainant continued to cower in the motor vehicle, she turned her body away from you and tried to curl into the seat. You swung the axe directly towards her. The blunt end of the axe struck her head. This caused a deep wound which immediately bleed profusely. You then attempted to pull her from the motor vehicle. Some of her clothing was ripped. You were yelling at the complainant telling her that you wanted her dead. The State assert, and you acknowledge by your plea of guilty, that when you struck the complainant on her head with the axe you had the intention to cause grievous bodily harm.

Even after you had wounded the complainant, you continued to pace around the vehicle, brandishing the axe. You smashed the passenger side window and then the passenger side mirror. You struck and smashed the front windscreen of the vehicle. You also struck the bonnet of the vehicle with the axe. Of course, all of this damaged the motor vehicle but significantly, in my view, also increased the terror and intimidation felt by the complainant. When you struck the bonnet of the vehicle with the axe, the utility's horn was activated and began to sound continuously. You demanded the complainant disconnect the battery, I infer because you did not want to draw attention to yourself and what was occurring. The complainant exited the vehicle, opened the bonnet and disconnected the horn. She took this opportunity to walk away. She walked to a nearby residence. During the walk she was disorientated and in considerable pain. As she walked, she was using her left hand to try and stem the blood flow from the wound on her right hand. She was in an understandable state of terror.

Eventually, police located the complainant on the side of the road. Preliminary first aid was provided before an ambulance arrived. The complainant was taken to the North West Regional Hospital. Her injuries were documented as "a deep, ragged open wound in the left parietal region that was oozing". This is the head injury. A 4 x 2 centimetre open wound on the dorsum

of the right wrist. A subsequent x-ray revealed a bone fracture in her hand. A CT scan revealed a depressed fracture of the parietal bone and air bubbles that were visible within the skull. Both fractures were "open" fractures, meaning they had a very high risk for infection. This was particularly concerning in respect to the skull fracture because infections in that area carry a significant risk of damaging the brain, leading potentially to permanent brain injury or even sometimes death. Because of this risk, the complainant's injuries were sutured in an operating theatre.

In addition to the significant injuries, the complainant also had marks to the left side of her neck, bruising to the right breast and chest area, multiple bruises to her right arm and elbow, lacerations to the right arm and fingers and multiple lacerations to her lower legs. A considerable quantity of glass was removed from her lower legs.

The complainant's 16 year old son attended the hospital and took photographs of his mother's injuries. In that manner he became aware of the violence that had been inflicted upon her.

Your behaviour was captured and recorded by the workshop's CCTV cameras. I have seen footage of the incident. It would be fair to describe your behaviour as intimidating, frightening and at times demeaning.

After the incident, you telephoned a friend and asked to be collected from the South Road workshop. You told that friend that you had hit the complainant with an axe and that you would be "going to gaol". You were arrested later that evening. You were found in a shed. When police saw you, you were described as "agitated and intoxicated". The following day, once you were sober, you participated in a record of interview. You told police that you had no idea what had happened and that you had had a "mental bloody blackout or something, I don't know, I don't have any recollection". You admitted that you had endeavoured to hide from police because you knew you had done something wrong, although you denied being able to recall the particulars of it.

You have been in custody since that date. On 31 October 2023, the State were advised the matter would resolve by way of a plea of guilty to the current indictment. The matter was never prepared for trial.

Beyond the obviously serious physical injuries, the complainant has been badly affected by your crimes. I have received a victim impact statement from her. She feels her ability to concentrate has been impacted by the head injury. She continues to experience an ache in her hand, and there are now tasks she is unable to perform, such as using a screw driver because of that. She has had difficulties at work because of the limitations in the movement of her hand. Psychologically, her sleep has been disturbed. She has experienced flashbacks. She is constantly anxious and frightened. She is now reluctant to go out and be with friends because of that. She has had difficulties in regulating her emotions. She genuinely believed during this incident that she was going to die. She worries that she will never escape from those feelings of fear. The type and extent of the impacts that she describes are, in my view, entirely consistent with the sort of reaction one might expect from an incident of this nature.

You are now 55 years of age. You have a number of relevant prior convictions for family violence offending. In February 2018, you were convicted of common assault and breach of a Police Family Violence Order. That incident involved you assaulting your then partner when you were intoxicated. In September 2018, you were convicted of injuring property and four

counts of breaching a Police Family Violence Order. The property was damaged in the context of a family violence incident. You were sentenced to a six month period of imprisonment, four months of which was suspended, for those offences. You were subject to that suspended sentence when these crimes occurred. That sentence was subsequently activated in the Magistrates Court. Additionally, you have a number of prior convictions suggestive of a long term difficulty with alcohol. When the suspended sentence was activated you were also sentenced for some driving offences and received an additional three month period of imprisonment. The end result is that you have served a seven month sentence of imprisonment in the time you have been remanded in custody since these crimes occurred.

There is very little that can be said to mitigate your behaviour on this occasion. You have struggled with excessive alcohol consumption for most of your adult life. Whilst that puts the offending into some sort of context, it in no way mitigates it. Your alcohol difficulties seem to have stemmed from your childhood. You were raised by parents both of whom were alcoholics. You were exposed to sexual abuse during your childhood. In 1975 you experienced the trauma of your brother, who was then aged 11, dying. I am told that you and your brother were at home unsupervised when this incident occurred because your parents were at a hotel drinking. You have struggled to cope with this loss, particularly given the circumstances in which it arose, and you have often turned to alcohol as a coping mechanism.

I take into account your plea of guilty. Whilst it could not be said to be an early plea of guilty, and to some extent is reflective of the inevitable, given the incident was captured on CCTV footage and recorded on the triple O call, it nevertheless retains some value as importantly the complainant has been saved the ordeal of having to give evidence about what was obviously a traumatic event. Your behaviour after the incident and what you said to police is not consistent with you having a sense of immediate remorse, but I am told the time you have spent in custody has given you cause to reflect upon your behaviour and you now acknowledge just how appalling it was. Your plea of guilty is an acceptance of responsibility. You accept that you have caused trauma and fear to the complainant and I am told for that you are sorry. I am also told that you now recognise that you need to address your long term alcohol difficulties. You have, whilst remanded in custody, undertaken a number of courses in an endeavour to learn new coping mechanisms. You have also enrolled in courses directed at addressing mental health difficulties arising from your difficult upbringing.

In my view, this is a very serious example of crimes of this nature. Striking a person to the head with an axe is so obviously dangerous. A single blow has the capacity to cause grave harm, even death. It is fortunate, in my view, the injuries sustained by the complainant were not more severe. This violence occurred in the context of a significant relationship. It involved a breach of trust. This behaviour involved a prolonged and terrifying assault upon the complainant. You had numerous opportunities to desist and walk away, but you chose not to. Instead, you continually returned to the vehicle where she was, and continued with your violence. This was entirely unjustified and unprovoked behaviour. The complainant was, in fact, endeavouring to assist you when you turned upon her. You were on bail for assaulting the complainant when these crimes occurred. Clearly the court processes associated with that did little to deter you or change your attitude. You have a number of relevant prior convictions. The combined effect of that is specific deterrence is, in my mind, an important sentencing consideration.

As has been regularly noted by courts throughout this country, the prevalence and devastating impacts of family violence are well recognised. Violence within relationships is an insidious,

all too common and very serious problem within our society. It must be strongly punished. General deterrence and denunciation of conduct of this nature are weighty sentencing considerations. In my view, a significant sentence of imprisonment must be imposed.

Crimes of committing an unlawful act intended to cause bodily harm are generally regarded as very serious in the range of violent offences because of the specific intent involved, in this case, to do grievous bodily harm. In sentencing crimes of this nature, a lengthy prison sentence is almost invariably imposed, and there is no reason why that ought not be the case here.

I make the following orders. There will be a compensation order in favour of [the complainant] the complainant, in an amount to be assessed. There will be a compensation order in favour of Shannons Pty Limited in the sum of \$22,311.55. Pursuant to s 13A of the *Family Violence Act*, I direct that all crimes and offences be recorded on your criminal record as family violence offences. I make a Family Violence Order for the protection of the complainant in the same terms as the Family Violence Order dated 3 October 2023. That Family Violence Order will remain in force until varied or revoked by a court of competent jurisdiction. You are convicted of all crimes and offences. I impose one sentence. You are sentenced to imprisonment for a period of seven years. That sentence will commence on 30 August 2023. I order that you not be eligible for parole until you have served four years of that period of imprisonment.