

STATE OF TASMANIA v DYLAN JOHN CRUSE
COMMENTS ON PASSING SENTENCE

16 JUNE 2016
WOOD J

Dylan John Cruse has pleaded guilty to attempting to commit murder. On 23 December 2015 he attempted to murder Sandra Evelyn Harding by stabbing her to the right side of her neck with a knife.

The defendant was staying at the complainant's unit in Ulverstone. Her son and the defendant are cousins. The defendant has known the complainant all his life. He often stayed at her home. She had recently moved from Hobart to Ulverstone with her son. The defendant had visited her there and, having mentioned to her that he also wanted to move to the North West Coast, she invited him to stay with her until he got settled. He had been staying in the complainant's unit for three weeks at the time he committed the crime.

The complainant suffers from Huntington's disease. She has limited mobility and requires a walking frame to move about her unit. She needs a support person to assist her when she leaves her unit. She has difficulty breathing and swallowing and suffers from tremors and asthma.

On 22 December the defendant and his cousin had been drinking alcohol and smoking cannabis during the day. They went to the home of a friend, Ms Durant, where they continued to drink and smoke cannabis. An associate, Malcolm Fitzmaurice, was also there socialising. During the evening he gave the defendant the drug methylamphetamine known as "ice". The defendant had never taken the drug before. At approximately 11pm the defendant's cousin left Ms Durant's house and returned home. Later, Mr Fitzmaurice left, leaving the defendant alone with Ms Durant.

Sometime after midnight the defendant started having thoughts about killing someone and hearing voices telling him to kill someone. He formed the intention to kill Ms Durant. He obtained a knife from her unit and persuaded her to walk him home via the beach. As they walked to the beach, he held the knife down by the side of his body. He intended to kill Ms Durant by stabbing her when they reached the beach. Along the way, they met Mr Fitzmaurice and he walked with them to the beach where they sat for a while and then he and Ms Durant left the defendant and returned to her home. The defendant decided to walk back to Ms Harding's unit.

He arrived at approximately 4:15am. He went to the rear of the unit and entered the unit via a side door. Ms Harding was asleep in an armchair and she woke when the defendant entered the room behind her. The defendant's cousin was asleep in his bedroom.

The defendant went to the kitchen where he obtained a knife from a knife block. Holding the knife in his right hand, he walked up behind Ms Harding in her armchair and stood behind her. He asked her for a cigarette and she told him that he could have one. He took a cigarette from a table close by. Moments later, he placed his left hand over her mouth, moved her head slightly and stabbed her to the right side of her neck with the knife. She tried to scream his name. The defendant fled from the unit.

He ran down to the beach where he buried the knife he had taken from Ms Durant's unit and the jacket he was wearing. He dived into the water to wash away any blood that was on him.

Initially, Ms Harding was not aware that she had been stabbed. She felt a burning sensation in her neck and realised there was a knife lodged in her neck. She pulled the knife from her neck. Her son had woken and found his mother in her armchair with blood all over her neck and top. He called triple zero and the police and ambulance attended.

Ms Harding was taken to the North West Regional Hospital. When admitted, she was stable and conscious. Her medical condition and history were noted, including that she had had multiple heart valves replaced and that her medication, clopidogrel, decreases the ability of her blood to clot. The wound was 2cm in diameter to the right lower part of her neck; it had penetrated the neck muscle. It missed the vital structures of the neck and they were not damaged. The wound did not need suturing. Treatment included pain relief and antibiotics. She was discharged the following day.

Penetrating neck wounds to the same area of Ms Harding's wound can cause damage to significant structures such as the carotid artery, jugular vein, and the major nerve plexus that supplies the upper limbs. These types of wounds can result in severe disability or death. If the knife had moved in a slightly different direction it could have had this result. Ms Harding's risk of severe harm was exacerbated by her medication which had the effect of inhibiting blood clotting.

A police search for the defendant commenced. He was found at approximately 5am in Ulverstone that same morning. Later that day, when sober, he participated in an interview. He made full admissions to stabbing Ms Harding with the intention of killing her. He admitted that during the course of the day he had drunk a large quantity of alcohol and smoked a significant amount of cannabis and, at Mr Fitzmaurice's suggestion, he had tried ice. He said not long after ingesting the ice he started having thoughts and hearing voices "to kill...to be a serial killer". He provided a detailed account of the events with Ms Durant, explaining that he did not attempt to kill her as his plans were interrupted when they met up with Mr Fitzmaurice on the way to the beach. He told police that he did not kill Ms Durant at her unit as he "did not have the guts" and thought he would work up the courage during the walk to the beach. He said on the walk to Ms Harding's unit he was still having thoughts and /or hearing voices to "to kill people" and he started thinking about killing Ms Harding. When he arrived back at the unit the voices were still telling him to "kill people". He recounted the events in the unit in some detail, explaining that he had asked Ms Harding for a cigarette to distract her. He said Ms Harding tried to scream and struggled, but her arms were wrapped up in a blanket and she was unable to free herself.

He admitted stabbing Ms Harding with the intention of killing her and that he stabbed her in the neck as hard and as forcefully as he could. He ran from the unit thinking he had killed her. He could not explain why he had obtained a second knife when he already had a knife which he had taken from Ms Durant's unit.

He said to police that he "shouldn't have taken that drug". He described the voices in his head as his own, but stated that they sounded like an evil man. He had in the past had thoughts and heard voices to kill himself or other people. At the conclusion of the interview, he was visibly distressed, stating that if he could take it all back, he would.

He further co-operated with police by retracing his movements prior to and after the stabbing and agreeing to the taking of a blood sample for forensic analysis. An analysis of the sample of the defendant's blood taken at 6pm, the same day as the interview, disclosed the presence of nordiazepam and THC, but not alcohol or amphetamines. The alcohol he consumed would have been eliminated from his blood and ice, if taken, may not have been detectable given the lapse of time.

I have received a victim impact statement from Ms Harding. Clearly, she has been significantly affected. She still experiences pain from the wound and takes pain relief medication. Movement in her arm is affected. Overall, her condition has deteriorated. While Huntington's disease leads to a decline in a person's condition, Ms Harding perceives that there has been a more rapid regression in her symptoms such as speech, balance and swallowing. She has been given medical advice that the emotional stress of what happened to her has hastened her condition. After the attack, she lost confidence and concentration and started having falls. She now needs a wheelchair. She is stressed, her appetite has been affected, she has difficulty sleeping and she relives what happened to her. She is fearful of being alone and attends counselling. She is hoping to be transferred to another unit. Her lifestyle is more restricted and she does not enjoy outings on her own anymore. It is apparent that her quality of life has been significantly affected. She holds concerns about her sons and the way in which the incident has affected them. She considers that it has caused them stress and an added need for them to spend more time looking after her than they used to.

Ms Harding is very relieved that she does not have to give evidence in any proceeding and in this regard, it is noted that the defendant entered a plea of guilty at an early stage.

The defendant was 21 at the time of offending, having turned 21 in early November last year. He has no prior convictions.

He has intellectual limitations and cognitive deficits and mental health difficulties.

The defendant experienced severe and entrenched bullying at high school. He was then physically smaller than his peers, and he wore glasses. He was a student who struggled academically and needed specialised help. The bullying began in year 7 as derogatory name-calling. At first, he was bullied by one group, but then it became widespread. By year 8 it was relentless and involved physical abuse, in one form or another, on a daily basis. The school tried to intervene, but was ineffectual. He had counselling for depression. By the time he left school in year 10, the abusive behaviour had eroded feelings of self worth. He experienced derogatory voices informing him he was worthless and that he should end his life. He became suicidal.

He turned to the use of cannabis as an escape and later, alcohol. Within a relatively short time he was smoking cannabis daily and drinking alcohol excessively on a regular basis. He was asked to leave College in year 11 arising from his use of cannabis. He had been prescribed medication, but he ceased using that. His lifestyle focussed around socialising and abusing alcohol and drugs.

His mental health deteriorated further; he was admitted to hospital when he was 17 years of age with suicidal thoughts after he had consumed an excessive amount of alcohol.

There were subsequent admissions to hospital and attempts to self-harm. He presented with delusional beliefs and episodes of psychosis when under the influence of alcohol or cannabis. He displayed aggressive or threatening behaviour at times and some of his behaviour was acutely disturbed, but did not result in harm to others.

After a psychotic episode in early 2014, and later as well, he was advised to refrain from cannabis and alcohol abuse.

I have the benefit of a psychological report dated 17 March 2015 from Ms Allison Wells, providing an assessment of the defendant's intellectual and cognitive functioning. I also have a psychiatric report from Dr Michael Evenhuis dated 15 March 2016.

The cognitive and intellectual assessment revealed that the defendant's full scale IQ performance is in the extremely low range with an index score of 64. It places him in the Borderline range of intellectual functioning performing equal to or better than only 1% of his peers. Ms Wells considers that he would benefit from a specialised service providing him with support and helping him to occupy his time in a meaningful manner. It is noteworthy that at the time of offending, and indeed ever since leaving school, he did not have this support or direction.

At the time of Dr Evenhuis' interview with the defendant on 11 February 2016, the defendant had little recall of the events of the evening subsequent to taking amphetamine. He cannot recall hearing voices or audible thoughts. He cannot recall what he was thinking at the time. He does not know why he would want to harm anybody and he does not understand why he behaved as he did. He explained to Dr Evenhuis that had a good relationship with Ms Harding and he had no reason to wish to harm her.

He expressed anger about what had happened, mostly directed at himself, but also at the person who gave him amphetamines. He said to Dr Evanhuis that he wanted to apologise to Ms Harding.

Dr Evenhuis stated that in relation to the incident, what the defendant described was an acute onset of auditory hallucinations or audible thoughts following his use of amphetamines. Dr Evenhuis stated the precise motivation behind his behaviour remains unclear. He noted that there is some suggestion that the defendant's actions were related to his feelings of worthlessness and hopelessness and perhaps he aimed to achieve a level of notoriety. In this regard, defence counsel pointed out that this

objective was in the realms of a possibility only and indeed, that is the way in which it is expressed by Dr Evenhuis. His defence counsel postulates that pervasive feelings of worthlessness may have had a role. That is also possible, but I am not able to make a positive finding about that either. Dr Evenhuis noted that the defendant has borderline personality traits with features of emotional dysregulation, poor self-esteem, recurrent suicidal ideation and difficulties with interpersonal relationships, but that he does not meet diagnostic criteria for Borderline Personality Disorder, or Antisocial Personality Disorder. He also does not qualify for a diagnosis of Schizophrenia.

Dr Evenhuis concludes that the defendant was afflicted by a mental disease and not merely experiencing symptoms of amphetamine intoxication. It is noted that there is no suggestion that the defendant did not understand the physical character of his actions. Also, the defendant was not afflicted with abnormal thought processes which might have prevented him from knowing he ought not harm the complainant. He does not have a defence of mental impairment under s16 of the Criminal Code.

I accept Dr Evenhuis' conclusions and assessment of the defendant's mental condition. The defendant was aware that his actions were unlawful, but there is no rational explanation or obvious motive that might explain his conduct. His impulse to commit harm was a result of his abnormal mental state giving rise to his actions. Dr Evenhuis states that it is likely that his state of mind was a result of intoxication from cannabis, alcohol, and amphetamines and also his underlying vulnerability towards developing psychosis. His initial impulse to cause harm occurred as a result of mental state disturbance brought on by amphetamine intoxication. Dr Evenhuis says it is not possible to draw a clear connection between his psychotic symptoms and his actions. His actions were impulsive, but he had some control over them. Dr Evenhuis says his transient psychotic symptoms gave rise to homicidal ideation and his subsequent actions. His vulnerability towards psychosis and his personality deficits appear to have contributed to his behaviour. It is not clear to what extent he was able to reflect upon his actions.

In terms of the defendant's decision to take amphetamines and the medical advice he had received in the past not to take drugs, his capacity to reason and understand the potential consequences of his drug-taking was, in my view, clearly limited by reason of his intellectual disability. Whilst he had caused harm to himself in the past, he had not harmed others. Finding solutions to his addictions was more difficult for him than others.

I proceed on the basis that, whilst the situation is far from clear, there is an underlying mental health condition and he was mentally disturbed during the incident. His mental impairment contributed to his offending. His vulnerability towards psychosis and his personality deficits contributed to his criminal conduct. Further, I proceed on the basis that his moral culpability was affected by his mental functioning in a way that was significant. Whilst the defendant must take personal responsibility for his risk-taking behaviour in consuming excessive quantities of alcohol, cannabis and in taking amphetamines, his capacity to reason as to the risks involved and to have insight with respect to the potential harm to others was clearly limited by reason of his intellectual and cognitive impairment. His poor self-esteem and lack of self-worth are relevant too, as part of the background to his drug addiction.

Notwithstanding his reduced moral culpability, punishment and general deterrence must still be reflected in the sentence. They are less prominent considerations because of the defendant's mental state and his reduced moral culpability.

I take into account that the defendant is genuinely remorseful. He expressed his remorse in the interview, saying that he felt "terrible". He is conscious of the harm he has caused Ms Harding and her fragile physical health.

He is trying to use his time in prison productively. He has been working in the laundry and has expressed satisfaction in being able to successfully undertake work. He recognises that he has a more positive outlook when he is busy and productively engaged. He has also expressed a wish to attend a

drug and alcohol program within the prison. He has insight about the importance of abstaining from drugs. I note he is receiving medical and psychiatric care, has been prescribed medication and his condition is stable.

This is a difficult sentencing exercise. It was, on the one hand, purposeful conduct. The defendant had an intention to kill which persisted during the course of the evening, directed first at one potential victim and then another, and he took steps to maximise his chances of effecting his purpose. His attempt to murder involved one stab wound, but its placement was calculated and it was inflicted with potentially lethal force. It was merely by chance that it was not fatal. Ms Harding was entirely vulnerable, she was completely oblivious to the danger she was in and was physically unable to defend herself. She was in her home asleep when the defendant entered with murderous intent. At the time of the stabbing, she had her back to the defendant and was utterly defenceless.

On the other hand, the defendant's conduct lacked rational purpose or motive. He bore no malice towards Ms Durant, and Ms Harding was a person he was fond of and who had been very kind to him. It is clear at least that his mental condition was a contributing factor reducing his moral culpability to a degree that is properly characterised as significant.

If not for his mental condition and its impact upon his moral culpability, a substantially heavier sentence would have been imposed.

I give weight to other considerations, such as the defendant's remorse, his willingness to engage in rehabilitative programs, his young age and lack of prior history. His reform remains a prominent objective of the sentence.

Balancing these factors, some of them conflicting, I record a conviction and impose a sentence of five and a half years' imprisonment from 23 December 2015. I allow the minimum non-parole period. He is not to be eligible to apply for parole until he has served two years and nine months' imprisonment.

He must pay the victims of crime compensation levy of \$50 within 28 days of release.