

Mr Cordwell has been found guilty by a jury on a charge of causing grievous bodily harm. On the night of 28 July 2014 he led a group attack on an innocent young man who was walking through Glenorchy to his mother's home. As a result of the attack, the victim, Tristan Sproule, suffered severe facial fractures and lost the sight in his left eye.

For sentencing purposes, I need to make some findings of fact. At the trial the Crown argued that there were four different bases on which the jury could find Mr Cordwell guilty of the crime charged: (a) on the basis that he had personally inflicted the grievous bodily harm; (b) on the basis that he was a participant in a joint criminal enterprise, each of whose participants intended that grievous bodily harm was to be inflicted upon Mr Sproule; (c) on the basis that he and others had formed a common intention to assault Mr Sproule in conjunction with one another; and that in the prosecution of their purpose the crime of causing grievous bodily harm was committed, that crime being one of such a nature that its commission was a probable consequence of the prosecution of their purpose; and (d) on the basis that, if Mr Cordwell was not the principal offender, he was guilty as an abettor. I am satisfied beyond reasonable doubt that Mr Cordwell was guilty on the third basis alone.

When interviewed by the police within hours after the attack, Mr Cordwell admitted that he had asked Mr Sproule for a cigarette, intending to bash him if he refused, and expecting that that would egg others on to join in an attack on him. He admitted that, after his request for a cigarette was refused, he threw Mr Sproule to the ground, kicked him to the head, and punched him. I am satisfied that he understated his involvement. Evidence as to the attack and Mr Cordwell's participation in it was given by Mr Sproule and by an eye-witness, Melinda Berry. On the basis of their evidence, I am satisfied that Mr Cordwell kicked Mr Sproule more than once, and that he bashed him to the head using a paling that an accomplice tore from a nearby fence. However there were other attackers kicking Mr Sproule and attacking him with palings or fragments of palings. It was very dark. There came a time when Mr Sproule could see very little because blood from a wound was entering his eyes. Whilst Mr Cordwell was the instigator of the attack and the most vicious attacker, it could well have been somebody else that inflicted the grievous bodily harm. I am therefore not satisfied beyond reasonable doubt that Mr Cordwell did that personally.

The evidence of an intention to cause grievous bodily harm was strong. At the outset, Mr Sproule was told by one of his attackers, "You're going to die tonight." However I cannot rule out the possibility that the grievous bodily harm was inflicted by an individual who, rather than intending such harm, was recklessly indifferent to the possibility that he would inflict grievous bodily harm. The crime of causing grievous bodily harm is committed if the offender either intends to cause grievous bodily harm or foresees such a consequence as a likely result of his conduct: *Vallance v The Queen* (1961) 108 CLR 56; *R v Bennett* [1990] Tas R 72. I am not satisfied beyond reasonable doubt that the offender who inflicted the grievous bodily harm had a positive intention to inflict such harm, as distinct from foreseeing such a consequence as a likely result of his conduct. Unless there was a positive intention to inflict such harm, then Mr Cordwell could not be criminally responsible for the conduct of another assailant on the basis of participation in a joint criminal enterprise or on the basis of abetting.

However, given the severity of the attack on Mr Sproule from its outset, I am satisfied beyond reasonable doubt that the causing of grievous bodily harm by means of a serious head injury was a crime of such a nature that its commission was a probable consequence of the prosecution of the vicious group assault on Mr Sproule. It follows that every participant in that assault was guilty of that crime by virtue of s 4 of the *Criminal Code*. I am satisfied beyond reasonable doubt that the assailant who inflicted the grievous bodily harm must either have intended that result or foreseen it as likely.

The attack on Mr Sproule was vicious, unprovoked, pointless and cowardly. Mr Sproule was walking alone. He was attacked by several people in conjunction with one another. None of his attackers knew him. He was on an unlit footpath between the back fences of some houses and a rivulet. He happened to be carrying a Smith & Wesson 26 inch extendable baton in a backpack, but he was very quickly disarmed when he produced it, and was then beaten with palings and abandoned, bleeding, on the path.

Mr Sproule suffered complex fractures of the bones on the left side of his face. His fractures were surgically repaired using two titanium plates and eight titanium screws. He suffered minor injuries to the left shoulder, the left knee, and the little finger of the left hand. There was a laceration above his left eyebrow that was four centimetres long and two centimetres deep. His vision in the left eye deteriorated in the weeks following the attack as scarring developed at the back of the eye. When his vision was tested on 30 December 2014 he could see light through that eye, but could not see shapes. Subsequent testing indicated that on some days he was able to detect movement with that eye, and that on his best days he was able to count the number of fingers that a person was holding up at a distance of two metres from his eye. For all practical purposes, he has become blind in that eye as a result of this crime.

He has also experienced continuing psychological symptoms and severe headaches. He has no feeling in the left side of his face. He was only 22 years old at the time of the attack.

Mr Cordwell was 19 years old at the time of the attack and is now 22. He has a long criminal record. Before committing this crime he had been dealt with by magistrates for seven assaults, two of them on police officers. In May 2013 a magistrate imposed on him a wholly suspended sentence of one month's imprisonment. On 3 June 2014, only eight weeks before the commission of this crime, a magistrate activated that sentence, and imposed a fresh wholly suspended sentence of two months' imprisonment. On 5 July 2014, he committed an eighth assault. The two-month suspended sentence was hanging over Mr Cordwell's head on the night that he attacked Mr Sproule. It appears from his record of prior convictions that he was also on bail on various charges that night.

Mr Cordwell was arrested shortly after midnight on the night in question. He has spent over 13 months in custody since then. The periods that he has spent in custody have been as follows:

- from 29 July 2014 to 27 November 2014;
- from 22 February 2016 until 28 April 2016; and
- from 20 May 2016 to date.

According to his record of prior convictions, a magistrate sentenced him on 7 August 2014 to 20 days' imprisonment, backdated to 29 July 2014, in relation to several charges. Otherwise none of the time spent by him in custody since the night in question has been related to any other offences. Because of the time that he has spent in custody, I will backdate his sentence to 3 December 2015.

To his credit, Mr Cordwell agreed to take part in a police interview on the night of his arrest, and made limited admissions, though not full admissions. He was originally charged with assault under the *Criminal Code*, and pleaded guilty to that charge in the Magistrates Court in August 2014. Before that charge could be dealt with, Mr Sproule's sight deteriorated, and Mr Cordwell was charged with causing grievous bodily harm. Whilst in custody he has participated in an anger management program, and received a good report as to his participation. He comes from a disadvantaged background. He can read but not write. He has a reasonable employment history. He has never had a drug problem, but he does have an alcohol problem. He was intoxicated when he committed this crime. In the past he has complied with probation orders and community service orders. He has a supportive partner, who has a young child. He wants to overcome his alcohol problem and lead a stable productive life with his partner.

It is not his fault that it has taken over two years to bring him to trial.

In my view the only appropriate penalty in this case is a substantial sentence of imprisonment. Although Mr Cordwell was young, he was by no means a first offender. He instigated a ferocious group attack on an innocent young man. He stood out as the most prominent and most aggressive participant in the attack. The victim suffered terrible facial fractures and lost the use of one eye. Because Mr Cordwell is young and has shown some prospect of rehabilitation, I will make provision for parole, but I will impose a non-parole period well above the minimum.

Brent Anthony Cordwell, I convict you and sentence you to six years' imprisonment with effect from 3 December 2015. You will not be eligible for parole until you have served four years of this sentence. I order you to pay your victims of crime compensation levy of \$50 within 28 days after your release from prison.