

STATE OF TASMANIA v THOMAS JAMES ALIANO
COMMENTS ON PASSING SENTENCE

21 JUNE 2024
MARTIN AJ

Mr Aliano, you have been found guilty by a jury of wounding. The primary charge was committing an unlawful act intended to cause bodily harm, but the jury acquitted you of that charge and found you guilty of the alternative of wounding. I must sentence you on the basis of facts that I find are proved beyond reasonable doubt and are consistent with the verdict of the jury.

Early in the evening of 21 April 2023, you were walking along the edge of a driveway into a carpark, heading towards a supermarket at Mowbray. The victim and his partner, together with their young dog, were walking in the opposite direction. According to the victim and his partner, as you approached each other, you were waving a hammer around in a threatening manner. I reject that evidence. The CCTV footage proves otherwise.

I am satisfied that as you approached each other, the presence of the dog caused you to jump sideways onto the footpath. You began edging past the victim and his partner with your back to a dividing fence/wall. As you were edging past, a verbal confrontation began between you and the victim. I am satisfied it was the victim who initiated the confrontation.

The victim suggested you were yelling and carrying on, with the hammer, and the victim claimed that he simply said "What's going on mate". The victim was a most unimpressive witness and, having regard to the CCTV footage, I reject that evidence. It is readily apparent to me that it was the victim who brought about the confrontation by behaving aggressively toward you.

As you moved in the direction of the supermarket, it is apparent from the CCTV that you made a movement in the direction of the victim before turning away and walking toward the supermarket from which the victim and his partner had come. As you were walking away, the victim took the dog from his partner and chased after you. I reject the victim's evidence that he chased after you to find out what was happening or, as the victim put it, to find out what your problem was. I am satisfied that the victim chased after you seeking a confrontation and he deliberately took the dog because he thought the presence of the dog would assist him.

The aggressive behaviour of the victim resulted in further confrontation during which you did wave the hammer about. There was significant toing and froing, each of you swearing at each other. At times you threatened to hit the victim and he goaded you. There was a lot of posturing, but it was serious posturing.

Eventually, you turned away from the victim and walked toward the supermarket. Unbeknown to you, after you turned away and while your back was turned to the victim, he ran across a narrow roadway to where his friend and partner were standing. The friend had retrieved a baseball bat, smaller than the standard size, from the boot of his car. The victim ran across the road to obtain the baseball bat. He then ran back and approached you from behind.

I reject the evidence of the victim and his friend that he took a swing at you, but missed. I am satisfied the victim swung as hard as he could and struck you across your back with the baseball bat. Having been struck, you turned and were confronted with a second full blooded blow with the baseball bat, this time aimed at your head. You put your arm up and blocked the blow.

After blocking the blow, you struck the victim in the head with the hammer. You were faced with a dangerous and aggressive man who had struck you with an offensive weapon and, with the second blow, had aimed at your head. From your perspective and from the perspective of common sense, you were entitled to defend yourself. Notwithstanding the dangerous nature of the hammer, I am satisfied the Crown failed to prove that your first blow with the hammer amounted to excessive self-defence. The Crown failed to prove that the first blow with the hammer was unlawful.

In addition, it seems to me likely that the jury had a doubt about your intention at that time. When you struck the first blow, in my view it is highly likely that you did not have a specific intention to cause harm to the victim. This was a real life dangerous situation unfolding quickly in real time which did not leave time for reflection or calm thinking. You reacted spontaneously in an effort to protect yourself and remove the danger. You were not thinking about harming the victim.

That situation changed. After the first blow, the victim fell to the ground and was lying on the ground on his side. He was not attempting to retaliate when you struck a further number of blows with the hammer. The jury was satisfied that at least some of those blows were unlawful because they amounted to excessive self-defence. As you struck the further blows, the victim put his hands up to his face in an endeavour to protect himself. You may well have had in mind that you needed to put the victim out of action and prevent him from coming at you again. However, you also had anger in your mind. At that point I am satisfied you were not thinking of defending yourself, rather you were angry and you wanted to hurt the victim. By an objective standard, your conduct in striking the further blows was not reasonable and amounted to excessive self-defence. Hence your conduct in striking the further blows was unlawful and one or more of those blows wounded the victim. This is the way in which the jury found you guilty of the alternative offence of wounding.

After you struck the further blows, you ran off. There was a conflict in the evidence as to whether the blows rendered the victim unconscious. It would be surprising if he was not at least stunned, but if he was rendered unconscious it was only momentarily. Eventually an ambulance attended and treated the victim who was taken to hospital where his wounds and injuries were treated.

The victim suffered wounds to the right and left sides and back of his scalp, together with a number of areas of bruising. There were minimal displaced fractures to the ninth and tenth ribs, depressed fractures of the right and left parietal bones, corresponding with open wounds, and on the right side there was a minor subdural haemorrhage.

A medical report of 16 May 2023 describes two open depressed skull fractures. I am satisfied that those skull fractures were caused by your first blow with the hammer which was a blow struck in self-defence.

Apparently the medical practitioners suggested the victim be transferred urgently to Hobart for neurosurgical intervention, but the victim wished to be treated as an out-patient. One of the wounds was washed and closed with sutures. Two of the wounds were left open in accordance with the victim's wishes. The victim discharged himself from hospital.

As I said earlier, the victim was a most unimpressive witness. I am of the view that nothing the victim says should be accepted beyond reasonable doubt unless it is supported by independent

and reliable evidence. The medical evidence provides such independent and reliable support in respect of the injuries suffered by the victim.

I have before me a victim impact statement dated 10 May 2024. The victim has said that he was just walking home from the shops when it happened out of the blue. I reject that version. There are a number of other aspects of the victim's statement which I am unable to accept. It is unnecessary for me to discuss that matter in further detail, except to say that where the victim says that he used to be an easy going person, and now finds he loses his temper and becomes more agitated, I again reject that version. He was not easy going on the night in question and his behaviour that night stands in stark contrast to the statement in his victim impact statement. Nevertheless, you inflicted very nasty wounds and other damage to the victim. Your behaviour in the use of the hammer was a serious offence.

As to matters personal to you, I have a limited amount of information about your childhood. You are now aged 45 years and I understand you are single. But you have a daughter, with whom you do not have contact. There does not appear to be any other family connections or support broadly speaking, within the community.

Regrettably, you have a long history of criminal conduct beginning in 1993 when you were aged about 14. Over the years since 1993, it is fair to say that you have been constantly in trouble for crimes of dishonesty and violence. You have also committed a number of drug offences. On 8 June 2022 a judge of this Court sentenced you to imprisonment for 2 years and 6 months for two sets of assaults against different victims. His Honour ordered that you not be eligible for parole until you had served 1 year and 8 months of that sentence, but I am told that you did not apply for parole.

The dates do not match up but the precise dates do not matter. They were serious assaults that you committed upon innocent and different victims previously and you were sentenced to a lengthy term of imprisonment in June 2022. In view of your appalling record of prior offending and personal circumstances, the sentencing judge found your prospects for rehabilitation were poor. His Honour was correct.

At that time the sentencing judge noted that in late August 2019 you were diagnosed with a brain tumour which subsequently required surgery. His Honour recorded that the illness continued to affect you as your coordination was reduced and you were subject to fitting. A recent pre-sentence report indicates you frequently hear noises when nothing is around and you have a history of low grade glioma. The report states that you did not wish to discuss your trauma experiences.

Although you did not start this confrontation, you responded using excessive force with a dangerous offensive weapon. Your counsel provided an explanation saying that you were living in a unit with a "dodgy" door and you used the hammer to gain access. I doubt that is the true explanation but I do not know whether it is true or not.

For whatever reason you were carrying a hammer, and you used it in a dangerous fashion when the victim was lying on the ground and covering his face. Of concern is your failure to take responsibility for your actions and your attitude to anger management. The report indicates that you expressed awareness of your difficulty with anger management, but you do not wish to address this by way of counselling.

It must be said that your prospects of successful rehabilitation in the foreseeable future are dismal. Personal deterrence, that is endeavouring to deter you from offending again, is a significant factor in sentencing. Previous sentences have not deterred you, but it is to be hoped that a further period of imprisonment will assist in achieving a degree of personal deterrence.

The primary function of this Court is to protect the public. In your case, protection of the public looms large, as does denunciation of your conduct and general deterrence.

Noting the importance of those matters, I also have regard to mitigating factors attending the commission of your crime. You were not looking for trouble. It was the victim who commenced the confrontation and who chased after you. He was looking for trouble and when he was unsuccessful in goading you, the victim attacked you with a baseball bat. You are to be sentenced for excessive force in self-defence, that is, the additional blows you struck after the danger had passed.

It is apparent to me that you are a risk to the public, but you also need help to manage your ongoing physical and mental health concerns. Substance abuse is also an issue. As best I can assess the situation, however, it appears you are likely to resist attempts to assist you.

I have given careful consideration to the possibility of partially suspending a sentence of imprisonment, but ultimately I have reached the view that fixing a non-parole period is a more appropriate course.

I convict you and I impose a sentence of imprisonment for 2 years and 3 months. You were arrested in 24 April 2023 and have been in custody since that date except for a period of 8 weeks from 4 December 2023 to 14 January 2024. I direct that the sentence commence on 26 June 2023. I fix a non-parole period of 1 year and 3 months which that period commencing 26 June 2023.

Mr Aliano, in about 3 months time you will become eligible for parole. It is a matter for the Parole Board whether you are offered parole and it is a matter for you whether you accept it.

But like it or not, you need some help. A non-parole period may assist in that regard.