

STATE OF TASMANIA v BRODY MARTIN JENNINGS
COMMENTS ON PASSING SENTENCE

23 AUGUST 2024
ESTCOURT J

At the time of this offending the defendant, Brody Martin Jennings, was 36 years old. As will appear, he has pleaded guilty to a number of offences of dishonesty on complaint and on indictment.

On 20 July 2021, the defendant drove to the Cellarbrations bottle shop at Cygnet where he purchased a six pack of vodka drinks by using a counterfeit \$50.00 note. (Count 1 on complaint 8259/2021). He received \$27.00 in change from the cashier. CCTV footage shows the defendant driving away from the bottle shop when he was not wearing a seat belt. (Count 4 on complaint 8259/2021)

On the 17th of August 2021 at approximately 10:30am, police executed a search warrant at the defendant's address and seized the following items from within the defendant's residence and shed:

- (a) 1 Counterfeit \$10 Australian Currency note (Count 2 on 8259/2021)
- (b) 1x Toshiba Branded Laptop. The State assert that this was used in the creation of counterfeit currency
- (c) 24 x .22 Magnum Calibre ammunition in the shed on the defendant's property. (Count 3 on complaint 8259/2021)
- (d) 1x bag of laminating sheets. The State assert that these were used in the creation of counterfeit currency
- (e) 1x Cannon branded colour printer. The State assert that this was used in the creation of counterfeit currency
- (f) 1x HP branded computer. The State assert that this was used in the creation of counterfeit currency
- (g) 6x Counterfeit \$50 Australian Currency notes (Count 2 on 8259/2021)
- (h) A Qantas frequent flyer card in the name of S Paige (Count 5 on complaint 8259/2021)
- (i) 1x Laminated plastic cut-out which the State asserts was designed to fit Australian currency. (Count 2 on Indictment 94/2024)
- (j) 20 A4 sheets of paper with counterfeit Australian currency printed (Count 1 on Indictment 94/2024)
- (k) 506 Counterfeit \$100 Australian currency notes (206 found inside floor safe within defendant's bedroom, 300 within the shed) (Count 2 on Complaint 8259/2021)
- (l) Counterfeit British Pounds to the value of 85 pounds (Count 2 on Complaint 8259/2021)

- (m) Counterfeit Euro to the value of 385 Euro (Count 2 on Complaint 8259/2021)

The 206 counterfeit \$100 Australian currency notes found inside the safe in the defendant's bedroom were mixed with genuine Australian Currency notes.

On 19 August 2021, police re-attended the defendant's address and arrested the defendant. While there they conducted a further search of and located a Commonwealth Bank of Australia card in the name of Jack Wilcox and a Bank Statement in the name of Joshua Beaumont (Count 6 on complaint 8259/2021)

In respect of the first sequence of offending that appear in the Crown Statement of Facts, and in these Comments on Passing Sentence, a compensation order is sought pursuant to s 68(1) of the *Sentencing Act* in favour of the proprietors of the Cellarbrations Bottle Shop, 58 Mary Street, Cygnet in an amount to be assessed. I make that order and adjourn any further assessment to a date to be fixed.

The State also makes application pursuant to s 11(1)(a) of the *Crimes Confiscation of Profits Act* 1993 that the following items be forfeited to the State of Tasmania pursuant to s 16 of the Act. They are:

- (a) 1 Counterfeit \$10 Australian Currency note;
- (b) 1x Toshiba Branded Laptop;
- (c) 1x bag of laminating sheets;
- (d) 1x Cannon branded colour printer;
- (e) 1x HP branded computer;
- (f) 6x Counterfeit \$50 Australian Currency notes;
- (g) 1x Laminated plastic cut-out;
- (h) 20 A4 sheets of paper with counterfeit Australian currency printed;
- (i) 506 x Counterfeit \$100 Australian currency notes;
- (j) Counterfeit British Pounds to the value of 85 pounds; and
- (k) Counterfeit Euros to the value of 385 Euro.

For the purpose of s 16(4), the State asserts that the property has minimal value. I accept that and make the orders.

The State asserts that all of the items listed at paragraph 21 of the Crown Statement of Facts are tainted property within the meaning of the *Crime (Confiscation of Profits) Act* 1993, as they are either the instrument of crime, or proceeds of the offence. I accept that.

On 22 February 2022, the defendant was bailed from the Hobart Magistrates Court, on conditions, which were subsequently breached. He was charged with breaching his bail and

was granted police bail. An examination of a medical certificate submitted proved to be falsified.

Two of the conditions of his bail were:

- You must report to a person on duty at the Huonville Police Station between the hours of 9am and 4pm every Monday, Wednesday, Friday and there sign the register of persons reporting if so directed and if so directed submit to an oral fluid test
- You must not consume or be found in possession of any illicit substance or drug as outlined in the Misuse of Drugs Act, unless prescribed by a doctor, such evidence to be provided in the form of a prescription

On 9 March 2022, the defendant attended the Huonville Police Station where he provided a medical certificate from a Dr Andreas Breitbarth of Doctors on Demand located in Teneriffe, Queensland. Police required the defendant to submit to an oral fluid test as a result of his bail conditions. The result of the test was positive for amphetamine/methyl amphetamine, but due to the medical certificate provided by the defendant, police did not charge him.

On 16 March 2022, the defendant attended the Huonville Police Station in accordance with his bail conditions to sign-in. He was required to submit to an oral fluid test as a result of his bail conditions.

The result of the oral fluid test was positive for amphetamine/methyl amphetamine. Again, due to the medical certificate provided by the defendant on the 9th of March 2022, police did not summons or arrest the defendant.

On the 18th of March 2022, the defendant attended the Huonville Police Station in accordance with his bail conditions to sign-in. The defendant signed the register of persons reporting as required and submitted to an oral fluid test. During his interaction with Sergeant Ward for the taking of the oral fluid test the defendant said "that'll most likely be positive, it's in the notes anyway for medication that I am on, it always goes positive for amphetamine. It might not but it most likely it will."

The result of the oral fluid test was positive for amphetamine/methyl amphetamine. Sergeant Ward then arrested the defendant for breaching his bail conditions. Sergeant Ward, under caution and recorded on body worn camera, offered the defendant the opportunity to undergo a blood test to confirm that the positive reading on the oral fluid test was not provided from any illicit substance. The defendant refused this request. The defendant was charged with breaching his bail and was granted police bail.

On 21 March 2022, a closer examination of the medical certificate was conducted and police contacted Dr Andreas Breitbarth. He confirmed that the certificate produced by the defendant had been altered and was not the original certificate that he had provided him.

On 25 March 2022, a Gumtree account in the name of the defendant posted items for sale. The mobile phone number associated with the advertisements was [number suppressed]. On the same date, a listing was made by a "Harry Wright" on Gumtree for a Toyota Landcruiser using the same mobile phone number as the contact number above. That mobile phone number is the defendant's mobile phone number.

1999 Subaru WRX Collectors Vehicle – Count 1 on Indictment 95/2024

The defendant listed a 1999 Subaru WRX Collectors vehicle on the Gumtree account in his name. The vehicle was advertised for \$65,300.00. The defendant and a person named "Josh" exchanged text messages about this vehicle. During those messages the defendant asked Josh to pay a deposit to secure the purchase of the vehicle. Josh did not make the deposit for the vehicle.

2017 Holden Commodore SSV Redline – Count 2 on Indictment 95/2024

The defendant listed a 2017 Holden Commodore SSV Redline vehicle on the Gumtree account in his name. The vehicle was advertised for \$52,499.00. Wade McHugh contacted the defendant about the vehicle. The defendant told him that he owned the vehicle from new and it had a flat battery.

The defendant asked Mr McHugh to pay a deposit to secure the purchase of the vehicle. Mr McHugh said he was interested by wanted to see the vehicle first. Mr McHugh never paid any money to the defendant and no further known interactions were had in relation to this item.

2021 Toyota Landcruiser Sahara Series 4WD – Count 3 on Indictment 95/2024

The defendant listed a 2021 Toyota Landcruiser Sahara Series 4WD vehicle on an account in the name of Harry Wright. The vehicle was advertised for \$94,000.00. Jordan Gunter contacted the defendant via the mobile phone number provided. When he contacted the mobile phone number the defendant did not answer and he was sent to the voicemail for the defendant.

Mr Gunter contacted the defendant and enquired about whether the car was still registered. He received a message via the Gumtree App that the vehicle was no longer available. Mr Gunter looked up the seller of the vehicle by clicking on Harry Wright's profile, which took him to the defendant's profile. Mr Gunter messaged the defendant about the Landcruiser through his other listing and the defendant said that it was available because a deposit did not clear and he was about to re-list it.

Mr Gunter never paid any money to the defendant and did not inspect the vehicle.

Donald Smith, who is the Managing Director of Webb Enterprises, which trades as Car Locators in Brisbane, has subsequently confirmed that the photographs used on the account of Harry Wright of the Landcruiser and this vehicle are photographs taken by him of vehicles advertised in his business.

2021 Trek Rail 9.7 E Bike - Count 4 on Indictment 94/2024

The defendant listed a 2021 Trek Rail 9.7 E Bike on the Gumtree Account in his name. The bike was advertised for \$7,600.

Merinda E 160 700 Mountain bike

On 26 March 2022, the defendant advertised a 2021 Merida E160 700 Mountain bike on a gumtree account in his name. On or around 26 March 2022, Cian Carey contacted the defendant via his mobile number about this item. He expressed interest in the bike and said he would be happy to pay the advertised price. The defendant provided bank details with the account name of Brody Jennings for a deposit to be made.

On 27 March 2022, Mr Carey paid the deposit of \$200.00 into the account provided by the defendant. (Count 5 on Indictment 94/2024). After paying the deposit, the defendant became uncontactable. Mr Carey attempted to stop the payment but it had already been transferred.

On 27 March, Martin Livingston contacted the defendant via Gumtree and the defendant sent Mr Livingston a receipt from Ride Bellerive for the purchase of the bike on 22 December 2021. This conduct constitutes the Uttering on complaint 5510/2022.

Mr Livingston lived in the ACT and the bike would need to be delivered to him. Mr Livingston agreed to pay \$4,500 for the bike. He paid \$500 to the defendant's Bendigo bank account on 27 March 2022 and the remaining \$4,000 to the defendant's Paypal account on the same day.

Mr Livingston also enquired about another bike advertised by the defendant on his Gumtree. This was the 2021 Trek Rail 9.7 E Bike. He said that he would be interested in the bike after the first one had arrived to him safely.

The defendant has said that he would lower the price if he paid for it then as he needed money for his brother's child who had a brain tumour. The 2021 Trek Rail 9.7 electric bike was \$6,500. (Count 7 on Indictment 94/2024)

On 29 March 2022, Mr Livingston spoke with employees of the Bellerive Bike Shop and provided them with a copy of the invoice/receipt provided to him from the defendant. The employees of Bellerive Bike Shop informed Mr Livingston that the invoice/receipt was not from their store and it was a fraudulent copy. They confirmed that they had never sold a bike to the defendant.

The State asserts that the receipt was forged by the defendant and as a result this conduct constitutes the Forgery on complaint 5510/2022.

On being interviewed by police, the defendant said that he had been committing these crimes to fuel a drug habit that was costing him more than \$500 per day. Following that interview he was charged.

A compensation order is sought, pursuant to s 68(1) of the *Sentencing Act* 1997 in favour of Martin Livingston in the amount of \$4,500. A compensation order is sought, pursuant to s 68(1) of the *Sentencing Act* 1997 in favour of Cian Carey, in the amount of \$200. I make those orders.

On Sunday 11 September 2022, between midnight and 7:45am the defendant entered the property of Willie Smiths Cider at 22 Lollara Road, Grove where he, as will appear from the Comments on Passing Sentence, stole a John Deere tractor, worth approximately \$100,000, fitted with a spray unit worth approximately \$60,000, which he drove away from the property and abandoned at 178 Davey Street in Hobart.

The complainant in this matter is William Ronald Smith. The defendant accessed the workshop shed by using a crowbar. The defendant located the keys to a 2016 John Deere 5058 GN Tractor worth approximately \$100,000.00. Attached to the tractor was a 2000L sprayer unit worth approximately \$60,000.00.

The defendant drove the tractor out of the property and onto the Huon Highway. He drove the tractor towards Hobart on the Huon Highway.

At 9:16am, the defendant drove the tractor into the rear car park of the Globe Hotel situated at 178 Davey Street, Hobart. He reversed the tractor and sprayer into a car park behind the Globe Hotel where he left the tractor and keys. The defendant walked across the road towards Hungry Jacks on Davey Street. The defendant can be clearly seen on the CCTV footage of Hungry Jacks approximately a minute after the tractor is parked in the Globe Hotel carpark. He can also clearly be seen entering Hungry Jacks on the CCTV footage.

At approximately 8:00am on Monday, 12 September 2022, an employee of the complainant notified the complainant that the tractor and sprayer were missing from the locked shed on his property. The complainant reported this to police. It was not until later in the afternoon on Monday, 12 September 2022 that the complainant was advised by police that they had located the tractor and sprayer unit.

The complainant attended the Globe Hotel after being notified by police of the discovery of the tractor and sprayer unit there, and he arranged for them to be towed back to his property, at a cost of \$400.00.

The complainant has estimated that the damage to the door at his property, which was broken to remove the equipment, was around \$500. The complainant did not believe that any damage had been done to the tractor or sprayer once it was recovered.

Pursuant to section 68(1) of the *Sentencing Act 1997*, the State seek a compensation order in favour of William Ronald Smith in the amount of \$900.00. I make that order.

In relation to all of this offending the defendant has spent some 50 days in custody and has, unallocated, a further period of 73 days. There is no need for me to take that time spent in custody into account given the course that I propose to take.

The catalyst for the defendant's multiple offences appears to be that his eldest son, who was a talented motocross rider from a very young age, was diagnosed with cancer, being metastatic stage 4 liver cancer, when he was only 7, and he was given only a 1% chance of survival.

The defendant remained with his son in Melbourne for the duration of his lengthy and debilitating treatment. Ultimately, that treatment was successful and his son is now a healthy 14 year old boy.

Despite that, the defendant's mental health took a significant downturn, as the trauma of caring for his son through this treatment took a serious toll on him and after a night out with friends he was introduced to drugs, which he began to use more and more frequently. This eventually led to him committing offences either in pursuit of funds for his growing addiction or to repay debts be owed to others in the drug community.

Given the obvious relationship between the defendant's crimes and his drug usage, I sought an assessment for his suitability and eligibility for a Drug Treatment Order. He has been deemed to be both eligible and suitable for diversion to treatment by the CMD program. The sentence I propose therefore is a Drug Treatment Order.

As I have reached the view that I would otherwise sentence the defendant to a term of imprisonment with no part of it suspended, it is appropriate to make a Drug Treatment Order.

The defendant is convicted of each of the offences to which he has pleaded guilty and the single custodial component of the Drug Treatment Order I now make, across all of those offences, is a period of two years' imprisonment, none of which sentence will have to be served if the defendant complies with all of the terms of the Order.

The Order will contain all the core and program conditions contained in sections 27G and 27H of the *Sentencing Act* 1997. In addition, the following conditions are added to my order:

- The defendant is directed to attend his first CMD case management appointment at the office of Community Corrections at level 1/75 Liverpool Street, Hobart on 26 August 2024 at 10am;
- The defendant is directed to appear in the Hobart Magistrates Court on 28 August 2024 at 10am before Her Honour, Magistrate Hartnett;
- The defendant is not to associate with any individual determined by CMD as being an inappropriate contact;
- The defendant is not to use, or associate with anyone who uses, any illicit, mood or mind altering substances, synthetic substances, or any unidentified substances and is to submit to testing as directed by CMD;
- The defendant is to reside at [address suppressed] or any other address approved by CMD;
- The defendant is not to be absent from those premises between the hours of 9pm and 6am and that he present to a police officer between those times when required to do so, unless he has pre-approval from his Court Diversion Officer to be absent;
- The defendant is not to be found in the township of Cygnet unless he has obtained prior permission from CMD;
- The defendant is to refrain from the consumption of alcohol and submit to alcohol testing as required by CMD and/or Tasmania Police;
- The defendant is to be contactable by phone 24 hours a day and advise his Court Diversion Officer immediately of any change in his contact details;
- The defendant is to obey all the directions from his Court Diversion Officer or any other case officer (this includes in relation to case management appointments, counselling, medical appointments or assessments, urinalysis and any other appointment or assessment as required); and
- The defendant is not to use any prescription medication without approval from a General Practitioner and is only to take prescribed medication in accordance with directions and is to notify CMD of any prescribed medication as soon as possible.