

STATE OF TASMANIA v MITCHELL DERICK WAYNE CARLSON-WEST

2 OCTOBER 2024

COMMENTS ON PASSING SENTENCE

PORTER AJ

Mitchell Carlson-West, the defendant, has pleaded guilty to one count of persistent family violence. He was aged between 27 and 28 at the relevant times. The complainant is Britney Renee Walker-Goodyer and she was aged between 22 and 24 at the relevant times. I will simply refer to her as the complainant. The couple had been in a significant relationship for approximately one year and three months at the time of the defendant's arrest on Christmas Day 2023. They are now separated. The State identified three occasions of unlawful family violence. Two of those occasions involve multiple acts. I consider some detail of the occasions to be necessary. Those details are as follows. Occasion 1: On 11 March 2023, the complainant and the defendant went from Launceston to a friend's house in Scottsdale. In the evening while there, the defendant drank a significant amount of alcohol and was intoxicated. The defendant went to bed and asked the complainant to go with him. She told him she would go to bed shortly. When she went to the bedroom the defendant became angry at how long she had been. He repeatedly demanded the keys to her car so he could drive home but the complainant refused to give them to him. The defendant eventually said he was going to walk back to Launceston and duly set off in the early hours of the morning. The complainant went in a car to try to car find him. When she did, he demanded that she let him drive. She refused several times but eventually relented because he became angry, and she was fearful. She got into the passenger seat of the car and the defendant began driving erratically towards Launceston. He was speeding and swerving all over the road, and close to its edge at times. He later admitted to police that this was done to intimidate her. The complainant told the defendant she was scared and asked him to pull over and let her drive. There was then a tussle over the keys during which the complainant was holding onto the keys and steering wheel and the defendant was trying to pull her off. After the complainant removed the keys from the steering wheel, the defendant put his arm around her neck and pulled her backwards. He was applying pressure to her neck that meant she could not breathe or make any real sound. She struggled to free herself but could not, and she felt concerned about the period during which she was incapable of breathing. She felt that if the pressure was applied for much longer, she would lose consciousness. The State says placing his arm around the complainant's neck, pulling her backwards and applying pressure to her neck is Criminal Code assault. During this incident the defendant was continually telling the complainant to let go of the keys. When she did, the defendant let go of her. She opened the passenger door to get out the car and the defendant pushed her out. That amounts to a common assault. Immediately after that, the complainant started to run. The defendant drove after her, stopped and chased her on foot. He caught up, grabbed her, dragged her back to the car and pushed her in. That amounts to a further common assault. The defendant began vomiting so the complainant ran again and hid in the bushes off the side of the road. Ultimately, the defendant drove the pair home to Launceston. The complainant did not seek medical attention after the incident but later reported to police that she had marks on her neck, a swollen jaw, a sore throat, and a bruise on her hand, and that during the incident, she was worried the defendant would not let go and would kill her.

Occasion 2: At the end of May 2023, the couple went to the home of the defendant's father. The defendant became intoxicated. On the way home an argument developed when the complainant complained about the defendant's aggressive driving at a take-away food outlet. When they got home the complainant went inside without taking the defendant's food. When she said she had forgotten it and left it in the car, he became angry and threw a drink against a

wall and then broke a clothes airer and a bed. The defendant moved towards the complainant and for a reason she does not recall, she fell to the floor. The defendant sat on top of her, put both hands around her neck and squeezed, restricting her breathing. The defendant would let go, and the complainant would tell him to calm down, but he would grab her neck again with both hands and squeeze. This happened about three times and on each occasion she could not breathe. The State asserts the crime of strangulation. The complainant reported to police that she thought she was going to die during this incident. She did not think the defendant was going to let go and that he would kill her. The complainant did not seek medical attention after this incident but later reported to police that she had a sore throat.

Occasion 3: On Christmas Day 2023, the complaint and defendant were at their home celebrating with family. At the end of the day the defendant was intoxicated. After the family left, while cleaning up and discussing what to do with leftover food, the complainant spoke to the defendant in what she described as an annoyed tone. The defendant grabbed her around the throat area in a manner that she felt was an attempt to keep her jaw shut so she would be quiet. She described the force used as 6 out of 10. The defendant then pushed her against the wall in a corner, grabbed hold of her head and tried to force her mouth shut while telling her to be quiet. At the same time, he covered her mouth and nose with his hand to the extent the complainant could not breathe. The defendant then pushed his thumbs against the bottom of both the complainant's eyes. The complainant said that this caused significant pain to her right eye and she was concerned her eye might "pop out". The defendant took the complainant towards the bedroom along a hallway while holding his thumbs against her eyes. The complainant tried to grab the defendant's hands and pull him off her as this was happening. This conduct is said to amount to a Code assault. When the pair got to the bedroom, the defendant threw the complainant to the ground, sat on top of her and held his hands against her mouth and nose again in a manner that she describes as an attempt to keep her quiet. She could not breathe while this was occurring. This also said to be a Criminal Code assault. The defendant then grabbed the complainant's hair and pulled her to the spare room and threw her on the ground again. He placed his hands over her mouth and nose, again in what she describes as an attempt to keep her quiet. He told her to "just do the right thing for once". The complainant was trying to get off the ground. She said she was able to get out of his grip to get up, but the defendant put his hands back over her mouth and her nose. He then punched the ground next to the complainant's head multiple times. At one stage, while the defendant got up to shut a blind, the complainant got up onto her knees, but he grabbed her from behind, placing his hands over her mouth and nose. She was trying to remove his hands, and at one stage was able to do this for sufficient time to say, "You are going to kill me". All of this conduct is said to be a Code assault. At the end of this incident the defendant told the complainant to "lay there and stay there". The complainant decided to stop resisting and when she did, the defendant got up and left the room. He left the house to buy cigarettes at which time the complainant called her mother and asked her to call the police. The complainant says she feared for her life during the incident. She reported that on each occasion she could not breathe. The complainant suffered bruising and swelling to her eyes and had a sore knee and a headache. The complainant's mother called 000 at approximately 8.30 pm and police attended. The defendant was arrested and taken to the Launceston Police Station where he was interviewed about each occasion. He made admissions about his conduct and conceded high levels of intoxication. He does not seem to have attempted to minimise what he did and accepted the complainant's version of things about which he had little to no memory. Following the interview the defendant was charged and remanded in custody. He first appeared in the Magistrates' Court on 27 December 2023. He entered pleas of not guilty to the charges on 12 January 2024. He was bailed on 19 January 2024 having spent 26 days in custody, he has again been in custody since 18 September 2024

pending sentence. The complainant has declined to make a victim impact statement. I was told she wants to have contact with the defendant in the future but not to cohabit upon his release, at least immediately.

The defendant is now 29. He is an aboriginal man who was living with his mother at the time of the hearing. He completed his education to year 10 level, after which he obtained some trade qualifications and has been in different jobs since then, most recently as a lead boiler maker in a machine engineering firm. I have a reference from his employer describing him as an asset who would be reemployed without hesitation, and as someone willing to take responsibility for his actions. The defendant does have relevant prior convictions. In November 2017 he was convicted of a common assault, a family violence offence, for which he was fined. In July 2018 he was convicted of a further charge of common assault and a breach of a family violence order involving the same complainant. He was heavily fined for all those offences. He has not previously been to prison. I have a letter written by the defendant to the Court, said to provide some personal context. He describes a dysfunctional and traumatic upbringing. His father was and is a physically and emotionally abusive person. His mother has a bi-polar disorder. That caused disruption in terms of where and with whom he lived with at various times. He changed schools about eight times and moved house about 20 times. He lived with his grandparents and various aunts and uncles interrupted by periods in foster care. Three stepfathers were abusive. Apart from when in foster care, the people in his life exposed him to drug abuse, alcoholism and violence in many forms, petty crime, mental health issues and poverty. Since his release on bail, he has been consulting a general practitioner about a mental health plan and was referred to a psychologist who he is seeing on a regular basis. He has now been diagnosed with ADHD. He says has been in contact with two different services for family violence counselling programs – one following on from the other – in which he has meaningfully participated. He states he takes full responsibility for his actions and says that what the complainant experienced should never have happened. He expresses remorse and hopes his willingness to be accountable can provide Ms Walker-Goodyer with some comfort. I have a report from the psychologist Mr Crosby-Brown, and letters from both the Men's Referral Service and Relationships Australia, the counselling services to which I have referred. I also have a detailed report from Dr O'Donnell, forensic and clinical psychologist. She says the defendant has personality and substance abuse disorders. In a key point summary, Dr O'Donnell says the defendant engaged in family violence behaviour while binge drinking and his mental state was emotionally volatile, reckless, impulsive, irritable and aggressive, which is reflective of his personality functioning, heightened by alcohol use. Contributing factors to his behaviour include his background history of family violence exposure as a child, the functional impacts of his personality disorder and his binge drinking. In her view he requires further participation in a family violence prevention program and long-term individual therapy to assist him in abstaining from alcohol and learn how to manage his personality vulnerabilities. In Dr O'Donnell's view it is positive that he has already commenced work on reducing his "risk profile", and continuing to abstain from alcohol and illicit drugs would be integral to his success. At this time however, she says he poses a high risk of reoffending due to numerous risk factors.

In my view the proper sentencing process for this crime leads to a defendant being sentenced as if the identified acts of family violence were separately charged, subject to moderating factors of totality and proportionality. Where relevant, the sentencing process should also recognise that identified occasions occurred in the context of regular or other unidentified similar offending. However, there is no suggestion of that in this case. In terms of relevant sentencing factors, general deterrence and denunciation are clearly the overriding considerations. Domestic violence is an entrenched and insidious problem and a matter of great

community concern. The abused partner is in a vulnerable position and abuse is a significant breach of trust. In this case the nature of some of the defendant's conduct on each occasion was particularly brutal and dangerous; the general conduct, domineering and cowardly. Two incidents seem to have been rather prolonged. The defendant's history of offending suggests that some emphasis should be put on specific deterrence as a factor. All of that said, there are things which operate in his favour. I take into account his dysfunctional background as I must. I accept that he has insight into the nature of his offending and has come to understand the reasons for it. He has expressed remorse. I accept that he is committed to his rehabilitation, having taken considerable steps to date in that respect. Relationships Australia can provide counselling while in gaol and he seems intent on pursuing that. I take into account his plea of guilty, which entitles him to some discount. It was not an early plea, but he was first charged with multiple counts of strangulation and that is not, of course, how the case against him was eventually put. Negotiations to resolve the matter seemed to have started at an early point in time. He was cooperative with police and made full disclosures to the best of his ability. The complainant does not seem to have suffered any lasting physical injuries, and I have already mentioned her attitude towards what the future might hold.

Mr Carlson-West, I have set out the facts, details of your personal circumstances and what I see to be the relevant considerations. Some of those considerations are, of course, competing. I need to embark on a delicate balancing exercise. Your behaviour was appalling and, as I have said, in breach of the trust that exists within a relationship. You badly abused that trust on three occasions over a period of about nine months. On each occasion you caused the complainant to be fearful for her life, and you caused some physical injury, fortunately of no great severity or of long-lasting effect. Your conduct no doubt also caused much emotional distress as well. I take into account your background, your apparent insight into your offending, the attempts you have made to rehabilitate yourself and your plea. But for those matters the sentence would have been quite a deal longer. You are convicted of the crime and sentenced to two years and nine months' imprisonment to commence on 23 August 2024, to account for all the time you have spent in custody. I order that you not be eligible for parole until you have served one half of that sentence. It is self-evident but the legislation requires me to record that conviction as a family violence offence, and I do so. The State argues for a serial family violence perpetrator declaration pursuant to s 29A of the *Family Violence Act*. Your counsel did not argue against such a declaration but made submissions about matters which would affect its duration. Those matters include those I have already set out and which operate in your favour in the sentencing exercise. Given your record, the nature of this offending and what Dr O'Donnell has to say about risk of reoffending, I think a declaration is warranted. I make that declaration to remain in force for a period of two years and 6 months. Lastly, I will vary and extend the operation of the current family violence order that is in place dated 29 May 2024. The variations are by deleting conditions 1, 3, 5, and 7, and 10 to 17 inclusive. Order number 4 is varied by substituting [address] and I extend the operation of that order for four years from today.