

STATE OF TASMANIA v DAVID JEFFREY TRUSWELL
COMMENTS ON PASSING SENTENCE

5 NOVEMBER 2024
ESTCOURT J

The defendant, David Truswell, born 8 February 1977, has pleaded guilty to one count of assault. The complainant is Dylan Clark-McDonald, born 27 November 1990.

On the evening of 4 July 2022, the defendant was at [address stated] in Bridgewater with his nephew and his brother. The defendant was intoxicated. The complainant and his partner were walking to [address stated] in Bridgewater along the back fence line. A verbal altercation occurred between the complainant and people present at [address stated]. The defendant jumped the back fence and a physical altercation broke out. The defendant punched the complainant to the head multiple times and kicked him to the body three times while he was on the ground.

While this was occurring, Detective Constable Ortuso was leaving the Bridgewater Police Station, driving a marked police divisional van. The defendant's partner waved him down and pointed towards the area the assault was occurring. Detective Const Ortuso observed the complainant lying on the ground being assaulted by the defendant. He drove towards the area. The defendant ran and jumped the fence into the backyard of [address stated]. He was located by police and arrested.

The complainant was taken to hospital by ambulance. As a result of the assault he had a right orbital floor blowout fracture with entrapment of the muscle responsible for movement of the eye downwards, bruising to his face and a missing tooth. The complainant stayed overnight in hospital and had surgery to correct the right orbital floor fracture, which required a hip bone graft. There were no complications from the operation or admission.

The defendant has some dated common assault convictions, the last being in 2017.

It is submitted on his behalf that when he became involved in the fight he was himself struck and injured to the head and temple and that he "helicoptered" his arms to defend himself. Accepting that however, it is clear that there was no justification for hitting and kicking the complainant as he did.

He has struggled with alcohol abuse most of his adult life and after these events he realized that alcohol was doing him no good and he decided to stop drinking of his own volition. He realised that if he had been sober he would not have assaulted the complainant. This was a wake up call for him and he has since been focusing on his children and himself self, and he obtained employment, which he had not had before.

This was a serious assault with serious consequences for the complainant. Despite the defendant's remorse and his steps towards reform, and the consequent lack of need for personal deterrence, the case calls for a significant sentence in the interests of general deterrence and denunciation. He is not deemed suitable for home detention or community service.

The defendant is convicted and is sentenced to 12 months' imprisonment, which sentence I wholly suspend on condition that he commit no offence punishable by imprisonment for a period of two years.