

STATE OF TASMANIA v KURT ALLAN HORTON
COMMENTS ON PASSING SENTENCE

5 NOVEMBER 2024
JAGO J

Mr Horton, you have pleaded guilty to one count of Criminal Code Assault and one count of Aggravated cruelty to animals, contrary to s 9(1) of the *Animal Welfare Act* 1993. Additionally, I am dealing with 10 related summary offences to which you have entered pleas of guilty, being three counts of common assault, one count of destroy property, one count of stealing and five counts of breach police family violence order.

The crimes and offences occurred over a two day period on 27 and 28 November 2023. The complainant in respect to the assault matters is your de-facto partner. You and the complainant had been in a de-facto relationship for approximately seven years and had two children together, aged five and three at the time of the offending. Until May 2023, you and the complainant lived together with the children. On 8 May 2023, a police family violence order was issued against you as a consequence of the police receiving information from your mother and sister that you had been behaving in an aggressive and erratic manner towards the complainant and the two children. The police family violence order did not prohibit contact between you and the complainant, but it did mandate that you were not to threaten, abuse or assault the complainant. Shortly after the issuing of the police family violence order, you moved out of the family home. You and the complainant made an agreement as to when and how you would share the care of the two children.

In the weeks leading up to 27 November 2023, you had been a regular visitor at the family home. You went there to spend time with the children and you, and the complainant had re-established a sexual relationship. Before you and the complainant had resumed your sexual relationship the complainant had had a brief sexual relationship with a Mr Brayden Wilson, who lived across the road from her. This relationship was very short in duration and as of 27 November 2023, was not ongoing. Similarly, whilst you and the complainant were separated, you had been involved in an on again/off again relationship with a Shannon Carter.

In the week leading up to 27 November 2023, you became suspicious about the nature of the relationship the complainant had shared with Mr Wilson. Mr Wilson was known to you, and you considered him a friend. You asked the complainant about it. She did not immediately disclose anything to you. On the night of 26 November 2023, you were on the complainant's phone. You saw that she was "friends" with Mr Wilson on a social media platform. When you asked the complainant about this, she said her communications with Mr Wilson had been about the children and organising playdates.

On the morning of 27 November 2023, the complainant left the residence for a short period. When she returned, you told her that you had been to visit Mr Wilson and he had told you "everything". It is unclear whether you had, in fact, done this. In any event, you demanded the complainant tell you the truth. The complainant told you that she and Mr Wilson had engaged in sexual intercourse during the period when the two of you were separated. Things became a little tense and you and the complainant went to separate places but continued to communicate via text message. In those communications, it seems you agreed that you would both move on from what had happened whilst you were separated and would remain together as a couple.

At about 10pm on the evening of 27 November 2023, you and the complainant were together at the family home. You were in the bathroom having a cigarette. The complainant was seated

on the closed toilet seat. You demanded she tell you more information about her sexual relationship with Mr Wilson. The complainant reminded you that you had previously agreed that there would be no further discussion or detail shared about the relationships each of you had engaged in whilst you were separated. When the complainant reminded you of this agreement, you became angry and headbutted her once to the forehead. This constitutes an offence of common assault and a breach of the police family violence order.

The complainant responded by challenging you about what you had just done. You denied that anything had occurred. The complainant told you that she did not feel safe and was concerned about the safety of the children and intended to leave the house for the night. She went to the children's bedroom. You physically blocked her from entering it. She tried to push past you but was unsuccessful in doing so. She moved away from you before returning and requesting again that you move so that she could enter the children's bedroom. Again, you refused to do so. You were becoming increasingly angry and agitated. When the complainant tried to move past you, you took hold of her by the throat, lifting her up somewhat so that her feet were barely touching the floor and then propelled her backwards into a cupboard. The right side of her body struck the cupboard and she fell to the floor. This behaviour constitutes a further count of common assault and a further breach of the police family violence order.

By this stage, the three-year-old child had awoken and was crying. The complainant entered the children's bedroom and comforted the child. You said to the complainant, "Don't do this". She responded, "Don't hurt me in front of the kids." The complainant then went to wake the other child up, intending to leave the residence. As she was leaning over that child's bed trying to wake him, you took hold of the centre of her throat for about 20 seconds and squeezed. The complainant was trying to speak during this time but was unable to do so. Whilst the complainant did not lose consciousness, she felt lightheaded and was unable to breathe. This behaviour constitutes the count of criminal code assault and a further count of breaching the police family violence order.

Thereafter, you appeared to settle somewhat. You assisted the complainant in finding the children's dressing gowns. At one point whilst you were doing this, however, you put your face very close to the complainant's face and began to swear at her and abuse her. This behaviour constitutes a further count of breaching the police family violence order. Whilst your face was close to hers, you bit her on the left cheek. This constitutes the third count of common assault and another breach of the police family violence order.

The complainant left the house with the children and called the police. Police attended upon her. She told them about your behaviour. Police observed red marks to the left side of the complainant's face and on her neck. Photographs taken by police at this time show a clear bite mark to the complainant's cheek and obvious abrasions and red marks around her throat. When the complainant visited her doctor some two days later, there was still obvious bruising to her neck in four separate areas and the complainant reported that it hurt to swallow. The doctor also observed that there was a graze on the complainant's left cheek, which was obviously tender; her right shoulder was tender and the complainant was experiencing difficulty in elevating it, consistent with her having struck the cupboard that she had been propelled into. In time, her physical injuries resolved without the need for further medical intervention.

Returning to the facts, when the complainant left the family home, you also left and went to the home of Shannon Carter. You stayed there the evening. Whilst there, you made comments to Ms Carter in which you admitted that you had grabbed the complainant by the throat.

The following day, 28 November 2023, you went to the home of Mr Brayden Wilson. Mr Wilson had left for work at around 8.00am and had left the back door open. His dog, Samson, a 10-year-old Rottweiler, was at the house. Whilst you were at the house, you damaged two televisions by punching the screens, rendering both televisions inoperable. This constitutes the count of destroy property. You also stole Samson. When Mr Wilson returned home during his lunch break, he noticed that Samson was missing. Mr Wilson made several enquiries in an endeavour to locate Samson, including sending you a text message at about 11.40am, enquiring whether you had seen Samson. You responded that you had not, a statement which was obviously a lie, because by that point you had taken Samson back to the home you shared with the complainant, taken Samson into a shed so as to restrain him and prevent him from escaping your brutality, and then used a knife or other sharp object to stab him multiple times, including to the throat, causing his death. This behaviour constitutes the crime of aggravated cruelty to an animal.

A post-mortem examination conducted on Samson's body disclosed a number of full thickness skin wounds, with the most prominent being a 30 centimetre long wound from the dog's left shoulder, ventrally across, transecting the jugular vein and most of the left neck muscles. Additionally, five other wounds were identified on Samson. The wounds were substantial. One of the wounds to the dog's chest caused the collapse of the dog's lungs. The veterinary pathologist also identified that there was a three-centimetre hole in the cranial bone of the dog's skull. It was the pathologist's opinion that the skull fracture was caused by a blow from an object, such as a hammer, but that the blow was most likely delivered after Samson had passed away.

The pathologist's opinion was that the blood loss from the various wounds would have caused Samson's death. The pathologist opined that death because of blood loss would not have been immediate and may have taken as long as 10 minutes to occur. The trauma of the dog being stabbed would have produced a high level of physical pain for the animal. The collapse of the lung would have resulted in shortness of breath and the dog would have been in significant distress after the wounds were inflicted and prior to death.

Given the number of wounds and the length and depth of those wounds, I have no doubt that you inflicted them intending to cause the dog's death and I will sentence on that basis. I am unable to determine whether you hit the dog in the head with the hammer, knowing it was dead, or whether you hit the dog in the head with the hammer prior to the infliction of the stab wounds. To my mind, it matters little. The combination of your violent acts towards Sampson was clearly done intending to cause his death. I am satisfied it was an act done out of retribution and with the intention to cause Mr Wilson and the complainant pain and anguish because you felt slighted over their brief relationship.

After you had killed Samson, you left his body in the shed at the complainant's home. I am satisfied that you did this intending that the complainant would find it. If your act was directed only at causing upset to Mr Wilson, you could easily have killed the dog at his residence. I am satisfied killing and leaving the dog in the shed at the complainant's home, was a deliberate and intimidatory act designed to cause her further pain and to send her a very clear message as to what you were capable of doing if she crossed you. The complainant, together with one of her friends, did, in fact, find Samson in the shed at around 9.00pm on 28 November 2023. I have no doubt that locating the dog's body, in the condition in which it was, would have been a very shocking and distressing experience.

You were arrested by police late in the afternoon of 28 November. You have been in custody since that time. At the point you were arrested, Samson had not yet been found. Police asked you whether you knew where Samson was and enquired whether the dog was "dead or alive". You said you knew nothing about the whereabouts of the dog. You subsequently made a comment to police about "how fucked up it is when a woman cheats on her partner with his best friend".

You initially pleaded not guilty to all matters. You were committed to the Supreme Court in June 2024. Subsequently, a proposal was received to resolve the matter. I take into account that the matter has not been prepared for trial. I take into account your pleas of guilty. They have value in the sentencing exercise as they have saved the complainant and Mr Wilson from having to give evidence about what was obviously a very traumatic series of events. I do not consider, however, that your pleas of guilty are reflective of a genuinely held remorse. I note that in the pre-sentence report I received there is a real sense of you blaming others for what occurred rather than accepting responsibility, or showing insight, into what was appalling behaviour. In particular, I note your claims that the complainant was "trying to set you up" with her account, that you saw the hurt you caused Mr Wilson as "eye for an eye"; that you pleaded guilty to many of the offences to "speed up the court process" and that you had done the wrong thing "to a certain degree".

I have victim impact statements from the complainant and Mr Wilson. The complainant has been badly affected by your behaviour. She experienced pain from the physical injuries for several days after they were inflicted. She was embarrassed by the obvious bruising on her neck and avoided interaction with others. She no longer feels safe, she struggles to sleep at night and experiences nightmares. She has panic attacks. Your children have also been badly affected by your behaviour. They, too, experience nightmares, and experience feelings of confusion and upset by what you have done.

Your criminal behaviour has had a significant deleterious effect upon both the complainant and your children. It is significantly aggravating that much of the violence you inflicted upon the complainant occurred in the presence of the children.

Mr Wilson has also suffered significantly as a consequence of you killing his dog. He has trust issues, feels angry, has trouble sleeping and suffers nightmares. Losing Samson in the way that he did has been a sad and distressing experience for him.

You are 34 years of age. You have no prior convictions for matters of violence. You have a strong industrial record. Since completing your schooling, you have worked in various industries and have always held good positions of employment. In 2018, you began your own marketing business, which was apparently quite successful, although it came to an end when the COVID 19 pandemic hit.

You have suffered with several mental health difficulties throughout your life. As a child you were apparently subject to sexual abuse. That led to you using cannabis on a regular basis. In 2022, you were diagnosed with adult ADHD. You have experienced trouble in regulating your emotions throughout most of your life. You reported to the author of the pre-sentence report that in the year leading up to this offending, you sought informal mental health support from a retired psychologist, and there was a suggestion that you may be suffering from Post Traumatic Stress Disorder. There is, however, nothing before me to confirm any such diagnosis or to

suggest there is any nexus between any mental health condition and this offending such that it attracts particular significance in the sentencing exercise.

That said, I accept that when your relationship with the complainant broke down initially, you struggled emotionally and you felt anxious, stressed and sad. Upon its resumption, you were hopeful that your family life would return to normal. I am told that when you found out about the sexual relationship between the complainant and Mr Wilson, your anger and jealousy got the better of you and you reacted in this most terrible way. Your Counsel also submitted on your behalf that you now recognise how appalling your behaviour was and are ashamed of it. As I have noted, this appears to be inconsistent with the attitude you expressed to the author of the pre-sentence report. Your actions immediately after the incident were certainly not suggestive of remorse. You lied to Mr Wilson about your knowledge of the whereabouts of the dog. You lied to police about your knowledge of the dog. Rather than reflecting on the violence you had perpetrated upon the complainant, and resolving to do better, you exacerbated her pain and anguish by leaving the dead dog in a shed where it was almost inevitable that she would find it. I can identify little in your behaviour, then or since, that is reflective of the genuine remorse a court looks for. You are entitled to some credit for your pleas of guilty for the reason I have expressed, but not otherwise.

Moreover, whilst I accept these behaviours were an extreme reaction to your anger and jealousy, I do not accept that they were impulsive. This behaviour went on for a period of two days. After the violence that you perpetrated upon your partner, you went to the home of your on again/off again girlfriend. You had time to think about what you were going to do. Instead of desisting from any more cruel behaviour, you acted as you did towards Samson. And of course, the violence towards the complainant occurred whilst a Police Family Violence Order was in force, which aggravates the situation, although I am conscious of the fact you have also been charged with breaching that Police Family Violence Order and you should not be punished twice for the same criminality.

As I have noted, your behaviour in committing the crimes against the complainant is significantly aggravated by the presence of the children when much of the incident occurred. It is now well understood that exposing children to family violence can, and often does, have significant deleterious affects upon them. Family violence causes harm to the whole family unit. It is an insidious and sadly prevalent problem within our community. The devastating impact of violence perpetrated against women in domestic circumstances is well recognised by both the courts and the community, and men who perpetrate such violence must understand that their behaviour is going to be met with strong sentencing responses. The Court has an obligation to provide such protection as it can through the imposition of sentences that will act as both punishment and a personal and general deterrent.

Your acts of applying pressure to the complainant's neck were particularly serious. Given the injuries she sustained, the pressure you applied must have been quite forceful. The application of force to a person's throat is inherently dangerous. What people often do not realise is that even a short period of strangulation, by applying force to the throat and interfering with a person's breathing, as you did here, may result in death or loss of consciousness and cause long-term consequences. Fortunately, it seems the complainant has recovered in a physical sense from your violence, but the trauma she suffered was serious harm in itself and is likely to be ongoing for some time yet.

Your behaviour towards Samson and the harm you caused to Mr Wilson was cruel. The charge of aggravated cruelty contained in s 9 of the *Animal Welfare Act* is the most serious of a range of offences relating to the mistreatment of animals. The seriousness of it is apparent from the maximum penalty which, in the case of a natural person, includes imprisonment for up to five years. You inflicted knife wounds to Samson, intending to cause the dog's death as an act of retribution for what you perceived to be the betrayal from a friend and the complainant. It is rather ironic, and reflective of what seems to be an arrogant and possessive attitude, that you do not consider the relationship you had with another during the same period of separation, in the same light. Your act of killing Samson was planned and deliberate and was motivated by malice, revenge, and jealousy. It is to be harshly punished.

I have regard to the pre-sentence report that I have received. I have already commented on some aspects of it. It notes, despite your lack of prior violent offending, that you would benefit from the Family Violence Offenders Intervention Programme given the nature of this offending. It also notes that you are willing to engage in self-improvement programmes and obtain mental health assistance. You have already completed the Resilience program, and a drug and alcohol programme, whilst you have been in custody, and have found such programmes valuable. Ultimately, you hope to obtain employment upon release and position yourself so that you can, in time, resume some form of relationship with your children.

There is no question that this involved serious criminal offending. A period of imprisonment is clearly warranted. I make the following orders. You are convicted of all matters to which you have pleaded guilty. I impose one sentence. You are sentenced to a period of two years' imprisonment, commencing on 28 November 2023. Because of your lack of prior criminal offending, and your desire and potential to make positive changes, I consider it appropriate to suspend the last nine months of that period of imprisonment on condition that you commit no offence punishable by imprisonment for a period of two years, following your release from custody.

I also make a Community Correction Order with an operational period of 12 months, to commence as at the date of your release from custody. The statutory core conditions of a Community Correction Order are imposed. Those conditions will be set out in a document that will be provided to you. In summary, they will include the following conditions that will apply for the entire operational period:

- You must not commit an offence punishable by imprisonment;
- You must report to a probation officer as required by the probation officer;
- You must comply with the reasonable and lawful directions of a probation officer;
- You must not leave or remain outside of Tasmania without the permission of a probation officer; and
- You must give notice to a probation officer of any change of address or employment before or within two working days after the change.

I also impose the following special conditions:

- You must, during the operational period of the order, submit to the supervision of a probation officer as required by that officer;
- You must undergo assessment and treatment for alcohol or drug dependency as directed by a probation officer and you must comply with any directions given to you in respect to engagement with alcohol and drug services;

- You must submit to testing for alcohol or drug use as directed by a probation officer;
- You must for the duration of the operational period of the order submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer; and
- You must if directed to do so, attend, participate in and complete the Family Violence Offender Intervention Programme.

I direct that you must report to Community Corrections, Burnie, within two working days of your release from custody.

Pursuant to s 13A of the *Family Violence Act*, I direct the crime of assault, the three offences of common assault and the offences of breach of police family violence order be recorded on your criminal record as family violence offences. I make a compensation order in favour of Brayden Wilson in an amount to be assessed. Pursuant to s 36 of the *Family Violence Act* I make a Family Violence Order for a period of five years from today. That Family Violence Order will be in the same terms as the Family Violence Order, dated 20 December 2023. Pursuant to s 43 of the *Animal Welfare Act*, I make an order disqualifying you from having custody of an animal for a period of seven years from the date of your release from custody.