

STATE OF TASMANIA v WILLIAM HENRY RICHARDSON
COMMENTS ON PASSING SENTENCE

3 May 2017
ESTCOURT J

The defendant, William Richardson, has been found guilty by a jury of the crime committing an act intended to cause grievous bodily harm.

Consistent with the jury's verdict I am satisfied beyond reasonable doubt of the following facts.

After a deterioration in the domestic relationship between the defendant and the complainant, over some years, culminating in a violent outburst concerning an unpaid bill in late February 2016 the complainant, his wife Kristen Richardson, left the family home and took the couple's two children to her mother's home.

The complainant had on that day consulted a lawyer and had filed an application for an interim family violence order. However, that evening the defendant visited the complainant's mother's home and behaved in an aggressive manner at the front door resulting in both the complainant and her mother ringing the police.

After the defendant left, threatening to return the next day and kick the door down if the children were not at school, police attended and as a consequence a police family violence order was taken out and served on the defendant in the early hours of the following morning.

The police family violence order did not prevent the defendant from having contact with his children but the complainant prevented any communication with them until the Magistrates Court granted an interim family violence order on Friday, 4 March 2016, which legally prevented him from contacting his children until the substantive hearing of the application in six weeks' time.

The defendant complied with the order until 6 March 2016 around 3.00pm in the afternoon when by chance he encountered the complainant and his children in an Eastern Shore shopping centre.

After speaking at waving distance to the children, and them walking off without any real response, the defendant took his shopping to his car and returned two minutes later to a shop in the centre and selected and purchased a tomahawk axe. He then sought the complainant out in the supermarket and attacked her with the axe still contained in the plastic bag. He approached her and immediately struck her twice to the upper part of her body as she tried to move away. She was knocked to the ground and the defendant continued to strike her. The incident was captured on CCTV.

In all there were five blows, causing bruising and minor abrasions, lacerations requiring sutures or steri-strips and a large haematoma to the left parietal region.

The complainant was treated and discharged, but returned to hospital subsequently with post-concussion syndrome. I have read the complainant's victim impact statement and I have had the benefit of a report from clinical psychologist Doctor Van Niekerk, and a report from the Director of Rehabilitation Medicine at the Royal Hobart Hospital, Doctor Mark Slatyer. Ms Richardson feels that she and her children forever carry the burden of pain and hurt from surviving a truly horrific and torturous family violence history. She genuinely believed, she says, that the defendant was going to kill her when he was attacking her; and flashbacks and the attack and the family violence incidents dominate her dreams. Her son George is very fearful, terrified of the dark and worried that his father will seek him out and harm him in the future. She says that her daughter Alice does not talk about the attack but gets extremely upset by anyone asking her about it. Ms Richardson states that she and the children all fear for their future safety. Reports from the Children and Young Persons Program which is part of the Department of Health and Human Service Family Violence Counselling and Support Service confirm that both George and Alice continue to present with clinically significant symptoms of post-traumatic stress disorder at least in their culmination from witnessing the attack on their mother and they will require ongoing therapeutic support for the foreseeable future.

The report from Doctor Slatyer confirms that Ms Richardson is suffering from a post-concussion syndrome and an overlapping post-traumatic stress disorder. She has pronounced stuttering and difficulty with speech, difficulty with processing information, sensitivity to light and sound, brain fog brought on by activities such as reading, difficulty with sustaining concentration for periods longer than five minutes, difficulties dressing and judging where her body is in space, misjudging distance and difficulties with recall.

The report from Ms Van Niekerk confirms the diagnosis of post-dramatic stress disorder and reports that Ms Richardson is likely to experience the ongoing psychological impact of the attack for a significant period and will require ongoing psychological treatment for the foreseeable future. The report confirms that Ms Richardson continues to experience levels of fear regarding her personal safety and that of her children.

In her victim impact statement Ms Richardson states that she was awarded a prominent and highly coveted position with the Education Department in 2016, and as a consequence of the impact of the attack upon her I infer she was stating that she had lost that position, although she did not say so. It is agreed between counsel that that position was for a period of 12 months and was not renewed. It is obvious from the medical reports however that as a consequence of the impact of the attack upon her Ms Richardson has lost the ability to be able to satisfactorily perform in a position at that level.

The defendant is 39 years old and had been married to the complainant for 16 years. The children were aged 9 and 11 at the time of the commission of this crime.

There are no significant mitigating features about this case save for the defendant's prior good character and record. He co-operated and appeared to show some remorse in his interview with police and in his immediate post-offence conduct. The extent of any ongoing remorse is not evident. He is not entitled to the benefit of a reduction in sentence for a plea of guilty. The complainant was put through the ordeal of having to give evidence although the defendant did, unrealistically in my view, plead guilty to wounding before the jury.

I take into account the matters put on the defendant's behalf by his counsel, Mr Hensley. I note that the defendant was sexually abused as a child, but had a successful post-tertiary education employment history. I note that the relationship with the complainant had problems, but that he remained in that relationship because of his love for his children. As a result of the commission of this crime he has lost any contact or connection with his children for many years.

Whilst there are more serious examples of this crime, and whilst the complainant's injuries and their sequelae could have been far worse, this is nonetheless at the upper end of the range of seriousness for sentencing purposes because the crime was committed in a busy public supermarket, in breach of a court ordered family violence protection for the complainant and her children, and egregiously committed in front of the complainant's two young children.

I am conscious of the recent comments by the Court of Criminal Appeal in *Jay v Tasmania* [2016] TASCCA 12; *Price v Tasmania* [2016] TASCCA 22, and *Kirkwood v Tasmania* [2017] TASCCA 7, and the sentencing range in those and other cases of committing an unlawful act intended to cause grievous bodily harm dealt with by this Court. I am also of course mindful of the provisions of the *Family Violence Act 2004*, s 13.

In *Kirkwood* Pearce J, with whom Wood and Brett JJ agreed, said at[10]-[11]:

"10 ... Sentences for crimes contrary to s 170 have been reviewed in a number of recent decisions of this Court: *Barron v Tasmania* [2010] TASCCA 3; *Director of Public Prosecutions v Blyth* [2010] TASCCA 10; *Director of Public Prosecutions v Rogers* [2011] TASCCA 17; *Director of*

Public Prosecutions v Blackaby [2013] TASCCA 4; *Jay v Tasmania* [2016] TASCCA 12 and *Price v Tasmania* [2016] TASCCA 22. Those cases apply the statements in *Lovegrove v The Queen* [1961] TASStRp 13; [1961] Tas SR 106 at 107, and *R v Allen* [1999] TASSC 112 per Cox CJ at [3], to the effect that because specific intent is required for the commission of a crime contrary to s 170 it is generally regarded as a more serious crime than grievous bodily harm under s 172. The decisions of this Court to which I referred also repeat and adopt the proposition that a crime under s 170 'ordinarily' carries a penalty within the range of three to seven years.

11 I think that the learned sentencing judge's description of the appellant's crime as a serious example of a crime against s 170 is without error. *His Honour was not bound to sentence within the ordinary range of sentences for the crime... "*

In view of all the circumstances in this case the defendant is convicted and sentenced to a period of seven years' imprisonment. In my view in all the circumstances justice requires that the defendant serve 4½ years of that sentence before being eligible for parole and I so order. The sentence is backdated to 6 March 2016 when the defendant was taken into custody.

I make the usual victim of crimes levy order.