

STATE OF TASMANIA v BAH
COMMENTS ON PASSING SENTENCE

8 APRIL 2025
WOOD J

BAH has pleaded guilty to two counts of burglary and two counts of stealing involving two separate premises, committed on 17 September 2024, and aggravated armed robbery committed on 18 September 2024. By committing these crimes, the defendant has breached a condition of a suspended detention order of six months, and there is an application that the sentence be restored.

On 17 September 2024 at approximately 9:55 pm, BAH and his co-offender KTB were present in the food court of the Eastlands Shopping Centre outside the service counter of Happy Kitchen, which was closed. CCTV footage shows KTB sitting on the service counter where he waited for a cleaner to walk past before he climbed over the counter and into the service area. Meanwhile, BAH kept watch. Shortly afterwards, he sat on the counter but then jumped down before returning to the counter several seconds later and moving into the Happy Kitchen area.

Once inside, the two youths went to the office area where they obtained a locked safe box. The box had a hole in the top to allow the complainant to place money inside. They tipped the box upside down, retrieving approximately \$2,000 in notes and coins. Taking the money with them, they jumped back over the counter and left the shopping centre.

At approximately 11:10 pm, the defendant and the same co-offender went to the Mornington Inn and approached the side restaurant entrance which was locked. They obtained a long metal object and took turns attempting to force the door open by forcing the implement into the gap in the door. After multiple unsuccessful attempts, they smashed the glass door and entered the dining area. They went to the storage area and removed two cartons of Jack Daniels valued at \$108 each and a bottle of Canadian Club valued at \$42, which was smashed at some point and left behind.

They entered another area of the premises and then left the premises with the two cartons of Jack Daniels.

The defendant committed the crime of aggravated armed robbery with two other youths, KTB, aged 17; and BNA, aged 17. The defendant was aged 16.

At approximately 5:00 am the next day, BAH arrived at his mother's address in Lutana in the company of BNA and KTB, took a large kitchen knife, and informed his mother he was going out to commit offences. BAH's mother notified police.

The three youths walked to the United Service Station on the Brooker Highway in Lutana, approximately 850 metres away.

At approximately 5:25 am, they entered the premises through the main entrance. Their entrance was captured on CCTV footage. All three were wearing hooded jumpers and caps, and KTB and BNA wore balaclavas covering their faces. BNA and BAH had weapons which were concealed.

Once they entered, they walked towards the back of the store, past a customer waiting to be served near the service counter, and opened a door reserved for staff only. The door provides access to the area behind the customer service counter, where the complainants, Sai Dhanekula

and Ajay Panchal, were working. BAH was carrying the kitchen knife which was visible, and BNA was carrying a hammer which was also visible.

At this time, the two complainants were behind the counter where they had retreated into the far corner away from the three youths. They were unable to escape as their exit was blocked by the youths.

BAH entered a storage space in an area behind the counter and KTB followed. KTB emerged with a cardboard box of cigarettes. BAH followed and, on his way, retrieved cigarettes from a drawer opposite the cash register. The complainant opened the cash register with BNA-standing by holding the hammer. BNA removed the entire cash register, disconnecting the electrical cord with the hammer.

The accused left the service station, taking the stolen items with them, and walking past two customers waiting to be served.

Police were notified and found BAH and KTB asleep at an address in Mornington, and property stolen from the service station, namely \$2,493 in cash, as well as 10 sealed packets of cigarettes and tobacco pouches. Six bottles of alcohol were located, stolen from the Mornington Inn.

BNA was located by police at an address in Lutana along with stolen property, including 17 packets of cigarettes and a tobacco pouch, a smashed cash till, and \$101 in cash.

Later that same day, BAH participated in an electronic record of interview with police. He made full and frank admissions with respect to his criminal offending. He told police he was under the influence of drugs and alcohol. That is no excuse and does not reduce the seriousness of these crimes. BAH is well aware of the link between his consumption of drugs and alcohol and behaving irresponsibly.

In relation to the United Service Station crime, he agreed that he had the knife to scare the staff only, and I accept you did not intend to use it to cause harm or injury.

BAH, the aggravated armed robbery of the United Service Station is a very serious crime. If committed by an adult, it would likely attract a sentence in the range of three to five years' imprisonment.

It was brazen conduct carried out with two others, so the victims were outnumbered, and you and one of your co-offenders were armed with weapons while the victims were defenceless. You were not deterred because members of the public were present. It is the kind of crime where customers might step in to help the victims and, in such a situation, there is a real prospect of someone being gravely hurt.

The victims were subjected to a determined and terrifying experience in their workplace, where they were entitled to be safe. I am conscious that you did not intend to use the weapon you had to injure anyone, but they did not know that.

You were arrested on 18 September 2024 and have been in custody since then, detained at Ashley Youth Detention Centre.

BAH is aged 16 and will turn 17 next month. He has extensive prior offending involving many dishonesty offences, such as motor vehicle stealing, burglary, stealing, property damage, as well as a significant number of common assaults. In February 2023 he committed an armed

robbery, and on 13 June 2023 he committed an aggravated armed robbery. On 29 September 2023, I sentenced him to 8 months' detention, and for the armed robbery he was sentenced to 6 months' detention wholly suspended for 12 months. That crime involved robbing a small store and, like the United Service Station crime, it also involved being armed with a knife. The crimes before the Court today were committed by him in breach of that suspended sentence.

His history shows that after his release from detention in October 2023, having served the detention order for the armed robbery and when he was still subject to that 6-month suspended sentence of detention requiring good behaviour, he carried out a spree of offending which commenced just 11 days after he was released. He was sentenced to a period of detention, and he was released in July 2024 subject to a suspended period of two months' detention and the condition that he not commit offences for 12 months. He committed these crimes in September of that year. These crimes breach that sentence of two months, and the 6-month suspended detention order for armed robbery that I imposed in September 2023, which required good behaviour for 12 months.

It is clear that once BAH was released from Ashley Youth Detention Centre, he ignored his obligations and did not engage with his Youth Justice worker. He spent time with people who were a bad influence, returned to drug use, and committed serious crime.

BAH was mostly raised by his mother, and he has her ongoing support. He experienced trauma in his childhood years. He was a victim of his father's violence, and he witnessed significant family violence in the home.

He has not had a stable home for a number of years. BAH mixes in a social group who are a very bad influence on him. They are much older than he is and entrenched in drug-taking and a criminal lifestyle.

He also has the support of his grandmother and there have been periods of short duration when he has lived with her which has proved to be a very positive environment. She is willing to have him live with her again.

He is currently in grade 11 and attending school at the youth detention centre. The report from the school principal at Ashley is that his engagement in school programs is positive.

He is enthusiastic about achieving an industry qualification and his white card. He has enjoyed work experience doing concreting and bricklaying. He must have a good work ethic because these trades are hard work.

He has an interest in art and is talented in this field. He is engaging well with his Ashley Youth Detention Centre case manager, Eli Preston, and with therapy provided by the Australian Childhood Foundation.

He has a drug problem and has been a user of illicit drugs, including cannabis and methylamphetamine. His drug use is closely associated with his social group, and both his social group and his drug use are closely linked to his offending and must be addressed.

I have a psychiatric report under s 105 of the *Youth Justice Act* provided by Dr Meredith Gray dated 4 December 2024. It informs me that BAH has been diagnosed with Attention Deficit Hyperactivity Disorder, which is presently untreated due to problems with his prescribed medication; that he has a history of complex trauma, physical violence, and neglect; and that

in Dr Gray's opinion, he meets the criteria of conduct disorder, with a pattern of aggressive and harmful behaviour, amphetamine use disorder, and significant learning deficits.

The report is very helpful and makes a number of recommendations. In Dr Gray's opinion, BAH requires a high level of support, intervention, and monitoring in the community to mitigate the risk he poses and to enable community re-integration. These recommendations are:

- Psychological therapy with a forensic psychologist while in custody and then in the community with a clinician with experience in trauma and substance use.
- A trial of medication for his ADHD.
- Engagement with alcohol and drug services while in custody and on his release.
- Supports for his grandmother if he is to live with her on his release.
- Education on his release to build on prosocial goals and employment programs.
- A speech and language assessment to optimise therapy and educational assessment.
- Engagement with Aboriginal youth organisations.

These recommendations have been considered by your case manager, Eli Preston, and a lot of work has been done towards implementing those recommendations. There is to be a referral to Pulse Youth Health, which will provide access to a psychologist. There is to be engagement with the Tasmanian Aboriginal Centre, with various programs being offered as well as drug and alcohol support. There is work being done to see if you can be offered an intensive mentoring program offered by Child Safety called the JCP BEAST Program. The program offers leadership camps, community service, respite accommodation, and emergency response options. If you are accepted, you will begin engaging while in Ashley. Finally, you are to be offered support at Claremont College where you will be offered a strong education program offering work-based placements and qualifications which would promote your employment prospects. A speech and language assessment may also be able to be offered, noting the psychologist at Claremont College will support and advocate for that assessment.

It is plain that what is required is intense and seamless support on his release into the community with a clear expectation of engagement and consequences if he refuses to engage while subject to supervised release.

I take into account that you are enthusiastic about these programs, especially the JCP Program. I note that you have pleaded guilty at the first opportunity.

An important question for me is whether you ought to be sentenced under the *Youth Justice Act* or under the *Sentencing Act*, effectively as an adult. There are good reasons for taking the more serious step. You have committed similar crimes before.

If I were to sentence you under the *Sentencing Act*, the specific programs and supports will not be offered to you. In my view, they offer you what is required; an intense level of support tailored for your needs.

In the end, I have decided to give you the chance to show the Court that if you are given this opportunity, you will make the most of it. I will sentence you under the *Youth Justice Act*.

I have taken into account the time you have spent in custody and the sentence I impose today will be backdated to take that into account.

I have considered the sentences imposed on your co-offenders and their offending histories, and I have endeavoured to avoid any disparity in the sentences imposed on you; that is, any difference which is not justified.

In relation to the two counts of burglary and two counts of stealing, I record convictions, and I impose a global sentence of three months' detention backdated to 18 September 2024. Your earliest release date for that sentence is 30 October 2024.

For the United Service Station aggravated armed robbery, I record a conviction and impose 12 months' detention cumulative to the sentence of three months. The earliest release date for that sentence is 30 April 2025.

In relation to the sentence of six months' detention wholly suspended which was imposed by me in September 2023, I restore most of that sentence and you are required to serve five months cumulative to the sentence of 12 months. Your earliest release date is 14 July 2025.

The total period is 20 months' detention. You will be required to serve half of it; 10 months, as cumulative terms. Your earliest release date is 14 July 2025.

In addition, I impose a period of supervised probation of 12 months from the date of your release on condition that you be subject to the supervision of a Youth Justice worker for that period, and the core conditions that you must comply with are under s 90(3) of the *Youth Justice Act*.

I make restitution orders pursuant to s 47(2)(b) of the *Youth Justice Act*. I order that the sum of \$2,594 in cash and the sealed cigarette packets and tobacco pouches seized from the address where BAH was located be returned to the proprietors of the United Service Station at 409 Brooker Highway Lutana. I order that the alcohol be returned to the proprietors of the Mornington Inn at 322 Cambridge Road, Mornington.

The applications for compensation orders are adjourned sine die.