

STATE OF TASMANIA v KATHERINE ERICA BROWN
COMMENTS ON PASSING SENTENCE

3 FEBRUARY 2020
ESTCOURT J

The defendant, Katherine Erica Brown, aged 48 has pleaded guilty to two counts of perverting justice.

The defendant was previously in a significant relationship with Ian Murray Roberts for approximately 17 years on and off. They separated seven years ago. They had two sons to the relationship, the younger, aged 9 and a firstborn son who passed away in 2007 when he was almost three years old.

The defendant resides with her son on a rural property.

On Wednesday, 23 August 2017 at 9:20 pm, the defendant contacted Tasmania Police. As a result of that conversation police attended her residence. Upon police arrival, she outlined that she had been assaulted that afternoon by Jamie Lee Jones. During her discussion with police the defendant further stated that she had been assaulted by Mr Roberts two weeks earlier. She suggested that Mr Jones was an associate of Mr Roberts, and that the assaults may be connected. She alleged that he wrapped a belt or something similar around her neck and pulled it tight. This restricted her ability to breathe and she received bruising across her lower neck. She further alleged that Mr Roberts then kned her to the face. She was bleeding from her nose and lips. She also received two black eyes, with the predominant injury being to her left eye.

The defendant made a statutory declaration outlining these incidents after being warned that it was an offence to provide a false statutory declaration to police. The defendant swore that the contents of the document were true and correct and outlined the matters she had complained of.

Police commenced an investigation based on the allegations made by the defendant and narrowed the alleged assault by Mr Roberts to the weekend of 12 and 13 August 2017.

On 24 August 2017, police attended upon Mr Roberts and he was transported to the Hobart Police Station. He participated in an electronically recorded interview, and under caution he denied the allegation and provided an alibi and witnesses for his movements that weekend.

At the conclusion of the interview, Mr Roberts was issued with a Police Family Violence Order for a period of twelve months. That order included the conditions that he not go within 100 metres of or contact the defendant and not enter the defendant's premises.

Mr Roberts was released from custody without charge, after spending some hours in custody, as the police investigation continued.

Police re-attended the defendant's residence later that day and spoke with her further about the allegations. During her conversation with police the defendant said that the assault committed by Mr Roberts had occurred on the weekend of 12 and 13 August 2017, and at that at the time she was assaulted by not only Mr Roberts but also Mr Jones. She alleged that Mr Jones bashed her legs whilst Mr Roberts bashed her upper body, face and neck.

On 25 August 2017, Mr Jones voluntarily attended the Kingston Police Station and spoke with police. He denied the allegations and provided police with a receipt from the Devonport Caravan Park for the evening of 23 August 2017.

Phone records showed that Mr Roberts' phone accessed phone towers in the area of Mt Rumney and Hobart airport for the weekend of 12 and 13 August 2017. His phone was not detected utilising any phone towers near Margate for that period.

Telecommunication records from Mr Jones' mobile phone were also obtained for 23 August 2017. These records revealed that his phone accessed phone towers in Rokeby at the time of the alleged assault. His phone records corroborated his evidence of travel to Devonport that evening, as did a statutory declaration subsequently obtained from his partner.

On 4 October 2017, the defendant re-attended the Kingston Police by appointment. She participated in an electronically recorded interview, and under caution she maintained that her original statement was true to the best of her knowledge.

Whilst this matter remained under investigation, the defendant made a second false report to police involving Mr Roberts.

On Tuesday, 9 January 2018, the defendant attended the Hobart Police Station to report that she had been assaulted by Mr Roberts. The defendant participated in an electronically recorded video statement, and she was warned about the importance of telling the truth. The defendant outlined the following matters under caution:

- That on Sunday, 7 January 2018 at approximately 8:30 pm, she left her house and walked to the animal feed shed.
- In the shed, Mr Roberts was present and startled her.
- He struck her to the eye and stabbed her to the stomach twice with a switch knife.
- She spent the next few hours in the Royal Hobart Hospital Emergency Department receiving treatment, and the following day in bed with a headache.
- That she wanted Mr Roberts charged and did not believe that he would stop.

The defendant presented with grazing to the outer side of her left elbow, two incised wounds to her lower abdomen (covered with steri strips), and she was wearing a black brace over her left wrist. The defendant had her injuries photographed by Police Forensic Services.

Further enquiries revealed that the defendant's property was fitted with closed circuit television cameras. These cameras had been installed and paid for by Family Violence Counselling Support Services. They were located on the front and back doors and were in operation at the time.

Police downloaded the footage from the cameras for 7 January 2018. This footage identified that at no stage was Mr Roberts seen on the property.

As a result of these inconsistencies police determined that an arrest of Mr Roberts was not warranted and could not be supported on the available evidence.

On Monday, 19 March 2018, the defendant attended the Kingston Police Station by appointment. She participated in an electronically recorded interview, and under caution made the following statements:

- She could not explain why the CCTV footage did not capture his attendance at the property or her movements outside.
- She denied that she sustained the injuries in any other way or that they were self-inflicted.
- She denied intentionally making a false report to police with the intention of getting Mr Roberts into trouble.

At the conclusion of the interview the defendant was arrested, charged and bailed. She was charged via summons for the earlier false report to police.

On 1 December 2017, the defendant sought a variation to the Police Family Violence Order in the Hobart Magistrates Court. This variation was granted and a Family Violence Order was issued against Mr Roberts. That order remains in force until varied or revoked. The Crown makes application that the Family Violence Order be revoked pursuant to s 20 of the *Family Violence Act, 2004*, and I make that order.

The defendant met Mr Roberts when she was 19 years old. Around 6 months into their relationship she ceased work. She became pregnant with her first child when she was aged 23.

Her first son was born in 2004. In November 2006, when he was two years old he was diagnosed with cancer. Treatment commenced immediately following the diagnosis, and from that date until his passing in September 2007, he spent most of his time in hospital. Towards the end of his life they were able to spend some time at home but he was very unwell.

The relationship with Mr Roberts deteriorated further during this time, in particular, due to issues with his temper.

Her second son, who is now aged 9 was born in 2009. The defendant found out she was pregnant within 12 months of her first child passing away. She felt that she did not have enough time to properly grieve that loss.

Her 9 year old son has Autism Spectrum Disorder, Global Development Disorder and extreme anxiety. Because of his condition the defendant feels she has never properly grieved the loss of their first son. For example, she tries not showing emotion in front of her son. She is a single mother to him. She is in the process of obtaining NDIS support for him.

Her son was taken out of mainstream school due to academic and social difficulties. He was in mainstream school until 2018. He engages with a psychologist who advised home school. He has a private tutor and the intention is for him to be in home school over the next two years and then to re-enter mainstream school for high school. This will hopefully coincide with the defendant finishing her university degree and being able to re-enter the workforce.

The defendant has no relevant prior convictions.

I have the advantage of a report from clinical psychologist, Dr Georgina O'Connor who states:

"34 It is my understanding of the interpretation of the *Verdins* issues that personality disorder is not considered under these principles, but that other mental health issues such as Posttraumatic Stress Disorder can be. It is acknowledged that, in my opinion, both personality dysfunction and trauma symptoms have been causative in the defendant making the statements she has to Police. Given that personality does not have relevance under *Verdins*, my comments focus on her trauma symptoms. The integral element, in my opinion, is that the defendant has a chronic heightened perception of threat, which is fixated on Mr Roberts. The evidence suggests that she is misinterpreting benign events as threatening, and associating her hypervigilant responses directly to Mr Roberts, even when he is not present. Her thought processes border on paranoid and delusional at times (for example, the paranoia that Mr Roberts is present in locations when he is not). In my opinion she genuinely continues to believe that Mr Roberts is a threat to her, and has been trying for some time to prove that the threat is real.

35 Hence, in relation to *Verdins* [she says], it is my opinion that her ability to exercise appropriate judgment has been impaired when making statements to the Police, and the clarity of her thinking has been compromised by her perception of threat. In my view, the intensity of her cognitive, affective and physiological symptoms (eg, heightened perception of threat) causally contributed to her making the claims that she has made to the Police.

36 The defendant requires psychiatric and psychological assistance to treat the intensity of her trauma symptoms, and to assist her to view the investigative evidence in a rational light. This is likely to be long term therapeutic work. She may also benefit from anti-psychotic medication, which will be the domain of her treating psychiatrist and GP."

I have more recently received a psychiatric report from Dr Leila Kavanagh. She is of the opinion that the defendant appears to be suffering from symptoms of PTSD, symptoms of depression with associated anxiety and panic attacks in the context of alleged domestic violence perpetrated by her ex-partner Mr Ian Roberts over a prolonged period. She says while the diagnosis of Delusional Disorder (including Folie a Deux with her mother, Ms Rosslee Brown, who confirms her daughter's claims) has been contemplated due to the extreme measures implemented by the defendant, purportedly to ensure her safety and the safety of her child, this diagnosis is said to require further exploration. Dr Kavanagh is of the view that the defendant will require ongoing long term psychiatric and psychological treatment to clarify the diagnosis and treat her condition.

The defendant is currently seeing a psychologist, Ms Gemma Dance, who she has seen fortnightly for the last 12 months. She did however state to Dr Kavanagh that she had not seen Ms Dance for a couple of months due to the numerous assessments that she had to undergo. Despite ambiguity in her presentation, the defendant is said to be receiving treatment for "trauma-informed framework" and is attempting to work on anxiety symptoms, management strategies, and improving coping skills.

Dr Kavanagh spoke with Ms Dance, who told her that she had seen the defendant on 11 separate occasions: from 13 November 2018 until 30 July 2019. She stated that the defendant had been referred to her by her GP, as part of a GP Management Plan, which offered her 10 sessions;

with the 11th session having to be paid for. While the defendant had told her that she would continue to see Ms Dance in a private capacity, as her mother would be able to pay for the sessions, she had not returned.

Dr Kavanagh also spoke with the defendant's GP referred psychiatrist, Dr Reddy. He had commenced her on antidepressant medication. However it is said to be doubtful that she has been compliant as, following one month of treatment, she did not notice any difference in her mental state and she has not returned to Dr Reddy for follow-up.

Dr Kavanagh concludes that the clarification of the defendant's diagnosis is required, as is the treatment of her distressing symptoms. She states that this should take the form of ongoing psychiatric and psychological input in terms of assessment and treatment. Long term psychotherapy in conjunction with psychopharmacological interventions will be necessary. Specific biological treatment should take the form of anti-depressant with or without antipsychotic medication (if Delusional Disorder is suspected). While Delusional Disorder is sometimes difficult to diagnose (as the delusions may often seem plausible) and difficult to treat, Ms Brown may benefit from a trial of antipsychotic medication (Risperidone) which may decrease the distress which she is experiencing as a result of her delusional thoughts, and subsequently reduce her concerning behaviours. In terms of psychological therapies, this would depend on the underlying pathology, and it would be ideal for the treating psychiatrist to work closely with her psychologist.

Mr Roberts' victim impact statement was read to the Court. It is clear that he has suffered greatly – psychologically certainly and, to a lesser extent, physically as a result of being falsely arrested and subjected to a Family Violence Order.

On 1 December 2017, the order was issued against Mr Roberts and, as I have said, would remain in force unless I had revoked it.

If the defendant acted otherwise in her offending than as a result of the compulsion of a psychiatric condition, whether it be PTSD, depression and anxiety with panic attacks, or a delusional disorder, then her crimes would be very serious examples of perverting the course of justice.

On the other hand, if she is a victim of a disordered mind, then imprisonment, either actual or suspended, is not an appropriate sentencing response. The same applies to home detention for which the defendant has been assessed as suitable.

It is not inconsistent with that observation however to find the defendant guilty by virtue of her own pleas and to record convictions for the crimes to which she has so pleaded. And I do so.

This is a difficult sentencing problem. It involves offences committed, most likely on the material before me, because of psychological triggers operating upon someone who has undertaken treatment with a view to removing them and must, for the benefit of the complainant, the community and the defendant and those in her care, do so in the future – most likely for some time.

I have a pre-sentence report in which the reporting probation officer states that the defendant has been assessed as requiring a low level of supervision from Community Corrections and therefore a Community Correction order is not recommended at this time. The defendant is

reported to have appeared genuine in her desire to positively move forward in a pro-social manner, and has arranged appropriate support for her to be successful in this endeavour. That report however pre-dates Dr Kavanagh's extensive report and is at odds with it. Therefore I do not propose to follow the recommendation.

I do make a community correction order for a period of three years from today, which, in addition to the core conditions specified in s 42AO of the *Sentencing Act*, I order the following:

- (1) the defendant is to appear before me on Monday 20 July 2020 at 10am and at such other times and places as I thereupon specify;
- (2) the defendant, during the operational period of the order, submit to the supervision of a probation officer as required by that officer;
- (3) the defendant, during the operational period of the order, submit to medical, psychological and psychiatric assessment and treatment as directed by a probation officer;
- (4) the defendant not, during the operational period of the order, communicate with or be in the presence of Ian Murray Roberts except for the purpose of facilitating access by Mr Roberts to his son pursuant to any request for such access first made to the defendant by Mr Roberts; and
- (5) the defendant not, during the operational period of the order, be present at any place of residence occupied by, or any place of work attended at by, Ian Murray Roberts, except for the purpose of facilitating access by Mr Roberts to his son pursuant to any request for such access first made to the defendant by Mr Roberts.

I make an order that the Crown be authorised to release the reports be released to Child Safety Services.

[His Honour addresses the defendant: Can you make a note of that date please to reappear before me. Just to see how things are going. And it is a condition of your probation order that you do attend, so it would potentially be an offence not to. And I also direct that you attend at Community Corrections at Highfield House, 114 Bathurst Street Hobart, to inform them of the order so that they can enrol you on the order. His Honour indicated he will order a report from Community Corrections prior to 20 July.]