

STATE OF TASMANIA v LUKE DAVID BUCK
COMMENTS ON PASSING SENTENCE

4 FEBRUARY 2020
BRETT J

Mr Buck, you have been found guilty of one count of wounding, one of assault and one of unlawfully injuring property.

The crimes were committed on 6 November 2018, at the premises of a female friend. You arrived at the premises in the late afternoon, without invitation or prior arrangement, but I accept that you arrived for the purpose of engaging in a spontaneous social interaction with the residents. I accept that you had been to the premises in those circumstances before, and were on good terms with the residents. However, you had been drinking, and it is clear that you were heavily affected by the alcohol which you had consumed, and perhaps illicit drugs, and your mood was belligerent. When you entered the front yard of the premises, you were carrying a bottle containing alcohol. Mr Bailey was present at the premises at the invitation of the residents, for a social visit. You did not know that when you arrived at the home, but you quickly identified that he was present. You and he had been friends, but in recent times, you had developed a dislike for him. I am satisfied that as soon as you realised he was present, you became angry and decided to inflict physical violence upon him. He did nothing to provoke this reaction from you. I am satisfied that what happened next substantially accords with Mr Bailey's description of this event. In particular, I am satisfied that you approached him, and as you did so, you smashed the alcohol bottle on the ground in order to create a sharp weapon, and said words to the effect of "you're dead dog". This constitutes the assault of which you have been found guilty.

Understandably, Mr Bailey sought to defend himself. This led directly to you, Mr Bailey and Mr Cripps becoming involved in an extended physical altercation, which ranged across the front yard and, at one stage, onto the street. Apart from the crimes of which you have been found guilty, you were also charged with other offences alleged to have been committed during the course of this altercation. As you have been acquitted of these offences, you will not to be punished for your conduct during this altercation, except for that which constitutes the specific crimes of which you have been found guilty. At one point during these events, you went to a shed on an adjoining property for the purpose of locating a weapon. You retrieved a star picket, returned to the front yard of the house and smashed the rear window of Mr Cripps' motor vehicle. This is the crime of unlawfully injuring property. It was a petulant and vindictive act, consistent with your prevailing aggressive demeanour.

You committed the crime of wounding when you bit off a portion of Mr Bailey's right ear, during the course of a struggle between you and him in the final stages of the altercation. I am satisfied that he had taken hold of you and pulled you to the ground as a defensive measure, after you had cornered him and Mr Cripps on the porch at the front door. As you were wrestling, you took hold of his ear in your mouth and then ripped your head around while you had his ear between your teeth. I am satisfied that you intentionally applied force with the movement of your head, in order to rip away part of the ear. This is clear from the description given by Mr Bailey as to your actions, and I accept his evidence about this. The act of biting the ear and then ripping your head around while doing so, could only be consistent with a deliberate attempt to cause a wound to him. You may have been defending yourself during the course of the struggle when you did this, but the intentional application of force of this nature clearly went beyond that which was reasonably necessary for self-defence. It was a brutal and violent act, and, consistent with the jury's verdict, was not justified on the basis of lawful self-defence.

Mr Bailey suffered excruciating pain as a result of the infliction of the injury to his ear. He required hospital treatment. He has been left with permanent cosmetic deformity of the ear. Understandably, he is self-conscious about this. In his impact statement, he describes ongoing psychological consequences which seem to me to be consistent with the type of effect that one would expect from an injury of this nature.

You are 36 years of age. You have a disturbing criminal history which commenced when you were 18 years of age. It includes a number of offences involving violence, and demonstrates what would seem to be a propensity for violent conduct. Some examples of such offending are as follows. On 5 November 2010, you were sentenced by this Court for one count of assault. Then, on 26 September 2012, you were sentenced after pleading guilty to one count of committing an unlawful act intended to cause bodily harm contrary to s 170 of the *Criminal Code*, as well as several counts of common assault. These offences all involved a high level of aggression manifesting in considerable personal violence, the nature of which is consistent with your conduct on this occasion. A significant sentence of imprisonment was imposed on each occasion. Further, it was noted by the sentencing judges that your violent conduct had occurred in the context of being affected by the consumption of alcohol. One of the judges noted that you cannot control your anger when you have been drinking. These observations remain applicable to your conduct in this case.

On the last occasion this matter was before me, I commissioned a forensic mental health assessment for the purpose of investigating this disturbing propensity. The report concludes that you have no treatable mental disorder. I also conclude from the report that the view of the report author is that your propensity for violent conduct would seem to be attributable to a lack of capacity or inclination to control your anger, particularly when you are subject to the influence of illicit substances and alcohol, as well as poor insight into the consequences of your actions. I agree with this conclusion. The report also notes that you have a relatively lengthy history of wider substance abuse. On the other hand, the report does point out some positive aspects of your character, in particular, your demonstrated capacity for constructive employment and reasonable interpersonal relationships. I note also, as has been said by your counsel, the fact that you have strong relationships with your family group. The report also notes aspects of your background which would have had a negative effect upon the formulation of your character. These include exposure to domestic violence within the family home during your childhood, and the perpetration of abuse upon you when you were very young. Although I do not underestimate the adverse impact upon you of these aspects of your childhood, it is not suggested by the report author that there is a direct link between these experiences and your violent offending, and in any event they would not adequately explain nor excuse such offending. It is clear from the circumstances of this case, and having regard to your background, that while you claim to have made a recent commitment to overcoming your propensity for violence, you have not taken any significant step in that regard to the present time. I am told by your counsel that you now want to deal with the underlying problem with illicit substances and to do that you are taking steps to attempt to secure a lawful means of pain relief, but you are having difficulties doing that while you are in prison. That is appropriate, but a commitment to overcoming criminal conduct is going to need a far wider and deeper commitment than what I have been told about. It seems to me that you still have a long way to go in order to achieve that kind of change.

I regard the wounding, in this case, as a particularly serious matter. It was a brutal act of personal violence clearly intended to inflict serious injury. It has resulted in permanent disfigurement. Having regard to the nature of your conduct on this occasion, and the propensity

for violence discussed above, there is a clear need to emphasise personal deterrence in the formulation of sentence. Of course, general deterrence is also a significant sentencing factor.

Luke Buck, you are convicted of each of the crimes of which you have been found guilty. I impose a global sentence of three years' imprisonment. That sentence will be backdated to 29 September 2019. I think that some provision should be made for your early release on parole. However, when I have regard to the need for specific deterrence, I am satisfied that the minimum period you should spend in prison is a period of two years. Accordingly, I order that you are not eligible for parole until you have served that period of two years in prison.

I make a compensation order in favour of Michael John Cripps in a sum to be assessed and I adjourn assessment of that sum sine die.