

R v Martin BRYANT

Cox C J

22-Nov-1996

Comments on Passing Sentence:

In consequence of the tragic events at Port Arthur on 28 and 29 April of this year and of his plea of guilty to the unprecedented list of crimes contained in the indictment before me, the prisoner stands for sentence in respect of

- * the murder of no less than thirty-five persons;
- * of twenty attempts to murder others;
- * of the infliction of grievous bodily harm on yet three more; and
- * of the infliction of wounds upon a further eight persons.

In addition, he is to be sentenced for

- * four counts of aggravated assault;
- * one count of unlawfully setting fire to property, namely a motor vehicle which he seized at gun point from its rightful occupants, all of whom he murdered;
- * and for the arson of a building known as "Seascope", the owners of which he had likewise murdered the previous day.

After having heard the unchallenged account of these terrible events narrated by the learned Director of Public Prosecution and his Junior, an account painstakingly prepared by them from the materials diligently assembled by the team of police and forensic investigators charged with that task, it is unnecessary for me to repeat it in detail or to attempt more than a brief summary. The prisoner, it is clear, a lengthy period of time before the day on which it was carried into effect formed the intention of causing the deaths of Mr and Mrs Martin against whom he had long harboured a grudge and at the very least of causing mayhem among the large group of residents and visitors he anticipated would be present at the Port Arthur Historic Site by shooting at them. Indeed he seems to have contemplated mayhem of such a drastic kind that it would in all probability provoke a response which would result in his own death. In furtherance of his intention, he acquired high powered weapons and embarked with three of them, a very large supply of ammunition and accessories such as a sports bag to conceal the weapons, a hunting knife, two sets of handcuffs and rope. In addition he carried large quantities of petrol in containers, fire starters and acquired a cigarette lighter en route. As he was not a smoker, the inference is that he intended to arm himself with the means of igniting the petrol and that this was intended to be used in unlawfully causing damage to some property in the course of his expedition.

Arrived at the Martins' home, he shot both of them dead and continued on to Port Arthur. There, at the Broad Arrow Cafe, he consumed a meal on the balcony outside and then, re-entering the cafe, placed the bag on an unoccupied table. He produced from the bag an AR15 rifle fitted with a 30-shot magazine and commenced to fire at close range at patrons who were complete strangers to him. In the first 15 seconds he discharged 17 rounds, thereby causing the deaths of twelve people, the infliction of grievous bodily harm to a thirteenth; wounds to five more; and injuries to an additional four whom he attempted unsuccessfully to murder. Moving through the cafe to the gift shop annexed to it, he continued to discharge the weapon a close quarters before leaving the premises approximately 1½ minutes after firing the first shot. In that period of 90 seconds, 29 rounds were fired causing the deaths of twenty people and injuries, many of them severe, to another twelve who fortunately escaped with their lives. In addition, the spectators who escaped physical injury were subjected to emotional trauma of the most stressful kind. Although not the subject of any count in the indictment, this form of injury was clearly a by-product of the prisoner's wrongful conduct.

In the cafe he changed magazines and leaving it, he fired indiscriminately at various parts of the historic site intending to hit and kill those who were within range. In the car park, where there were a number of buses, he shot the driver of one in the back, killing him; and fired at groups of people seeking shelter in them or in their vicinity. Here he killed another person and caused injuries to a further three. He then exchanged the Armalite rifle for a semi-automatic .308 FN rifle or SLR which was in the boot of his car parked nearby and fired across the water towards the ruins and back towards the cafe. Still in the car park, the prisoner killed two further visitors and by firing at them shots which, in some cases, connected, attempted to murder six others. From here he moved up the road in his car and en route encountered Mrs Mikac and her two daughters, murdering all three in the heart rending circumstances already described by the Director of Public Prosecutions.

Comments on Passing Sentence (continued):

At the toll booth he murdered the four occupants of a BMW, pulling the two female passengers seated in it from the car and shooting them at close range. He then commandeered the car, transferring from his own car some of the items in it, including the AR15 rifle, a quantity of ammunition, the two handcuffs and some petrol. Thereafter he fired two shots at a car which had been reversed by the driver on appreciating the situation. In the vicinity of the toll booth, 11 spent cartridges fired by the prisoner were later recovered.

A short distance from the toll booth a white Corolla occupied by Mr Glen Pears and Miss Zoe Hall was parked at the service station. The prisoner brought the vehicle he was driving to a halt on the wrong side of the road and blocked the passage of the Corolla. He alighted with the SLR and tried to extract Miss Hall from the passenger seat. When Mr Pears attempted to intervene, he was forced into the boot of the prisoner's stolen vehicle. Miss Hall was then murdered in a series of three rapid shots from the hip and the prisoner moved on, returning to Seascope. On the way, and after his arrival, he fired at a number of vehicles causing very grievous harm to the occupant of one of them and endangering the lives of nine other people, including two police officers called to the scene.

Arrived at Seascope, the prisoner forced Mr Pears, whom he was treating as a hostage, to enter the house, placed handcuffs on his wrists and immobilised him by attaching a second set of handcuffs to the first and some fixture in the premises. He then set fire to the stolen vehicle and retreated to the house where, at some time before his apprehension, he murdered Mr Pears by shooting him. Throughout the night he continued to discharge a number of weapons, his own arsenal augmented by weapons belonging to the Martins, and kept at bay the police who were surrounding the house, their response restricted by the belief that both the Martins and Mr Pears could still be alive. Clearly the Martins were not alive at that stage, but the prisoner deceitfully conveyed the impression that they were in telephone conversations with police negotiators. The following morning he set fire to the house, destroying it completely and, while fleeing from it in an injured condition due to burns, was apprehended.

Objectively, it is difficult to imagine a more chilling catalogue of crime. The prisoner, having had a murderous plan in contemplation and active preparation for some time, deliberately killed two persons against whom he held a grudge, and then embarked on a trail of devastation which took the lives of a further thirty-three other human beings who were total strangers to him and which caused serious injury, distress and grief to literally thousands more. The repercussions of these crimes have been world-wide. His selection of victims was indiscriminate. He killed and injured men, women and even children. He killed, or attempted to kill, local residents, visitors from other parts of this State, from other parts of Australia and visitors from a number of overseas countries. He killed individual family members, married couples and, in one case, all the members of one family save the bereaved father left to mourn them. The learned Director of Public Prosecutions has mentioned the impact these crimes have had on individuals immediately affected by the loss of a family member or members, or who suffered physical injury in the course of this shooting rampage. He has also mentioned the effect it had on eye witnesses who experienced the nightmare as it ran its course or who came upon the scene or otherwise had to cope with the injured and dead.

This is not the place to acknowledge the contributions made by groups or individuals in dealing with the aftermath of these crimes. No doubt that will be acknowledged elsewhere. Suffice it to say that there were many, many people who were severely affected by their distressing experiences and who will continue to be so affected for many years to come. It is proper to record also the anguish no doubt caused to the prisoner's mother and immediate family.

Then there is the effect on the community at large: the shock and disbelief that criminal conduct on this scale could occur in Australia, let alone Tasmania; the feelings of outrage, anger, grief and frustration at not being able to do more to redress the wrong suffered by so many innocent victims. Though no way comparable to the human suffering endured by those directly affected, very considerable financial loss has also been occasioned to individuals and to the community at large. In the sentencing process, the impact upon the victims of crime cannot be ignored. In this case more than any other I have ever experienced, they demand recognition.

In determining an appropriate punishment, the Court is required to have regard to a great many factors:

- the gravity of the offence or offences;
- the moral culpability of the offender so far as that lies within the limited province of human assessment;
- the effect upon the victims;
- the need to protect society from similar conduct by others, or repetition of it by the offender himself;

Comments on Passing Sentence (continued):

- his background and antecedents;
- any contrition or remorse on his part; and
- a host of other considerations.

In the forefront of this case is the prisoner's mental condition. The law recognises that if a person is afflicted by a mental disease to such an extent that he is unable to understand the physical character of what he is doing in, for example, firing a weapon at another person, or that he is rendered incapable of knowing that such an act is one which he ought not to do, or if he acts under an impulse which, by reason of mental disease, he is in substance deprived of any power to resist, then he should not be held criminally responsible for an act which, in a sane person, would clearly amount to a crime. Society is entitled to be protected from such a person, but he may not be held criminally responsible.

The great Australian jurist, Sir Owen Dixon, once observed that it was perfectly useless for the law to attempt, by threatening punishment, to deter people from committing crimes if their mental condition is such that they cannot be in the least influenced by the possibility or probability of subsequent punishment; if they cannot understand what they are doing or cannot understand the ground upon which the law proceeds. There is no utility, he said, in punishing people if they are beyond the control of the law for reasons of mental health. Nevertheless, a great number of people who come into a criminal court are abnormal. They would not be there if they were the normal type of average, every day, person. Many of them, he said, are very peculiar in their dispositions, but are mentally quite able to appreciate what they are doing and quite able to appreciate the threatened punishment of the law and the wrongness of their acts and they are held in check by the prospect of punishment. It is clear on the materials before me that the prisoner falls into the latter category. He is not suffering from a mental illness - certainly not one which rendered him incapable of knowing what he was doing or of knowing that what he was doing was wrong, or one by virtue of which he was deprived of any power to resist an impulse to do the things he did. He knew what he was doing and that it was something he ought not to do.

Nevertheless, he clearly has a mental condition which rendered him less capable than those of normal healthy mind of appreciating the enormity of his conduct or its effect upon others. I accept the psychiatric evidence that he is of limited intellectual ability, his measured IQ being in the borderline intellectually disabled range, but with a capacity to function reasonably well in the community. From an early age he has displayed severe developmental problems, being grossly disturbed from early childhood. Whatever its precise diagnosis as to which the psychiatrists differ, he suffers from a significant personality disorder. Professor Mullen said of him that his limited intellectual capacities and importantly his limited capacity for empathy or imagining the feelings and responses of others left a terrible gap in his sensibilities which enabled him not only to contemplate mass destruction, but to carry it through. Without minimising the gravity of his conduct or denying his responsibility for it, it would appear to me that the level of his culpability is accordingly reduced by reason of his intellectual impairment and the disorder with which he has been afflicted for so long notwithstanding his parents' earnest endeavours to correct it, which the medical records acknowledge. That the prisoner, through these handicaps, in combination with a number of external factors beyond his control such as the loss of stabilising influences, has developed into a pathetic social misfit calls for understanding and pity, even though his actions demand condemnation.

The prisoner has shown no remorse for his actions. Though he has ultimately pleaded guilty, it has clearly been done in recognition of the undoubted strength of the evidence against him and amounts to little more than a case of bowing to the inevitable. That his change of plea has saved considerable distress, inconvenience and cost to those who would have had to be called as witnesses and to the victims and community at large by the prolongation of the proceedings is a factor which should be considered in his favour when weighing all the relevant considerations, but in the overall scheme of things, it is, in my view, overwhelmingly outweighed by the factors militating against him.

Having regard to the nature and extent of his conduct, I cannot regard it as anything other than falling within the worst category of cases for which the maximum penalty is prescribed. Taking account of the medical evidence and of his lack of insight into the magnitude and effect of his conduct apparent in all his appearances before this Court, I have no reason to hope (otherwise) and every reason to fear that he will remain indefinitely as disturbed and insensitive as he was when planning and executing the crimes of which he now stands convicted. The protection of the community, in my opinion, requires that he serve fully the sentences which I will shortly impose. That consideration, as well as my belief that service of the whole of such sentence is the minimum period of imprisonment which justice requires that he must serve having regard to all the circumstances of his offences, leads to the conclusion that he should be declared ineligible for

Comments on Passing Sentence (continued):

parole.

MARTIN BRYANT - on each of the thirty-five counts of murder in this indictment you are sentenced to imprisonment for the term of your natural life.

I order that you not be eligible for parole in respect of any such sentence.

On each of the remaining counts in the indictment, you are sentenced to imprisonment for twenty-one years to be served concurrently with each other and with the concurrent sentences of life imprisonment already imposed.

In respect of each sentence of 21 years, I order that you likewise not be eligible for parole.