

**IN THE DISTRICT COURT  
AT HAMILTON**

**CRI-2015-019-006607  
[2017] NZDC 17069**

**THE QUEEN**

v

**[DAVID BRADLEY]**

Hearing: 2 August 2017  
Appearances: R Mann for the Crown  
T Sutcliffe for the Defendant  
Judgment: 2 August 2017

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**NOTES OF JUDGE R G MARSHALL ON SENTENCING**

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[1] Mr [Bradley] is here for sentence before me today on a number of charges he has pleaded guilty to. These charges are intentional damage, burglary, assault with a weapon, theft, common assault, threat to kill, assault with intent to injure on a representative basis, breach of protection order, aggravated robbery and unlawful possession of a firearm.

[2] The Crown have filed a summary of facts. It showed that Mr [Bradley] was in a relationship with the principal victim in this matter. They have been in a relationship for approximately five years and have a [child] together who was one year old at the time of this offending. [Victim 1] also had a [child] from a previous relationship.

[3] In May 2015 while they were still together the victim and two children moved to a farm house in [Location 1] and a friend went to stay with them for a period of some months. The relationship between Mr [Bradley] and [victim 1] ended about the August of 2015. In early August she moved, taking the children with her. As she was packing to leave Mr [Bradley] slashed the tires of her vehicle. She arranged to be collected and went to stay at her mother's house with the children. That left Mr [Bradley] and [victim 2] living at the house where he was at.

[4] He continued to make contact with [victim 1] and also made various threats and accusations against her. A few weeks after she left, he set fire to her possessions which he had piled up outside the house and included it sounds like a chest of drawers, clothes, shoes, jewellery and a birth certificate. Some of the items had been given to her from her deceased grand[parent].

[5] Things started to take a turn for the worse at the end of August and on 29 August 2015 the victim moved into a house in [Location 2] with the two children. She had not told Mr [Bradley] of her new address. On the afternoon of Saturday 25 August he had care of the young [child]. He contacted [victim 1], told her the child was unwell and if he could bring [the child] to her address. Due to concern for her [child], she provided her new address. Shortly after, Mr [Bradley] arrived and stayed for a short time before returning home.

[6] [Victim 1] had invited [victim 2] over for a drink to thank him for providing furniture for a new house. It was at 10.00 pm which was where the burglary charge arose, Mr [Bradley] returned to her home. He started banging on the doors and windows. He then went to the back of the house, removed the hinge off the side door and smashed his way in. He went to the lounge where the [victim 1] was. He was angry with her, abused her, shoved her and demanded to know where [victim 2] was and then located and confronted [victim 2].

[7] [Victim 2] was struck repeatedly to the head and face and he was struck with sufficient force to drop him down onto one knee. That is where the common assault charge arises. Mr [Bradley] then went to the kitchen, picked up a vegetable knife to

[victim 2]. [Victim 1] managed to distract Mr [Bradley] long enough for [Victim 2] to get out the front door and he took off.

[8] [Victim 1] was then verbally abused and Mr [Bradley] had the knife in his hand, waving it around. He then told her he was leaving and that she needed to go with him. She was concerned for the welfare of her [child] who was supposed to be in his care but she was not with him so she decided to go. Before leaving the address Mr [Bradley] got two cellphones of [victim 2] and took those with him. He then drove to his home where [victim 1] discovered her [child] was in fact in the care of the defendant Mr [Bradley]'s father.

[9] At this address he again became angry with [victim 1], abused her, grabbed her around the throat with his hands, squeezed her throat and yelled at her, spat in her face, told her he was going to kill her and then he went into his bedroom and got a sawn off shotgun. He came out of the bedroom holding the shotgun, pointed it in her direction. Seeing that, she said to Mr [Bradley], "So what? Are you going to kill me now?" He yelled at her, pointed the shotgun at her face and told her if that is what she wanted him to do he would do it and that she deserved it.

[10] He then forced the barrel of the gun into her mouth and told her, "Do you think I would not hesitate to blow you away?" She was frozen at the time and was concerned her teeth had been knocked out and so opened her mouth. When she did so the barrel went into her mouth. After a few seconds she heard her [child] crying, stepped back and pushed the shotgun out of her face and managed to walk away. She then comforted her [child]. She considered jumping out of the window but was concerned she would either be shot or pursued and was concerned for the safety of her [child].

[11] She went back into the lounge with her [child]. Mr [Bradley] then became violent again, kicked her repeatedly to the stomach and ribs. She was on the floor and he kicked her again and stomped her on her torso. When their [child] cried and came running over he stopped. He then went to the couch and started crying. In the meantime, [victim 2] had contacted the police and they arrived. [Victim 1] told them she was okay, being fearful of repercussions.

[12] That night it appeared he video-recorded on his digital camera his Last Will and Testament. I have seen some footage of Mr [Bradley], three items of some three minutes in length including the Last Will and Testament which showed him speaking and acting very irrationally and I would suspect heavily under the influence of methamphetamine which was obviously a major feature of his life at the time.

[13] In the event, [victim 1] obtained a protection order although the unpleasantness continued. The next significant development is in November 2015. The charge of aggravated robbery where Mr [Bradley] made contact with a [victim 3] by Facebook message saying he was interested in purchasing a motorbike that that person had for sale. He arranged to meet him at Innes Common. At the time [victim 3] did not know who he was meeting but all the parties, the defendant, the victim, his former partner and [victim 2] were all known to [victim 3]. He arrived at the meeting point and a male who identified himself as, "Danny", was waiting for him.

[14] At that time, Mr [Bradley] drove up in an orange car next to him, held a shotgun on the windscreen directed at [victim 3] and said he wanted to have a chat about his former partner and [victim 2]. He got out of the vehicle and asked [victim 3] what he had been messaging to his former partner and wanted to look at his texts. [Victim 3] removed his phone and wallet from his pocket as the person, Danny, stood close.

[15] He was told by Mr [Bradley] the gun was loaded and he was threatened with it. The person, Danny, then demanded cash from [victim 3's] wallet and told him he was lucky they were not taking the car as well. He handed \$180 to the person, Danny. With the presence of the gun he felt he had no choice. He had to hand his phone over to Mr [Bradley] and [victim 3] never saw his phone nor Mr [Bradley] after that.

[16] On 6 November 2015 Mr [Bradley] used that phone to call and send text messages to [victim 1]. She was unaware of it until Mr [Bradley] called and she answered her phone and she was abusive towards her.

[17] On 18 November 2015, the police executed a search warrant at his home. In his bedroom they located a number of live .22 calibre rounds, shotgun ammunition, a glass pipe for consuming methamphetamine and also in a secret storage compartment

under the rear of his passenger seat of a Mazda Bounty vehicle they found a sawn off .22 rifle wrapped in a t-shirt. That was loaded with five live rounds of ammunition.

[18] As a result [victim 1] suffered bruising to her ribs, throat and neck and also suffered psychologically from having the firearm presented at her. The victim impact statement sets out the effects on her.

[19] With the sentencing approach the Crown take the threat to kill as the lead offence for the first sets of offences that occurred in August of 2015. In particular the Crown refer to *Allen v Police*<sup>1</sup> in which Justice White identified a number of factors which could be assistance in determining the overall seriousness on that type of offending. Amongst them were:

- (a) A threat related to a vulnerable person such as a child or a relative.
- (b) Whether the threat was impulsive or premeditated.
- (c) The precision and specificity of threat.
- (d) The degree to which it was meant to be taken seriously.
- (e) Whether the threat involved the threat and/or use of a weapon
- (f) The level of harm, distress or fear caused.
- (g) Whether the threat was made directly.

[20] Here using those factors and the fact that the offence of threat to kill has a seven year maximum sentence the Crown say that a starting point of three and a half years on the threat to kill charge is appropriate. Further that on the balance of the other offending relating to the August incident an uplift of 18 months, being a starting point of five months for that offending. For the intentional damage and breach of protection order the Crown say a further uplift of six months.

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<sup>1</sup> [1999] 1 NZLR 356 (HC)

[21] For the aggravated robbery charge, involving [victim 3], the Crown refer to *R v Mako*<sup>2</sup>. Although it does not really fit within the scenarios category set out in *R v Mako*, the Crown say it is more akin to the dairy style robbery where in this case due to the aggravating features of the use of a firearm, the fact that two people are present and that starting points of three and a half to four years' imprisonment were appropriate and a further six months' uplift for the possession of a firearm charge which would leave an overall end starting point of eight years' imprisonment.

[22] The defence adopt a different approach and urge the Court to take the assault with intent to injure, the representative charge, as the lead offence. In any event the defence refer to a number of cases relating to threat to kill to say that the Crown has approached this far too high. That on the totality of the August offending a starting point in the range of two years, six months to two years, nine months' imprisonment would be appropriate and an 18 month uplift for the aggravated robbery which the defence argues is more akin to the street robbery which has a maximum of up to three years. Given the totality principle, 18 months is an appropriate uplift which would leave an end starting point in the range of four years, six months to five years' imprisonment and then mitigating factors.

[23] I am of the view, considering the factors referred to in *Allen v Police* and particularly on the threat to kill charge that that is the lead charge on the August incident. At the time [victim 1] was vulnerable, there was certainly precision and specificity to the threat, there was a high degree of intention that that threat be taken seriously, hence the insertion of the shotgun into the mouth of [victim 1]. There were threats associated with that, a direct threat as to killing the victim by discharging the firearm and there is a high level of harm and fear caused to the victim as a result of that. In my view a starting point of three years is easily seen as appropriate having regard to the purposes and principles of sentencing. This was a serious example of a threat to kill.

[24] With the other offending associated with that, the burglaries, theft, assault on [victim 2], the assaults with intent to injure, in my view a further uplift of one year on

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<sup>2</sup> [2000] 2 NZLR 170 (CA)

a totality basis would be appropriate being a four year starting point on the August incident.

[25] With the aggravated robbery, that is a discrete separate offence but I also include the ancillary follow on charges of breach of the protection order and the unlawful possession of the firearm with that. Certainly, the aggravated robbery on a stand alone basis does not fit comfortably with the categories set out in *R v Mako* but there was the luring of [victim 3]. So there was some degree of planning and premeditation, there were two people involved and there was the use of a firearm. Three years plus for that as a starting point, once again, it would be easily within range in my view. However I must have regard to the totality principle. Bearing in mind the aggravated robbery charge, the unlawful possession of the firearm charge and the breach of the protection order I am of the view that an uplift of two years is appropriate which brings me to an end starting point of six years' imprisonment.

[26] From that I accept that Mr [Bradley] has been on e-bail for some 17 months. I further consider that Mr [Bradley] is probably a very different person now to the person that I saw in the video clips or digital recordings. This offending which is at a serious and concerning level, much of it can be laid at the door of a lifestyle that is characterised by methamphetamine addiction. It seems now that Mr [Bradley] has insight and has an appreciation of what life is like straight as compared to what is described as chronic daily use of methamphetamine. It is probably the difference between night and day. It would be good if Mr [Bradley] could keep living in the light rather than the dark. I give a six month allowance for the restrictive conditions of the e-bail and also the improvements that he has sought to make to his life as a result of being on e-bail.

[27] As to credit for the plea of guilty, this was at the last working day before trial. Often allowances of five percent are given for such a late plea. There may have been reasons and I accept genuine reasons why Mr [Bradley] wanted to delay the pleas due to the ill health of his newborn child but that does not resolve things as far as the victims of his offending are concerned. However I do give an allowance of 10 percent which is a further six months.

[28] That means that from the starting point of six years' imprisonment I have given you allowance of one year. So the end sentence will be one of five years' imprisonment but I do urge the prison authorities to assist you to maintain your drug free status and give you the skills hopefully so that you do not relapse or consider relapsing, certainly on your release.

[29] You can stand now, Mr [Bradley] and just pause. I need to pass sentence in respect of each of the charges, Mr [Bradley]:

- (a) On the charge of intentional damage you are sentenced to six months' imprisonment. That is charge 2.
- (b) Charge 4A, burglary, six months' imprisonment.
- (c) Assault with a weapon, six months' imprisonment.
- (d) Theft, one month's imprisonment.
- (e) Common assault, three months' imprisonment.
- (f) Threat to kill, three years' imprisonment.
- (g) Assault with intent to injure, one year, six months' imprisonment.
- (h) Breach of a protection order, three months' imprisonment.
- (i) Aggravated robbery, two years' imprisonment and that will be cumulative on the threat to kill charge.
- (j) Possession of a firearm that will be one year's imprisonment.
- (k) On charges 1, 3, 4, 5, 7, 8, 9, 11, 14, 16, 18, 19, and 20 in the Crown prosecution notice you will be discharged pursuant to s 147.
- (l) I order the destruction of the firearm.



R G Marshall  
District Court Judge