

DIRECTOR OF PUBLIC PROSECUTIONS

v

CHRISTOPHER STUART STARR

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JUDGE: LEWITAN  
WHERE HELD: Melbourne  
DATE OF HEARING: 19 July 2019  
DATE OF SENTENCE: 16 August 2019  
CASE MAY BE CITED AS: DPP v Christopher Starr  
MEDIUM NEUTRAL CITATION: [2019] VCC 1253

**REASONS FOR SENTENCE**

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Subject: *Recklessly cause serious injury; recklessly cause injury*

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<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Ms S Borg	John Cain Solicitor for Public Prosecutions
For the Accused	Mr P Kilduff	Chris McLennan and Co

HER HONOUR:

- 1 Christopher Stuart Starr, you have pleaded guilty before me to one charge of recklessly causing serious injury for which the maximum penalty is 15 years imprisonment and one charge of recklessly causing injury for which the maximum penalty is 5 years imprisonment.
- 2 On 14 January 2018 Anthony Molluso (Molluso) walked to the local supermarket around the corner from his unit at the apartment complex at Caulfield South. He heard a car revving its engines and driving up and down the street. As he walked to the supermarket, he saw Natasha Guszich (Guszich) who was in a relationship with you. Molluso said hello and continued walking.
- 3 Shortly after, Molluso saw you pull up in your car. You got out of the car and accused Molluso of sticking needles in your girlfriend's arms. Molluso told you that he had nothing to do with Guszich and asked you to leave him alone. You then pushed Molluso in the chest and back and made a demand for half a gram of ice. Molluso told you that he did not have any ice and tried to leave. You "did some sort of ... martial arts kick" and told Molluso that you were a "black belt". Molluso offered to get some money for you as Molluso was scared of what you would do. Molluso just wanted to be left alone and for you to go. Molluso then walked back to his unit.
- 4 Shortly after this event, at approximately 2pm, you and Guszich went to visit Guszich's ex-boyfriend, Fuentes, at Fuentes' apartment in Larch Street. Fuentes noticed that your speech was slurred. You tried to start a physical fight with Fuentes resulting in Fuentes telling you to get out of his apartment.
- 5 Molluso heard you "yelling and carrying on" outside when he was back in his

- unit. Molluso told his partner Felicity Seeley ('Seeley') not to go outside.
- 6 Molluso grabbed a cricket bat out of a big vase (that also held umbrellas in it) from inside the apartment. He went outside. There were a lot of people outside watching what was going on.
- 7 Your car was parked in one of the middle bays that is closest to the bottom of the first photograph contained in exhibit A. You had reversed into the bay which is the third from the brick wall depicted in that photograph.
- 8 You were 'carrying on' near your car. Molluso went towards you with the "cricket bat held up like he was playing cricket" and told you to "fuck off, nobody wants you here, I don't know you, just fuck off". Molluso also told you that he did not owe you any money.
- 9 Molluso held the bat up at about chest level to "scare [you] off". Molluso agrees that he "must have been aggressive" as he was trying to scare you.
- 10 Fuentes' neighbour, Gavin Berry (Berry), was in his unit when he heard two male voices arguing. He heard Molluso yell at you to leave.
- 11 Berry walked outside his unit and saw the two men "up in each other's faces." He jumped in between them. They kept "going at each other" but they did not grab or touch each other. They did not hit each other at any point, it was just a very heated verbal argument.
- 12 Berry saw a bat in Molluso's hand. You got into the driver's seat of the car. Molluso then put the cricket bat through the open window under your chin. Molluso said, "piss off and leave everyone alone." Guszich was in the front passenger seat of the car.

- 13 You were accusing Molluso of putting a syringe in your girlfriend's arm. Molluso's partner, Seeley, heard you yelling at Molluso and went outside and yelled at you and Guszich to leave. She also heard Berry yelling at you to leave. She saw that Molluso had a cricket bat in his hand.
- 14 Fuentes also saw Molluso with the bat and heard him tell you to fuck off, however Molluso did not hit you with the bat and did not swing the bat at you. No one alleges that Molluso hit you with the bat. Fuentes said that you were standing over a group of people and that is why they were yelling at you to go away.<sup>1</sup>
- 15 You and Guszich got into the car and Berry and Molluso stood next to each other opposite the car, with Berry standing to Molluso's right.
- 16 Berry saw you reverse five metres and then drive straight for him and Molluso. Berry put his hands on the bonnet and flew over it. Berry felt the car nick his lower left leg causing a large abrasion. He heard a "thud" and saw Molluso get hit by the car. You then ran over Molluso again. Berry saw the car go over Molluso's upper body as he lay on the ground. Berry then saw you drive out of the carpark at high speed and turn right onto Larch Street.
- 17 Fuentes also saw you reverse back and drive straight at Molluso striking him and running over him. He saw Berry near the car and Molluso lying on the ground. He saw you reverse over Molluso before seeing you drive the car past Fuentes' door and out of the car park.
- 18 Berry ran inside to get a towel for Molluso and when he returned, he said that Molluso's body looked "mangled" and that "he had blood coming out of his

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<sup>1</sup> Transcript p 8.

- head.”
- 19 Another neighbour, Johan Vandervis (Vandervis) saw you take a hold of the bat as you sat in the driver’s seat and Molluso holding onto it. Molluso then fell back onto the ground. Vandervis then saw you move the car forwards and “veer to its right” hitting Molluso, with Molluso going under the car at the front of the driver’s side front. Vandervis also saw Berry bounce off to the left-hand front side of the car. Vandervis saw you continue forward and “then without hesitation, reverse[d] back.” Molluso was still under the car. You then drove out of the car park and Vandervis called 000.
- 20 Seeley also saw you reverse back and then drive straight at Molluso. She also saw you reverse over Molluso again hearing the crunch of his bones when this happened.
- 21 Both sides agree that initially you drove at the two men. Both sides agree that you did not intend to run Molluso over a second time but did so in trying to navigate your way out of the car park when other people from various units were standing around.
- 22 After the incident, Berry held Molluso up slightly to support him. They were then facing the street. Vandervis saw your car stop right across the driveway. Both you and Guszich were looking directly at Berry and Molluso for about 30 seconds and then drove off without saying anything.
- 23 Molluso was examined by Dr Vicky Kim on 19 January 2018, at the Alfred Hospital Trauma Ward. Not all of his injuries were able to be examined as some injuries were covered in plaster. Molluso also had limited movement due to his injuries which prevented a full examination.

- 24 The injuries to Molluso included a broken left arm and hand, 6 broken ribs, a broken left leg and ankle, a broken pelvis on both sides, damage to his left shoulder, kidney damage, a laceration to his head and burns from tyres to various parts of his body. Long term complications from the injuries include scarring and deformity as well as psychological trauma and post-traumatic stress disorder.
- 25 The prosecution alleges that you recklessly caused serious injury to Molluso when you drove over his body two times in a blue Holden Astra registration SDC473 (the blue Holden). The prosecution alleges that you acted without lawful justification or excuse in that your conduct was not a reasonable response in the circumstances despite your initial belief that you were acting in self-defence.
- 26 The injury sustained by Berry was a laceration to the left leg below the knee, which was photographed.<sup>2</sup>
- 27 The prosecution alleges that you recklessly caused injury to Berry when you struck him whilst driving the blue Holden.
- 28 In the record of interview with the police on 15 January 2018 (the record of interview) you said that you had a brief tiff with Fuentes and then a neighbour and his partner Seeley came out and said that you and Guszich were nothing but trouble. A bigger man then came out with a cricket bat. There were others in the carpark telling you that you were nothing but trouble. The man with the bat was angry, furious. You tried to grab the cricket bat. You and Guszich got into the car and in doing a U-turn you collected the man with the cricket bat. You said that because of the divider in the carpark you had nowhere to go. Guszich was heavily pregnant at the time of the incident. You said that you

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<sup>2</sup> Pages 189-194 of the depositions.

found the exchange intimidating. You said that “I had to exit quickly”. You admitted that it would have been better off just to drive away from them out of the gate rather than directly at them. You said that you could have driven over the bumps. You said that Molluso had not made any direct threats towards your girlfriend.

29 The facts in this case are very serious. The aggravating aspects include the use of a motor vehicle that you drove at the two victims. The injuries sustained by Molluso were severe. Molluso was 59 years old and Berry was 51 years old at the time of the offending.

30 No victim impact statements have been tendered in this matter. I have been informed that the victims were offered the opportunity of making such a statement but chose not to do so. It is clear from the depositions, the extent of the injuries suffered by the complainants and the evidence I do have before me that there was considerable suffering on the part of the victims as a result of your actions.

31 As has been pointed out by your counsel, there are however some mitigating factors. You have pleaded guilty. You were originally charged with the more serious offences of intentionally cause serious injury and intentionally cause injury. Although you did not plead guilty until the first day of the trial, there is a significant utilitarian benefit in your plea, saving the community the cost and inconvenience of a trial. Witnesses have been spared the ordeal of giving evidence upon your trial.

32 I accept that you are remorseful for your actions. This is consistent with your pleas of guilty, your expressions of remorse in the record of interview and the recognition that you “fucked up”.

33 I have been told something of your personal history and your circumstances. You were born on 17 January 1987 and are 32 years old. At the time of the

- offence you were 31 years old.
- 34 Your parents, Daryle Starr and Michelle Starr, separated when you were 8 years old. Your father moved to Melbourne. Your mother was living in Bendigo. When you were 8 or 9 years old you tried to hitchhike to Melbourne with a friend to be reunited with your father. Police intervened when you were at the Ballarat train station.
- 35 Soon after these events, your father decided that he should care for you and your younger sister and placed you in a primary school in Thornbury. Your relationship with your mother drifted. You became more unsettled at school despite getting good marks.
- 36 You attended Darebin High school in 2000 – 2001. You left school in year 11. You attended the TAFE institute course for electrician accreditation (in Coburg). In 2005 you started a job as a “motor-winder”. Your employment ceased in 2006 due to closure of the shop. You obtained a job as an air-conditioning technician. You started using heroin. You left your father’s house and began a long lasting stay with your uncle, Jeffrey Starr at Thornbury. You unofficially cared for Jeffrey whilst he recovered from a heart transplant.
- 37 Your mother died in a car accident in Tasmania in 2009. You were heartbroken and guilt-ridden due to the deterioration of your relationship with your mother.
- 38 You lost your air-conditioning job in 2010. Your use of heroin increased. Methadone treatment was undertaken but not successful.
- 39 You became the official disability carer for Jeffrey in 2015. You started dating Guszich. Guszich became pregnant in 2017. Your son Joshua Starr was born after you were arrested. Jeffrey Starr died in 2019.
- 40 You have admitted before me to prior convictions. There are 32 such convictions involving 4 court appearances between 2013 and 2016. The nature of some of those prior convictions, in particular the conviction for recklessly

cause injury on 25 August 2016, is highly relevant to my task of sentencing you today. You were also charged with unlawful assault in 2013. The matter was adjourned for 2 months without conviction.

41 You have been in custody for 548 days. Whilst in custody you have completed courses conducted by Corrections Victoria on the management of ice and dealing with ice addiction, managing emotions and managing worry. You have also completed courses conducted by Carniche on Release Related Harm Reduction, 24 Hour Managing Ice Addiction, 6 Hour Alcohol and Other Drugs and Loss and 6 Hour Ice Effects Program. You also participated in courses and received certificates from the Box Hill Institute, including Provide First Aid, Certificate II in Cleaning Operations (Workplace Safety Arrangements), Certificates 1 and II in Information, Digital Media and Technology, Certificate 1 in Information, Digital media and Technology, Certificate 1 in Access to Vocational Pathways, Certificate 1 in General Education for Adults. You have also received certificates for provide cardiopulmonary resuscitation (Kangan Institute), “take Stock A and B” and “Adapt” (Relationships Australia).<sup>3</sup>

42 Your father, Lindsay Starr and your partner Natasha attended court to support you. When you are released from custody, you hope to be reunited with your son. You are an electrician by trade and would have prospects of employment when you are released.

43 Taking these matters into account and the submissions made by your counsel, I have formed the opinion that your prospects for rehabilitation remain guarded and will depend on your ability to remain drug free in the community.

44 As well as those matters personal to you to which I have referred, including your prospects of rehabilitation, I must also take into account such matters as deterrence, especially general deterrence, which is of considerable importance in a case such as this. I must also consider the question of the protection of

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<sup>3</sup> Exhibit 2.

members of the community from you and bear in mind the likelihood of your re-offending. I am called upon by the *Sentencing Act* 1991 to manifest the community's denunciation of your conduct and generally to impose a just punishment.

45 These are without doubt serious offences. Your conduct involved the use of a motor vehicle being driven at the two victims and reversing over the victim Molluso. The injuries to Molluso were very serious. You conceded that the offending is serious. In all the circumstances I have no alternative to the imposition of custodial sentences.

46 It was conceded by your counsel that in the circumstances of this offence a term of imprisonment was called for. However your counsel submitted that in the circumstances of your case the term of imprisonment should be followed by a judicially supervised community correction order. Your counsel submitted that initially there were issues of self-defence. Your partner Guzsich was pregnant and seated in the passenger seat of the blue Holden. You were surrounded by a group of people yelling at you. Your counsel referred to the following answers you gave in the record of interview with the police:

Q 177 Why were you so worked up?

Because of the cricket bat.

Q 178 So what was he doing with the cricket bat?

He wasn't coming out to play cricket. He was coming out to threaten me for some reason.

Q 179 Did he threaten you?

Absolutely, my oath he did.

47 However you conceded that the manner in which you drove was a disproportionate response.

48 It is the Crown's view that an immediate term of imprisonment with a non-parole period is warranted in this case given the disproportionate response to the altercation between you and the victims and the injuries that resulted.

49 As you know I have sought and received a pre-sentence report in this matter. That report indicates that you are considered unsuitable for a community correction order. You have had prior involvement with Community Correctional Services, having been subject to prior Community Correction Orders in 2013 and 2016. Both Community Correction Orders were contravened by failure to complete conditions and further offending.

50 In my judgment the imposition of a community correction order in this case would not give sufficient effect to the principles of specific and general deterrence, the community's denunciation of your conduct and the need to impose a just punishment. Whilst you believed that your actions were necessary in self-defence, your conduct was not a reasonable response in the circumstances. Molluso sustained severe injuries as a result of your actions and continues to suffer adverse emotional and physical consequences.

51 As I have stated, these are without doubt serious offences. I propose to record convictions on all charges and sentence you to be imprisoned as follows:

Charge 1 –recklessly cause serious injury – to a term of imprisonment of 3 years and 8 months.

Charge 2 – recklessly cause injury – to a term of imprisonment of 12 months.

52 I direct that 4 months of the sentence imposed on Charge 2 be served cumulatively on the sentence imposed on Charge 1. That results in an effective sentence of 4 years. I direct that you serve a minimum term of 2 years and 6 months before being eligible for parole.

53 Further, I order that any driving licence held by you be cancelled and that you be disqualified from obtaining such a licence for a period of 12 months.

54 I direct that the order for disqualification is made under s89A of the *Sentencing Act* 1991 in respect of the offences of recklessly causing serious injury and

recklessly cause injury pursuant to s17 of the *Crimes Act 1958*.

55 As prescribed by s18(4) of the *Sentencing Act* I declare that the period of time you have already spent in custody is 548 days. I direct that such be noted in the records of the court.

56 Section 6AAA of the *Sentencing Act 1991* requires me to state the sentence and non-parole period that I would have imposed but for the plea of guilty. Your plea has saved time, expense, and the need for witnesses to give evidence, and is reflective of remorse. But for your plea of guilty, I would have sentenced you to a term of imprisonment of 58 months on Count 1 and 18 months on count 2. I would have directed that six months of the sentence imposed on count 2 be served cumulatively on the sentence imposed on Count 1, making a total effective sentence of 5 years and 4 months.