

# YOU BE THE JUDGE

## SENTENCING LAW IN TASMANIA



SUPREME COURT - CASE SCENARIO 2



# CASE SCENARIO 2

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## SUPREME COURT

**CHERIE ANN BROWN DOB 14/10/74**

### CHARGE: ARMED ROBBERY

At about 9.00 pm on Saturday 10 June 2002, a male employee was working at the Central Newsagency in Hobart Road, Kings Meadows. There were no customers in the shop at the time. Another employee was out the back having a coffee break.

A female wearing a balaclava, red jumper and blue jeans entered the premises. She held up a blood filled syringe and demanded money from the till. She said "If you don't give me the money right now, I will stick this into you."

The male employee responded by saying "Go away or I will call the police." The female then approached him waving the syringe in the vicinity of his left arm. Fearing that he would be harmed, the employee emptied the contents of the till into a brown paper bag and gave it to the female. She ran out of the store and was seen running down Hobart Road.

The male employee called the Police. The Police located a female fitting the description in Betty's Café nearby. She had approx \$600 on her person which could not be accounted for. She gave her name as Cherie Ann Brown. She was interviewed on video at the Launceston Police Station where she admitted to her involvement in the incident.

She stated that she needed the money for drugs. She also said she needed new shoes for her 6 year old son. She said she had no intention of harming anyone with the syringe but felt that it was a good weapon to use as people are "real scared of being infected." All but \$10 of the money stolen was recovered.

The Defendant was charged and bailed to reside with her mother at West Launceston.

### PRIORS

- 1989 Stealing - S234 Criminal Code. No conviction recorded
- 1993 Stealing – S234 Criminal Code Conviction recorded.
- 1998 Possession of Prohibited Substance. Conviction Recorded \$100 fine
- 2001 Stealing - S234 Criminal Code. Conviction recorded with a good behaviour bond for 2 years.  
(Current until November 2003)

### BACKGROUND

Cherie is the fifth child of a family of nine siblings. Her father was an alcoholic who abandoned his family when Cherie was nine. She has not seen him since. Her mother put her into foster care when she was ten years old. She had twelve different foster homes and four different schools between the age of ten and sixteen. She was a poor scholar. She started using drugs and abusing alcohol when she was 17 and lived on the streets at that time. She was sexually abused by a group of youths in a park when she was 18. She has never been employed. She has had several relationships over the years. Her son, Ricky was born when she was living with a known criminal, who is currently in prison for wounding. At present she lives with her son in a Housing Commission home in Mowbray.

### ISSUES

Prevalence of robberies of small businesses.

Is a deterrent sentence needed?

She is a mother of a young son.

Rehabilitation - Is detention the most appropriate way to deal with this offence?

# INDICTMENT

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SUPREME COURT

(TASMANIA)  
(LAUNCESTON)  
(TO WIT)

IN THE SUPREME COURT OF TASMANIA

THE QUEEN against CHERIE ANN BROWN

This            day of            2003..

MICHAEL TERRENCE PHIBBS Esquire Crown Law Officer on behalf of Her Majesty charges  
CHERIE ANN BROWN with -

STATEMENT OF CRIME

ARMED ROBBERY – Contrary to Section 240 (3) of the Criminal Code.

PARTICULARS

CHERIE ANNE BROWN at Kings Meadows in Tasmania on the 10<sup>th</sup> day of June, 2002 stole \$600.00 from Gary Black and at that time was armed with an offensive weapon, namely a blood filled syringe.

(Sgd) Michael Terrence Phibbs  
CROWN LAW OFFICER

Filed in the Supreme Court of Tasmania

this            day of            2003.

CLERK OF THE COURT

# CRIME

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## SUPREME COURT

### Armed Robbery

#### *Criminal Code Act 1924* (“Criminal Code”)

#### Robbery, &c.

**240.(1)** A person who steals anything and, immediately before, at, or immediately after the time of stealing that thing, uses or threatens to use violence to any person or property in order to obtain that thing or to prevent or overcome resistance to the stealing of that thing is guilty of a crime which is called robbery.

Charge: Robbery.

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**(3)** A person who commits robbery and is armed with a firearm or other dangerous or offensive weapon or instrument at the time of committing that robbery is guilty of a crime which is called armed robbery.

Charge: Armed Robbery.

### *Chapter XLIII - Punishments*

#### Sentences

#### 389.

.....

**(3)** Subject to the provisions of the Sentencing Act 1997 or of any other statute, and except where otherwise expressly provided, the punishment for any crime shall be by imprisonment for 21 years, or by fine, or by both such punishments, and shall be such as the judge of the court of trial shall think fit in the circumstances of each particular case.

# VICTIM IMPACT STATEMENT

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SUPREME COURT

RE: CHERIE ANN BROWN  
FROM: GARY SHORT BLACK

I work at the Central Newsagency in Hobart Road, Kings Meadows. I am employed on a permanent basis and work from 2 to 10 pm Saturday to Thursday. On Saturday 10 June 2002 I started work as usual at 2 pm. My mate Andrew was also working that day. We started the day off normally by sorting the previous days papers, sorting the display and leaving the excess papers out the back for the driver. We had been really busy all afternoon. Andrew had been on a drinking binge the night before and decided that he needed something to eat. He headed out the back to the tea room and left me in charge of the shop. It was about 9 pm, I think.

I was tidying up behind the front counter when a female customer entered the shop. I didn't really notice what she was wearing, but when she came closer to the counter I noticed she had a balaclava on her head. I remember wondering what she was up to. The closer she came I could see she had a blood filled syringe in her hand. She demanded that I empty the till and hand her all the money. I opened the till and as I was very nervous I fumbled with the cash tray.

She threatened to stick the needle into me if I didn't hurry. I put all the money in a brown paper bag and gave it to her. She left the shop. I was so frightened, I couldn't stand up, and my legs just wouldn't hold me.

Andrew came from out the back after hearing me fall over. He came over and wondered what on earth was wrong. I was as white as a sheet and the till was open and the cash drawer minus the cash was on the floor. I remember him asking what had happened. All I could say was call the cops we've been robbed.

The rest of the evening passed in a blur. The police wanted to know what had happened, I had to explain it also to my boss. They wanted to know if I knew the person who took the money. They wanted to know if I had set the whole thing up. I hadn't I was the innocent one here.

I still have nightmares about that day. I didn't work for a few weeks I was just too frightened. I wasn't paid for that time, but have since returned to work. I won't stay in the shop by myself and I always jump when the bell rings confirming that the front door has opened. I live in fear that someone else will come and rob the shop.

I don't know if the blood in the syringe was HIV positive, but I have nightmares that the blood was splattered all over me and I died a long and painful death. None of this was my fault I was just doing my job and earning some money to keep my family.

I know that I am different at home now. I have two little girls. I won't let them go anywhere unless either my wife or I are with them. I won't answer the front door at home. All my friends know to come around the back; I won't open the front door any more. My wife has had the hardest time. I yell at her when I can't cope with what is happening and I know I am really mean to her. I can't help it I am still so frightened.

I am getting some help and hope that I will be better soon. It has been nine months already. I think I am making progress. I have been warned that it will take a while and I may never forget what happened.

# GROUP WORKSHEET - PAGE 1 OF 2

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## CASE 2 - SUPREME COURT

1. What crime has been committed?  
See Indictment.
2. What is the penalty range for the crime?  
See relevant legislation.
3. What should the sentence be?

### **PART 1 (FOR DISCUSSION WITHIN YOUR GROUP)**

#### **A. FACTORS TO TAKE INTO ACCOUNT**

Issues listed in scenario  
Circumstances of the crime  
Victim impact  
Personal Circumstances of the Defendant  
Character of the Defendant  
Remorse (if any) shown by Defendant  
Financial Circumstances of the Defendant (relevant to capacity to pay fine)  
Prior convictions

#### **B. SENTENCING OPTIONS**

Imprisonment  
Suspended sentence – wholly or partly  
Community service order up to 240 hours  
Probation order – can add special conditions  
Fine  
Adjourn for up to 5 years & release on undertaking to be of good behaviour with conditions  
Record a conviction and discharge offender  
Dismiss charge

# GROUP WORKSHEET - PAGE 2 OF 2

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## CASE 2 - SUPREME COURT

### PART 2 (FOR PRESENTATION)

Group Colour:

**A.** Sentencing Decision (only write final decision on paper):

\*Imprisonment for..... months/ years

Wholly / partly suspended for ..... months/ years

Community service order for.....hours

Driving disqualification for ..... months/ years

Probation order for ..... months/ years

Specify any special conditions -

Fine for \$ ..... at the rate of \$ ..... per fortnight

Adjourn for ..... months & release on undertaking to be of good behaviour with conditions  
– Specify .....

Discharge offender

Dismiss charge

**B.** Why (3 main reasons)

- .....
- .....
- .....

**C.** \*Non-Parole Period (only relevant to imprisonment)

Yes for .....months/years

OR

No

# THANKS

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The Sentencing Workshop was a joint initiative of the Crime Prevention and Community Safety Council, Legal Aid Commission of Tasmania, Neighbourhood Watch Association, Department of Justice and Industrial Relations and Department of Police and Public Safety. Special thanks go to the Law Foundation for supporting the initiative.