

Justice 2020? Court lets cop who leaked address of domestic violence victim walk free with no record

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[MICHAEL BRADLEY](#)

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Nine separate times over the course of year, Senior Constable Neil Punchard misused his access to the Queensland Police Service's restricted computer systems, searching for and obtaining private information about a close mate and the mate's estranged wife.

Among other information, Punchard gave his friend the address where his wife was living. At the time, as Punchard knew, they were going through a particularly nasty separation.

Later, Punchard's friend would be convicted of domestic violence offences against his wife. He had threatened to kill her.

Punchard wasn't just innocently helping out a mate; he became personally invested in the cause. The many texts and emails he sent to his friend included this delight: "...is she fuckin' delirious? Fuck her. No more negotiations. Court, court, court."

As the court recorded, at one point Punchard "suggests that [his friend] should wind her up, laugh at her, smash her with the facts, reply with a laugh. And it's in that context that he provides the address where [his friend] might find [his friend's wife]".

There's plenty more, but you get the gist. Punchard, a senior officer of 18 years' service, could hardly not know how comprehensively he was breaching the public trust invested in him as a police officer.

Whatever Punchard thought he was doing, his actions exposed a woman to serious danger. That's why the extraordinarily sensitive information to which police have access is supposedly so closely protected.

It's also supposed to be the central concern of the criminal justice system to protect people from criminals, not to facilitate their wrongdoing.

Punchard was convicted of nine counts of criminal hacking under the Queensland Criminal Code, an offence with a maximum penalty of five years imprisonment per count. So you'd expect he copped a pretty hefty serve, right?

The magistrate who convicted Punchard gave him 2 months for each count, but suspended the entire sentence (meaning no jail time). However, Punchard appealed against the severity of that to the District Court, which agreed that it is too harsh and instead gave him 140 hours of community service. The court also exercised its discretion to record no conviction, leaving Punchard with a clean criminal record.

Why? Well, a number of factors conspired to protect Punchard from what many of us might have called actual consequences. First, the prosecution had made the decision to particularise its charges on the basis that Punchard had not caused any "detriment" by his hacking, only gained a "benefit" which they called "knowledge". The judge thought that very significant, ignoring why exactly he had wanted to gain that knowledge and what he then did with it.

As such, the judge considered that the consequences of Punchard's wrongdoing had very little relevance to the punishment he should receive. The court had received a victim impact statement from his friend's wife, but the judge was at pains to note that she wasn't really a victim at all: "While the upset experienced by [her] as a result of [Punchard's] offending is understandable, the fact remains that the appellant was not charged with causing or intending to cause her detriment or damage."

Also on the judge's mind was the fact that Punchard's friend had not been charged with any domestic violence offences, and there was no evidence that Punchard was aware of any particular risk of that type when he provided information to his friend.

While he did know the relationship was acrimonious (that was more than obvious from what Punchard himself was saying to his mate, for example, "fuck this bitch"), the judge was impressed that he had "specifically checked whether any protection order had been made before releasing the address". Top bloke. Give him a medal.

Still, the judge recorded that Punchard "should have known better that to involve himself in an acrimonious family dispute" and some of the things he wrote to his friend about his wife were "derogatory and offensive".

On the other hand, he had enjoyed an exemplary career and an otherwise good character, and he'd lost pay due to internal police service punishment.

More importantly, as he is now 54, he "will find it difficult to find work if he loses his job as a police officer, especially in the current climate." Because a conviction would most likely result in dismissal, the only fair outcome was to record no conviction at all.

Every week in Australia, a woman is killed by her current or former partner. One in six women report having been the victim of physical violence by a partner since they were 15. Domestic and family violence in this country persists well above crisis level, year after year.

Sentencing practice is hellishly difficult and I sympathise with every judge and magistrate who must undertake it. No matter where they land, someone will say they got it wrong. The judge in Punched's case wasn't crazily out of line with prevailing principles in the decision he made.

However, the outcome of this case speaks to where the priorities of our criminal justice system still lie on the subject of domestic violence: in a far distant field from where they should.