

The defendant, Mr Brown, has pleaded guilty to one count of assaulting a police officer, contrary to s 114(1) of the *Criminal Code*. The charge arises out of events on 8 November 2019. At about 11.50am, police officers in a marked vehicle saw the defendant in the driver's seat of a red motor vehicle, parked in a driveway in a suburban area. The defendant was accompanied by a youth. It is common ground that the vehicle had been reported as stolen earlier that day, and also that it seems the defendant had recently been involved in that and other offending. After the police drove past, the defendant drove away and police followed. Due to the manner in which the vehicle was being driven, authority was given for the use of road spikes. Another police unit waited to deploy those spikes at the intersection of the East Derwent Highway and the Bowen Bridge. When approaching that point, the defendant was driving in the right hand lane of dual lanes, travelling at an estimated speed of 60 to 70 km/h. Constable Mehdi Mohammadi deployed the spikes in the right lane, and retreated to the left lane near a marked bicycle lane. He was wearing a police uniform which included a high visibility vest. In an apparent attempt to avoid the road spikes, the defendant swerved into the left lane which put his path directly towards the officer. The tyres were spiked but the vehicle did not slow appreciably, and continued towards the officer who tried to run away. The vehicle struck the officer to the left side of his lower body. He collided heavily with the bonnet, and went over the roof of the car before he fell to the ground, striking both his head and body. Const Mohammadi sustained abrasions to his left forearm, left lower leg and hip, as well as bruising, swelling and general aches and pains. He was hospitalised and treated for concussion due to his head injuries. The defendant continued driving the vehicle along the East Derwent Highway towards Risdon Vale. Police followed with lights and sirens activated. By this time, the vehicle had slowed to about 40 to 50 km/h and was travelling on flat tyres. Police continued to follow. The defendant's vehicle slowed to about 20 km/h but he did not stop until there was a collision with another vehicle at a roundabout, some three kilometres away from where the road spikes had been deployed. The defendant was apprehended and later interviewed. In that interview, he made admissions. He said he was aware police were trying to intercept him, and he wanted to get away. He saw the officer in the middle of the road and slowed to 20 km/h. He tried to avoid the officer. He said he was shocked and scared by what he had done and claimed it was an accident. The Crown does not accept that the defendant tried to avoid hitting the officer or slowed to 20 km/h although it is conceded the defendant may have briefly braked to avoid the road spikes. The defendant does not raise a dispute in relation to this position. The Crown accepts that the defendant did not intend to strike the officer, but was reckless as to the likelihood of that occurring. Const Mohammadi continues to suffer pain in his neck, shoulder, back and knee as a result of the incident. He has experienced a significant psychological impact. He is receiving ongoing medical support and treatment, including seeing a psychologist and a physiotherapist. I have a lengthy victim impact statement dated 13 July 2020. In short summary, immediately after the incident he says was shocked and shaken; he could not tell how bad the injuries were and he was still trying to accept what happened. His partner was seven months pregnant at the time, and he was worried about the effect on her, on his wider family and on work. He was not able to walk without assistance for almost two weeks and was in constant pain, mostly in his leg. He has attended multiple medical appointments for consultations, scans and the like. His psychological treatment has addressed developing depression and feelings of uselessness. He eventually went back to work after a couple of months but had to manage with pain medication and consultations to assist with his mental health. More recently he had to seek advice from an orthopaedic surgeon about his knee injury and there is a possibility of surgery. He is still feeling the effects of the incident, both physically

and mentally. He says he has suffered a great deal simply as he was doing his job. He feels the assault has caused him a long lasting effect, and he is not sure if he will fully recover. For completeness, I note the Crown does not suggest the officer has suffered serious bodily harm within the meaning of s 16A of the *Sentencing Act*.

The defendant is now 28 years old. He has a lengthy record starting as a youth in September 2007. As an adult he has a bad record for offences of dishonesty, and an appalling record for driving offences, including 19 convictions for driving whilst disqualified. That charge is not before me, but he was disqualified at the time of this offence. That is relevant as context, as is the fact that he was trying to avoid apprehension because of his recent conduct. Of particular significance are convictions in June 2010 for two assaults on police officers by use of a vehicle arising out of the one incident. He then faced a total of 18 charges arising from two episodes, including dangerous driving, driving whilst disqualified, and offences of dishonesty. After an appeal by him, he was sentenced to three years' imprisonment with a non-parole period of 18 months. Of particular relevance is that the assaults effectively involved precisely the same scenario. One officer was assaulted when the defendant, on being pursued and encountering a road block, drove at a car in which the officer was sitting. The second assault occurred when the defendant drove at an officer who was deploying road spikes. That officer managed to get out of the way. The assault was by driving at him. The defendant was paroled in respect of that sentence but breached several times. On several subsequent occasions he was sentenced to terms of imprisonment, some of which were partly or wholly suspended. Most recently, in July 2019, on traffic and dishonesty offences, he was sentenced to four months' imprisonment, the execution of which was wholly suspended for 12 months. He was made the subject of a community corrections order and disqualified for 18 months. Accordingly, he was the subject of the conditions of suspension at the time of this offence, which is relevant although no application to activate the sentence has been made to me. The defendant has an unfortunate background. His family unit fractured when he was quite young. His parents separated, his mother leaving the country with the defendant's half-sister, leaving the father to care for him and his younger brother. The father struggled. The defendant was exposed to substance abuse and violence from a young age. He was expelled from school and then evicted from the home. He started to offend and took up with criminal associates. He engaged in substance abuse and developed an addiction to drugs including methylamphetamine and morphine. Since the age of 18, he has spent much more time in custody than free. In April 2018 he was sentenced to a partially suspended term of imprisonment which was backdated. From then there was a period of about 14 months during which he established a positive relationship with a woman and was relatively drug-free and felt he was turning his life around. However, he was still facing charges, and in June 2019 his bail was revoked. Those court matters seem to be the ones concluded in July 2019. Having reconnected with his antisocial associates in prison, he again started to use drugs heavily when he was free. The defendant had been living with his partner at her parents' home but he was asked to leave. At the time of this offence he was homeless and using drugs. He has been the subject of a number of community corrections orders with conditions to address his drug use, but he has not been able to overcome the problem.

As to the relevant considerations, first it must be said that general deterrence and denunciation are the primary considerations. Assaults on police officers who are acting in the execution of their duty and for the protection of the public, often exposing themselves to risk of injury as in this case, have to be condemned. Although the application of force was reckless and not intentional, the defendant attempted to avoid the road spikes which involved driving at or in the direction of the officer. The basis of the accepted plea means the defendant adverted to the risk of impact but proceeded regardless. There was a high degree of recklessness, and a high

risk of serious injury. It is fortunate that Const Mohammadi was not more seriously injured. I have already outlined the effects on him; those effects are ongoing. I have already noted that the defendant was seeking to avoid apprehension because of recent conduct, and that he should not have been driving in the first place. Specific deterrence is also a prominent factor given the previous involvement in precisely the same type of behaviour. At the same time, I take into account the plea of guilty. This was not entered at an early stage in the proceedings but some time was taken to resolve the issue of intention. It has saved the officer and other officers from giving evidence, and there is generally a utilitarian value. That value is perhaps higher than ordinarily it might be because a jury would have had to determine, by inference, the defendant's state of mind. In addition to the plea, I am told that the defendant is genuinely remorseful. I was told of tearful expressions made during the interview relating to remorse and concern for the officer's wellbeing. I accept that on reflection, the defendant regretted his conduct. I accept that the relevant conduct occurred in a very short time span, and that the assault was not premeditated in any sense; it was a "split second" decision made in an attempt to avoid the road spikes, involving some, but no great, moderation of speed. I was told that the defendant was in complete shock after he had hit the officer. In the rear vision mirror, he saw him stand up and could see no obvious sign of injury, and the passenger yelled at him to drive off so that they could get away. It was put that the defendant accepted he would be arrested and slowed the vehicle, although I note the tyres were then spiked, which would have impeded progress, and that he drove some distance before involuntarily stopping. I take into account the lack of recorded convictions for violence since the similar matters in 2010. The defendant does not seem to be typically violent and obstructive, although the overall record shows a high level of persistent criminality in the forms I have mentioned. The defendant has been in custody since 8 November 2019. I accept, as suggested by counsel, that the prison environment is presently more onerous than usual in terms of more limited visitor contact and program availability.

Mr Brown, I have outlined what I see to be the relevant factors in your case. This is a grave matter. You thought of the risk of hitting the officer but took the chance he would get out of the way. Were the impact to have been intentional, the sentence would have been markedly higher. But even as it is, it calls for a significant penalty. That is particularly so in your case given your involvement in an almost identical scenario, for which, along with quite a number of associated offences, you spent a long time in gaol. That is now some time ago but the similarity of conduct suggests a current need to attempt to dissuade you from repetition. Your plea of guilty entitles you to a discount. The period during which you were relatively drug free and with limited offending shows that you are not beyond rehabilitation, and your expressed remorse in the interview supports that. For that reason I will provide parole eligibility. You are convicted and sentenced to 20 months' imprisonment to commence on 8 November 2019. I order that you not be eligible for parole until you have served 12 months of that sentence. You will be disqualified from driving for a period of 18 months. That period will be cumulative to any current periods of disqualification.