

You initially continued to interact with each other in this way after you had arrived at the front of your house. However, I am satisfied that after a short time, and without any provocation from you, the complainant's mood and attitude changed markedly and he started to act towards you with hostility and aggression. I am satisfied that he in fact stabbed you with a sharp implement, causing a needle-like puncture wound in your side, and then told you that he had just infected you with hepatitis C. He also made threatening comments to your partner and you, and then ran away.

In relation to what happened after this, I will proceed substantially in accordance with the version of events given by your partner to police when she was interviewed later that morning. It is clear from the verdict that the jury accepted this version, which is inconsistent in significant respects with what your partner said in court, with a version given by you in your police interview, and with the complainant's evidence. Had the jury accepted the version put forward in your partner's evidence in Court and your police interview as a reasonable possibility, it is extremely unlikely that you would have been found guilty of this crime. In any event, having viewed your partner's interview, I am satisfied that she was giving a truthful and substantially accurate account when she spoke to police.

After the complainant had run away from your house, both you and your partner were understandably concerned about his claim to have injected you with hepatitis C. However, you did not chase or follow him at that time, and I am satisfied that you did not intend to take any further action. I am also satisfied that the complainant went immediately back to his house, for the purpose of collecting a weapon, a tomahawk, and then returned with it to the park across the road from your house. I am satisfied that his intention was to mount some kind of attack on you. It is not clear from the evidence why he decided to do this, and there may not be a rational explanation for that. He acted in a provocative way by using what I think was probably the tomahawk to bash on metal play equipment and thereby cause significant noise. This noise was heard by and disturbed a number of neighbours. You and your partner went to investigate. When you reached the park, the complainant, who had been hiding, ran at your partner, brandishing the tomahawk with the apparent intention of hitting her in the head with it. He was holding it by the handle so as to make contact with the sharp blade. When he saw you, he diverted his attack towards you rather than her. You then became engaged in a defensive struggle with him, and were eventually able to disarm him. During the course of this struggle, you threw him to the ground and delivered some blows. I am satisfied that the force used by you during the course of this struggle was in lawful self-defence and defence of your partner.

After you had taken the tomahawk from the complainant, he tried to run away. I am satisfied that you chased after him and tackled him to the ground. You then brutally assaulted him. He was lying on the ground and you stood over him and punched him to the face with considerable force a number of times. It is not possible for me to be certain about the number of punches but the medical evidence was that the injuries to the complainant's face were consistent with a minimum of three and more probably five blows. In any event, it is clear from your partner's version that it was a sustained attack and you only desisted because she screamed at you that he had had enough and she threatened to call the police. This alone allows some understanding of the ferocity of the attack. On the other hand, I am not satisfied that you kicked the complainant at any time, nor that you used or were even armed with a baseball bat or any other weapon. All of the blows were delivered by punches with a closed fist. This is consistent with your partner's evidence. Further, the forensic evidence is not consistent with kicking or the use of a weapon, and the only witness who suggested to police that he saw kicking, recanted this in his sworn evidence. I accept as truthful and accurate the evidence that that witness gave to the Court.

I am satisfied, as the jury clearly was, that your actions in chasing, tackling and bashing the complainant after you had disarmed him and he had started to run away, did not amount to lawful self-defence. In fact, I am satisfied that you were not then acting defensively at all. You were angry and seeking retribution against the complainant, both for his immediate attack on your partner and yourself with the tomahawk, and his earlier actions. I am satisfied, consistent

with observations made by your partner, that you simply lost your temper and were acting in an uncontrolled rage. It is a mitigating factor, of course, that you had been subjected to very considerable provocation by the complainant. For no apparent reason, he had attacked you earlier in the night, and then had mounted a potentially lethal attack with a weapon on your partner and yourself. Your concerns would have been compounded by the fact that both you and your partner believed that she was then pregnant. It is clear also that your criminal reaction occurred before there had been time for your anger to abate. On the other hand, the fact that your actions were fuelled by emotion and anger made them even more dangerous, because these emotions considerably reduced your capacity to moderate and restrain the force which you used in the attack. Further, the jury's verdict is consistent with satisfaction beyond reasonable doubt that you had formed an intention to disable or cause grievous bodily harm to the complainant. You clearly wanted to teach him a violent, painful and potentially dangerous lesson. This considerably aggravates the objective seriousness of your conduct. Finally, your moral culpability is aggravated by the fact that after the attack, you simply left the complainant injured and bleeding in the park, without making any attempt to provide him with assistance.

The complainant has not provided a victim impact statement. However, the medical evidence establishes that he suffered lacerations to his eyelid, above his eye and on his left cheek. He also suffered deep cuts on both sides of his lips. Some of the lacerations were through the full thickness of the skin and underlying muscle. They caused considerable swelling and bleeding, and required surgical repair. The prognosis was for full recovery but with some scarring and potential concussion-type symptoms. However, there is no evidence of any actual ongoing impairment or consequence.

You were 19 years of age when you committed this crime and are now 21. You had a chaotic childhood and witnessed and were probably subject to significant violence within the family home when you were very young. At eight years of age you were taken into care by child safety services and spent much of your older childhood in foster care. By your mid-teens, you were homeless. Despite this, you have a relatively modest criminal history, at least until November 2018, when you were dealt with by the imposition of community-based orders for a variety of offending, related mostly to traffic, bail and street offences. You have no prior convictions for matters of violence, although subsequent to the commission of this crime, you were convicted of common assault, which had been committed about six months before these events. I am told that you were on bail in respect of that matter when you committed this crime.

Your counsel submits that there are a number of reasons to conclude that despite your difficult childhood and the commission of this crime, you have good prospects of rehabilitation. You and your partner are still in a committed and mutually supportive relationship and you now have a young child. I am told that you are devoted to your family and enjoy your role as a father. You live in a small unit that you have resided in for a number of years and take good care of it. You and your family may lose that accommodation if you are sentenced to a lengthy term of imprisonment. Your partner suffered complications after giving birth to your child and you have been caring for her on a full-time basis. However, you are now able to look for employment and have been actively doing so. You have previously done some courses to improve your prospects of obtaining employment. Finally, I am told that you have not been charged with committing any further offences subsequent to the commission of this crime.

This is a difficult sentencing exercise. There is no doubt that you committed a serious crime, although I think your moral culpability is heavily mitigated by the conduct and provocation offered by the complainant. I disagree with the prosecutor that your actions can be characterised

as seeking vigilante justice. There was no element of planning or premeditation involved in your conduct, it was completely responsive to the serious attack perpetrated by the complainant. The hostile interaction with the complainant did not start with you. However, it is clear that after you had successfully defended yourself and your partner, you then acted in anger to seek retribution and had formed an intention to cause serious harm to the complainant. In the end, you did cause significant injury, although I accept that this case can be distinguished from more serious cases of its type by the fact that your conduct has not resulted in any ongoing impairment. Further, I agree with your counsel that your age and background and current circumstances requires that considerable emphasis be placed on rehabilitation.

For all of these reasons, I think this case is at the lower end of the scale of objective seriousness in relation to what, by definition, is a serious crime. However, **this specific case** is serious enough, and general deterrence remains an important sentencing consideration. The perpetration of significant violence, notwithstanding the provocation offered, is a serious crime and has no place in our community.

After taking into account all relevant considerations, I have concluded that the appropriate sentence in this case is a home detention order. Such an order will inflict appropriate punishment having regard to the objective seriousness of the crime, fulfil the requirement to emphasise general deterrence, but at the same time avoid the corruptive influence of prison in respect of a lengthy sentence. I regard this as an important consideration because of your age. Such an order will also provide an opportunity for you to pursue rehabilitation. It will be combined with a community correction order. I note that you have been assessed as suitable for both forms of order.

In assessing the punitive effect of the order, I have taken into account that you have been remanded in actual custody since 9 November 2020.

The orders I make are as follows:

- 1 You are convicted of the crime of which you have been found guilty.
- 2 I make a home detention order, which will have an operational period of 18 months, which will commence immediately. The home detention premises will be at [address]. I note that the core conditions of the order contained in s 42AD(1) will have effect during the operational period of the order. This will include s 42AD(1)(g), which is the provision requiring submission to electronic monitoring. For the purposes of the condition contained in s 42AD(1)(c), I specify that the offender must during the operational period, be at the home detention premises at all times on each day of the week, unless he is not there for a relevant reason, as specified in s 42AD(4). The order will also include the following special conditions:
 - (a) That you must report to a community corrections officer at Community Corrections at Highfield House in Hobart immediately after 9am tomorrow.
 - (b) That you must, during the operational period of the order, maintain in operating condition an active mobile telephone service, provide the details to a community corrections officer and be accessible for phone contact through this device at all times.

- (c) That you must, during the operational period of the order, submit to the supervision of a community corrections officer as required by that officer.
 - (d) That you must not, during the operational period of the order, take any illicit or prohibited substances, including:
 - (i) any controlled drug as defined by the *Misuse of Drugs Act 2001*;
 - (ii) any medication containing an opiate, benzodiazepine, bupropion, hydrochloride or pseudoephedrine unless you provide written evidence from a medical professional that you have been lawfully prescribed the relevant medication.
 - (e) That you must not, during the operational period of the order, consume alcohol and you must if directed do so by a police officer or community corrections officer submit to a breath test, urine test or other test for the presence of alcohol.
- 3 I also make a community correction order. You must comply with the order for a period of 18 months, and that period shall commence immediately. The core conditions of the order require you to report to a probation officer and you shall do so at the office of community corrections at Highfield House in Hobart immediately after 9am tomorrow. In addition to the core conditions, the order shall also include the following special conditions:
- (a) you must, during the operational period of the order, attend educational and other programs as directed by the Court or a probation officer;
 - (b) you must, during the operational period of the order, submit to the supervision of a probation officer as required by the probation officer;
 - (c) you must, during the operational period of the order, submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer.