

The defendant, Mr Eaves, has pleaded guilty to one count of aggravated burglary and one of assault. Those counts arose out of a "home invasion" type incident on 28 November 2017. At about 11.30pm on that day the complainant, Reginald Collins, was at home with his partner Catherine Fisher and Ms Fisher's daughter, Ms Leed, and Ms Leed's 7 month old baby. They were sitting in the lounge room, which is next to the front door. That door, which had glass panels in it, was slightly open, but there was an external screen door which was locked. Mr Collins heard a noise that sounded like someone pulling on the screen door. He went to the front door where he encountered a number of men trying to get in. He put his shoulder and weight against the door to prevent them. The Crown facts refer to three men, and it is common ground that there were three men generally involved, the defendant being one of them. However, the defendant says that during the events that followed, he remained on the porch outside the house and did not force the screen door, nor enter the house. The Crown does not challenge this assertion in any real sense, but for reasons that will emerge the defendant must have had some form of contact with the screen door. In the attempt to gain entry, the other men hit and kicked the door causing two of three glass panes to smash. One man pulled Mr Collins' arm through the middle section of the door causing Mr Collins to be cut by the broken glass in the frame. The two men gained access by pushing their way into the unit. Mr Collins was pushed backwards into a crouched down position against a wall where he was punched a number of times to the head. The two men demanded Mr Collins' wallet, asked where his money was and felt through his pockets. Mr Collins said he did not have a wallet, after which one of the men demanded of Mr Collins' partner where the money was. She said there was no money. The men then left and the police were called. The defendant says he left the scene as soon as he heard raised voices – a fact also not in dispute – but accepts that he was a party to the assault. The defendant was identified by way of a DNA match, that DNA being taken from a small sample of skin found on a torn section of the screen door. He was arrested on 25 July 2018. The two other offenders have not been identified. The laceration to Mr Collins' arm was some 12 centimetres in length and required surgical repair involving significant stitching. He had to undergo a period of physiotherapy. In his victim impact statement he says he was severely cut and shocked by the incident. He spent two days in hospital and has ongoing weakness in his arm.

The defendant is now 29 years old; 26 at the time. He has a history of prior offending starting as a youth in 2008. In April 2009 he was convicted of aggravated assault and escape for which, along with creating a nuisance, he was sentenced to 12 months' youth detention made cumulative to a 12 month period of youth detention imposed two months earlier for offences of dishonesty and traffic offences. Those traffic offences included dangerous driving and driving whilst disqualified. In October 2010 he was convicted of a number of offences including motor vehicle stealing, and resisting, obstructing and abusing a police officer, and sentenced to four weeks' imprisonment suspended. Further convictions for dishonesty, significant traffic matters and anti-authority offences including obstructing police followed, resulting in a six week suspended term of imprisonment imposed in December 2013. Since that time there is a marked improvement in the record, with a disorderly conduct matter in 2015 and little recorded history since. I have the benefit of counsel's submissions and a home detention assessment report. The defendant seems to have had a relatively unremarkable upbringing. He has a close relationship with his parents who separated when he was 18 years old, and with his three siblings. He was educated to grade 10 level, although that was completed while in youth detention. During that time he also completed a bricklaying and

automotive course. For some reason his schooling years were difficult, with suspensions due to behavioural issues. He has not been employed since 2015. He was employed in scaffolding and roofing areas, but chose not to continue due to a dislike of heights. I note that he cared for his unwell father for a time before the father went into a care facility. After that, the defendant's drug use increased. At the time of this offending he was abusing illicit substances and was part of a group who did the same. I infer that these associates were involved in the offending. He was the youngest of the three involved and went along with the plan. In relation to the aggravated burglary, the intended crime as alleged was stealing. It seems the intention was to get in to steal money from the complainant who was reputed to be selling drugs, something which proved to have a basis in fact. In any event, the defendant seems to have removed himself from that group of associates and now spends most of his time at home with his family. He has been in a long-term relationship with his current partner. They have four children, three of whom are of school age, and all live within the home. He is described as an active father, picking up the children from school each day and does most of the shopping. He does not have an issue with alcohol. He started using cannabis at the age of 14 and went on to regular amphetamine use. He has committed crimes while under the influence of that drug. I was told he has considerably reduced his drug use in the last eight months, and I note he told the probation officer he has not used amphetamines in that time.

This sort of criminal conduct needs to be strongly condemned. Members of the community should expect to feel safe, particularly in their own homes. In this case, as well as the adult residents, a young woman and her baby were present during the attack. General deterrence and denunciation are weighty factors. I proceed on the basis that in relation to the aggravated burglary the defendant was acting in concert or an abettor – it really makes no difference to sentence – and was a party to the assault by way of s 4 of the Criminal Code. I accept that he did not enter the house. The particulars of that assault do not include the laceration injury to Mr Collins, and the defendant is not charged with a crime directly relating to it. But notwithstanding that, I am able to take that injury into account. Although neither violence nor injury was intended or foreseen by him, that someone in the home might be injured in some way in the course of the unlawful entry in the particular circumstances, including the time, was reasonably foreseeable: see *Vanstone v The Queen* (2012) 35 VR at [41]. That is to be given some weight in the sentencing process, but it is not of any great significance. I take into account the pleas of guilty and the fact that the defendant played a much lesser part in what happened. I note that he seems to have taken steps to rehabilitate himself, although he is assessed as requiring a high level of intervention from Community Corrections. I consider specific deterrence to also be a weighty factor.

Mr Eaves, I have set out the essential facts and what I see to be the relevant factors in your case. This was a serious incident although I accept you played a significantly lesser role. You seem not to have actually planned or expected violence but quite plainly violence was a probable consequence of the carrying out the plan. With your consent I make a home detention order, the operational period of which is nine months to commence today. The statutory core conditions of the order are those contained in s 42AD(1) of the *Sentencing Act* 1997 including electronic monitoring, with the exception of subs (1)(j) which does not apply in these circumstances. Those conditions will be set out in writing for you. I specify the home detention premises for the purposes [address]. Special conditions of the order are as follows:

- 1        You must during the operational period of the order, submit to the supervision of a probation officer as required by the probation officer.

- 2 In addition to the core condition in s 42AD(1)(h)(i) relating to electronic monitoring, you are not to allow anyone else to tamper with, or damage or disable, the device used for the purpose of electronic monitoring.
- 3 You must maintain in operating condition an active mobile phone service, provide the details of that to a probation officer or prescribed officer, and be accessible for phone contact at all times.
- 4 You must not take any illicit or prohibited substances including any controlled drug within the meaning of the *Misuse of Drugs Act* 2001, and any medication containing an opiate, benzodiazepine, bupropion hydrochloride or pseudoephedrine without a prescription from a medical professional, proof of which prescription must be provided by you on the demand of a probation officer.

I also make a community correction order for a period of 24 months. Special conditions are that you must submit to the supervision of a probation officer as required by the probation officer; you must within that time satisfactorily perform 100 hours of community service as directed by a probation officer or a supervisor, and you must undergo assessment and treatment for drug dependency as directed by a probation officer. You will have to report to a probation officer at 114 Bathurst Street, Hobart, immediately after you are released from Court today.