

Mr Barnard, the defendant, has been found guilty by a jury of one count of aggravated assault. The facts are that on 29 August 2019, police in George Town were investigating the theft of a motor vehicle. Const Frankcombe found the vehicle in an area of bush with one male working on the car with the bonnet up, and another male – the defendant – sitting in the passenger seat of another car. Const Frankcombe called for assistance. Snr Sgt Groves and Insp Mollineaux went to the area. Sgt Groves travelled with Const Frankcombe to where the cars were. They found the stolen car with branches stacked on top of it, and saw the other car moving away. After a short distance the driver stopped. Sgt Groves went to the passenger side. The defendant got out and moved away. Sgt Groves yelled out "stop – police". The defendant turned to face her. At that point Sgt Groves had to move a tree branch out of the way in order to move forward. At the same time she glanced back at Const Frankcombe who was dealing with the driver. As she turned back, the defendant – using a downward motion – struck at her with a tyre iron or similar object. At that time, Sgt Groves had her hand out to arrest the defendant, and she immediately pulled back. If she had not, she believes she would have been struck on the forearm. The defendant then ran off and was chased through the bush, but unsuccessfully. He was arrested the next day and interviewed. He made some admissions about being at the scene but denied any assault. It is clear from the video of the interview, and I think it is common ground, that the defendant was heavily affected by drugs both at the time of the incident and during the interview. He had limited recall of events and some of what he said he recalled was quite inaccurate. The crime of aggravated assault is constituted by the assault by attempting to apply force, done with the intention to resist or prevent his lawful apprehension.

The defendant is now 39; 37 at the time. Given the obvious problem with substance abuse, I obtained a drug treatment assessment report. He has a history of offending both in this State and in Victoria. Both records include crimes of violence. In this State, in July 2017, he was convicted of two counts of assault committed on the same day. Later, in October 2020 he was dealt with for a number of offences committed after the present one. In addition to a nine week term of imprisonment for assault, a community corrections order for 12 months was made but he faces breach action in respect of that order. He failed to satisfactorily complete a similar order made in August 2019. He has convictions for driving offences, offences of dishonesty and breaching a family violence order. The Victorian record of violent offending is worse. The record itself is a little difficult to follow but it seems clear there are convictions for recklessly causing injury in September 2009, possessing a controlled weapon and resisting police in January 2012, for possessing a firearm in June 2013, and assault with a weapon in June 2015 for which he was sentenced to a term of imprisonment. More recently, in August 2016 he was sentenced to a total of eight months' imprisonment for recklessly causing injury, unlawful assault and resist police. In short, he is assessed as unsuitable for a drug treatment order because he is facing a number of charges in the lower court, at least one of which is indictable, and which involves the infliction of actual bodily harm: see s 27B(f)(ii) of the *Sentencing Act*. His personal circumstances are as follows. He spent most of his life in Victoria and came to Tasmania about six years ago. He is now separated from his partner of 10 years with whom he has three children including a newborn. He has had the care of another child, aged 14, who is presently being looked after by the defendant's father. In his young and early adult life he witnessed and experienced violence. His father was a victim of domestic violence at the hands of his mother. The defendant disengaged from education and took up antisocial associates and behaviours. Violence and drug use were the norm. He has heavily used addictive drugs for a long time, starting in his mid-teens. He has used methylamphetamine for 15 years and his

addiction is heavily entrenched. He suffers from anxiety and has been diagnosed with adult ADD. He also suffers from drug-induced psychoses. There is a strong suggestion of underlying mental health issues. There seems to be an element of self-medication in his drug use. He has had some employment as a roofer from time to time but his drug use and addiction has limited his opportunities, and he has not been employed for about six years. He is also suffering from a back injury and is presently on a waiting list for surgery. As to the offending, he was under the influence of drugs at the time and acted irrationally. It was put on the defendant's behalf that it is of some significance that he admitted being in the passenger seat and running, otherwise identity could have been an issue. It was also put that during the interview he was making genuine attempts to recall events, and not being evasive; he just had a very faulty memory of what had occurred. I accept that submission. Police officers require protection carrying out their duties, and factors of general deterrence and denunciation should be reflected in the sentence. Having said that, the Crown accepts that although there was a potential for harm to be caused, this offending is at the lower end of the scale of seriousness for the type of crime. There is little to be said by way of mitigation. Given the defendant's record of violent offending attempting to deter him from such conduct and offending generally, is a weighty factor.

I observe that but for the matters that prevent the making of a drug treatment order, such an order probably would have been appropriate.

Mr Barnard I have set out the facts, your personal circumstances and what I see to be the relevant factors. Because charges are pending against you which allegedly involve the infliction of actual bodily harm, as I have said, the law is that I cannot make a drug treatment order. As I see things, the only alternative is a term of actual imprisonment. There is little point in making any further community corrections orders. You are convicted and sentenced to four months' imprisonment; that will commence from today. I note you have been in custody on other matters since late July, and I will leave that period to be taken into account when those matters are resolved.