

STATE OF TASMANIA v ADRIAN MICHAEL FLOUNDERS **17 DECEMBER 2021**
COMMENTS ON PASSING SENTENCE **MARSHALL AJ**

Mr Flounders, together with co-accused Joshua Astell, was found guilty by a jury of committing an offence of aggravated robbery. The gist of the offending was that at Bellerive on 22 February 2020, accompanied by Mr Astell, Mr Flounders caused bodily harm to the complainant in the course of which the complainant was robbed of cash and some personal possessions.

From the evidence given in the joint trial, and the verdicts of the jury, the following facts appear.

Mr Flounders befriended the complainant. He had several chats and smokes with the complainant in the smoking area of the gaming room at a hotel in Bellerive. When the complainant won \$600 in cash on the poker machines, he and Mr Flounders had a conversation about sourcing some drugs. Mr Flounders telephoned Mr Astell who agreed to come to the hotel to sell drugs to the complainant. However, Mr Astell did not bring drugs with him. His sole intention was to rob the complainant and run off. Mr Flounders and the complainant left the hotel to wait for Mr Astell in an area out of sight of patrons entering and leaving the hotel. Mr Astell suggested a price for the drugs sought by the complainant. The price was deliberately exorbitant. The complainant reacted angrily. Mr Astell then punched the complainant several times to the head, knocking him to the ground. He then started to kick the complainant. From blood droppings on a shoe of Mr Flounders, Mr Flounders joined briefly in that activity. He also helped Mr Astell raid the complainant's pockets when the complainant was on the ground. Mr Astell robbed the complainant of his mobile phone, which included a case with \$200 cash inside it. Mr Flounders took the complainant's cigarettes and cigarette lighter. The complainant then fled. Mr Astell then picked up the complainant's sunglasses from the ground and fled the scene. Mr Flounders followed.

I am not satisfied that Mr Flounders engaged in a plan with Mr Astell to injure and rob the complainant but that he assisted in that activity when it occurred but not to the same extent as Mr Astell. Nevertheless his criminal offending was serious.

Mr Flounders is 25 years old and was 23 years old at the time of the offending. His parents separated during his early childhood, he lived with his father from 10 years of age. His father died when Mr Flounders was 15 years old. He was traumatised by his father's death and described himself as "angry with the world". He has currently good relationships with his mother and sister, he resides with them. He is single and has no dependants.

In the nearly two years since the offending, he has kept out of trouble and ceased associating with people who are anti-social acquaintances. Unlike approximately 50% of the Tasmanian adult population, he is functionally literate. He is also numerate.

He was on bail in relation to the current offending, but due to confusion about a change of bail address was incarcerated for a short time before being bailed again. Prior to being remanded in custody, he was gainfully employed as a landscape gardener and has resumed that work.

He has issues managing money, and has about \$10,000 in unpaid debts, and nearly \$5,000 in outstanding fines. He is healthy and has no issues with alcohol and used cannabis socially in the past.

In his interview with Community Corrections, he failed to acknowledge his role in the aggravated robbery and claimed that his contact with Mr Astell on the night in question was a chance encounter. It is fortunate that the complainant experienced no long lasting injuries, apart from his claims to be now concerned about associating with "lower class people". In light of the jury's rejection of his evidence that a gun was involved in the robbery, his victim impact statement needs to be read with some circumspection. See generally Chief Justice Crawford in *Belbin v Bennett* [2011] TASSC 23 at par [37].

Mr Flounders has a prior conviction for assault, being convicted on 31 July 2020 in respect of an incident on 19 September 2018 in respect of which a conviction was recorded, but with no other penalty. He has no other relevant priors in the last five years.

Mr Flounders has been assessed as suitable for a home detention order by Community Corrections, the residence has been assessed as a suitable residence for the purposes of home detention, and his mother and sister who reside there consent to the imposition of home detention at that address. I consider it appropriate to make a home detention order for a period of 12 months commencing today. If a home detention was not made, I would have sentenced Mr Flounders to a term of imprisonment. Albeit that a portion of it would have been suspended. Mr Flounders consents to a home detention order.

I formally convict Mr Flounders of the offence of aggravated robbery and make a home detention order for a period of 12 months. The following will be conditions of the home detention order in addition to the other core conditions in s 42AD of the *Sentencing Act*.

- Mr Flounders must during all of the operational period of the order submit to electronic monitoring, including by wearing or carrying an electronic device.
- Mr Flounders is required to submit to electronic monitoring and
 - a. must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
 - b. must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring.
 - c. must comply with all reasonable and lawful directions given to him in relation to electronic monitoring, including in relation to the installation, attachment or operation of device or system used for the purposes of electronic monitoring by:
 1. A police officer,
 2. A probation officer, or prescribed officer,
 3. Another person whose functions involve installation or operation of the device or system used for the purpose of electronic monitoring.

The following special conditions will also be attached to the order:

- He must during the operational period of the order remain at [address], at all times unless approved by a probation officer,
- He must attend the Community Corrections Office at Highfield House, 114 Bathurst Street, Hobart for induction on to this order.
- He must attend this service of induction during normal business hours, and no later than 10am, Monday 20 December 2021.
- He must, during the operational period of the order maintain in operating condition, an active mobile phone service and provide the contact details to Community Corrections and be accessible for contact through this device at all times.
- He must submit to the supervision of a Community Corrections officer as required by that officer.
- He must not during the operational period of the order take any illicit or prohibited substances, illicit or prohibited substances include:
 - a. any controlled drug defined by the *Misuse of Drugs Act* 2001;
 - b. Any medication containing an Opiate, Benzodiazepine, Bupropion, Hydrochloride or Pseudoephedrine, unless you provide written evidence from your medical professional that you have been prescribed the relevant medication
- He must not during the operational period of the order consume alcohol and must if directed to 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.

In addition, Mr Flounders is ordered to complete 45 hours of community service within the next 12 months by arrangement with Community Corrections Tasmania as directed by Community Corrections Tasmania.