

The defendant has pleaded guilty to a charge of aggravated assault. It was committed on 28 December 2020 against a good friend of his then ex-girlfriend. He has also pleaded guilty to five summary offences relating to the same incident. I will deal with them pursuant to s 385A of the *Criminal Code*. Those charges comprise two counts of breaching a police family violence order, one by harassing Paige Harding by threatening to shoot her friend, and one by having possession of a firearm and ammunition contrary to the terms of the police family violence order. There is also one charge of possessing an unregistered firearm, one charge of possessing a firearm to which a firearms licence may not be issued and one charge of possessing ammunition when not the holder of the appropriate firearm licence. All those charges arise from his possession of the firearm which he used to commit the aggravated assault.

On 29 September 2020 a police family violence order was put in place between the defendant and his partner Ms Paige Harding. Conditions of the order included that the defendant was not to harass Ms Harding and he was not to be found in possession of any firearms or ammunition.

Tanaya Bester, was a close friend of Paige Harding. On 28 December 2020 at approximately 7.05am, Ms Bester went to work at McDonalds in Bridgewater. She parked her car and was about to exit it when the defendant opened the front passenger side door of the vehicle. He sat in the front passenger seat. He said to Ms Bester "where the fuck is Paige the sly slut". When Ms Bester told the defendant she did not know the whereabouts of Ms Harding, the defendant removed a firearm from his pocket and sat it on his lap. The firearm was about 30cm in length and had duct tape wrapped around the handle. The defendant said to Ms Bester "Ring her Tay or I'll fucking shoot you". The firearm was pointed in the direction of Ms Bester. The defendant had two bullets in his possession and Ms Bester believed she saw him load the bullets into the firearm. Ms Bester was scared. In an attempt to keep the defendant calm, Ms Bester telephoned Ms Harding. When Ms Harding answered, Ms Bester yelled "He's got me in the car Paige". Ms Harding yelled at the defendant to let Ms Bester go. The defendant and Ms Harding then yelled at each other for a period of time. Ms Bester took the chance to open the driver side door of her vehicle and get out. The defendant followed her out of the car and tried to snatch Ms Bester's phone. He was unsuccessful. Ms Bester told him she just wanted to go to work. At that point a colleague of Ms Bester observed what was happening and yelled at them. The defendant ran away. Ms Bester went into work and police were called.

The defendant ran to his grandmother's house. Police subsequently attended there and located the defendant. When he was spoken to it was apparent he was under the influence of an intoxicating substance. He told police he had taken an overdose. It is not asserted by the State that the defendant was under the influence of an intoxicating substance when the incident with Ms Bester occurred. It seems the defendant consumed the substance, whatever it was, afterwards.

Police located the firearm under a cushion of an outdoor chair, after the defendant told his grandmother where it was. When police found the firearm it was not loaded with any ammunition. A subsequent ballistics investigation revealed the firearm was only capable of holding one bullet at a time.

The defendant was taken to hospital for examination. When he was transferred to a bed in the Emergency Department, a cartridge of .22 ammunition fell from the ankle area of his trousers.

When interviewed, the defendant denied any aggravated assault. He said he did not have a gun in his possession, he denied pointing a gun at Ms Bester and threatening to shoot her. He denied having a gun in Ms Bester's car at all. He said all he had done was demand some answers.

A ballistics investigation subsequently revealed that the firearm was not in working order as the construction prevented it from discharging a chambered cartridge. Of course that was not known to Ms Bester. She was of the belief that the defendant had loaded ammunition into the firearm. She was terrified and believed she might be shot.

The defendant says at no time did he load bullets into the firearm. He accepts he had bullets in his possession, and accepts Ms Bester may have believed bullets were loaded into the firearm. It is necessary for me to determine whether I am satisfied the firearm was loaded. I note the defendant was not honest with police. It is difficult to place much weight on his account. When police found the firearm it was not loaded. Of course, the defendant may have unloaded the firearm on route to his grandmother's. Even so, Ms Bester believed she saw two bullets loaded into the firearm and the firearm is only capable of holding one bullet. It is not likely then her observations were accurate, which is not at all surprising, given the state of distress and fear she was experiencing. I cannot be satisfied the gun was loaded at the time it was pointed at Ms Bester. I therefore dismiss count 3 complaint 10998/20. Quite frankly, for sentencing purposes, in my view, it matters little. Ms Bester was given good reason to believe the firearm was loaded and believed she may be shot. It was a terrifying experience for her.

The defendant is now 25 years old. He has a rather lengthy criminal record, predominantly for driving offences and dishonesty offences. In August 2015 he was convicted of being an accessory after the fact to aggravated armed robbery. He received a 9 month sentence of imprisonment. There is nothing before me to suggest the defendant's role in that involved any actual violence. In November 2015 he was sentenced into the Court Mandated Drug Diversion Program with a custodial component of 12 months for many driving and dishonesty offences. It seems that order was cancelled in January 2016 and the defendant was required to serve the custodial component. In January 2017 he received a substantial period of imprisonment for further driving offences including evading police, driving whilst disqualified and dangerous driving. In May 2018 he received a 15 month period of imprisonment (3 months of which was partially suspended) for driving offences and offences of dishonesty. It is noteworthy that included in that sentencing order were convictions under the *Firearms Act* for possess a shortened firearm, possess a firearm when not the holder of a firearms licence (x 2) and possess ammunition when not the holder of an appropriate firearm licence. That partially suspended sentence was breached. In July of 2019 he was convicted and sentenced for further offences of driving and dishonesty. Also included in the matters for which he was sentenced in July 2019 were further offences under the *Firearms Act* namely possess a firearm to which a firearms licence may not be issued and possess a prohibited firearm when not the holder of a firearms licence of the appropriate category. As to offences involving violence, on 12 January 2017 the defendant was convicted of assault a police officer. On 26 July 2019 he was convicted of common assault. That matter did not involve family violence. The defendant does not have a particularly poor recorded history of violence as such, although there are many convictions for driving and dishonesty offences. In the past, the defendant has failed to take advantage of sentencing orders directed at encouraging his rehabilitation such as partially suspended periods of imprisonment and the Court Mandated Drug Diversion sentence.

The defendant was taken into custody on 28 December 2020 following the aggravated assault. On 10 June 2021 he was sentenced to a period of 4 months' imprisonment, again for driving

and dishonesty offences. This was backdated to commence on 28 December 2020. Since the expiration of that period of imprisonment, the defendant has remained in custody in relation to this matter only.

The defendant had a very difficult upbringing. He was taken into State care from the age of three because of neglect issues within his home. He remained in care until he was 18. Whilst in care he was sadly subject to sexual abuse. He is currently pursuing a class action against the State in respect to that. He has found discussing the abuse a most difficult process. He experienced a number of difficulties in his school life and found it difficult to make friends and communicate with others.

Following his release from care he returned to live with his mother. His mother had a significant drug addiction and was involved in the drug trade. The defendant was exposed to heavy drug use whilst residing there and was also encouraged to assist her in her drug trafficking enterprise.

He described illicit substances as being "on tap" at his mother's residence. Consequently, he was using a wide variety of drugs on a daily basis. His excessive use of illicit substances was a catalyst for much of the criminal offending that appears on his history of prior convictions.

At age 23, he formed a relationship with Ms Harding. That relationship was very positive for him. He was welcomed into Ms Harding's family and received support from her parents. They were able to assist him in obtaining employment on a farm at Port Arthur. The relationship with Ms Harding proceeded uneventfully until she became pregnant, about 14 months into the relationship. Some tension developed between Ms Harding and the defendant about whether Ms Harding's pregnancy should be disclosed to her parents. Subsequently, Ms Harding miscarried. This led to difficulties in the relationship. The defendant did not cope with the loss of the pregnancy and had difficulties in coming to terms with his grief. The relationship broke down and the defendant returned to his mother's residence and returned to using large quantities of illicit substances.

The defendant was eager to speak with Ms Harding to try and resolve their relationship difficulties. He could not get her to talk to him and in a desperate attempt to communicate with her, behaved in the manner he did.

He is remorseful for his behaviour. He realises the foolishness of what he did and is cognisant of the effect his behaviour had on Ms Bester. He accepts she must have been terrified by the incident and has apologised to her. There is no victim impact statement from Ms Bester. It is obvious given the circumstances, however, the incident would have been most traumatic for her.

The defendant has now repaired his relationship with Ms Harding. He has her ongoing support. Her parents have also remained supportive of him. It is planned, that upon his ultimate release from custody, he will live at the family shack at Port Arthur so as to maintain compliance with the family violence order, and continue to work on his relationship with Ms Harding. It is also hopeful he may be able to regain employment in that area.

He believes with the support of Ms Harding and her family, he will be able to live a productive, crime-free life.

It is noteworthy that the State were advised in July this year the matter would resolve without the need for a trial. It was only the issue as to whether the firearm was loaded, that delayed the plea of guilty being entered. I take the plea as an early one.

Threatening someone by pointing a gun at them is a very serious matter. It may be the defendant was frustrated by his perceived inability to communicate with Ms Harding, but that in no way excuses his behaviour. The possession of a firearm in the context of an emotional relationship breakdown is potentially very dangerous, as is the defendant's possession of the firearm at a time when he had returned to the heavy use of illicit substances. That being said, there is no evidence the defendant was under the influence of anything at the time he was in the car with Ms Bester, but he was when police found him and the firearm at his Grandmother's home. His possession of firearms in unlawful circumstances is not without precedent. He has a number of prior convictions for offences under the *Firearms Act*.

Of course, the defendant has also breached the police family violence order, by harassing Ms Harding, by forcing Ms Bester to telephone her. Ms Harding answered the phone to an upset Ms Bester, who told her that she was in the car with the defendant. This too must have been an upsetting experience for Ms Harding.

The sentence must balance the seriousness of the behaviour and the obvious need for general deterrence, with the fact the aggravated assault involved a short lived pointing of a firearm which was not capable of being discharged. Once Ms Bester left the motor vehicle, the defendant did not try and restrain her. There was no physical assault of Ms Bester. The defendant's prior recorded criminal history does not suggest a propensity towards violence. There is hope that with the support of Ms Harding and her family, the defendant will be able to turn things around. It is noteworthy that between January 2019 and April 2020, the defendant did not commit any offences. This coincides with the period of time he was in a stable relationship with Ms Harding, which suggests that with the ongoing support of Ms Harding and her family, the defendant is capable of rehabilitation.

The defendant is only 25. In my view, his rehabilitation should be encouraged. The seriousness of the offending warrants a period of imprisonment, but I intend to suspend some of it to encourage him to pursue such rehabilitation.

Brayden Hopkinson, you are convicted of all matters to which you have entered pleas of guilty. On Count 4 of the complaint I make no further order. On all other matters, I will impose one sentence. You are sentenced to 12 months' imprisonment to commence on 27 April 2021, the last four months and two weeks of that period of imprisonment is suspended on condition you commit no offence punishable by imprisonment for a period of 18 months. You should understand that if you breach the terms of the partially suspended sentence you will be required to serve it, unless a Court considers it unjust for you to do so.

On my reckoning Mr Hopkinson, you have a short period of time left to serve on your sentence but will be released before Christmas.