

On 23 November 2021 Mr Costello, the defendant, pleaded guilty to one count of unlawfully injuring property, and not guilty of wounding but guilty of assault. The State has accepted the plea of guilty to assault in discharge of the count. The crimes were committed on 23 October 2019 at a unit complex in Launceston where both the defendant and the complainant, Douglas Baron, lived. They did not know each other. As I will later discuss, the defendant suffers from schizophrenia. He has persistent symptoms in the form of paranoid ideation, distressing and persecutory auditory hallucinations, and general problems with organisation. At about 5pm on that day the defendant went to the complainant's door where he started yelling. The complainant opened the door and asked the defendant to go away before shutting the door and returning inside. The defendant quickly returned and smashed the lounge room window of the complainant's unit with his fist, and ran away. The act of damage is count 1. The complainant obtained a shovel and walked to the defendant's unit where he smashed the bathroom window of the defendant's unit. He started to walk back towards his unit and had not proceeded far when the defendant emerged and went towards the complainant with an empty vodka bottle in his hand, with his arm raised. The complainant dropped the shovel and grabbed onto the defendant's arm in an attempt to prevent being struck. The pair wrestled and the complainant lost his grip of the defendant. The defendant then struck the complainant six or more times to the head with the bottle, during which altercation the complainant dislocated his shoulder. Witnesses gathered, one having obtained a baseball bat, at which point the defendant returned to his unit. Police arrived shortly after. They tended to the defendant's hand which had been cut when he punched the complainant's window. When interviewed, the defendant said that he had gone to the complainant's house to talk to him, they had an altercation and the complainant pushed him in the chest. He said he was suffering a psychotic episode and the complainant was "affecting him with mental voices". He said that in a lapse of judgment he smashed the complainant's window and claimed the complainant then came to his unit with one or more people with weapons. He claimed that the complainant smashed his window and attacked the door with the shovel. He grabbed the bottle with the intention of protecting himself. He said the complainant tried to hit him with the shovel, but he knocked the shovel out of the complainant's hands, or the complainant had dropped it, and the complainant started fighting him. He admitted hitting the complainant in the head with the bottle five or six times, but said he was acting in self-defence. The State does not accept that the complainant pushed the defendant to the chest, or that the complainant was not alone when outside the defendant's unit, nor that the complainant attacked the defendant's door with a shovel, nor that the complainant tried to hit the defendant with a shovel and then started fighting him. The defendant does not now assert those facts. However, on the basis of psychiatric material, the State accepts that because of the symptoms of his illness the defendant genuinely believed he needed to defend himself when he confronted the complainant outside his own unit, and accepts that the defendant neither intended to wound, nor was reckless about the consequence. The plea is entered on the basis that the blows with the bottle amounted to unreasonable force in self-defence. Mr Baron was treated at the hospital that night. In addition to the dislocation of his left shoulder, he had a number of lacerations to the back of his head and bruising to front and back of his head. He was treated, referred to outpatient orthopaedic and physiotherapy services and discharged that same evening. In terms of the shoulder injury, he suffered a bone tissue injury, an injury whereby the tendon was pulled away from the bone, disruption of the shoulder capsule and ligament, and tears of the shoulder muscles. I have a victim impact statement and a report from a psychologist on Mr Baron's condition. He said the incident was a very traumatic experience for him. He has been diagnosed with severe post-traumatic stress disorder, the

consequences of which are pronounced and ongoing. He has suffered from depression and vertigo but the assault made these worse. He has had to undergo a lot of treatment for his shoulder injury. He says the assault has affected him badly, both physically and psychologically.

The defendant is now 34. At the present time he is temporarily in supported accommodation at the Launceston General Hospital. At the time of the plea hearing I was told he was in receipt of NDIS assistance and was very shortly to move to housing supported by a Fellowship with the assistance from NDIS. That has since occurred. Importantly, the defendant is currently the subject of a treatment order under the *Mental Health Act*, that order having been recently extended so that it will expire in February 2023. He has a number of prior convictions which include breaches of a restraint order, driving and anti-authority type offences, some minor drug offences and assaulting and resisting a police officer. There is about a 10 year gap between 2006 and 2016 with no recorded offending, and an approximate further two year gap to August 2018 when he committed the assault and resist offences. I initially had a detailed psychiatric report from Dr Michael Jordan dated 2 March 2021, and I obtained a report from Community Corrections which is dated 2 December 2021. I also have the benefit of counsels' submissions. Before turning to the psychiatric evidence and other material, I note that the defendant had been at the particular unit for about a year although he had been staying in a local rehabilitation and recovery service for about three weeks leading up to this incident. That immediately followed the death of his grandfather. He attended the funeral. The death and consequent funeral seemed to have affected him badly. The complex of units where the incident took place is not supported housing. After his arrest, the defendant was remanded in custody but finally bailed on 6 February 2020, a period of 106 days. In that period he spent most of his time in the Wilfred Lopes Centre but the last part was spent in the prison itself, the first time he has been imprisoned. Dr Jordan notes that adding to the problems arising from psychotic disorder is the defendant's alcohol use. He says the defendant is a classic example of an individual attempting to self-medicate with alcohol in order to manage not only the direct effects of psychotic symptoms but also the anxiety indirectly related to issues derived from the illness. Apparently the defendant's use of alcohol accelerated after the death of his grandfather, and when he was discharged from the recovery centre back to his own accommodation he had little to no support. He was drinking significant amounts of alcohol. Even before the consumption of alcohol on the day in question, the defendant was affected by paranoid ideation which resulted in him believing that the complainant had sold him an amount of "dodgy" cannabis earlier that day, although at the same time saying he had not bought any cannabis from the complainant and had not smoked any on the day. It was as a consequence of the combination of the paranoid ideation and the disinhibiting effects of the alcohol that the defendant decided to confront the complainant. In relation to the *Verdins* considerations, Dr Jordan's view are as follows. The schizophrenia had a direct effect on the defendant's decision-making, and reduces the moral culpability of his conduct. The agitated and assaultive response to the effects of his schizophrenia highlight the requirement for adequate treatment and support, treatment being best provided within the broader community. Adequate treatment of his schizophrenia and judicious management of his alcohol misuse should provide a definitive reduction in the chances of him re-offending. The defendant's understanding of the interaction of his schizophrenic illness and the offending, together with his understanding of the gravity of the offence remain compromised; specific deterrence should be moderated in some fashion. More stringent sentencing measures may not have the same deterrent effect on him, as they might on a defendant without his psychotic disorder. Further, the defendant would find the custodial environment difficult to manage, and it is possible that re-entering custody could once again cause mental state deterioration. The Community Corrections assessment report states that due

to the defendant's mental health he is not suitable for community service or indeed supervision. As a consequence of the cumulative effects of the reports to hand, on 3 December 2021 I sought a report from the Chief Forensic Psychiatrist as to proceeding under Part 10 of the *Sentencing Act*.

On 2 March I received a lengthy and detailed report from Dr Shanmugham. Two things clearly emerge from this report. The first is the significant and entrenched nature of the defendant's mental illness. The second is that the defendant's alcohol use exacerbates the effects of the illness and makes its treatment difficult. Dr Shanmugham notes that the defendant has little motivation to reduce his drinking. Overall, on the material in the report it seems that the defendant has little insight into the effects of his alcohol use. The doctor's view is that, particularly in light of the substance abuse, the utility of a supervision order is unclear and potentially problematic, and one is not recommended. He says that on the other hand, as he understands it, a community corrections order could mandate engagement with drug and alcohol counselling or suitable programs, or if he were given a custodial sentence, he could be considered for prison-based programs to address substance abuse. Hence, the defendant is said to be unsuitable both for a community correction order directed to assisting with his treatment regime and managing his alcohol use, and a supervision order to the same effect although perhaps more restrictive. Having said that, on a consideration of all the material I would not regard a supervision order, as open ended and as actually and potentially restrictive as it is, to be a reasonable response.

Of course, on the face of it, this a serious assault preceded by gratuitous damage to property. A sustained attack using a glass bottle as a weapon was involved. Significant risk was inherent in the assault. Mr Baron has suffered considerably, it seems perhaps more so psychologically than physically, but suffered nonetheless. Factors of general deterrence, denunciation and specific deterrence are important, but it must be noted that the assault is made out by way of excessive use of force in self-defence. Having regard to the psychiatric reports and the information provided to me, a significant degree of individualisation is required. There is no reason to ignore Dr Jordan's views. The punitive related factors need to be moderated to an extent, but – importantly – bearing in mind that alcohol consumption had a causative role. Although the emphasis should remain on a more therapeutic approach than a strictly punitive one, there are no community based orders open in that regard as options. That the treatment order is in place for nearly 12 months provides comfort in that respect. I note that the defendant's first appearance in court in early 2006 resulted in a short period of imprisonment which was suspended, and although he breached the conditions of suspension, a further suspended term of imprisonment was imposed in the resentencing process later that year. As I have noted, there is then a 10 year gap in the recorded history of offending with a drink driving offence and a minor drug offence being committed in June 2016. Those matters were dealt with in December 2016 by way of a release on an undertaking to be of good behaviour for a period of two years. On the face of the record, to a large extent the defendant honoured that undertaking. My point is that the second suspended sentence and the release on the undertaking were court orders designed to have a deterrent effect, and have substantially had that effect, ostensibly at least. What I propose to do is to impose a term of imprisonment, with the commencement date taking into account the period of time spent in custody, and suspend the execution of the balance. Hopefully when taken in conjunction with the supportive structure and the treatment order presently in place, it will have the desired deterrent effect.

Mr Costello, I hope you have followed what has been said today and what I have been saying in these comments on passing sentence. I have set out the facts and the things that are important

in your case. It is in your interests and everybody's interests that you continue to deal with your illness, and it is particularly important that you understand the link between drinking too much and committing crimes. Drinking too much also creates difficulties for treating your illness. Please bear those things in mind or you will likely find yourself back before a court. You are convicted of the crimes and sentenced to six months' imprisonment to commence on 17 November 2021, the balance from today is suspended on condition you commit no offence punishable by imprisonment for a period of 18 months. As you are no doubt aware, if you commit any offence punishable by imprisonment – and I stress *any* offence punishable by imprisonment – within that time, you can be brought back to a court and a judge must order you serve the balance of the term – about 2 ½ months – unless it is unjust to do so.

[On 7 March 2022 his Honour revised the above comments as they relate to the facts of defendant's prior convictions]