

Mr Church-Clark, you have pleaded guilty to one count of persistent family violence. You have also pleaded guilty to several summary offences. These include breaches of a family violence order which are related to some of the unlawful family violence acts which constitute the indictable crime.

You committed the crime throughout the course of your 10 year relationship with the complainant. You and she commenced the relationship in 2011. You were then 20 years of age and the complainant was 19. The relationship proceeded in an on-and-off fashion until it came to a permanent end in March 2021. There is one child of the relationship, who was born on 1 March 2017.

In your counsel's plea in mitigation, a number of disputes were raised with respect to the factual basis of this sentence. I regarded the disputed facts as significant. Accordingly, the prosecution adduced oral testimony from the complainant, her mother and another witness, in order to address these disputes. These witnesses were cross-examined by your counsel, and a number of aspects of their evidence was challenged by her. Your counsel then called you to the witness box with the obvious intention of leading evidence from you concerning the disputed facts. However, at the outset, you indicated that you did not want to give evidence and, in the end, no oral testimony was presented by you or on your behalf. However, the disputes still exist and it is therefore necessary for me to make some findings in respect of them. To the extent that any asserted fact is disputed and, if accepted, would aggravate the seriousness of your criminal conduct, I will proceed on the basis that I can only act on that fact if I am satisfied of it beyond reasonable doubt. I will now summarise the factual basis of sentencing, incorporating where necessary my findings of fact in respect of the areas of dispute.

In general terms, I found the complainant and the other witnesses called by the prosecution to be credible and reliable witnesses. I was particularly impressed with the testimony of the complainant. Her demeanour and approach to her testimony was consistent with someone who was doing her best to be as balanced as possible. She did not exaggerate and she made appropriate concessions. It was obvious to me that she was not motivated by hatred or resentment but rather genuinely regretted how things had turned out with the relationship. She was a good historian and able to give a detailed and vivid description of the relevant events. These were significant acts of violence and it is to be expected that such events would be

retained in her memory. I accept the credibility and reliability of her evidence. I also accept the testimony of her mother and Ms Clark. I note that such testimony was not subject to significant challenge in any event.

The prosecution initially asserted that you committed unlawful family violence acts against the complainant on 11 separate occasions over the course of the relationship. By way of context, the complainant, when asked to describe the relationship said it was "all over the place and very violent". However, there was no specific assertion of violence other than the specific occasions relied upon by the prosecution. I will assess your culpability solely on the basis of those occasions. Of course, in any event, taken as a whole, they constitute an ongoing and concerning pattern of family violence perpetrated by you throughout the duration of the relationship.

The relevant occasions are as follows:

- (a) The first occurred in 2011, when you and the complainant were living in a shack on your mother's property at Southport. You went to a party together. You consumed a lot of alcohol and became very intoxicated. You also became jealous when you saw the complainant speaking to one of your male friends. You verbally abused her, and then physically pulled her from the party and forced her into your car. You drove home in a fast and erratic fashion, and verbally abused the complainant continually during the journey. When you got home, you locked the complainant out of the house. A short time later, you opened the door of the house, grabbed a Jerry can of fuel and poured fuel over the complainant's face and body. You then attempted to set fire to the fuel on her clothing with a cigarette lighter. You were telling her as you did this, that you were going to set her alight. She physically resisted you and ended up in the house and shut the door. You were outside and able to lock the door from the outside, which you did, thereby effectively locking the complainant in the house. You then grabbed a surfboard from the laundry, put it underneath the house, poured fuel over it and tried to set it alight. The complainant watched you do this through a window. On both occasions, that is when you tried to set fire to the complainant and then the surfboard, you were unsuccessful in doing so.

After this incident, the complainant drove to her mother's house to seek help. She told her mother that you had doused her with fuel and tried to set her alight. She was understandably terrified and the fuel caused her considerable physical discomfort.

Some of this account is disputed by you and your counsel cross-examined the complainant accordingly. However, I am satisfied that she gave a truthful and accurate account of what took place. I am satisfied that in your drunken jealous rage, you tried to set the complainant on fire and then attempted to set fire to the house after you had locked the complainant in it. I believe the complainant, and her account is supported by the observations of her mother after the incident. Clearly, this is a very serious example of family violence and it is fortunate that you were not able to successfully achieve your purpose. Had you done so, the consequences would undoubtedly have been catastrophic and probably lethal.

- (b) On a separate occasion in 2011, when you and the complainant were staying at your brothers residence in South Hobart, you became verbally aggressive and abusive towards the complainant when she refused your demand that she go to a shop to buy you more alcohol. Once again, you had been drinking and were very intoxicated. During the course of this abuse, you kicked a liquor bottle directly at the complainant. The bottle hit her in the eye and caused a swollen black eye. As a result of your violence and aggression, she gave in to your demand to buy more alcohol.
- (c) The third occasion occurred in 2014 at the Southport Tavern. This was then the complainant's workplace, but she was attending a function there for her sister's birthday. You arrived in an intoxicated state and became verbally abusive towards the complainant. Again, your anger seems to have originated in irrational jealousy. You were escorted from the function by the complainant and her employer, the Tavern owner. After the owner had returned to the function, you picked up a steel pole from the gutter and swung it at the complainant, almost hitting her in the face. I am satisfied that you brought the pole with you when you went to the function. The complainant had to seek further assistance from her employer to remove you from the function
- (d) The fourth occasion took place in 2019, when you, the complainant and your child were living in a different house in Southport. Your daughter was about 2 years old. One of your brothers was also present on this occasion. An argument started between

your brother and you over an accident involving the child. The accident was not your fault and you did not start the argument. However, the argument developed into a physical fight and you and your brother ended up fighting outside. You had the better of this fight. The complainant confronted you because of the violence you were using against your brother and you then turned on her. You were physically violent towards her, including by grabbing her by the head, shoving her to the ground and then holding her down by the head and neck and pushing her face into the carpet. She was unable to breathe while you were doing this. Your brother came to her assistance and you then fought with him inside the house. After this fight, you smashed holes in the wall and damaged items of furniture and other contents. Your daughter was present and exposed to all of this violence. Eventually, the complainant and your daughter left the house with the assistance of the complainant's mother. You sent threatening text messages to them later that night, some of which contained threats to shoot them.

- (e) A fifth occasion, again in 2019, was asserted on the basis that you had effectively forced the complainant to give you the keys to her car so that you could travel somewhere to buy drugs. The complainant conceded in her evidence that there was no violence on this occasion because she gave you the keys. I do not regard this as a family violence act sufficient to constitute the crime charged, but it does provide some context concerning your assertion of dominance and control over the complainant at that time. In essence, her evidence was that she gave you the keys because she knew that if she refused, you would become violent. I will regard this incident as context.
- (f) On another occasion in 2019, during an argument which arose because the complainant challenged you about having drugs delivered to the house, you threw her to the ground and stomped on her head. She does not assert that she suffered any injury as a result of this violence
- (g) At Christmas 2020, during another argument which arose because you wanted to buy drugs and the complainant did not want you to do so, you grabbed her by the hair and dragged her around the house. This caused chunks of her hair to be ripped from her skull. This occasion was the subject of dispute, but the complainant's account is supported by her cousin, a hairdresser, who assisted her to repair the damage to her hair the following day. I believe both, and accept the complainant's version of these events.

- (h) In August 2021, you forcibly took and used the complainant's car despite her expressly refusing to give you permission to do so. You had an accident in the car and damaged it during this journey. The complainant reported you to police for stealing her car. About two weeks later, after you and the complainant had consumed some alcohol together, you became angry with her over this incident. You called her a "fucking dog," and grabbed her around the throat with both hands. You let her go after she punched you in the face. Your daughter witnessed this violence. The complainant reported this matter to police and a police family violence order was made protecting the complainant and restricting your contact with her.
- (i) In September 2021, you head-butted the complainant in the face during an argument. She suffered a bleeding nose as a result of this assault. You were in breach of the conditions of the police family violence order by being with the complainant, although I note that this was, initially at least, with her consent.
- (j) The final acts which constitute this crime were committed on 9 October 2021. The relevant events commenced with an argument between the complainant and you while you were both drinking alcohol together. Eventually, she left the house and spent some time sleeping in her car. When she returned to the house, you were in her bed. You became aggressive towards her and she told you that she was going to call the police. A struggle took place when you tried to grab the telephone from her. You then placed your arm around her neck from behind and strangled her. The force applied by you caused her feet to come off the ground. She could not breathe and blacked out. When she awoke, she was on the floor. She tried to run from the house, but you chased her, grabbed her again from behind around the neck and continued to strangle her. This again caused her to have trouble breathing and she lost consciousness. After she woke this time, she again tried to leave the house, but for the third time, you placed your arm around her neck and applied pressure. She blacked out again. On this occasion, you said something to her to the effect that she was not to call the police. When she came to this time, you let her go. The complainant called the police and you were arrested. You have been in custody since then. Once again, the events of this day including your contact with the complainant and your assaults on her, constituted breaches of the police family violence order and some bail conditions. You have pleaded guilty to the summary charges relating to these breaches. You are not to be

punished twice for the same acts, but it is an aggravating factor that your conduct constituted a breach of the said orders.

You have also pleaded guilty to some other breaches of the family violence orders. On 11 October, two days after your arrest, you sent a letter to the complainant in abusive terms. You sent another letter from remand to the complainant on 14 April 2022.

The complainant suffered tenderness and bruising from the assaults of 9 October, but fortunately, there is no serious ongoing physical injury. However, it was clear from evidence that she has been profoundly affected emotionally by your treatment of her. She has confirmed this in her impact statement. She has detailed in that statement ongoing emotional and psychological trauma. At the time of the final assaults, she felt as if she was going to die and this feeling has stayed with her and continues to traumatise her. The impact described by her in her statement is completely consistent with what would be expected from family violence of this nature.

You are now 30 years of age. You had a difficult and chaotic childhood, as part of a large family. You found school difficult, and have had a problematic relationship with your mother. You had a much better relationship with your father, but suffered significant grief and trauma when he passed away 10 years ago. As is apparent from the facts relevant to this crime, you have had a significant problem with the abuse of alcohol and illicit drugs for most of your adult life. Despite this, you have shown that you can be an industrious person. You completed grade 10 and, after leaving school, had consistent employment until your daughter was born. You left paid employment at that time in order to care for her and provided that care on a full-time basis until your remand in custody.

You have a relatively significant criminal history. This includes several convictions for offending which relates to or is constituted by violence. In 2011, you were sentenced by this Court for an attempted assault. The sentencing judges' comments disclose that you and someone else set upon and stole from a young man who was walking home late at night. While your companion actually punched this man, you attempted to do so as well, thereby committing the crime. You were ordered to perform community service. In 2012, you were given a wholly suspended prison sentence with further community service for an attack with the same companion in the street on some innocent passers-by. This attack involved considerable violence, including a punch by you to the head of one of the victims, which knocked him to the

ground. You have since been convicted of relevant summary offences, including using abusive language to a police officer and two counts of assaulting a police officer. On 5 May 2021, you received two suspended sentences of imprisonment for a variety of offences. The first was a sentence of four months imprisonment, of which two months was suspended for three years, for offences which included assaults on your brother and mother, together with an aggravated assault on your brother which was constituted by threatening him with a replica pistol. On the same day, you received a two month wholly suspended sentence for driving offences, which included unlicensed driving, driving while exceeding prescribed alcohol limit with a reading of .158 and evading police. By committing the crime and other offences to which you have pleaded guilty, you have breached the conditions of suspension in relation to both sentences. I am required to activate each sentence unless I am of the opinion that it would be unjust to do so. Your counsel makes no argument about the sentence for the assaults, but submits that it would be unjust to activate the sentence for driving offences because they are of a different nature to the crime and offences which constitute the breach. I disagree. The clear condition of suspension was that you were not to commit any imprisonable offence during the relevant period. It is obvious that you disregarded these conditions in respect of both sentences when you committed the assaults on 9 October. This occurred relatively soon after the imposition of the suspended sentences. It is not unjust that these sentences be activated, and they will be.

This case is a serious example of the crime of persistent family violence. The violence occurred over a lengthy period. All of the acts of violence were serious, but the attempt at the commencement of the relationship to set fire to the complainant and the very serious assaults on 9 October, which included three separate acts of strangulation, are of particular concern. I have already commented on the potentially lethal nature of the 2011 violence. Further, this Court has on numerous occasions, discussed the serious and dangerous nature of strangulation, particularly in the context of family violence. For example, in a recent case, I said the following:

The act of applying pressure to another person's throat can easily result in death or serious injury. Death is most likely to result not from the restriction of breathing but from the blockage of the arterial blood supply to the brain, usually as a result of pressure applied to the carotid arteries. Attempted strangulation which does not result in death or visible injury can still have long-term physical and psychological impacts, and leave the victim susceptible to ongoing symptoms. In criminal assault, such acts

are generally used to subdue and force compliance by the victim, without any real thought being given to the danger inherent in such conduct.

In this case, you applied considerable pressure for an extended period to the complainant's throat on three separate occasions in relatively quick succession. The force used by you restricted her breathing and caused her to lose consciousness on each occasion. You clearly did not have the capacity to judge or moderate the pressure being applied by you and your actions could easily have resulted in serious injury or death. In actual fact, they caused distress and terror to the complainant, and she has suffered ongoing emotional and psychological impact.

Family violence is unacceptable. It is correctly of great concern to the community. When it is committed on a persistent basis such as in this case, it's insidious nature and controlling effect means that it often remains effectively hidden within the relationship for lengthy periods. In this case, the complainant endured many years of suffering, and your child was exposed to such violence on several occasions. Further, the use of potentially lethal force against women will not be tolerated. General deterrence and denunciation of your conduct are important sentencing considerations.

There is little to be said in mitigation. You did not voluntarily desist from this conduct. I will take into account that you were very young when the early acts of violence occurred, but the relevance of this is somewhat lessened by your persistence with the conduct as you got older. In fact, although the early acts of violence were very serious, so too were the acts perpetrated at an older age. You have pleaded guilty, but the benefit of the plea has been largely negated by your unsuccessful dispute of some of the facts, although I acknowledge that your challenge to one of the incidents was successful. You assert genuine remorse and shame, and claim that you want to pursue courses to assist your rehabilitation while in custody. I can accept that with the benefit of reflection, you regret what you have done, but it is hard to extend this to the specific acts which were the subject of the unsuccessful dispute. I accept also that you miss your daughter and will find the time in custody difficult for this reason, but, of course, this is all a consequence of your own conduct. I will take these matters into account to the extent appropriate when assessing sentence. I will also account for totality.

The only possible sentence in this case is a significant term of imprisonment. I will allow for release on parole after you have served what I consider to be the minimum time you should spend in actual custody.

The orders I make are as follows:

- a You are convicted of the crime and the offences to which you have pleaded guilty;
- b The suspended sentence of 2 months imprisonment imposed by the Magistrates Court on complaints 650/2021 and 651/2021 on 5 May 2021 is activated. It is backdated to 9 October 2021. You are not eligible for parole in respect of that sentence.
- c The suspended sentence of 2 months imprisonment imposed by the Magistrates Court on complaint 652/2021 on 5 May 2021 is activated. It will be served cumulatively upon the sentence already activated. You are not eligible for parole in respect of that sentence.
- d For the crime of persistent family violence and the summary offences, I impose a global sentence of imprisonment of 6 years. This sentence will be served cumulatively upon the sentence relating to complaint 652/2021. I order that you not be eligible for parole until you have served 3 years and six months of that sentence.
- e For the purposes of S 92A (3) of the *Sentencing Act*, I specify that:
 - i. the total term of imprisonment which you are liable to serve in respect of all of the above sentences is six years and four months commencing on 9 October 2021
 - ii. The total period that you must serve before you become eligible for parole is the aggregate of the activated sentences and the non-parole period, which is a total period of 3 years and 10 months.
- f Pursuant to s 13A of the *Family Violence Act*, I direct that each crime and offence be recorded on your criminal record as a family violence offence.
- g I have been asked to make a family violence order in the same terms as the interim order made by the Magistrates Court on 27 May 2022. You do not oppose this in respect of the complainant but do oppose the inclusion of terms relating to your child. However, I am satisfied that the order should be in the terms requested by the prosecution. I take into account the nature and extent of the violence, and the fact

that the child was often exposed to this violence. There are adequate exceptions in the existing order which permit contact between the child and you in accordance with a court order or contact agreement. I order that there be a family violence order in the same terms as the said interim order. The said order will be in place indefinitely, that is until varied or discharged by a court of competent jurisdiction.