

JAGO J

The charges related to an incident that occurred on 23 July 2020. The defendant was camping at Narawntapu National Park. He was mentally unwell and had withdrawn from family support at that time. He was observed to engage in a bizarre conversation on his phone. This was heard by a fellow camper, Mr Bennam. The defendant suddenly exited his van and threw his phone into the bushes. He then turned towards Mr Bennam. He was armed with a knife. He pointed the knife in the general direction of Mr Bennam whilst repeatedly directing him to get on his knees, and say that he was not a paedophile. This amounts to the first count of *Criminal Code* assault. As it turns out Mr Bennam was a retired medical practitioner and readily recognised that the defendant was experiencing some mental health difficulties, and calmly responded. The defendant moved away without further incident.

The defendant then entered his four wheel drive vehicle. He drove off at a speed from the camping area, skidding in the dirt at the camping area and colliding with a camp chair. He then proceeded to drive, at some pace, a route between the Narawntapu National Park and Port Sorell. He drove along Bakers Beach Road and Frankford Road into Wilmot Street in Port Sorell. His manner of driving was found by the jury to be dangerous. Particulars of the dangerous driving included that he drove at excessive speeds, that he drove on the incorrect side of the road on occasions, he veered into the lane of oncoming traffic, he overtook when unsafe to do so, and that he collided with other vehicles. One of the collisions involved him impacting the driver's side of an oncoming vehicle as he veered onto the incorrect side of the road. It was not a particularly grievous collision, but no doubt a most uncomfortable experience for the driver of the oncoming vehicle, who fortunately was able to take evasive action and limit the impact of the collision. In Wilmot Street, the defendant entered the roundabout on the incorrect side and drove around it in the wrong direction. The defendant then collided head on with a vehicle on Wilmot Street. Following this collision, the defendant exited his vehicle and approached the vehicle with which he had collided. He stood at the passenger side window of that vehicle and waved a knife towards both the occupants of the vehicle. The defendant said words to the effect of "my name is Gabrielle and I am going to kill you". The male driver of the vehicle exited the car and began to run. The defendant chased him with the knife. The female occupant of the vehicle ran away whilst the defendant was in pursuit of the driver. This behaviour encompasses count 3 and 4 on the indictment, namely 2 counts of *Criminal Code* assault. The defendant then engaged in some other behaviour, reflective of his mental illness, which is not necessary to describe for the purpose of these sentencing comments. Because of his bizarre behaviour however police were called. Upon arrival, Police found the defendant in Wilmot Street armed with a knife. Two other members of the public were in the immediate

vicinity and they were holding shovels. The police approached the defendant and directed him to drop the knife. He did not do so. OC spray was deployed. Whilst the police were endeavouring to have the defendant drop the knife, he was behaving in a manner and yelling out things, consistent with him being mentally unwell. Eventually police restrained the defendant on the ground. He struggled whilst on the ground and tried to stop the application of handcuffs. This behaviour amounts to the resisting a police officer charge. This is a brief summation of the facts. The behaviour of the defendant was more complex than this. Given the jury's findings, however, and the purpose of these sentencing proceedings I do not consider it necessary to expand further upon the facts. In doing so, I do not ignore that a number of members of the public were exposed to the defendant's behaviour, and a number of people were put at risk as a consequence of his behaviour. I accept many of those people were likely to have found the circumstances confronting and alarming.

Damien Minehan gave evidence during the special hearing. He is an experienced forensic psychologist. His unchallenged evidence was that in 2014 the defendant suffered a work place accident which resulted in carbon monoxide poisoning. He was deprived of oxygen to his brain for a substantial period of time causing a significant brain injury. The defendant was left with a number of physical impairments but additionally it became apparent that there were personality changes, difficulties with mood regulation, difficulties in coping with stressful situations and processing difficulties. Subsequent cognitive testing revealed a marked decrease in the defendant's cognitive abilities following the onset of the acquired brain injury. Following the injury the defendant also suffered severe depression. Periods of psychosis were also identified. Medical evidence suggested there was a direct nexus between the acquired brain injury and the psychosis. Mr Minehan gave evidence that following the defendant's arrest for the index offending he was taken to hospital and assessed as being "clearly psychotic and highly emotional". He had formed a belief it seems over a preceding period of time that there was a paedophile ring that he believed was targeting his family, and that he needed to intervene in order to ensure the protection and safety of his family, in particular his son. His behaviour on 23 July 2020 was in response to this delusional belief. Medical records indicated it took quite some time for the defendant's delusional beliefs and psychotic symptoms to settle. The jury accepted this evidence, given the verdicts. I also accept this evidence. It is entirely consistent with the evidence of the defendant's behaviour.

Mr Minehan also gave evidence that he authored a report dated 14 June 2022 in respect to the defendant. I have read and considered that useful report. By the time Mr Minehan saw the defendant he was no longer psychotic, was being appropriately treated with anti-psychotic medication, was compliant with his treatment to the point that the community mental health service believed that a general practitioner would be sufficient to manage the defendant's ongoing mental health needs. In addition to the report of Mr Minehan, I also have regard to a report prepared by Michael Marriott dated 10 November 2022. He is Mr Stevens treating psychologist within the community. In that report Mr Marriott opines that the defendant can be adequately managed within the community by way of regularly seeing his GP and continuing with his mental health care plan formulated by Mr Marriott in consultation with his GP. He also notes the defendant is generally compliant with medical recommendations, attends appointments reliably, has been abstaining from marijuana use and avoiding circumstances likely to be difficult for him. I have also read and considered a report from Dr Sunny Atherton forensic psychiatrist dated 25 January 2023. It is a detailed and comprehensive report. In the report Dr Atherton states in respect to Mr Stevens:

"His psychotic symptoms have substantially improved with treatment.... Mr Stevens has maintained inherent with treatment including a depo anti-psychotic medication. I understand he has remained relatively stable in his mental state without overt psychotic deterioration for over a year now as a voluntary patient under the care and oversight of his GP's and long term psychologists. It appears therefore Mr Stevens mental health care needs insofar as they relate to the management of his psychotic disorder can be adequately meet through those current supports in the community".

And further:

"In terms then of the risk of Mr Stevens endangering others by engaging in future behaviours of kind which lead to the index offending, if he remains in remission of psychosis and in the absence of any serious deterioration in his mental health, I consider his future risk of similar offending to be low. It is important therefore and recommended, that he remain adherent with treatment, abstinent from cannabis and maintain his engagement with current supports".

Ultimately Dr Atherton opines:

"Given those considerations I do not recommend a supervision order or a restriction order be imposed. I also did not, at the time of my assessment, consider Mr Steven to lack capacity to make decisions regarding treatment of his mental illness and thus I do not recommend a treatment order be imposed."

Section 18 of the *Criminal Justice Mental Impairment Act* 1999 lists five types of orders that a court may make upon a verdict of not guilty by reason of insanity being returned following a special hearing. All of the material I have available for my consideration, suggests Mr Stevens is currently compliant with his treatment regime, anticipates that he will remain so, and appears confident that with such adherence, future risk is low. His compliance with his treatment regime has been constant for over 2 years now. There has been no suggestion of any serious deterioration in his mental health and no suggestion of any serious behavioural difficulties flowing from his mental health since the commission of the index offences.

I am required to apply the principle that restrictions on Mr Stevens' freedom and personal autonomy should be kept to a minimum, consistent with the safety of the community. I have received reports as to the wishes of the victims of the offending behaviour and from Mr Stevens' sister as his next of kin. In the main, those reports acknowledge Mr Stevens illness and wish him to receive appropriate treatment. I take all such reports into account. I accept the opinion of Dr Atherton. It is supported by the reports of Mr Minehan and Mr Marriot. I do not consider it appropriate to make it a restriction order nor a supervision order nor a treatment order. I am satisfied that there are adequate resources available for the defendant's ongoing treatment within the community and that he has sufficient family support and financial means to continue to access such supports without the need for strict mandates. I will release the defendant. I have given careful consideration as to whether it should be a conditional or unconditional release. The clear thrust of the reports is that the defendant must remain compliant and stay engaged with his health care professionals. Ensuring he does so is necessary to promote community protection, and minimise future risk. I am therefore satisfied it is appropriate to make a conditional release order, but given his demonstrated preparedness to be compliant, I intend to craft the conditions in a relatively broad manner, so as not to unduly impinge his liberty, and leave the determination of the need for more specific mandates to the mental health care

professionals. This order is designed to assist and encourage the defendant to maintain his commitment to his mental health treatment regime and is in no way intended to punish. I order that the defendant be released on condition that for a period of two years from today he continue with his mental health care plan as administered by his general practitioner and treating psychologist, and comply with directions given to him by his general practitioner and treating psychologist relevant to his mental health.