

Mr Drake, you appear for sentence in relation to the murder of Gabrielle Lee Marshall on 15 June 2021. Ms Marshall was 23 years of age at the time of her death. She was the mother of a then 6 year old daughter. Ms Marshall had come to Tasmania only two weeks earlier, intending to begin a new life. She had left behind a difficult period in her life and was planning for a more positive future. Her daughter had remained with her parents interstate until she had settled herself. She moved in with her lifelong friend, Ms Devlin, who lived in a property in Ulverstone with two young children, aged 2 and 3.

Shortly after arriving in Tasmania, Ms Marshall connected via a dating application with a man by the name of Kadyne Coe. On the evening of Monday, 14 June 2021 they made arrangements to socialise. Those arrangements were interrupted when Ms Marshall had to return home as one of Ms Devlin's children was unwell and needed to be taken to the hospital. Later in the evening, however, Mr Coe returned and he and Ms Marshall spent some time together until he left the residence at approximately 2.15 – 2.30am. When he left, Ms Marshall was asleep on a mattress on the lounge room floor. She was wearing leggings and a crop top and had bedding over her. He left via the back door.

At about the same time, the defendant was walking along Main Street in Ulverstone. The defendant was, at that point, living at 117 Main Street, Ulverstone, a property that was approximately 230 metres away from where Ms Marshall and Ms Devlin lived. The property at 117 Main Street was supported accommodation owned by Leap Occupational Therapy. The defendant was the subject of a Forensic Mental Health Supervision order and a 24 hour per day rostered support care arrangement was in place. His living arrangements were subject to a number of conditions that had been imposed by Forensic Mental Health. Those conditions included that he was not to leave the house without a support worker; and that he was to be in his room and settled by 11.00pm each night.

Contrary to these conditions, and unknown to his carer, the defendant left the residence shortly before 2.30am. He walked to the home of Ms Devlin and unlawfully entered it. He was, at that time, in possession of two knives. One had been taken from a knife block in the kitchen of the residence. The other was a serrated fishing knife. The defendant entered the lounge room where Ms Marshall was sleeping. It is not known for how long the defendant was in the home before the attack upon Ms Marshall commenced, but at 3.00am Ms Devlin, who was asleep in a bedroom with her ill child, awoke to the sounds of Ms Marshall screaming. She could hear thuds and banging sounds consistent with someone being thrown around a room. She heard the door to the lounge room slam and heard her son screaming. Ms Devlin rang 000 and left her bedroom. As she left her room, she observed her son in the hallway crying and banging on the lounge room door, which connected the hallway to the lounge room. Ms Devlin pulled her son away from the door and moved him back towards her bedroom. She then went to the kitchen intending to arm herself with a knife to protect her and her children. As she was leaving the kitchen, she was confronted by the defendant who was moving from the lounge room into the kitchen area. Ms Devlin observed the defendant had blood on his face and glasses and was holding a bloodied knife with a serrated blade partly up the sleeve of his jumper. At that point, she was still on the phone to the 000 operator and the exchange she had with the defendant was recorded.

Ms Devlin bravely confronted the defendant and demanded to know who he was. She told him several times to get out of her house. The defendant replied that he was "one of her boyfriends". He also said "I have lost something ... my torch". Ms Devlin again demanded the defendant get out of her house. The defendant returned to the lounge room and Ms Devlin returned to her bedroom. She barricaded herself in there with both of her children. She heard the defendant walking through the house and after a couple of minutes, heard him leave. The 000 operator remained on the line with Ms Devlin throughout this. I have heard the 000 call played. It was tendered as an exhibit on the sentencing hearing. The terror the defendant's behaviour created for Ms Devlin and her children is blatantly apparent.

After murdering Ms Marshall, the defendant ran back along Main Street, most likely hiding for a period to avoid approaching police, and then returned to his residence.

At approximately 3.08am, police officers Kathleen Parker and Jonathon Bonnelame arrived at the scene. They observed the side entrance to the house to be unlocked. Upon entering, they heard Ms Devlin in the bedroom. They searched the residence and quickly discovered Ms Marshall's body. I have observed the body worn camera footage of the police officers' arrival and their discovery of Ms Marshall's body. Their reaction demonstrates how confronting the scene was even for experienced and trained police officers.

The attack upon Ms Marshall had been frenzied. The lounge room was awash with blood. In total she sustained 17 stab and/or slash wounds to her neck, hands, arms and leg. There was an incised wound to her left temple, which was 5-9 millimetres deep and penetrated the soft tissue and muscles of the scalp. There were 11 wounds to her neck. One was an oblique linear incised wound that was 54 millimetres deep. Another of the neck wounds was 44 millimetres deep. There were also three wounds to her left arm and hand, one to her right hand and an injury to her right knee. Subsequent forensic analysis established that the attack upon Ms Marshall commenced when she was lying on the mattress in the lounge room, most likely asleep. Cast off blood stains were detected on the ceiling above the centre of the mattress. It is likely Ms Marshall struggled against the defendant. She sustained a number of defensive wounds and her body was located face up, between the mattress and the door of the lounge room leading to the hallway, suggestive that she had tried to struggle with the defendant and fight him off.

It was the deep penetrating stab wounds to the neck which caused death. Two stab wounds, in particular, caused damage to the veins and soft tissues of her neck. There was an injury to the left hyoid bone and perforation of the left hypopharynx. Her right external carotid artery was severed. Any of these wounds could have caused death. It was the opinion of the forensic pathologist that a degree of "severe force" would have been required to cause the damage that was observed to the hyoid bone in particular. A broken blood stained knife blade was found underneath Ms Marshall's body. Subsequent analysis disclosed that the blade was from a Smith and Noble knife, the same knife that had been taken by the defendant from the knife block in the kitchen of his residence. The forensic pathologist opined that the Smith and Noble knife was capable of causing the fatal stab wounds to Ms Marshall. His examination could not rule out the possibility that some of the wounds had been caused by a second serrated knife. The concentration of stab wounds to the neck area evidences, in my view, an intention to kill.

Upon returning to his residence, the defendant threw the handle to the Smith and Noble knife into the wheelie bin. He also washed some of the clothing and the shoes he had been wearing. At about 7.00am on 15 June, the defendant's rostered carer, Mr Cole, awoke and spoke with the defendant. He noted the defendant was in the same pyjamas that he had been wearing the

evening before. The defendant told Mr Cole that during the night, he had been trying to fix a cupboard with a knife from the kitchen and that it had broken and that he had thrown it away in the wheelie bin. It was protocol for the carers of the defendant to conduct a knife count each morning and evening, thus an explanation for the missing knife was necessary. Mr Cole told the defendant he needed to go and retrieve the broken knife. He went to the wheelie bin and retrieved the knife handle. When Mr Cole questioned the defendant about the location of the blade, the defendant said it had broken into pieces and he was not going to search the wheelie bin for the smaller pieces. Mr Cole noticed clothes drying on a rack in the lounge room. The defendant told Mr Cole he had done some washing throughout the night.

At around 9.00am, the replacement support worker, Mr Hall, arrived to commence his shift. As he entered 117 Main Road, he observed blood on the front gate. He also noticed police in the area conducting searches. He was advised about the broken missing knife. He notified police about his observations. Detective Senior Constable Joshua Wood attended the defendant's residence. He observed the defendant appeared to have blood on the t-shirt he was wearing. A search was conducted of the residence. A number of items were seized for forensic testing, including the knife handle from the wheelie bin, a pair of sandshoes, and the clothing drying on the rack.

Forensic swabs were taken from a washing basket in the defendant's room and from blood on the front gate. Subsequent forensic examination revealed that the DNA extracted from samples taken from the laundry basket, the front gate, the sandshoes, clothing on the drying rack and blood stains found on the t-shirt the defendant was wearing, matched those of Ms Marshall. Additionally, samples taken from blood on the defendant's glasses, his face and on the band of the Fitbit watch he was wearing also matched the DNA profile of Ms Marshall.

The defendant was arrested. He participated in a record of interview. He told police he had been at home for the entire night with his carer, went to bed at 11.00pm and did not leave the house. He agreed he had told his carer he had broken a knife the previous evening fixing a cupboard and had thrown it into the wheelie bin. He told police that he had washed his clothes during the night because he "likes washing at night". He denied being responsible for Ms Marshall's murder. He was charged and has been in custody since 15 June 2021.

The State assert this is an intentional killing. The accused left his residence armed with two knives. He had dressed in a manner which was consistent with him wanting to disguise his identity. Ms Devlin described to police that the defendant was wearing dark clothing, black gloves and had a hoodie over his head. His possession of two knives suggests that at the very least, he had contemplated the use of violence during his attendance at the residence. The defendant's attack on Ms Marshall I find to be frenzied and persistent. He inflicted 17 stab wounds within a relatively short period of time and despite her endeavours to defend herself. I am satisfied beyond reasonable doubt that given the number, nature and location of the stab wounds, at the time the defendant inflicted the lethal stab wound, he intended to kill Ms Marshall.

As to motive, the State submits there are several possibilities. It may have been sexual. The defendant's carers reported to police that in the weeks leading up to the murder, the defendant had been exhibiting sexualised behaviour, including pointing out women and making sexualised comments about them. The defendant had told one of his carers that he was aware that a young woman with a small child lived at the house where Ms Marshall was murdered. I note there is no evidence of any sexual assault being perpetrated upon Ms Marshall, but it may

not have reached that point. If the motivation was sexual, then protection of the public is an important sentencing consideration. The defendant says he entered the residence intending to steal cigarettes, but of course that is a claim that has only recently arisen. I do note that in some of the psychiatric material tendered during the sentencing hearing, there is comment that the defendant has a fixation with cigarettes. It appears as though the defendant considers his ability to smoke cigarettes as one of the few enjoyments he has in life. If the obtaining of cigarettes was the reason for the killing, then the defendant has displayed a preparedness to commit extreme and brutal violence against a stranger in an endeavour to satisfy a menial need. Again, community protection is a most important sentencing consideration. It is not possible for the Court to determine with any certainty the motive for the killing. What is clear, however, is that the defendant either planned or at least anticipated that he would inflict violence when he went to the residence because he had with him two substantial knives. His conduct was purposeful. Ms Marshall was a stranger to him. There is no evidence whatsoever that she had done anything to provoke this crime or warrant this level of hostility. This was random violence committed against a stranger. The contempt the defendant showed towards another human being can only be regarded with repugnance. Whatever the reason behind the defendant's murder of Ms Marshall, it is apparent that he is a danger to the community.

Ms Marshall's senseless and brutal murder has caused immense shock and extreme pain and suffering for her family. I heard victim impact statements read by her mother and father. I thank Mr and Mrs Marshall for their courage in endeavouring to assist the Court in understanding the sheer enormity of the impact of their daughter's loss upon them. I also received victim impact statements from Ms Marshall's siblings, her daughter and from Ms Devlin. Ms Marshall's family and friends will have to endure the pain and sadness of which they have spoken for the rest of their lives. Her daughter has been deprived of a future loving and caring relationship with her mother. Their lives have been irrevocably damaged by the loss of Ms Marshall and that loss is exacerbated by the dreadful and random circumstances of her death. Ms Devlin has been terribly affected by this crime, as has her son who sadly had to witness the defendant's violence. Ms Devlin continues to suffer with nightmares and panic attacks. She has been left with depression and anxiety, and a myriad of conflicting emotions including anger, grief, fear and guilt. Ms Marshall's murder has had a profound and devastating effect upon her family and friends.

The defendant is 37 years of age. He suffers from a mild intellectual disability. Tasmania Disability Services have been involved in the defendant's life since childhood. When he was aged 11, he was administered an intelligence test which indicated he was not attaining six year old equivalence. The most recent assessment of his intellectual disability disclosed his full scale IQ was considered to be 60, which placed him in the "extremely low range" consistent with being in the bottom 0.4% of the population for his age.

The defendant grew up in Queenstown in a dysfunctional family. He is one of many siblings. His childhood was marred with deprivation and neglect. He attended school until 16 years of age. He performed poorly academically. Behavioural and disruptive issues also arose, particularly during his later years. After leaving school, he obtained various forms of employment, mainly simple manual jobs.

In 2006, the defendant was placed on a community supervision order following proceedings under the *Criminal Justice (Mental Impairment) Act 1995* in respect to a charge of unlawfully set fire to vegetation. He has remained on that supervision order ever since. In June 2012, he was again before the Supreme Court in respect to charges of aggravated burglary and arson.

On that occasion an order was made pursuant to s 7(f) of the *Sentencing Act* requiring the defendant to be of good behaviour for a 12 month period and comply with the terms of the supervision order. Since its imposition the supervision order has been reviewed annually, save for periods when the defendant has been admitted to a secure mental health facility and the order suspended. When in the community, the defendant has lived in a variety of supported accommodation placements, always subject to 24 hour supervision. During the life of the supervision order, the defendant has had a number of admissions to the Wilfred Lopes Centre. The condition of his supervision order allowed him to be detained at Wilfred Lopes when his risk to the community was raised. He was detained there from November 2017 to November 2018, then more recently to this crime, from March 2020 to January 2021.

In a report prepared for the Forensic Mental Health Tribunal by Dr Mark Ryan, Psychiatrist and dated 21 June 2021, it was noted *"in the lead up to apprehension and detention in March 2020, there were significant problems with poor engagement and compliance with directions and rules; demanding, threatening and intimidating behaviour culminating in an assault on a staff member. Mr Drake has also been found in possession of dangerous implements in his room including knives...and it was believed he was leaving his accommodation unaccompanied at night"*. Dr Ryan further opined; *"Mr Drake's ongoing difficulties relate primarily to problems with intellectual disability in concert with attitudes of an antisocial and oppositional nature as well as poor judgement and impulse control ...Although he doesn't have a major mental illness, Mr Drake displays persistent and significant psychological and behavioural problems related particularly to his intellectual disability filtered through a developmental history of significant psychosocial disadvantage, deprivation and neglect. The key issues include impulsivity and tendency to poor frustration tolerance...It is my opinion that Mr Drake needs to remain on the supervision order for the foreseeable future and that there are not sufficient resources available in the community to manage him safely without significant risk of endangerment to others."*

It seems, beyond the defendant's diagnosis of intellectual disability, he does not suffer from any mental health disorders, but is considered to have a number of significant anti-social traits, including poor behavioural controls, poor judgement, promiscuous behaviour, impulsivity and lack of empathy. In earlier years the defendant has also experienced difficulties with excessive alcohol and cannabis use, but since the mandate of his supervision order, these issues have dissipated. I have been provided with a number of helpful reports, authored by Dr Michael Jordan. Those reports have considered the question of the defendant's fitness to stand trial and have also considered the question of whether any of the considerations outlined in the decision of *Verdins* [2007] VSCA102 have application. It is his opinion that none of the *Verdins'* considerations apply although, of course, the defendant's intellectual disability is a relevant matter for sentencing, as is his background of trauma, dysfunction and abuse. It is well established that a defendant's background of deprivation is relevant to sentencing (*Bugmy v The Queen* 2013, 249 CLR 571) but, of course, that must be balanced against the gravity of the criminal conduct and the need for protection of the public.

In summary, Dr Jordan's opinion is that there is no significant nexus between the effects of the defendant's intellectual disability and his actions in killing Ms Marshall. Dr Jordan does note that the defendant's cognitive processes and decision making skills are simplistic and constrained by his low intelligence. Dr Jordan notes that the defendant has been in institutional care, either at the high dependency unit or within the community, for large periods of his adult existence. Despite constant intervention and supervision, this crime occurred. That is suggestive, in Dr Jordan's opinion, that the defendant has a reduced ability to process and retain

the undesirability of being placed in custody. Therefore, Dr Jordan opines, the prospect of an extensive sentence is largely lost on the defendant and because of his cognitive restrictions, he is somewhat immune to the effects of deterrence which arise from incarceration. This is, of course, relevant to the weight to be given to specific deterrence in the sentencing exercise.

In a report dated 14 June 2022, prepared by Dr Alexander Jasper in relation to the annual review of the defendant's supervision order, it was noted *"Mr Drake was arrested on 15 June 2021 and subsequently charged with murder. He has been remanded in custody since that date, aside from being transferred to the Wilfred Lopes Centre for an admission for assessment of his mental state from 24 June 2021 to 20 July 2021..... Multiple inpatient and community assessments have consistently revealed no evidence of major mental illness. Mr Drake's community forensic mental health team have engaged behavioural specialists to work with Mr Drake to reduce his risk to others.....Mr Drake has a long history of serious fire lighting, violence, carrying weapons...and defiant and anti-social behaviour. He has a history of reported breaches of his supervision order. His triggers for violence have previously been reported as unexpected change in routine, lack of satisfying activity, lack of or too much family contact, lack of sleep, inconsistency from staff, authoritarian tone or approach, and access to or use of drugs and alcohol....When an inpatient of the Wilfred Lopes Centre in June/July 2021, his treating psychiatrist opined that Mr Drake appears to have a mild intellectual disability with a reasonable level of functioning. He does not currently suffer from undue anxiety, mood or psychotic disorder. The effective and behavioural dysregulation that is clearly manifest is a product of the defendant's cognitive limitations and anti-social personality disorder."*

In a report dated 22 May 2023, again prepared in respect to the annual review of the defendant's supervision order, it was noted, as expected, that very little had changed. It was the opinion of the author of that report that, if released from the supervision order, Mr Drake would be likely to endanger the public.

I have taken the time to set out a number of opinions from various psychiatrists who have at various times, evaluated the defendant as community protection is obviously a significant consideration in sentencing for this crime. It appears as though concern as to his risk to the community, the inability to manage his behaviours and ongoing non-compliance with the conditions of his supervision order have been a common theme. Because the risk arises from a condition that will not change, the risk he presents to others is likely to be ongoing into the future.

I note and take into account the defendant's plea of guilty. I accept it has value in mitigation. Whilst it could not be said to be an early plea of guilty, I accept there was a legitimate need to conduct a number of psychological and psychiatric assessments in respect to the defendant before it was appropriate to enter the plea. The plea has saved a lengthy trial and most importantly, has saved witnesses having to recount traumatic events, and family and friends having to endure the stress and upset of a trial.

As to the crime, the defendant submits that he attended the residence intending to steal cigarettes, because his carers were restricting his access to them. He had earlier noted a female and child lived at the residence and therefore considered it unlikely they would have weapons. He had knives with him because he says it is his habit to carry them for protection. He does not have a clear recall as to what happened once he entered the residence. He has a memory of inflicting one stab wound. He does not recall inflicting the balance but accepts that he must have been responsible for those. It is submitted on his behalf that he is remorseful for the

crime. His post-offence conduct in telling lies and endeavouring to cover up his involvement is inconsistent with this claim, but that is not to say remorse and shame for conduct may not develop following time for reflection. In my view, however, given the gravity of the crime, it is not a matter that carries any real weight in the sentencing exercise.

There are a number of aggravating features associated with this crime. The defendant left his residence, contrary to the terms of the supervision order, armed with knives. He had selected the home where Ms Marshall lived because he believed there was only a female occupant who would offer less resistance to his plan, whatever it was. As I have already noted, it is not possible for the Court to determine the motive for the murder, but whatever the defendant's motive, the end result was the infliction of extreme violence upon a vulnerable victim.

I am satisfied Ms Marshall was asleep when the defendant's attack commenced. Given he was armed and she was not, it was inevitable that the defendant would readily overcome any resistance, and given the number of stab wounds, inflict fatal injuries. The concentration of stab wounds to the neck area evidences, as I have noted, an intention to cause death. The attack was frenzied and persistent. The ordeal must have been terrifying for Ms Marshall. These crimes occurred within a home where she had gone to be safe, but was instead exposed to this violence. The defendant's violence was witnessed by a child. The defendant knew a child lived in the residence. The confrontation with Ms Devlin must have been a terrifying ordeal for her also. The defendant was armed with a knife and was covered in blood. It was only after several demands from Ms Devlin that he leave, that he did so.

In my view, there was a degree of cunning associated with the defendant's behaviour. Firstly, he left his residence undetected by his carers. He took steps, albeit not particularly sophisticated ones, to hide what he had done. He told lies to his carer about why he had the knife and how it had come to be broken, he tried to wash his clothes and footwear and hide his involvement in this matter. He told lies to police, and he maintained those lies during initial consultations with mental health experts. The defendant's moral culpability is very high indeed.

The defendant's history of prior criminal behaviour and the material that I have referenced relevant to the difficulties that have been experienced with his compliance whilst subject to ongoing supervision, clearly suggests the defendant is oppositional in his attitude generally and difficult to control. As noted, this means ongoing protection of the public is a weighty consideration. Of course, the sentence imposed must remain proportionate to the defendant's crime, but risk of reoccurrence and community protection are legitimate factors to be considered in fixing sentence. If Dr Jordan's opinion is correct, and I have no reason to doubt it, the defendant's inability to be specifically deterred by a lengthy period of incarceration only increases the life-long risk he presents to the community.

The sentence imposed must look to not only achieve community protection but also to meet a number of other sentencing aims including punishment of the defendant, vindication of the victim, the public condemnation of the intentional taking of a life and the deterring of others from such abhorrent conduct. The State submit that having regard to the circumstances of the crime, namely that this was an intentional killing, coupled with the personal circumstances of the defendant, which reveal he is an ongoing danger to the public, I ought to consider this case to be in the "worst case category" and impose a life sentence, albeit making appropriate allowance for parole. I note what was said in *Veen v The Queen (No 2)* (1998) 164 CLR 465, at 478: *"The maximum penalty prescribed for an offence is intended for cases falling within the worst category of cases for which that penalty is prescribed... that does not mean that a*

lesser penalty must be imposed if it be possible to envisage a worse case; ingenuity can always conjure up a case of greater heinousness. A sentence which imposes the maximum penalty offends this principle only if the case is recognisably outside the worst category".

The maximum penalty for the crime of murder is life imprisonment. Eligibility for parole is closely associated with the gravity of a sentence, and must be addressed even if a life sentence is imposed. The gravest penalty that could be imposed for murder is life imprisonment without eligibility for parole. In deciding whether to impose a life sentence, both the objective circumstances of the crime and the circumstances of the offender are to be considered. For the reasons I have stated, I regard the objective circumstances of this crime as involving a very high degree of seriousness. It was an intentional, purposeful killing. The crime is significantly aggravated by the randomness of it which highlights the danger the defendant presents.

The defendant's personal circumstances are also pertinent. The material I have referred to suggests that the defendant presents as a broad ranging and long term societal risk. His capacity to be rehabilitated is limited by his intellect and personality traits. Because of his limitations, I am satisfied he will remain a risk to society for the rest of his life. The combined effect of these considerations is that I am satisfied this is a case that falls within the worst category of murder cases. I therefore intend to impose a life sentence, but I will make provision for parole. The protection of society demands that if the defendant is to be released on parole, it should be a conditional release revocable for the rest of his life.

It will be the Parole Board who, in time, is best positioned to assess whether it is appropriate to release the defendant into the community, and if so, mandate the appropriate supports that need to be put in place to protect the public. The gravity of the crime requires a lengthy parole ineligibility period, but after the defendant has served the minimum period of actual imprisonment warranted for the crime, he should, in my view, have the opportunity to apply for parole.

I make the following orders. Mr Drake, you are convicted of the crime of murder and you are sentenced to imprisonment for the term of your natural life. I order that you not be eligible for parole until you have served 20 years' imprisonment, calculated from the date you went into custody being 15 June 2021.