

The defendant, aged 21, has pleaded guilty to one count of being unlawfully armed in public. The firearm involved was a replica pistol made of wax.

On Sunday, 3 April 2016, he consumed a quantity of drugs, including ice, and alcohol. The following morning he was upset and enraged as a result of a conversation with his ex-partner. At about 11am the defendant called the police radio room. As he was walking through the grounds of a local high school and threatened he would go out with guns and shoot people who were upsetting him; that he had a gun and he was going to do five homicides. Whilst he was speaking on the phone to police, the defendant was walking in close proximity to three students from the high school who were in the school grounds and their attention was drawn to him. One of the students, who was 15 at the time, saw the defendant on his mobile phone, and as the defendant got closer to him he heard the defendant say the words, or similar, "There are going to be five homicides tonight." Another student also heard the defendant make threats as he walked straight past the three boys without acknowledging them. When the defendant got off the phone he said, "They don't think I'm going to do it." The defendant was about four metres away from the students at this time and they saw him take a firearm from the back of his track pants. He pulled the firearm from the back of his pants and held it down his side for a few seconds before moving into it into the front of his track pants. The boys were clearly able to see the firearm. One believed that it was a Glock firearm as he had seen one before and described it as looking like the ones used by police.

The three boys watched the defendant walk off towards the school netball courts, which provide an exit out of the school, and towards Eastlands Shopping Centre. The boys found a teacher and told her that there was a man outside with a gun. Police were called and attended very shortly after. The entire school was locked down.

Police attended the area near the Rosny golf course, just behind Eastlands, and saw the defendant. He was arrested and it was only upon touching the firearm that police realised it was a replica pistol made from solid black wax, and made to function as a candle.

The defendant was taken to the Hobart police station where he told police that he carried the firearm because his ex-partner owed money to drug dealers and they had kicked his door in. He had forgotten that the firearm was attached to his jeans; he had intended to dispose of it that day, but police located him before he could do so. He said that he had episodes of rage that are brought on by stress and drugs. He could recall going towards Eastlands and being arrested by police. He felt so stupid and wished he could turn back time. He became quite upset at the conclusion of the interview.

The defendant was charged and appeared in court the following morning. He made an application for bail which was refused. On 2 May the defendant made application for bail in the Supreme Court, which was granted. Accordingly, he spent from 4 April 2016 to 2 May 2016 in custody in respect of this matter – a total of 28 days.

The replica firearm was subsequently examined by the ballistics section, Tasmania Police, and the candle firearm was classified as an imitation pistol. It was made of solid black wax and was in the shape of a self-loading pistol. It had a wick running through the slide portion, with both ends of the wick only just protruding from the nozzle. Police concluded that the firearm had the same external shape and features of a live firing 9mm Beretta self-loading pistol, and I have seen photographs which would indicate that to be correct. Police further concluded that the replica firearm had enough similar details present for a member of the public to conclude that it was a genuine live firing pistol.

The defendant has no relevant prior convictions as an adult, but has a number of matters where he was dealt with as a youth, ultimately without conviction. I take into account the defendant's plea of guilty and his co-operation with police. He is a disability pensioner who does some part-time work. He has

suffered from ADHD. A psychological report recently obtained shows that he has an IQ of 67, which is in the extremely low range. The defendant has participated in the mental health diversion program in the Magistrates Court in the past.

The defendant had, prior to this offending, endeavoured to change his company, but he formed a relationship with a person who had a drug habit and used ice, and he became entangled. He was assaulted by his partner's friend and was wounded. He has since sought a new and more stable relationship with success.

The exposure of the replica pistol, I note, in the presence of children was momentary, and that the defendant walked straight past the boys and, in effect, was using the high school as a thoroughfare. I take into account that the defendant appears to have been remorseful from the outset, and insightful into his offending. He has engaged in drug rehabilitation counselling in recent time. The fact that the firearm was a replica pistol detracts from the seriousness of the offence. However, going unlawfully armed in public is, in and of itself, a serious crime and all the more serious when the crime was committed in school grounds and the alarm was caused to children attending the school to the extent that the school was locked down. Particularly when, at the other end of a telephone, the defendant was telling police that he proposed to kill people.

I expect that the defendant has learned a valuable lesson from his one month spent in prison before being granted bail, and, as is well known, I am obliged to take that period of imprisonment into account in arriving at sentence.

In the whole of the circumstances that I have just related, I propose to sentence the defendant to period of 90 days' imprisonment, all of which above and beyond the period of 28 days already served, I suspend on condition that the defendant commit no offence punishable by imprisonment for a period of two years. I make an order pursuant to the *Crime (Confiscation of Profits) Act 1993* that the replica pistol be forfeited.

I convict the defendant of being unlawfully armed in public.

I make the usual victims of crime levy order.