

Mr Stubbs, you have been found guilty by a jury of aggravated armed robbery. I must sentence you on the basis of facts I find proved beyond reasonable doubt which are consistent with the verdict of the jury.

The aggravated armed robbery was committed on 5 December 2021. In addition, you pleaded guilty to aggravated burglary committed a few days later at the same premises in which you committed the aggravated armed robbery.

The victim of your robbery was unknown to you. You and your co-offender decided to attend at the victim's home with a view to stealing cannabis. The co-offender apparently believed that the victim had sold cannabis to a young female person and subsequently demanded payment from her through sexual services. There is no evidence that there was any truth in that allegation.

On 5 December 2021 you and your co-offender arrived at the victim's home when the victim was watching the car racing from Bathurst on TV. One of you banged loudly on the front door and the victim told you to go around the back because access through the front door was blocked.

When the victim opened the rear sliding door, he saw you and your co-offender. The co-offender is a much bigger person than you. Both of you were standing outside and your co-offender said something about racing. The victim said "no, not here", and a apparently normal mood quickly changed to an aggressive and dangerous situation. Your co-offender pulled a knife out and said, words to the affect, "we want your guns in the garage". He also demanded marijuana plants.

The victim endeavoured to cooperate throughout the events that followed. He offered some small plants that were growing at the premises but they were rejected by your co-offender who spoke about wanting the proper marijuana. The victim lead the co-offender to the bedroom and, as they were walking down the hallway, an air rifle was knocked over. our co-offender took the air rifle and passed it to you. A drum containing marijuana was seized by the co-offender.

It appears that during the events that followed the entry into the house, your co-offender decided to take the guns. He obtained the keys to the gun safe and went to the garage where he eventually unlocked the safe and took a Winchester rifle and ammunition. You and the victim stayed outside.

During the events, on more than one occasion, your co-offender accused the victim of forcing a 16 year old female to engage in oral sex as a means of paying for cannabis. You said you had heard what had happened and it was really bad. The victim denied any such behaviour.

Although you subsequently told police that you did not see a knife, and denied that your co-accused threatened the victim with a knife, I accept the evidence of the victim that throughout the events in the house, your co-accused waived the knife around and threatened the victim with it. He also poked the point of the knife into the back of the victim's neck without breaking

the skin. You were present Mr Stubbs, and you well aware of the knife and your co-offender's use of it.

In evidence that I accept, the victim described your co-offender as an "absolute nutcase". He said your co-offender was bouncing all over the place and described him as a an absolute crazy man who was as aggressive as the victim had ever seen. Your co-offender also threatened to shoot the victim.

You were present while your co-offender behaved in this manner, including during his threats with the knife and the air rifle. You saw what was happening and I reject your denials. You were also present when your co-offender told the victim that you were a mad bastard and he should not piss you off or you would shoot him. You did nothing to deny your co-accused's statement about you.

In your interview, you told police that you were drunk and you took no notice of what was happening. You claimed that you were patting the dog. I reject your claims to the police. You were well aware of what was happening and you were not drunk. The victim was specifically asked about alcohol and he denied that you were drunk. It appears that your co-offender displayed signs of the effects of alcohol, but you did not display any such signs. Throughout these events you were well aware of what was happening and you assisted your co-offender by holding different items and through your presence. The victim told the jury that you were not aggressive and did not threaten him. The victim accurately described your job as being there to assist the co-offender.

While in the house, your co-offender noticed cameras and asked where the hard drive was located. The victim took the hard drive from behind the television set while your co-accused was standing over him with the knife. You were present, and at that time you were holding the air rifle and a tub containing cannabis. After the victim retrieved the hard drive, your co-offender demanded money. The victim pulled \$50 out of his wallet which your co-offender took, leaving \$5 in the wallet. Your co-offender lifted the hard drive as if to smash it, but he did not follow through and retained possession of it.

During the events your co-offender spoke in a threatening manner to the victim saying the victim had seen your faces and he would do something about that. He spoke in an aggressive fashion. The victim described how your co-offender and you locked eyes as if the co-offender was asking your permission to do something about the fact that the victim had seen your faces. You looked down and gave a small shake of the head discouraging your co-offender from doing anything.

As you and your co-offender were leaving the premises, your co-offender told the victim that if he called the police you would come back and shoot him with his own weapon.

During cross-examination by your counsel, a case was presented that you spent all your time in the kitchen and had little to do with the events that occurred. It was suggested to the victim that he could not exclude the possibility that you did not see what was going on. In evidence I accept, the victim maintained that you were present throughout watching everything that was happening. He accurately described you as being present to backup the co-offender.

Eventually the pair of you left with cannabis, the air rifle, the Winchester rifle, the CCT hard drive and \$50 cash. I note that you were not charged with robbing the victim of the cannabis.

As you were leaving and heading towards the property of neighbours, the victim decided to offer you his vehicle rather than you wandering around the neighbourhood armed with rifles. In short, your co-offender, with you and the victim in the car, drove away quickly from the premises and eventually left the vehicle in a paddock. The keys were put under a seat and were accessible to the victim who was able to drive home.

As I mentioned, your co-offender accused the victim of criminal conduct in relation to a 16 year old female. During the events, your co-offender said to the victim that if he found out the allegation was not true, he would bring the property back to the victim. The following day, you and your co-offender returned to the premises with the gun bag containing the two rifles. The victim said words to the effect "you found out it was bullshit then" and your co-offender replied "that bitch won't answer phone". Your co-offender handed the bag containing the rifles to the victim. You told the victim that you had had a bit of a think about this and it was a bad idea. You told police that it was you who had second thoughts about the rifles and suggested that they be returned.

I am satisfied that you told police the truth in that regard.

It must be said that the victim showed remarkable calmness and presence of mind in his dealings with you and your co-offender, notwithstanding that your co-offender behaved in an extremely aggressive, threatening and bizarre manner. The robbery could easily have had tragic consequences, but the sensible response of the victim resulted in the incident concluding without physical injury to the victim. It is also appropriate here to mention that you were a calming influence on your co-offender.

On 6 December 2021 the victim installed extra camera security. Unfortunately, he failed to switch the camera on and it did not record your visit when the guns were returned to the victim. Having discovered that the camera was not working, the victim activated the camera and it recorded footage during the evening of Wednesday, 8 December 2021 which is the occasion in respect of which you have pleaded guilty to aggravated burglary. You have pleaded guilty to entering the premises as a trespasser, with intent to commit the crime of stealing, and at the time of the burglary you had an offensive weapon, namely a knife or a block of wood.

At about 9am on Thursday, 9 December 2021 the victim noticed that the door to his garage was open. The door was not normally locked, but he had a practice of making sure it was closed every night. The victim also noticed a padlock on his shed next to the garage was missing.

The footage from the security camera showed you and two other male persons wandering around the back of the house at about 10.20pm on 8 December 2021. All three males were wearing hoodies and face masks. One of the men was carrying an item that looked like a hammer, and the other a block of wood in one hand and a knife in the other hand. In his statement to the police the victim said that something appeared to spook the three male persons and all took off. Subsequently, the victim found an old and rusty hammer was missing. He found a pair of grey gloves on the ground which he retained.

In your interview with police on 14 December 2021, you said that you, your co-offender and another male person "wanted to go and get some more weed". You said that after work you went to see your co-offender, and you met up with the other male person on the way to the victim's home. You admitted that the three of you got together because you wanted to get more

marijuana. You told police you did not go to the door of the shed, but the others looked in the shed and were unable to find any marijuana. You described that you sat around "for a little bit to see if he was going to get up and then we just took off". You maintained that you were only after marijuana.

Police asked about you being armed and you answered "um, I picked up a steak knife there I think it was". You said that the steak knife came from the property and you left it there.

Police also put to you that it looked from the CCTV footage like you were carrying some sort of block of wood. You said "yeah, I was at one stage, yeah, I picked that up, the block of wood". You said that you picked up the block of wood on the property. As to why you were in possession of the knife and the block of wood, you said "Uh, it's just my own protections cause I knew that he had guns". As to the gloves, you said "I don't think I had gloves, I don't know whose they are". You said that you did not use or take the hammer.

Mr Stubbs, your crimes have had a serious affect upon the victim. Although he demonstrated remarkable composure in the face of frightening and threatening behaviour on the first occasion, the victim has told me the events and aftermath have been, for him, a nightmare. He said it would have been a lot tougher if friends had not been of great assistance to him. They have loaned him their guard dogs and slept at his premises in support of him. They have let him store machinery and vehicles on their property. The victim describes that the crimes have had a huge impact on his life and affected every aspect of what he does. He has 15 security cameras installed, which he constantly checks. He has a security monitor in his lounge that constantly reminds him of how his life changed. The monitor constantly cycles through each security camera every five seconds. He lives alone in a quiet bush setting, as you know, but he now lives in fear of further violence. He was accused of sickening things and that in itself has had a huge impact upon him.

The victim makes, what might be described as an unusual but telling observation at the end of his victim impact statement. He has told me, and I accept this, that one of the things that has affected him most was that on the day of the incident, and I use his words, "I actually had to contemplate taking the life of another human being that was ready, maybe, to take mine." That should tell you, Mr Stubbs, something about the extent of the impact that the crime committed by you and your co-offender has had upon the victim.

As to matters personal to you, I have had the assistance of the home detention and pre-sentence report, and submissions from your Counsel. You are now aged 32. To your credit you have disassociated from the people with whom you were associating at the time that you committed these crimes. You are residing now with family. It appears that you commenced using cannabis at the age of 17, particularly after the breakdown of the relationship between your parents.

You ceased using cannabis in 2021 of your own volition, but you relapsed in early 2023 due to a relationship breakdown, but you ceased again in April 2023 and have been abstinent since that time. You experimented socially with LSD, ecstasy and other illicit drugs in the past, but you have no issue with respect to those drugs at this time, and Community Corrections have expressed no concerns regarding your alcohol or illicit substance use.

There is mention in the report of family violence incidents, which occurred during a previous relationship when you were on the receiving end of the violence. It resulted in you turning to

alcohol. To your credit, since you committed these offences and you were charged, and during the delay between you being charged and the matter going to trial, you have ceased using any form of illicit substance and you have sought and received counselling. That counselling is ongoing. You have gained insights into the issues of alcohol, other illicit drugs and relationships.

I accept that when you committed these offences, you were in an extremely poor mental state. Significantly, notwithstanding a number of difficulties, until you committed these offences, you had not been in trouble with the criminal law. You have a couple of traffic matters, but you have remained a law abiding citizen over all those years until December 2021. Also significantly, you have indicated expressly this morning a willingness to give evidence against your co-offender should that become necessary, and to give truthful evidence about what occurred.

Mr Stubbs, every crime of armed robbery involving the use of a weapon such as a knife is a serious crime, and the use of such weapons always possesses the potential for drastic results. The behaviour of your co-offender could very easily have resulted in serious injury or death. You did not bring the knife to the premises, and you did not behave aggressively. However, once the knife was produced, you supported or backed up the co-accused.

As I said earlier, to your credit you were a calming influence, particularly when your co-offender spoke about the victim being able to identify both of you and hinted at a need to do something about that.

For every crime there is a scale of seriousness. The crime committed by you and your co-offender is a serious example of the crime of aggravated armed robbery. It is not at the lower end of the scale of seriousness. But there are two matters of particular relevance to your role in the commission of the crime.

First, there is no evidence that you were aware in advance that your co-offender was carrying a knife or was likely to use it. The case was presented to the jury on the basis that you and your co-offender agreed to steal cannabis from the victim and, in pursuing or putting into effect that agreement by carrying out the stealing, the crime of aggravated armed robbery was of such a nature that the commission of such crime was a probable consequence of carrying out the stealing. The jury was specifically told that it was not necessary that you realised that the commission of an aggravated armed robbery was a probable consequence. The offence was made out because a reasonable person in your position would have appreciated that the commission of the crime of aggravated armed robbery was a probable consequence of carrying out your planned stealing.

Secondly, you did not display any aggression and, as I have said, to some extent you were a calming influence.

The combination of these circumstances is somewhat unusual. These circumstances place in proper context of your role in the commission of the crime and the important fact that the agreement or understanding you reached in advance with your co-offender was to steal cannabis. In advance, you were not aware that a weapon would be used or that your co-accused would behave in the aggressive and threatening way described by the victim.

Mr Stubbs, crimes of robbery, particularly aggravated armed robbery are, unfortunately, far too common. They cause great disquiet throughout our community. They pose a great danger to the safety and wellbeing of immediate victims and others in the vicinity. The primary concern of a court is the protection of the public. In looking to that issue, deterring others minded to behave like you, denunciation and punishment are particularly important factors in arriving at an appropriate sentence. So is deterring offenders from repeating their crimes.

Although you are not entitled to the benefit of a plea of guilty for the first offence, and having been caught on camera the case against you for the second offence was overwhelming, nevertheless, your absence of prior offending and your conduct following your arrest in this matter speaks well of your prospects for the future. It can never be guaranteed that an offender will not offend again, but I assess that you have excellent prospects of full rehabilitation and that you are at a low risk of offending again.

You are convicted of both offences and I impose a single penalty. I impose a period of 18 months' home detention, that will commence today. All the core conditions contained in s 42AD of the *Sentencing Act* are imposed. You must during all of the operational periods submit to electronic monitoring, including by wearing or carrying an electronic device, during that period you must not remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring. You must not allow anyone else to remove, tamper with, damage, disable or interfere with the proper functioning of any electronic device or equipment used for the purpose of electronic monitoring. You must comply with all reasonable and lawful directions given to you in relation to the electronic monitoring, including in relation to the installation attachment or operation of a device, or a system used for the purpose of electronic monitoring by a police officer, a probation officer or prescribed officer, or another person whose functions involve the installation or operation of a device or a system used for the purpose of electronic monitoring.

I also impose conditions that during the operational period, you remain at [address stated] at all times, unless approved by a probation officer. That is, unless departure from those premises is approved by a probation officer and then for whatever period of the approval is given.

Immediately upon release, you must attend the Community Corrections Office at Hobart for induction into this order. You must during the operational period maintain in operating conditions an active mobile phone service, provide the contact details to Community Corrections and be accessible for contact through this device at all times.

You must submit to the supervision of a Community Corrections Officer as required by that officer and obey all reasonable directions of that probation officer. You must not, during the operational period, take any illicit or prohibited substances including any controlled drug as defined by the *Misuse of Drugs Act*, or any medication containing an opiate, benzodiazepine, ibuprofen, hydrochloride or pseudoephedrine unless you provide written evidence from your medical professional that you have been prescribed the relevant medication.

You must not, during the operational period, consume alcohol and you must, if directed to do so by a police officer or a Community Corrections Officer, submit to a breath test, urine test, or other test for the presence of alcohol or any other drug.

Further, you must continue to engage with Anglicare and Uniting Care with respect to your mental health and to undergo any counselling or medical treatment for your mental health as directed by a probation officer.

Mr Stubbs, the probation officer's report suggests you are suitable for community service. I make an order that you perform, over the next 12 months, 50 hours of community service as directed by Community Corrections, or a probation officer.