

STATE OF TASMANIA v PJM
COMMENTS ON PASSING SENTENCE

1 MAY 2024
PORTER AJ

PM, the defendant, has pleaded guilty to one count of aggravated armed robbery and one count of stealing. In brief, the allegations are that on 30 June 2023 at about 6.30 pm, in company with his younger sister, J, and a friend, S, and while armed with a knife, he stole a number of small bottles and cans of alcohol from a bottle shop. Much of the offending was caught on CCTV. The defendant was then 15 years old. The facts are that the three walked past the entry of a 9/11 Bottleshop in a shopping plaza, each with a hoodie pulled over their head. Before going into the shop, the defendant spoke to both females who then entered while the defendant stayed outside, apparently waiting. A staff member, recognising the females were underage, repeatedly asked them to leave but they ignored the requests and started to remove alcohol drinks from the fridge. While two staff members were dealing with the females, the defendant walked in and removed two 700 ml bottles of bourbon before running back out the front entrance door. One staff member, Ms Oliver, followed him, the other, Ms Coleman-McElle, also moved nearby and stood at the door with her arms extended to try to stop the two females from leaving. S managed to run past but J was stopped. She tried to push past, dropping two of the bottles she had in the process, one of which broke. At this point a customer intervened in an attempt to prevent J from leaving the shop. The defendant then returned to the front entrance where he produced a fold-out knife from his waistband and yelled at Ms Coleman-McElle, at least once, "don't fucking touch her" and then threatened multiple times to stab her. He was holding the knife in a threatening manner. Ms Coleman-McElle released J as she feared she would be stabbed by him. About ten minutes later police intercepted all three youths on a bus heading away from the location. They were found to have a total of ten bottles or cans of alcohol to a value of about \$170. The defendant was found in possession of a knife with a blade of approximately nine centimetres in length. I have victim impact statements from the two staff members. Not surprisingly both were very fearful during the incident; in particular, Ms Coleman-McElle was terrified she would be stabbed. Both have suffered quite significant psychological difficulties as a result and remain generally fearful and anxious.

The defendant is now 16. In a short space of time and effectively in three court appearances, he has acquired a rather a significant record of offending. On 7 March 2023 he appeared in the Youth Justice Court on 48 charges. These range from a number of assaults, including two by kicking different people to the head and punching another to the head, to stating a false name. The bulk of the offending is dishonesty, a lot of which can be categorised as "shoplifting". He was not convicted of any of those. The combined penalty was youth justice probation for 12 months and 60 hours community service. That offending occurred in the date range from late 2021 through to mid-2022. He again appeared on 4 April 2023 on charges of assault, possess dangerous article in a public place, and stealing, for all of which he was sentenced to an additional ten hours community service. Of course, this offending occurred only some three months later. Lastly, he appeared again on 12 January 2024 on offences of assault, dishonesty using abusive language to a police officer and possessing cannabis, all committed before the incident with which I am dealing. There were two orders of 50 hours community service made, with the period for performance of both to commence on the day of sentence.

I have a Youth Justice report, dated 24 April 2024 and the benefit of counsel's submissions. It seems the defendant's upbringing was very traumatic as he was a witness to frequent domestic violence towards his mother. That of course is a relevant consideration. At the present time, he is living alternatively with his mother in the south of the State and his father in the north. He

seems to have a reasonable relationship with both, although his mother reports that he wants to return to her on a full-time basis. In terms of this offending, he offered to the Youth Justice officer a comment that the offending was "fucking stupid, pointless", and that he did it in the heat of the moment. He went on to explain that he was reacting to someone grabbing his sister, and acknowledged the staff would have been scared by his behaviour. A short time ago he broke up with his girlfriend, with whom he had been living intermittingly at her house. Apparently this had a negative impact on him. The report indicates that he completed his year 10 education in 2023, and has shown an interest in construction work. He wants to attend TAFE. There is an unconfirmed suggestion that PTSD from witnessing domestic violence and a further suggestion of ADHD and depression, although currently not on medication. He is a user of cannabis and says that without it he is generally angry, His use escalated after the breakup with his girlfriend. He has also admitted methamphetamine use occasionally, however, he is receiving counselling in relation to substance abuse. A report from Holyoake states that he has been respectful, eager to engage and applies himself enthusiastically. In terms of previous sanctions, he completed his 60 hours of community service in a satisfactory manner and is said to be progressing well in completing the 100 hours of which he has performed 11.5 hours. There is a note that he has set goals for his current order and is proud to be working towards them. He is described as friendly engaging and cooperative, and as having shown insight into his offending and expressed remorse and regret for his actions.

This is undoubtedly a very serious matter. The issue of youths with knives, prepared to use them, is a matter of significant community concern. Shop staff and security are often in vulnerable situations and require the protection of the law. The principles of youth justice can give way to factors of general deterrence in certain circumstances. This case may be close to the line, given the defendant's record of offending. I take into account his personal circumstances. I also take into account the pleas of guilty for which he is entitled to credit. Although, with respect, the tenor of the Youth Justice report seems not to fully reflect the seriousness of the offending, I will follow the recommendation of community service and probation. I will deal with the defendant under the *Youth Justice Act*. Section 72 of that Act enables an order or orders for community service to be made to a total of 210 hours; that is in aggregate with any previously uncompleted orders. The defendant has 88.5 hours left to complete and I take that into account.

PM, I need to make it very clear to you that what you did is very wrong. This was a serious criminal incident. You need to put yourself in those people's places, and just imagine how you would feel. Aggravated armed robbery is a very serious crime. As an adult you would be facing imprisonment. If you continue to behave in the way you have over the last year or two you will inevitably be put in to detention or later, as an adult, in prison. I can tell you that they are places you want to avoid. You are convicted of the crimes. I make a community service order. You must perform 100 hours within the 12 month period as specified in s 73 of the *Youth Justice Act*. In addition, I make a probation order for 12 months. You must report to a youth justice officer in person or by telephone at the Inga Building at St Johns Park New Town by 5pm by this Friday.