

Adrian Rees, the defendant, has been found guilty by majority verdict of one count of perverting justice having been tried on one count of assault and five counts of perverting justice. There was a unanimous verdict of not guilty of the assault, while the jury was not able to reach a verdict on four of the perverting justice charges. It was count six on the indictment and the last alleged act of perverting justice, in chronological order, on which he was found guilty. The State's case was that the defendant assaulted his ex-partner, Ms Hingston, on 8 October 2020 by kicking her to the shin, and after being charged with that offence on five separate occasions up to June 2022 he made threats or inducements to her to not give evidence or to go to police and say she had made a false statement about the assault. It follows that the State's case was that the defendant had assaulted Ms Hingston and then made attempts to have her resile from her statement of complaint said to be true, and to make an exculpatory one. Count 6 was simply particularised as an allegation that on or about 7 June 2022, with the intent to obstruct prevent pervert or defeat the due course of justice, the defendant drove Ms Hingston to a police station and threatened and/or offered her an inducement in relation to her "making a false statement to police." That expression is neutral. A difficulty arises in relation to the factual basis of sentencing the defendant on the count of which he was found guilty. That difficulty arises in the following way. The verdict of acquittal of the assault means that the crime was not proved beyond reasonable doubt. The law is that where there is an indictment containing multiple counts and there have been some convictions and some acquittals, the trial judge must accept the implications of the verdicts for the purpose of imposing sentence: *Bresnehan v The Queen* (1992) 1 Tas R 234 at 243. Assuming consistency, it necessarily follows that the guilty verdict on count 6 cannot be one based in fact on the defendant attempting to have Ms Hingston change her version from a true one – that he assaulted her – to a false one. Given the jury was directed that the due course of justice is obstructed, prevented, perverted or defeated by impairing or preventing the capacity of a Court to perform its function and to do justice, the finding of guilt is consistent with the jury's view that the defendant attempted to have Ms Hingston change her statement from one they were not satisfied was true. The State submits that in the sentencing process the finding of not guilty on the assault is not a material consideration as the Court is only concerned with the actions of the accused, and in any event, it is not possible to reason from the jury's verdict that the threat or inducement related to her changing a false statement to a true statement. It is pointed out that the verdict on count 1 does not necessarily imply a finding that Ms Hingston lied. This means it is the mere fact of attempting to have Ms Hingston change what she proposed to say in court that forms the basis of sentence. The State further submits that a finding of guilt of the assault would not be an aggravating factor in the sentencing for the perverting justice charge. It seems to me however, that it would be an aggravating factor if the defendant knew the truth of the allegation of assault against him and was trying to avoid being punished for that, as distinct from knowing the assault allegation was false and attempting to prevent him being the subject of an injustice. For it to be an aggravating factor, I would have to be satisfied beyond reasonable doubt that he committed the assault. In the circumstances it would be wrong of me to attempt that exercise. That said, the failure of the jury, and hence my inability, to be satisfied beyond reasonable doubt of the assault, does not necessarily establish the opposite fact in mitigation on the balance of probabilities: see *Weininger v The Queen* [2003] HCA 14, 212 CLR 629 at [24]. In that passage the plurality also pointed out that not every matter urged on a sentencing judge can be fitted into one or other of the categories of aggravating or mitigating. It is not a question of whether I think the jury was satisfied that the defendant probably did not assault Ms Hingston. It is a factual matter for me

to consider, acting consistently with the verdicts. On the whole of the evidence, I cannot be satisfied on the balance of probabilities that the defendant did not assault Ms Hingston. It follows that, as the State submits, the truth or otherwise of her allegation of assault is a neutral factor in relation to the crime of perverting justice and the defendant is to be sentenced simply on the basis that he was attempting to interfere with the process by which a court should freely hear and determine the allegation.

The facts of the crime of which the defendant has been found guilty are that on 7 June 2022, he picked her up from where she was living to go grocery shopping. The defendant said, "Here is what we are going to do, we are going to go into the police station, and you are going to say that you have made a false statement". The defendant told Ms Hingston, "We are going to sort this out", adding that if she did not go through with it then something bad would happen to her. The defendant then added a financial inducement, telling her that he was due to get a pay out through the redress scheme, and that she would be rewarded if she said she had said made a false statement; he would buy her a motorbike. They drove to a police station where, with the defendant in the car outside, Ms Hingston told a female police officer that she wished to withdraw a statement in relation to a family violence matter. She was asked if she was making a statement of her own free will to which she replied she was not, and when asked if she had been threatened, she said, "Kind of". She was then taken to a private room where she explained that the defendant had made her come to the station to make a "withdrawal statement", otherwise he would hurt her. I have a victim impact statement of Ms Hingston which was obviously prepared in anticipation of guilty verdicts; in particular, for the assault. That said, it does refer to the threats made and the adverse impact on her. She says she was fearful up to the time of trial and is still "haunted" by them. It is always difficult to assess the dynamics of relationships all of this perhaps needs to be put in some context. In evidence, Ms Hingston agreed that a police family violence order had been made against her in 2020, restraining her from going to the defendant's home, threatening or abusing him, and damaging his property. In February 2023 she pleaded guilty to damaging his vehicle, and there was a conviction for a similar matter in June 2023, this time by the use of a golf club.

The defendant is now 60 years old; 56 at the time. He has a recorded history of offending in this State, and in Western Australia and South Australia. In this State the record starts in May 1983. The matters for which he has appeared before courts in this State range from traffic offences through minor drug offending offences of dishonesty to several convictions of assault, firstly in 2004, again in 2006, and more recently in March 2016 associated with a conviction for a breach of a family violence order. There is somewhat a similar pattern of offending in South Australia in 1990 through to 1992. Much earlier, in Western Australia, there were convictions in May 1987 for assault a police officer, refuse name, resist arrest and using threatening words, for all of which he was sentenced to a short term of imprisonment. Most relevantly however, is a conviction for perverting justice recorded by this Court in June 1997. This was associated with a conviction for causing death by dangerous driving. On the latter charge he was sentenced to 12 months' imprisonment, and for the perverting justice sentenced to a further four months' imprisonment cumulative. I note that the regularity of the defendant's offending has significantly lessened over the last eight or nine years. Leaving this offending to one side along with some traffic infringement notices, the only recent matter is a breach of a family violence order involving Ms Hingston in November 2022, for which in July 2023 he was fined a moderate amount. I was told the incident involved him grabbing Ms Hingston by the arm during an argument. Further relevant personal circumstances are as follows. He was born in Perth, Western Australia and raised in Tasmania from the age of two. He had a dysfunctional childhood, being exposed to and experiencing family violence. His father left the

family when he was very young. He was sexually abused by a teacher while he was at high school. I am told that the impact of this abuse has been life long and has affected many areas of his life. As a young adult he began drinking and using cannabis heavily as a means of self-medication. That seems to be reflected in his record of prior convictions. As he become older, he was able to reduce his dependence on these substances, and his children have helped with his focus on rehabilitation. Substance abuse is not an issue for him. The defendant is now in very poor health. In the past 12 months he has had significant periods of hospitalisations relating to heart issues including a cardiac arrest on the most recent occasion early this year, which saw him hospitalised for two weeks. As a result of his heart problems, his mobility and speech has been affected. He suffers from incontinence issues and severe swelling in one foot. He is on several medications to manage this condition. I have a report from his treating doctor who says that his condition would not withstand actual imprisonment. I note that the defendant has stable accommodation. He has three children with the complainant; those children now being aged 5, 8 and 9. He has the care of them every weekend for three days. I was told that he considers his relationship with the complainant over and I note there are family violence orders still in place each protecting one from the other.

The crime of perverting justice is invariably treated as a serious matter because of the intention, involved in the crime, to undermine and interfere with the administration of justice. It is of some relevance in this case that, whichever way one looks at the factual situation, the attempt failed. Ms Hingston gave evidence in accordance with her original statement. In any event, any efforts to undermine the integrity and proper operation of the justice system need to be condemned. General deterrence is a prominent factor. In this case a threat of physical harm was made, as well as a financial inducement. Threats of violence are not acceptable in any context particularly, it might be said, in the present. Motive is not a relevant issue. I take into account the defendant's personal circumstances; in particular, his background and his present state of serious ill health. I note that the prior conviction for the same crime was a considerable time ago and the defendant has undergone significant rehabilitation since then.

Mr Rees, I have set out the facts and the basis of the sentence, your personal circumstances and what I see to be the relevant factors. Even ignoring your health issues, in this case I would not regard immediate actual imprisonment as appropriate, but the seriousness of the crime needs to be highlighted. You are convicted and sentenced to two months' imprisonment the execution of which is wholly suspended on condition you commit no offence punishable by imprisonment for a period of 12 months.