

Mr Fazel, the defendant, was found guilty by a jury of one count of wounding and one count of assault. These are family violence matters, the complainant being Mr Fazel's wife. There were two separate incidents, one on around 10 November 2020, the other about a year later. I find the facts to be as follows. At the time of the first incident, the couple had been married for about seven years, having married in Kabul, Afghanistan. They are both originally from Iran. In relation to the first incident, late in the evening, the two were in their bedroom. Their two young children were asleep. The defendant wanted to have sex with the complainant, but she refused saying she was tired, and wanted to go to sleep. The defendant argued; the complainant told him not to annoy her. He was persistent and she started to cry. He told her to get out of the room. She did so and next saw him standing in the corridor with a large, serrated kitchen knife. She ran towards the bathroom intent on locking herself in but tripped on a child's potty and fell. Just after she fell the defendant struck her twice to the back of the head with the back, or non-sharpened, side of the knife blade. The complainant immediately started to bleed and was shocked and frightened. She dialled 000, telling the operator that her husband had hit her in the head, and that she was bleeding. Police attended. Body worn camera footage shows the complainant in a distressed state, and as best she could, outlining what had happened. At the hospital police obtained a written statement from the complainant, and made a video recorded statement both with the assistance of an interpreter. Parts of that were in evidence, as verified by an independent interpreter. About two weeks later, the complainant went to the Launceston Police Station with a typed letter and resiled from the statement she had made about what had caused the injuries to the back of her head. She said they were self-inflicted. That is the position she took at trial and her evidence was elicited mainly by way of cross-examination under s 38 of the *Evidence Act* by reference to the prior inconsistent statements. The second incident involving the assault came to the attention of the police in the following way. The complainant had come to know a local woman, Ms H, through a church group. Ms H had been assisting the complainant with conversational English and had helped draft the letter of retraction in relation to the first incident. On the evening of 11 November 2021, the complainant rang Ms H and told her she, the complainant, needed to get out of the house. She said that the defendant had hit her, and she needed to leave. Ms H said she would pick her up in about half an hour, but the complainant insisted that she needed to leave immediately. It was then arranged that the complainant go to the home of another church member who lived close by. Ms H then went to that home, picked up the complainant and her children and took her to a refuge. The complainant wearing a surgical mask but Ms H noticed her face was swollen and one eye was bloodshot. At the refuge, the complainant refused to have photographs taken of her and refused an offer to contact police. During this conversation the complainant told Ms H that the defendant had shown her a video of Australians rioting against police somewhere in Australia, told her that people do not like the police, said to her that she had brought them into his home and then hit her. The complainant went on to confess that she had lied about the earlier incident when she said that the defendant had not been responsible for hitting her with a knife but she that she had self-harmed. The complainant admitted that it this was not right; the defendant had caused the injuries with a knife. A police officer did go to the refuge and noticed swelling to the complainant's face but she was reluctant to speak and claimed she had caused the facial injuries herself. Those injuries sustained in the first incident were two wounds to the back of the head; one five centimetres long by two centimetres wide on the back of the scalp, and the second, a four centimetre by one centimetre wound to the crown of the head. Both wounds needed to be closed using medical staples and the complainant was kept overnight.

I have the benefit of a pre-sentence report dated 11 October 2024 together with the submissions of counsel. The defendant is now 41. The two children of the marriage are now aged nine and six with whom he has a strong relationship. He had no prior convictions at the time of this offending but has since been dealt with for breaches of an interim family violence order relating to the complainant by being in a car with her and then at the place where she lived, both being, it must be said, with her agreement. That order lapsed and from January 2023, the two resumed cohabitation. The couple came to Tasmania via Malaysia in 2019. The evidence suggests a difficult period of five years in transit. The defendant went there first to be later joined by his wife, but as undocumented refugees they seem to have exploited. They found adjusting to life in this country very difficult and they were under financial strain in period before the first incident and beyond. The defendant has a lengthy employment history commencing at the age of 10. He was employed as a rug maker when very young. He has had various positions in various countries. In this State he has worked in casual positions, and he studied nursing in 2020 but had to abandon that, I was told, due to his working with vulnerable registration being revoked in light of the charges he faced. Until recently he was employed as a supermarket store person but has resigned, apparently due to these matters. He is now studying information technology and hopes to achieve tertiary qualifications. It is said that he suffers from PTSD which he attributes to experiencing acts of war, including air raids, bombing attacks, involvements with the Taliban, and living in refugee camps. He worked as an interpreter for government and allied forces in Afghanistan – which puts him at grave risk should he return – and was a victim of an IED explosion while travelling in a vehicle. The diagnosis has been confirmed by the defendant's general practitioner. The doctor describes multiple stressors including the location of his growing up, the fact that he belonged to the Hazara people – a persecuted minority in both Afghanistan and Iran – military service, life as a refugee, transition to Australian life, the sudden death of a close friend in Tasmania in May 2020 who was a key support person, and concern for relatives and friends in Afghanistan since the Taliban took control. There are no substance abuse issues. The pre-sentence report shows that the defendant maintains his denial of the offences, which of course he is entitled to do. I was told that although he has some difficulty with the jury trial concept, he accepts the verdicts. I note however, he is of the view that the accusations made by the complainant have brought shame and embarrassment on the family, putting him "in a situation". He says that as a result they have had to distance themselves from the Afghani community, stating he felt betrayed by the complainant. He thinks the complainant's lack of understanding for his situation as the provider for the family has contributed to relationship issues. He has completed three sessions with a men's referral counselling service facilitated by his GP, and there have been some attendances with a psychologist.

In terms of the wounding, the nature of the injuries speak for themselves. I am not able to make a finding that the defendant intended to wound but the degree of recklessness is such that any distinction is of no significance. In relation to the second incident, I cannot be satisfied of more than one blow by hand to the face. The defendant does not obtain the benefit of a plea of guilty, and the trial process had some complications due to the need for an interpreter for his wife and as an objective fact, the prosecution evidence had to be adduced by way of cross-examination. In terms of aggravating features in relation to the wounding, the children were present in the house at the time. The evidence might suggest they were asleep, but I cannot make any finding one way or the other; certainly, there is no evidence that they saw or heard anything of the crime or its immediate aftermath although it is likely they became aware of the presence of the police in the house. There is no evidence as to their whereabouts in the second incident. In the defendant's favour, I take into account his background; that entitles him to some leniency. I

also into account the period of nearly four years between the first incident and the trial, none of which, as the State concedes, can be attributable to him in any relevant way. That was a stressful time for him.

Mr Fazel, all unlawful violence is unacceptable but violence within relationships is a particular matter of great community concern. Within marriage and other such relationships, violence against the other person is a breach of trust. I accept that you have had a very difficult life and that you are doing your best to advance your and your family's interests in this country. Fitting in would be difficult and you are of course free to follow and express your cultural identity. But as is permitted, a jury has decided that you broke the law. As violence within marriage is against the law; the shame falls on the person responsible for the physical violence, not on the person who seeks help for injuries and tells police about what happened. As I understand the law, a person in your position of a permanent resident on a humanitarian visa may have that visa cancelled if you are sentenced to a term of imprisonment of at least 12 months, or you otherwise do not pass a character test. That can happen if a substantial criminal record accumulates. I say that as a warning to you. For these matters I have decided that, as I indicated on the last occasion, immediate imprisonment is not necessary but there needs to be a sentence which shows to everybody that this sort of conduct is not acceptable, and which works as a punishment to try to stop you from committing offences in the future. You are convicted of the crimes and sentenced to nine months' imprisonment the execution of the whole of which is suspended on condition you commit no offence punishable by imprisonment for a period of 18 months. In addition, I make a community correction order for a period of 18 months. That will contain conditions as follows. You will have to submit to the supervision of a probation officer as required during that period, attend educational and other programs as directed including the Family Violence Offender Intervention Program, submit to medical, psychological or psychiatric assessment or treatment as directed, and that you perform 50 hours of community service within that period. You will have to report to a probation officer at 111 Cameron Street, Launceston by 5pm tomorrow. I should say to you that some of what I have done enables a probation officer to provide you with guidance and ensure help with your mental health if that is required. I declare that the two crimes are family violence offences. I have considered the question of making a serial family violence perpetrator declaration I do not see one as necessary in this case, nor do I see it necessary to make a further family violence order. Mr Fazel I need to warn you that what I have done is impose a term of imprisonment but suspended the operation of it on condition you commit no offence punishable by imprisonment for a period of 18 months. So that means for 18 months from today, you are not allowed to commit any offence punishable by imprisonment. If you do that, you will be in breach of the condition of suspension and you can be brought back to court and a judge has to activate that sentence, that is, send you to prison, unless it is shown to be unjust. I need to warn you that offences that are punishable by imprisonment are many in nature and number. You need to be careful about that.