STATE OF TASMANIA v DANIEL JOHN RIDGERS **27 FEBRUARY 2025**
COMMENTS ON PASSING SENTENCE **PORTER AJ**

Daniel Ridgers, the defendant, has pleaded guilty to a charge of manslaughter. The charge arises from the death of Khaylan Shayne Butler, a baby aged 10 months and 16 days, on 30 November 2023. Khaylan's mother is Maddison Butler. The defendant is not Khaylan's biological father; the biological father was not involved in Khaylan's life. The defendant and Ms Butler started a relationship in early August 2023 after meeting online six months earlier. By the end of August 2023, they were engaged to be married, and the defendant had moved into Ms Butler's house. The defendant has three children to a different relationship. In addition to Khaylan, Ms Butler had an older child aged five. The particulars of the charge allege the defendant killed Khaylan by dropping him into a cot and shaking him. The State is mostly reliant on the defendant's admissions when interviewed by police for a third time. The prelude and the way things came to light are as follows. Some of the facts as to the defendant's behaviour are relevant to the question of his mental health, an issue in these proceedings. In mid-November 2023, Khaylan was admitted to the Royal Hobart Hospital for treatment for a respiratory infection. He was prescribed antibiotics and discharged. Afterwards, his behaviour was noted as having changed. He did not want contact with anybody but his mother and was stressed if the defendant came near. In the afternoon of 30 November 2023, Ms Butler took both her children to her grandfather's house, left them there and went to work. At about 6.15pm the defendant collected the children and took them home, arriving at about 7.00pm. At 12.50am on 1 December 2023, Ms Butler returned home from work and found Khaylan in the main bedroom, apparently gasping and struggling to breath. When she went to him, she saw that he was "hot sweaty and clammy" and was stiff when she picked him up. Ms Butler placed him on the floor, and rubbed his chest to try to rouse him, but she was unable to wake him. She woke up the defendant and called '000'. That was at 1.10am. The ambulance arrived at 1.23am and Khaylan and Ms Butler were taken to hospital. When paramedics arrived they found the baby to be stiff, sweaty pale and breathing irregularly, and noticed two small bruises on his forehead. At 2.07am the defendant sent Ms Butler a message saying that he totally understood if she did not trust him with Khaylan. He went to the hospital about half an hour later. When Khaylan was seen by medical staff, he was diagnosed with a subdural haemorrhage which was causing considerable pressure on the brain. His presentation was indicative of a severe brain injury and was noted that he had symmetrical bruises to his forehead and a tear to his soft palate. He was incubated and ventilated and underwent emergency surgery. Whilst still at the hospital, the defendant sent a text message to another female with a message "Morning beautiful xx". Hospital staff reported the injuries to police about 5.20am and officers attended the hospital. I will return to the defendant's statements to police and movements but pause to note that, tragically, the emergency surgery was to no avail. On 3 December 2023 Khaylan's intensive care support was ceased, and he was pronounced dead at 3.19pm.

In the defendant's version of events first given to the police at the hospital in the early hours of the morning, he said that after getting home at about 7.00pm, he was about to have a shower, when Khaylan pulled himself up on the bed in the main bedroom and hit his head. He cuddled him for about 20-25 minutes and after Khaylan became tired, he made him a bottle and put him in the crib. After sleeping for a time Khaylan woke up and started to cry. He gave him another bottle but that was refused. He then took Khaylan into bed with him and the next thing he knew Ms Butler was waking him saying that she had called the ambulance. He was in shock when he saw Khaylan's state.

Some time after talking to police, at 6.13am the defendant posted two laughing emojis in response to a video his friend had shared on Facebook. He then left the hospital to travel to a worksite and returned shortly after. He was arrested by police at about 10am and was interviewed under caution. He essentially maintained the earlier version but provided further detail to the effect that Khaylan had pulled himself up using the doona, the pillow had slipped from under his feet and as he came down his head hit the bed base, fell on the floor. He said he attended to Khaylan, who was a little upset, but he had been "real sooky" for a few weeks, and after being put in his cot with a bottle he seemed to be alright. The defendant then had his shower, attended to the other child and got into bed and went to sleep. He said he woke up at 9.15 because of noise the older child was making. He spoke to him and, it can be inferred, went back to bed. At 10.15 Khaylan woke him crying. Khaylan refused a bottle, so he put him in bed with him and he quickly went sleep. The next thing he knew was Miss Butler waking him up. He could provide no explanation for the catastrophic injuries or the soft palate injury. He denied shaking him, saying he knew all about 'shaken baby syndrome', acknowledging that it can involve death and head injuries.

Shortly before 9pm on 2 December 2023 the defendant was again interviewed. Not directly relevant to the crime, but of some import in these proceedings is that he admitted sending photos of himself to other women earlier in the night and telling someone he and Ms Butler were separating – he thought she did not love him anymore. More particularly, in addition to maintaining the claim that Khaylan had hit his head after climbing up on the bed, he added that as he was carrying Khaylan to the loungeroom after that, he trod on a toy car or truck in the hallway, lost his balance and accidentally dropped him. He said that Khaylan landed on the side of his head. When he picked him up, he was breathing but his eyes were closed and shook him twice to try him to wake him up. He succeeded, gave him a bottle and put him to bed, and woke him later at about 10.30 to give him another bottle which he did not want. He had to change him as his bed was saturated. He took Khaylan to bed with him, and they both went to sleep. Again, he said the next thing he knew was Ms Butler waking him up. He said that he could have shaken Khaylan three times, but his memory was hazy.

It was when he was asked to again explain what had happened, the truer version emerged, although he initially repeated the assertion that he had dropped him unintentionally and then shook him to try to wake him up. The following are my findings as best I can make them, guided by counsel, as to the course of events drawn from the defendant's various statements. He told police he was having a really bad day; that he was going through a lot of stuff with his ex-wife and had had a "shit fucking couple of months". He took and sent the photographs of himself and, it appears more likely, then showered. Between about 7.20 and 7.30, he saw Khaylan fall while climbing on the bed and hit his head. That fact is not in dispute. Khaylan was crying and the defendant comforted him for about 20-30 minutes. It was at about this time that the defendant dropped him into the crib. He said he lent over the cot from the height of about two A4 pieces of paper and he dropped him straight on to his back. Khaylan rolled on the mattress over on to his right side and hit his head on the side of the bed. The defendant made him a bottle, all of which he drank but would not settle; he was still "sooky". The defendant took Khaylan to the lounge room floor and laid him there for 5-10 minutes. At about 8.15 he took a photo of Khaylan and sent it to Ms Butler. Khaylan started to doze off, so he decided to put him back in the crib, but he started screaming again when he was picked up. The defendant reported to police that he screamed and screamed and screamed. He held him for about five minutes but he continued to scream That is when he shook him. This would have been at about 8.30 or so. He put him in his crib, and he appeared to go to sleep fairly quickly. By about 9.15 the defendant was asleep, and he was woken by the other child. He attended to

him and went back to bed, only to be woken later by Khaylan at between 10.15 and 10.30. He tried to give him a bottle, but he was groggy and dopey. The defendant admitted shaking Khaylan five times. He said "*I had a moment and I shook him trying to get him to stop, to settle. I shook him really hard. I said Dad has had enough, Dad is tired, Dad is drained. I shook him five or six times and he just screamed and screamed and screamed*". He said that he did not know why he did it; "*If I could take it back, I would in a heartbeat*". He said that Khaylan just "*sooked and sooked and sooked*", so he picked him up grabbed him under his arms and shook him really hard. He said that he was just having a bad day; he thought Ms Butler was going to leave him. He repeated he was having a bad day and just flipped. When asked about having "flipped" he replied that he "was just truly having a bad day". In relation to the marks on Khaylan's forehead, he said he got one from falling onto the bed, but admitted the other was sustained when Khaylan hit the side of the crib when he dropped him in there. In relation to the injury to the throat, he said that Khaylan was sucking on a wipe and it was in his mouth; he tried to pull it out but he would not let him, so he put his finger in his mouth and scooped it out. It was possible he hit the back of Khaylan's throat with a knuckle. He did not intend to hurt him.

The autopsy revealed that Khaylan's injuries were consistent with a combination of blunt force trauma associated with shaking of the head and neck and one or more head strikes on a hard surface. To generate the relevant injuries, the child would have had to have been shaken vigorously. The pattern of injuries to the forehead were consistent with oblique impact against the slats of the cot sides. It seems to me clear that the shaking was the predominant cause of the injuries. As to the mouth injury, the force required was more than that which would reasonably be expected when using a finger to remove a foreign body from an infant's mouth. There is no evidence that the mouth injury contributed to the death but it may be relevant to the nature of the defendant's conduct on the night.

I have a victim impact statement of Ms Butler dated 11 November 2024. Ms Butler read this to the Court. She describes being truly blessed and absolutely in love with her beautiful little boy. She describes the trauma of the period leading to his death. Afterwards, she said that she did not want to live in the world anymore. Both her and her other child are receiving counselling, but thinks healing is not possible. She feels the pain is getting worse; is the most desperate feeling. I am in no doubt that her suffering and sense of grief is immeasurable with the death being simply unbearable, and that for an infinite time she will carry that burden of grief and sense of loss. The trauma the defendant's criminal conduct has caused cannot be measured, nor perhaps really understood by someone who has not lost a child.

The defendant is now 26 years old and has no record of offending of any significance. In the end, I was given three reports from Dr Jennifer Wright, clinical psychologist, a comprehensive one dated 9 December 2024; the others, supplemental ones, dated 5 January and 21 February 2025. They relate to the defendant's history of mental health issues and the significance of that for sentencing purposes. The State took issue with aspects of Dr Wright's opinion, and she gave evidence on 30 January. As to the defendant's general background, at an early age he was diagnosed by a paediatrician with ADHD and prescribed medication which he took until he was 18, when he stopped due to how it made him feel. His symptoms were fairly marked. Apparently, he was severely bullied at school. Otherwise, he had a largely unremarkable upbringing, with a stable homelife. He has a good industrial record, having worked in various roles after leaving school. He has three children to his ex-wife, a daughter aged four and twin boys aged two, that relationship ended in June 2023, and while the two remain on good terms, their separation and subsequent divorce proceeding caused the defendant stress and anxiety.

As is apparent, it was not long after the breakdown of his marriage that he got together with Ms Butler. The defendant's ex-wife reported to Dr Wright that the defendant was an excellent father, although needing very specific instructions on what to do to care for the children in terms of preparation of meals, and time to do particular things. They always cared for the children together because it was challenging with three young children, but she did not hold concerns about his capacity as a father. In addition to the ADHD, the defendant experienced a major depressive episode in 2022 for which he was treated with anti-depressant and anti-anxiety medication which, in Dr Wright's view, appeared to be beneficial but he would have benefited if he had also been prescribed further treatment for his ADHD. After the relationship with Ms Butler commenced, the defendant became close to her two children and he would care for them often, particularly at night when Ms Butler was at work. He considered them to be his own and adopted a father like role in their lives. Before this particular night he had not shown any signs of violence.

For the initial report, Dr Wright obtained information about the defendant's behaviour from his mother, covering both his formative and later years, and from his former wife. Dr Wright carried out a detailed psychometric assessment. She confirms the diagnosis of ADHD. The related prominent and consistent traits include being obsessive over neatness and cleanliness – sometimes with fixation on particular numbers – being excessively energetic and unable to sit still, having difficulties with attention, concentration and organisation for task completion, the avoidance of conflict and problems with an inability to express negative feelings or emotions. There is a sensitivity to sensory input especially loud noise. In general, he presented as a highly emotionally contained, avoidant individual with his manner possibly mistaken for a lack of empathy or concern about his actions.

In that background, the Court was told that the day leading up to the events had been a particularly stressful day for the defendant. He had been arguing with his then wife about things to do with their divorce. She was aware of his relationship with Ms Butler. His father-in-law had called into his workplace that day and spoken to him about the situation. He found that to be confronting and added to his stress. He had to stay late at work which disrupted the pickup routine for the children. He felt Ms Butler was annoyed with him about this. That made him feel angry as he thought he was doing his best but felt overwhelmed. He generally felt isolated with no time to see his friends. In the evening, Khaylan was upset crying and was screaming. The court was told that the defendant struggled with the change in Khaylan's behaviour after the illness, as he had been previously able to regularly care for him without any difficulties. The defendant could not get him to stop crying or to go to sleep. The defendant became physically and emotionally exhausted. Counsel put that the shaking was done in a moment of utter frustration. It was said that he simply could not deal with the screaming as the sound was completely overwhelming. I was told that the defendant is truly remorseful for his acts. He expressed to counsel his remorse and disbelief at what he had done shortly before the last police interview and has expressed his remorse many times, saying that he would take it back if he could.

In Dr Wright's view the defendant's s resources to cope with the challenges of settling Khaylan's crying and screaming were completely spent and he exploded in a reactive act of violence. He was also not able to deal constructively with his negative emotions, resulting from a variety of life stressors, in a healthy manner as he had been supressing and not communicating his feelings as part of a lifelong pattern of avoidance. This was likely to be part of his ADHD linked to personal experiences of bullying. She says the defendant was more susceptible to finding the screaming as intolerable because of sensitivity to noise that formed part of his

ADHD. Dr Wright's opinion is that the degree to which the various contributors drove his actions is hard to quantify, but the combination operated to impair his judgment and his ability to make calm and rational choices. That expression, of course, is taken from *R v Verdins* [2007] VSC 862, 16 VR 269 at [26]. The principle there recognised is that impaired mental functioning as an effect of a disorder may serve to reduce moral blameworthiness if it is causally connected to the offending and so may operate to moderate the sentence. In terms of moderation specific deterrence, also noted in *Verdins* in that context, Dr Wright says that although the defendant initially lied police this was a likely panic response, consistent with his tendency to avoid anything negative and express his fears. She notes he has expressed remorse for the offence and, is likely to respond positively to rehabilitation and unlikely to commit further acts of violence.

I need to examine the evidence further. Dr Wright succinctly explained those factors that, which in her view, combined to impair the defendant's judgment and his ability to make calm and rational choices, while maintaining that the degree to which each of the elements contributed to his actions cannot be exactly quantified. The first element was a base line level of stress in his life, which became somewhat more acute during that day. He was resentful about the degree to which he had become socially isolated because of looking after the children while Ms Butler worked. The defendant had argued with his mother about this, and they were not speaking on the night of the offence, leaving the defendant in a situation where, in Dr Wright's view, it would be less likely that he would ask her for help. The second element is his long-standing poor coping resources being his lifelong tendency to emotional suppression and avoidance. When he was stressed, and feeling resentful about his situation and thought Ms Butler was annoyed with him, he did not have the skills to express his feelings and ask for help. His emotions were bottled up, "ready to explode". The third is his capacity to problem solve; not to act impulsively but to think of ways to manage problems when under stress. ADHD provides challenges with executive functioning which includes the ability to evaluate and analysis a problem. Dr Wright's opinion is that in the face of overwhelming stress, the defendant was not able to more effectively problem solve and think about options available to him. The fourth element is the noise sensitivity. With ADHD, some sensory input can be intolerable and the ability to tolerate noise input can fluctuate depending on other factors such as stress. Loud noises elsewhere, such as in the defendant's workplace, are in a different context and can be managed. The context of Khaylan screaming included an emotional impact absent from the workplace which, after the period of about 1½ hours involved, led to emotional exhaustion. Dr Wright says that the defendant's actions were reactive violence to stress with which he did not have the resources to cope. She noted he told police that as soon as he picked Khaylan up after dropping him, Khaylan started screaming again, and screamed and screamed. The defendant was upset because he did not know how to stop him crying. He did not know what to do. He felt upset and scared but not frustrated; he just did not know what to do. He wanted the crying to stop. Dr Wright's summary is that the defendant felt totally overwhelmed, he was not coping with a noise of crying, he was in a high state of stress and he did not know how to solve the problem. The shaking was a reactive violence in response to the state of being completely overwhelmed. The symptoms of his ADHD contributed causally to the state of overwhelm and impaired his mental functioning in the sense of impairing his judgement and ability to make rational choices. The photo sent to Ms Butler, Dr Wright says, may have been an attempt to seek help in a passive unclear way, which is consistent with his tendency to avoid raising problems, especially with a partner.

The apparently odd behaviours of sending photographs, and later messaging and texting while at the hospital are somewhat difficult to explain but, Dr Wright says, make sense considering

the defendant's neurodivergence; that is, problems with the impulsivity, poor decision-making and poor coping, particularly with negative emotions. In doing those things, he was likely searching for some positive emotional feedback in the face of a suppressed but deeply negative emotional state; in short, he was trying to make himself feel better.

There are three essential formats of the crime of manslaughter, but the crime can involve widely different factual scenarios and personal circumstances of the offender, and sentencing for it is highly fact specific. The historic range of sentencing for this crime, bearing that in mind, is from no custodial sentence at all up to about 10 years. The higher levels of sentencing are ordinarily reserved for cases in which the offender intended some harm or intentionally did an act known to be likely to cause harm. The State's case is put on the latter basis; that is, the defendant's actions were unlawful within the meaning of s 156(2)(c) of the Criminal Code. The State says the death was caused by an unlawful act – an assault or assaults – which was or were inherently dangerous, that phrase meaning a reasonable person in an accused's position would realise the acts exposed the victim to an appreciable risk of serious injury. That form of culpable homicide is generally regarded as more serious than that involving criminal negligence. The objective seriousness, or criminality, of the offending in this case needs to be assessed, and in my view, it is of a high level. The starting point is the very young age and vulnerability of the victim, who was entrusted to the care of the defendant. Next, the more dangerous the act, the more objectively serious the crime: *DPP (Vict) v White* [2020] VSCA 37 at [81]. The levels of dangers inherent in dropping Khaylan from a height of about 60 centimetres onto his cot and, more critically I think, forcibly shaking an infant of his age are very high. There is also the issue of the subjective awareness of the dangers involved*: R v O'Connor* [2018] VSC 516 at [24]-[30]. It will be recalled the defendant admitted to the police that shaken baby syndrome could cause injury and death. Additionally, he told police he knew he had hurt Khaylan when he put him in the bed as he went straight to sleep. He considered calling for help, but it did not seem like he needed it because he was snoring as he normally would. It was, of course, about five hours before paramedics attended. Lastly, lying and failing to properly explain the circumstances of a death can be an aggravating factor: *R v Cullerton* [2000] VSC 55 at [21]; *DPP (Vict) v Ristevski* [2019] VSCA 287 at [78].

There is a difference between criminality and moral culpability. The latter is more concerned with the circumstances or characteristics of the offender which may have an impact on blameworthiness. Moral culpability may be reduced from the level of culpability that corresponds with the objective seriousness or criminality of the offence. Commonly, that includes impaired mental functioning causally connected to the crime. The question is whether and to what extent moral culpability is reduced. The extent of mental dysfunction and the gravity of the crime have to be considered in light of each other. Any moderation will vary with the nature and severity of the condition and the nature and seriousness of the offence: *GOK v The Queen* [2010] WASC 185 at [58]; *Butt v Tasmania* [2018] TASCCA 3 at [66].

That brings me to the consideration of Dr Wright's evidence. The value of expert opinion depends on the facts on which it is based. The court is not obliged to accept the opinion evidence if it is not credible or reliable. Dr Wright was extensively and closely cross-examined as to her opinion of the existence of ADHD, the reported traits of the defendant and the role of those traits in the offending. While the State did not concede the existence of the disorder, in the end it did not strongly argue against the proposition but submitted, in accordance with the law, that this court needs to carefully consider the nature and severity of the symptoms at the time of the offending. Generally, I found Dr Wright to be a good witness. I believe she had approached the assessment process comprehensively, professionally and objectively. She

independently made a diagnosis of ADHD. I am satisfied of the existence of the disorder and of the consequential traits she described. The incidents of odd behaviour are odd to the extent that the ADHD is more likely to be an explanation that then the defendant is simply callous, indifferent and without any empathy. The State implicitly accepted that the traits or consequences of the disorder would, in broad terms, amount to mental impairment. The critical question is the extent of any impaired mental functioning on the particular night, and what causative role, if any, it had in what happened. To recap, Dr Wright's view is that there were four factors which operated on the defendant's conduct, three of which were ADHD related. The other was general stress of the type ordinarily experienced by many people and which seemed to be particularly acute on this evening. As earlier noted, Dr Wright said she could not quantify the role each factor played, and it was a complicated combination. She conceded it was possible that the defendant would have offended in the absence of the ADHD traits but thought it much less likely he would have offended had he had not had the disorder. The associated conclusion is, of course, that in the absence of acute emotional stress of common human experience, the offending would not have occurred. With that in mind, some aspects of the facts need to be highlighted. I do this in the context of examining the expert evidence. Although there is material to suggest that the defendant did not have to supervise any of his own three children when he was with his ex-wife, there was no suggestion this was his first time left alone with Ms Butler's two children. On the contrary, from what the court was told, this night was routine in terms of childcare, with Ms Butler at work. It is more than a fair inference that the defendant would have dealt with Khaylan's crying before, particularly in more recent times since his illness. The defendant said Khaylan was a bit "sooky" when he first came home but did not suggest he was then loudly crying or screaming. Khaylan was said to be crying for up to half an hour after he accidently hit his head. After comforting him for about 20 to 30 minutes, the defendant dropped him into the crib. The defendant seemed to put that down to not knowing what to do, but clearly frustration at least is evident. In any event the result was that Khaylan hit his head again but this time as a result of the defendant's own actions. That added to the blow to the earlier one which the defendant knew about, and which may have contributed to the overall degree of injury found on autopsy. It can be accepted that Khaylan was crying loudly, if not screaming, for quite a time but he seems to have settled after the brief period on the floor, immediately before which the defendant sent a photo of him to Ms Butler. Khaylan then started to doze off and it was when the defendant decided to pick him back up that he started screaming again. It was this period in particular, that seems to have triggered the shaking. To the extent that the proposition is advanced, I have some difficulty in accepting on the material that Khaylan was literally screaming for 1¼ to 1¾ hours continuously, but I accept that he was crying and screaming and difficult to settle for quite a lengthy period. Most, if not all, parents experience the extreme frustration and distress of a loudly crying, if not screaming, infant for what seems to be a lengthy time. Various strategies are employed, particularly when an entirely dependent young infant is involved. Regardless of the pressures on a parent, the welfare of the child must remain a paramount state of mind.

Having given the matter careful consideration, in light of Dr Wright's evidence, I am prepared to accept that the defendant's ADHD did have a role to play in the offending, even in the factual framework I have set out. Although a complicated scenario and an exercise that Dr Wright said she could not perform, this court does need to make some assessment of the role the mental impairment played in the defendant's actions. Of necessity, the exercise is an impressionistic one. In my view, the defendant started the evening from a base level of a high degree of stress caused by a buildup of ordinary life pressures. A repeated statement was to the effect he was "just having a very bad day." He gave reasons. The defendant also repeated the difficulties in coping with the screaming, but his emotional state was the predominant and underlying issue,

and it was in that context that the issues with Khaylan proved to be too much. I am satisfied the defendant's impaired functions as described rendered him less able to cope with all that he was dealing with, and as he put it, he "flipped'. But when taken alongside the predominant underlying level of general emotional stress, I am not satisfied that the role the ADHD traits played was of any great significance and not such so as to reduce moral culpability by anything more than a limited degree when compared to the seriousness of the violence inflicted. In my view it would require a substantial degree of causative mental impairment to result in a substantial reduction of moral culpability of this type of offending: *Freeman v The Queen* [2011] VSCA 349 at [28]. That is the critical point. In short, a modest degree of reduction is appropriate but moral culpability remains high. There are other mitigating factors and moderating considerations. Such things as triggered the defendant's reactions do not of themselves mitigate the criminal act of killing an infant, but it does mean the absence of an aggravating factor of premeditation. I accept the defendant is remorseful. More objectively, there is his plea of guilty which I take as an expression of remorse and as having utilitarian value. I also take into account that an offender found guilty of a child homicide may find imprisonment to be a substantially more difficult proposition.

Mr Ridgers, I have sent out the facts as I have been able to establish them, your personal circumstances, the psychological evidence and my conclusions about that. The court is obliged to impose a sentence designed to uphold the sanctity of human life. There is a need to attempt to deter people from engaging in conduct that puts lives at risk, and such conduct needs to be condemned. At the same time, all circumstances need to be considered. A balancing exercise is involved. I take into account your personal circumstances and the other matters I have noted that operate in your favour. You are a relatively young man of previous good character who has taken the life of an infant, unintentionally but through inherently and obviously dangerous acts. You are convicted of the crime. In my view, the appropriate sentence is one of six years' imprisonment to commence on 2 December 2023. The minimum period you will serve before being eligible for parole is one half of that term.