

The defendant Darren Leigh White has pleaded guilty to one count of aggravated burglary contrary to s 245(b)(ii) of the *Criminal Code* in that he entered a place with intent to commit the crime of stealing and that violence was used and/or offered whilst in or leaving the place of the burglary; further, he has pleaded guilty to one count of assault. He did not carry out any of the violence but he is guilty on the basis of s 4 of the *Code*, as a party to a common purpose, that of stealing.

On 9 September 2024 Ms Jane Murphy was at home at Wills Circle in New Norfolk. She was present with her friend, Ms Donoghue, who was visiting; both women were in their 60's.

During the afternoon there was a knock at the door. Ms Murphy went to the door and opened the main door but left the screen door closed. The defendant and his half-brother Nicholas Manser were at the door and asked to come inside. Ms Murphy observed that they were both badly drug affected and were acting 'weird', so she told them they could not come in. She locked the screen door but the lock was faulty. The defendant opened the screen door and went inside with Mr Manser. Ms Murphy walked into her bedroom and the men followed her in, closing the door behind them. Ms Murphy asked them, "what the hell are you doing in here?".

Mr Manser asked her, "where's the gun? I know you have a handgun", and Ms Murphy told him that she did not know what he was talking about. Mr Manser was holding a telescopic metal baton and raised it in a threatening action as if he was going to hit her with it. He forcefully pushed her to the chest, with his fist, hurting her, and she fell back onto her bed. Mr Manser went through her drawers, yelling about wanting a gun and demanding Valium, which she said she did not have. The defendant was standing at the doorway while Mr Manser rifled through her drawers. In doing so, the defendant was blocking Ms Murphy's exit from the bedroom although that was not his intention.

Meanwhile, Ms Donoghue had heard noises and raised voices, and called out to Ms Murphy asking her if she needed help and Ms Murphy replied "yes". She opened the door and saw Mr Manser holding the metal baton above his head and standing over Ms Murphy, shouting, "where's the gun?". Ms Donoghue said, "don't you hurt her". She saw the defendant looking through the drawers. Mr Manser then came over and kicked the door shut. Ms Donoghue said she was going to call the police and went outside.

Mr Manser and the defendant opened the bedroom door and walked out of the house. Ms Murphy followed them outside. Ms Donoghue was outside and Mr Manser pushed her as they rushed past and she fell to the ground. The men were yelling that they were going to 'firebomb' Ms Murphy's house.

Ms Murphy's neighbour, Dean Weston, came outside his house with a large garden fork and confronted the defendant and Mr Manser. Mr Manser was holding the baton above his head and Mr Weston swung his garden fork at Mr Manser. The defendant was yelling abuse at Mr Weston. Mr Manser struck Mr Weston to the head with the baton, wounding him. Mr Manser yelled at the defendant to get the "knife", and the defendant grabbed the garden fork as an act to protect his brother and taking it with him when they left the scene. The State does not suggest

that the defendant bears any criminal responsibility for the conduct of Mr Manser in wounding Mr Weston.

Another neighbour, Steve Munnings, drove up the road and stopped his car in between Mr Weston and the defendant and Mr Manser. Ms Donoghue called out that she had called the police, and the defendant and Mr Manser ran off, yelling abuse as they ran. Police arrested them later that day at an address at Downie Circle, New Norfolk. The defendant was unable to be interviewed until the following day because he was affected by drugs. He made some admissions. He told police he went to Ms Murphy's place for a 'smoko', he asked for \$50 of "pineapple express", and that they were there for "dope". He said she invited them inside, which is not accepted by the State. There was an argument and he left. He told police they did not ask for a firearm and his brother was holding something but he did not know what it was. The defendant said he had not wanted anyone to get hurt.

The State asserts, and it is accepted, that the defendant and Mr Manser entered the house at Wills Circle as trespassers with a common intention to steal a firearm and/or drugs from Ms Murphy, and the use of violence by Mr Manser towards Ms Murphy was a probable consequence of that shared purpose.

In relation to the assault upon Ms Donoghue, the defendant is criminally responsible in that Mr Manser assaulted Ms Donoghue in the carrying out of their unlawful common purpose to steal a firearm and/or drugs from Ms Murphy, and that assault was a probable consequence of the commission of that unlawful common purpose.

While the role of Mr White in the aggravated burglary and assault was limited, it contributed to the commission of serious criminal conduct. I have no doubt that the involvement of the defendant and the presence of two men rather than one added considerably to the fear and apprehension of both complainants.

Mr Manser has not yet been sentenced. Mr Manser's role in the commission of the crimes of aggravated burglary and the assault is entirely different as the principal aggressor and instigator of the crimes. It is not asserted by the State that with respect to the defendant there was any pre-meditation in relation to the burglary or that he had advance knowledge that a theft was to occur, or violence, or that he was even aware that Mr Manser had possession of the baton before he produced it in Ms Murphy's bedroom.

The defendant has relevant prior convictions as an adult involving crimes of dishonesty such as stealing, burglary, attempted burglary, and aggravated burglary and a conviction for robbery dealt with in this Court in 2014, as well as common assault and summary drug offences consistent with a drug problem.

The defendant pleaded guilty, but just before the trial was due to commence. While it is a very late plea of guilty, it still has been of benefit to the State and the witnesses, and it is a recognition by the defendant of his wrong-doing.

I have a medical report informing the Court that the defendant has been diagnosed with cancer. His focus in life has shifted and is now on his condition and ongoing treatment. He is no longer using illicit substances. He has been prescribed medicinal cannabis.

Given the nature of the defendant's role, his personal circumstances, and noting that the defendant has spent 105 days in custody on this matter, from 9 September to 23 December 2024, I am satisfied that a short period of suspended imprisonment is an appropriate sentence.

Darren Leigh White, you are convicted of the crimes of aggravated burglary and assault. I impose a global sentence of four months' imprisonment wholly suspended for a period of 12 months from today, subject to the following conditions:

- You must not commit an offence punishable by imprisonment for a period of 12 months from today; and
- For the same period, you are to be subject to the supervision of a probation officer;
- You must, within two working days, attend Community Corrections at 75 Liverpool Street, Hobart and report to a probation officer and subsequently as required by a probation officer;
- You must comply with the reasonable and lawful directions of a probation officer or supervisor as required;
- You must not leave or remain outside Tasmania without the permission of a probation officer;
- You must give notice to a probation officer of any change of address or employment before, or within two working days after the change; and
- You must submit to the supervision of a probation officer as required by the probation officer.