

REASONS FOR ORDER UNDER THE CRIMINAL JUSTICE (MENTAL IMPAIRMENT) ACT 1999

After a trial before a jury with respect to 11 counts on indictment the jury returned verdicts that the accused, Paul Jason Berry, committed the act charged in each count but was not guilty on the ground that he was insane at the time so as not to be responsible according to law. The verdicts were returned on eight counts of unlawfully injuring property, one count of attempted carjacking, one count of carjacking and one count of dangerous driving. They arose from an incident that commenced at approximately 7 am on 4 November 2020 on the Tasman Highway.

Mr Berry was on foot walking from the airport towards the Tasman Bridge. He was in the vicinity of Tunnel Hill about half a kilometre past the Cambridge turnoff. He was in a highly disturbed and agitated state and began throwing fist size rocks at approaching vehicles, causing damage to the bodywork or smashing or damaging the windscreens. At times he stood in the middle of the road way throwing rocks. At one point he lay flat on the road holding rocks before jumping to his feet. At one stage of the incident he was calling out "help". As vehicles were approaching the scene, the drivers were slowing and stopping, or swerving to avoid Mr Berry or the rocks being thrown at them. This caused mayhem with some of the vehicles crashing into cars that had backed up. On one occasion he threw himself onto the bonnet of a vehicle that had stopped and struck the windscreen with the rock whilst lying on the bonnet.

Subsequently, Mr Berry yelled and swore at a driver and kept moving into the path of that vehicle yelling at the driver to stop. The driver swerved to avoid Mr Berry but he kept moving into the path of the vehicle. He got onto the bonnet of the motor vehicle, then moving at slow speed, and holding onto the windscreen wipers he struck the windscreen repeatedly with a rock, completely destroying it. His purpose was to take the car in order to drive it. The driver accelerated and drove from side to side in an attempt to remove Mr Berry from the bonnet. The defendant screamed stop and threatened to kill the driver. The driver drove in this fashion for 50 metres before Mr Berry slid off the bonnet onto the median strip. This conduct resulted in one count of unlawfully injuring property and one count of attempted carjacking.

Subsequently, Mr Berry committed the crime of carjacking. After falling from the bonnet of the car, he ran over to a vehicle that had stopped amidst the chaos and other stationary cars. He stood in front of the vehicle and banged on the bonnet telling the female driver repeatedly to 'get out'. In response, she repeatedly said no. He got into the passenger seat of that vehicle, a Mazda CX3, while she was in the car. He told her to get out and pushed her out of the driver's seat, pausing to allow her to retrieve her handbag. Once she was out of the car he drove away. He then drove in a dangerous manner on the Tasman Highway and taking the Mornington exit he turned onto the South Arm Highway. He drove on the South Arm Highway towards the roundabout at Shoreline Drive. At some stage he performed a U-turn and travelled back towards Mornington on the South Arm Highway. He crashed into five vehicles, colliding with the rear or the side of the vehicles and with the front of one of them. One female driver had her two young children in the car. He drove erratically, swerving from lane to lane without indicating. He overtook by driving between cars in the middle of the road. As he approached a set of traffic lights on the South Arm Highway, he drove in the middle of two lanes of vehicles

stationary at the traffic lights, colliding with one of the vehicles as he did so. He drove through the intersection against the red light and through the Mornington roundabout and drove back onto the Tasman Highway towards the airport. As he did so, he collided with another seven vehicles travelling on the highway. Then, Mr Berry struck the centre barrier, a wire divider causing the vehicle he was driving to flip and land on its side. During the course of his dangerous driving he collided with a total of 13 vehicles. Miraculously, no one was killed or injured.

He was assisted from the vehicle and arrested at the scene. He was still in a highly disturbed state saying "*Help me, they are trying to kill me*". A blood sample was taken and no alcohol or illicit drugs were detected in his system. He was interviewed on a later date.

He was remanded in custody for some time, and ultimately released on bail on 23 July 2021.

Because of the verdicts, these court proceedings are governed by the *Criminal Justice (Mental Impairment) Act*. By virtue of s 33 of that Act, I have a report from two victims, the drivers who were subjected to an attempted carjacking and carjacking. They have both been affected by the actions of Mr Berry. One of the victims described the incident as shocking, the other, the victim of the attempted carjacking, as the "scariest thing I have ever encountered in my life." He thought he was going to be killed. They both suffer ongoing effects such as anxiety.

Mr Berry is now aged 50 and has prior convictions for offending in Tasmania as well as other jurisdictions. His prior convictions in Tasmania commence in 1999 and his most recent offending was committed in 2020. His offending extends to matters of stealing and dishonesty, common assault and assault a police officer, driving offences and possession of illicit drugs. In 2011, he was sentenced with respect to a breach of a police family violence order and common assault which attracted a community service order and probation order; in 2014, he was sentenced to suspended terms of imprisonment for offences which included destroy property, common assault, two offences of assault a police officer and one offence of resist a police officer. He committed driving offences and an aggravated burglary in breach of the suspended sentences in the same year. He received terms of imprisonment for driving offences that were committed in 2019 including driving whilst a prescribed illicit drug is present in his oral fluid and dishonesty offences involving forgery and uttering of a prescription for medication in 2019 and computer related fraud in 2020. At the time he was sentenced to those terms of imprisonment he had been remanded in custody on the matters before the court today. The period he spent in custody from 4 November until 17 April 2021 has been attributed to sentences imposed in the magistrates courts.

As mentioned, he has some convictions in other jurisdictions. In Queensland, an offence involving destruction of property and another involving unlawful use of a motor vehicle in 1990 and 1991, in 1997 he was convicted of an offence of common assault in South Australia. In New South Wales, there are some youth matters recorded and some offences of dishonesty dealt with in 1995 and 1996 including for breaking, entering and stealing. Apart from a period of periodic detention, he was sentenced to non-custodial sanctions for these dishonesty offences. He has a prior conviction for retention of stolen goods dealt with in the Victorian Magistrates court in 2016.

At the trial, the jury heard evidence from forensic psychiatrist Dr Michael Jordan. His evidence was led on behalf of the defence and was not challenged by the Crown. Dr Jordan's opinion

was that Mr Berry was afflicted with a mental disease, schizophrenia, to such an extent as to render him, at the relevant time, incapable of knowing that the act, in each case, was one which he ought not to do. Schizophrenia is an enduring condition and Mr Berry had been diagnosed with that condition by a psychiatrist some 20 years ago. As is often the case, symptoms of Mr Berry's disease fluctuate depending on stressors. His condition had deteriorated markedly in 2020 when his long term partner died quite suddenly. His grief was significant. Further, as a consequence of her death, he lost his support network which had been based around his long term partner. He became homeless and his circumstances and grief led to a significant increase in illicit drug use particularly, amphetamine. Between 24 October and 4 November, he presented to hospital on four occasions in a psychotic state, very distressed and agitated with symptoms including persecutory auditory hallucinations and suicidal ideation. On one occasion he was brought in to hospital by police from the Tasman Bridge, in a suicidal state, and admitted on 30 October. He was discharged on 2 November, just two days before the commission of acts before the Court.

Mr Berry gave an account of the events of 4 November to Dr Jordan when Dr Jordan assessed him on 22 November. His account was consistent with what he told police in his interview. He had been intending to catch a plane to Melbourne. His plan was to escape the auditory hallucinations. However, once at the airport he did not wait for his flight but walked back to the city experiencing intense auditory hallucinations that he and his family were under threat and in danger. These included that his stepson had been killed or murdered. He believed that these threats were emanating from the cars as they were going past. His intention was to get a car and drive away from the voices. He attempted to stop vehicles that went by throwing rocks at them. These hallucinations continued during the course of the dangerous driving. Dr Jordan explained that what Mr Berry was responding to, was an overwhelming, frantic and very distressing experience.

Mr Berry had not experienced symptoms of this severity before. In fact, in the years before, his previous admission to hospital had been in 2008.

In Dr Jordan's opinion, Mr Berry was experiencing a psychiatric decompensation involving pronounced symptoms of a relapse of his schizophrenia. He did not have the powers of judgment to appreciate the consequences of his actions. His primary concern was to try and manage the highly distressing experience of those auditory hallucinations and try and escape from them as quickly as possible. He had lost contact with reality and his fears overrode his ability to appreciate the danger to others.

After being remanded in custody, he received treatment at the Wilfred Lopes Centre including antipsychotic medication and once that was in place his symptoms began to improve. Ultimately, his condition improved to an extent that he was released on bail on 23 July 2021, as mentioned. He reports to have reduced his substance use and has remained well with treatment. Treatment involves medication prescribed by his general practitioner and psychological support and counselling provided by Alcohol and Drug Service.

After the trial, I ordered a report under the Act from the Chief Forensic Psychiatrist or his delegate. I have the benefit of a report by Dr Suriya Shanmugham, consultant psychiatrist, and delegate of the Chief Forensic Psychiatrist. In an interview conducted by Dr Shanmugham, Mr Berry expressed remorse for the impact of his conduct on the victims and expressed that they should not have had to suffer as a result of his actions. Dr Shanmugham states that Mr Berry

is realising the potential serious consequences if his schizophrenia is untreated or if he fails to address his illicit substance use. He regards Mr Berry as genuinely motivated to remain abstinent and willing to attend drug and alcohol related counselling. However, he notes that some of his urine drug screen tests have been positive for amphetamines and cannabis. Mr Berry reported that he was trying to stop amphetamine use but was struggling.

Dr Shanmugham's opinion, consistent with that expressed by Dr Jordan, is that Mr Berry has chronic paranoid schizophrenia and comorbid polysubstance use disorder. In addition, in 2020, Mr Berry suffered grief and secondary depressive symptoms including suicidal thoughts. He notes that with the aid of effective treatment his psychosis seems to have fully resolved. In Dr Shanmugham's opinion, the history indicates that if Mr Berry remains compliant with medication and abstinent from alcohol and drugs, his psychotic and affective illnesses can be brought under control. Further, he opines that presently, risks to himself and others appear to be satisfactorily contained with treatment in the community and Mr Berry does not warrant consideration of a restriction order.

Section 34 of the Act indicates that in determining which order to make under the Act, a court is to apply where appropriate the principle that restrictions on a person's freedom and personal autonomy should be kept at a minimum consistent with the safety of the community.

Dr Shanmugham has had regard to Mr Berry's persistent offending history as well as his mental illness and history of substance use. In his opinion, there are significant risks, in the medium and longer term, of recurrence of offending or risks to others or himself, arising from Mr Berry relapsing into previous patterns of substance use, irregular compliance with medication, treatment or monitoring of his mental health giving rise to a risk of offending or risks to others and himself. He notes that while Mr Berry is currently insightful and cooperating with community treatment, there is a concern about whether he will maintain that insight and his compliance in the longer term. Obviously, the order I make today must address that concern.

Section 21(1) of the Act sets out the orders that the court may make following a finding of not guilty on the ground of insanity. Dr Shanmugham recommends a supervision order having regard to the gravity of his offending on 4 November and the level of risk that Mr Berry poses in the medium and longer term to the broader community on account of his mental illness. A supervision order will guard against the risks of relapse in his insight and relapse in terms of compliance with treatment and the risk that Mr Berry may resume substance abuse in the medium to longer term.

Dr Shanmugham notes that under a supervision order, Mr Berry's progress can be regularly monitored by the Community Forensic Mental Health Service and psychotropic treatment and appropriate medication reliably administered. There are adequate resources for his treatment and support in the community under a supervision order. He recommends specific conditions of a supervision order in order to address factors that would have the potential to undermine his mental state.

It is considered that Mr Berry would comply with a supervision order given his response to treatment and therapy and his motivation for positive change. In essence, the supervision order would build on the progress Mr Berry has made and consolidate that progress but also provide monitoring, accountability and protection to Mr Berry and the community in the event of relapse.

I also have the benefit of a report from Dr Jordan prepared for the purpose of the trial dated 14 April 2021. The content of that report was captured in his evidence at trial that I have referred to. Dr Jordan has also provided a report dated January of this year and he recommends a supervision order with conditions to ensure that Mr Berry receives appropriate treatment and to monitor his abstinence from methylamphetamine. Dr Jordan notes that Mr Berry has good insight with respect to the need for ongoing treatment, as does Dr Shanmugham. Dr Jordan expresses the opinion that a supervision order would enable treatment to be provided by a mental health team well placed to ensure Mr Berry receives appropriate treatment. Dr Jordan notes with concern that in the weeks leading up to the serious incident on 4 November, the gravity of Mr Berry's mental state deterioration had been underestimated in those four hospital presentations I have spoken about. He notes that a supervision order overseen by community forensic mental health services would address the potential for a deterioration in his mental state. A mental health team would have capacity and expertise to ensure appropriate treatment and complementary support and care as needed.

I am entirely satisfied that the order recommended by Dr Shanmugham and Dr Jordan is appropriate and meets the criteria in the Act. It reflects concern about the gravity of the acts committed on 4 November and will ensure the protection of the community as well as Mr Berry. An order that Mr Berry must not drive is appropriate given the gravity of his dangerous driving. I note Mr Berry has presently no intention of driving. There will be provision to allow for this order to be reviewed.

By virtue of s 21(1) of the Act, a supervision order is made under s 29A of the *Criminal Justice (Mental Impairment) Act*. Mr Berry is released under the supervision of the Chief Forensic Psychiatrist on the following conditions:

- He is to comply with any directions as to supervision given by the Chief Forensic Psychiatrist or his/her delegate;
- He must take medication and submit to the administration of medical, psychological or psychiatric treatment as determined by the Chief Forensic Psychiatrist or his delegate.
- He must comply with directions of the Chief Forensic Psychiatrist or his or her delegate to address drug use, including drug and alcohol counselling and treatment with services such as Alcohol and Drug Services, directions to comply with drug screen testing (including providing urine samples) in order to monitor his illicit substance use, and other counselling such as grief counselling.
- That he must not drive under any circumstances, for an indefinite period, subject to an order of the Supreme Court.