

Ms Stokes, you have pleaded guilty to one count of Criminal Code assault. The crime was committed against your then partner on 8 November 2024. There was an issue at the sentencing hearing as to the basis upon which I should sentence you for the crime of assault. The State's position is that you threw a glass at the complainant intending to strike him. You assert that you intended to throw the glass over the complainant's head and that he unexpectedly stood up and was thereby struck by the glass. You accept your guilt on the basis of subjective recklessness, that is, you accept you foresaw the risk that the glass would strike him but threw it regardless. There were other issues raised on the sentencing hearing which were also in dispute. I say now, that in my assessment, none of the broader areas of dispute impact to any real degree on the sentencing outcome and I do not consider it necessary to make specific factual findings in respect to those areas of dispute.

The background to the incident was that you and the complainant had been living in a significant relationship for a period of about eight months. You were living together at the complainant's home in Latrobe. Each of you had children to prior relationships and the children would spend time at the residence. On this evening, your two children were present at the residence, but the complainant's children were not.

During the evening, the complainant had gone to a friend's residence. Whilst there, he had consumed approximately six beers. The evidence does not enable me to find the volume of the beers. Before leaving for his friend's house, he had moved his pillow from the master bedroom, into his daughter's bedroom because he anticipated a late return home, and did not wish to wake you upon his return. The complainant arrived home at approximately 11.40pm and went to his daughter's bedroom. Approximately five minutes later, you entered the bedroom and asked him what he was doing. The complainant told you he was staying in his daughter's bedroom that evening as he did not wish to wake you as he was aware that you had been unwell and sleeping poorly. Given you were awake, however, the complainant asked whether it was appropriate he return to the master bedroom. You said "no".

It seems you then returned to the master bedroom and realised the complainant's pillow missing. You returned to the bedroom where the complainant was and asked him whether he had removed the pillow in advance of going out. The complainant said that he had. This upset you as you inferred it meant the complainant had consumed a considerable quantity of alcohol that evening, and the arrangement was that he was to care for your children the following morning. What you perceived to be his excessive consumption of alcohol had been an issue throughout the course of the relationship. Seemingly agitated, you picked up a glass of water, which was sitting on a bedside table, and threw it over the complainant. You then left the room and returned to the master bedroom. In retaliation, the complainant went to the kitchen, filled up a glass of water and went to your room and threw the water over you. Thereafter, a loud verbal argument occurred between you and the complainant. I am satisfied that during this argument, there were raised voices, and you were concerned that your children would be awoken. You asked the complainant to quieten down. He did not do so, but instead displayed some childish behaviour, by yelling further and also slamming doors.

Ultimately, the complainant left the master bedroom and headed back to his daughter's bedroom. At that point, the matter could easily have been over. But you followed the complainant back to his daughter's room. You took with you the glass from which the water

had been thrown. As he walked along the hallway, you threw the glass in his direction. It did not hit him but instead, hit a piece of furniture and ricocheted onto the floor. You picked the glass up again. By this time, the complainant had returned to his daughter's bedroom. You followed him in there and threw the glass a second time. This time it struck the complainant to the face, hitting him beneath his right eye. As a result of the impact, the complainant fell onto the bed and began to immediately bleed from a laceration below his eye.

As noted, your state of mind when you threw the glass on the second occasion was in issue at the sentencing hearing. I heard evidence from both you and the complainant about this subject matter. The complainant's evidence was that he returned to his daughter's bedroom following the argument in the master bedroom, intending to go back to bed. He said he was standing in about the middle of the room when he heard you approaching. On hearing this, he turned and looked towards the bedroom door entrance. He observed you at the doorway of the room. You immediately threw the glass directly towards him. His evidence was you were looking at him. He said the glass was thrown from a distance of about one to one and a half metres. He said when the glass hit him, he fell over the bed and was bleeding and feeling unsure as to what was occurring.

Your version of events was very different to this. You claimed that after the complainant entered the bedroom and threw the glass of water at you, there was a loud argument. You repeatedly asked the complainant to keep his voice down so he would not wake your children. You said the complainant responded negatively to this request and suggested that if you did not like how he was behaving, you could leave the residence. You then claimed that the complainant started slamming the walk-in closet door. You said you approached the complainant and put your hands on his chest in an endeavour to distract and quieten him. You asked that he calmed down. You said that the complainant responded by grabbing you by the throat and holding you firmly for about six seconds to the point where you were struggling. You said in your evidence that the complainant had a look of "pure anger in his eyes".

You said after this assault came to an end, the complainant left the bedroom, banging some more doors on the way out. He proceeded towards his daughter's bedroom. You followed him down the hallway, having picked up the glass from the bedroom floor. You said you threw the glass in his direction, as he walked down the hallway, but it did not hit the complainant, rather it bounced off the couch and landed on the lounge room floor. You said you threw the glass in the direction of the complainant because your thought process was that if you threw it and it broke, he would be distracted by the noise and the need to clean up the glass and, therefore, would desist in his behaviour. I must say, if your only intention was to cause a distraction by breaking the glass, it is difficult to understand why you had to throw it in his direction at all. You could have easily smashed the glass on to a hard surface, meeting your needs for a distraction. The question of why you had to pick the glass up and throw it at him a second time, once he had retreated to his daughter's bedroom, is even more perplexing if you were simply endeavouring to create this distraction. On your own evidence, he had ceased slamming the bedroom door and had shut it, before you opened it and entered. The incident had come to an end. The need for a distraction had dissipated. Yet you opened the door and threw the glass nevertheless. Such behaviour is inconsistent, in my assessment, with the claim of seeking to cause a distraction and consistent with you being angry and frustrated and intentionally throwing the glass at the complainant.

In any event, you said that as the complainant continued towards his daughter's bedroom, he was slamming the hallway door and making a number of disparaging remarks towards you.

You also said he was also yelling towards your children's bedroom, telling them to "wake the fuck up and get out of his fucking house". You said the complainant then entered his daughter's bedroom and again was slamming the door. You said it was once he had stopped slamming the door and shut it, that you opened the bedroom door to observe the complainant crouching down, towards the ground. You said you threw the glass in the direction of the wall behind the bed. You said as the glass left your hand, the complainant stood up and the glass impacted his face. You said in your evidence that you had no intention of striking him with the glass, you only wanted to distract him. In essence, you claimed it was accidental as you did not anticipate him standing.

Without hesitation, I reject your evidence. I had the opportunity to observe you give your evidence. It presented to me as contrived and rehearsed. There were several occasions where your answers were non-responsive to the question. You presented as intent on providing your explanation for the events irrespective of the question asked. There were aspects of your account that were simply non-sensical. For example, if your intention was to bring the angst to an end, one wonders as to the need to follow him into his daughter's bedroom. If your intention was to distract the complainant, then there was no need to throw a glass in his direction. This was a standard size bedroom. You could easily have thrown it into an area away from where the complainant was positioned. If using a breaking glass to create a distraction was really necessary, and I doubt it was, then it simply could have been smashed by you onto a nearby hard surface. Moreover, having heard your evidence I was left with the very firm impression that you were intent on casting blame on the complainant for events that evening, and sought to minimise your own conduct. I reject your claim that the complainant took hold of you by the throat and squeezed during the argument in the bedroom. You did not raise this with police when you spoke to them. The first time you claimed this occurrence was when you gave evidence on the sentencing hearing. Your explanation for not having raised it at an earlier point was that you were fearful of the repercussions. You suggested you were fearful as to "who could turn up at your house and what they would do".

I do not accept your evidence as to this. You attended the police station on 9 November 2024, the day after the incident and before the complainant had spoken to police. You told police about some aspects of the complainant's behaviour but nothing of this nature. You then spoke to police again on 25 November 2024 at which time you participated in a record of interview. In that interview, you told police that the complainant had entered the master bedroom and thrown water at you. You explained that there had been a loud verbal argument in which you had asked him to quieten down and not wake the children. You reported to police that his response was to the effect that he did not care if he woke the children. You also told the police about him slamming the walk-in wardrobe door. You told police that you put your hands up to his chest in an endeavour to calm him. You told police that he grabbed you by the arm and pushed you before he walked out of the bedroom, slamming the bedroom door several times as he exited. You were obviously prepared at this point to explain to police that he had assaulted you in the sense of grabbing you by the arm and pushing you, but you made no suggestion that there had been any impact to your throat.

The version of events that you provided to police was largely consistent with what you said in Court, but did not contain any claim of him grabbing hold of your throat. Throughout your record of interview, it is apparent that you were not concerned about the repercussions of making a number of disparaging comments about the complainant. I do not accept that you had any hesitation in saying adverse things about him for fear of consequence. I have no doubt that if he had taken hold of you by your throat, you would have told police about it. Your claim

that you did not do so for fear of repercussion is not at all consistent with other matters that you raised within that record of interview. I conclude that your claim that he took hold of you by the throat was simply an attempt by you to paint the complainant in an adverse light in an endeavour to justify your behaviour. I was not impressed by your evidence, and where it differs from that of the complainant, I reject it.

I will sentence you on the basis that you intentionally threw the glass at the complainant. I find that the complainant's behaviour on this evening agitated you. You were angry that he had been out at his friend's place, consuming alcohol, when he had responsibility for caring your children the following day. You obviously became upset that he had pre-planned sleeping in his daughter's bedroom that evening. There was an argument about this, and in an act of frustration, you threw a glass of water over him, setting off a chain of events which I accept included him making some derogatory comments about you, and also making a considerable amount of noise. I accept that his behaviour involved yelling and slamming doors and, to a degree, his behaviour played a part in the leadup to the incident, but ultimately, I find it was your feelings of exasperation, frustration and anger which were the catalyst for you throwing the glass at him.

After the complainant had been struck with the glass, there was a further altercation between you and him. It is not necessary for me to make factual findings about that, as whatever occurred is of no relevance to sentencing you for the crime of assault.

The complainant, thereafter, left the residence and went to his friend's place. The following morning it was obvious that he had a significant injury to his face. He attended the Mersey Community Hospital. Examination revealed that he had a comminuted and displaced fracture of the right cheek bone, which extended to the floor and lateral side of his eye socket. The complainant had to undergo surgery, which involved the fixation of the fracture by the insertion of two plates and multiple screws.

Following this incident, both you and the complainant were served with police family violence orders. The relationship came to an end. There is no suggestion that there has been a breach of the orders by either of you.

I have not received a victim impact statement from the complainant. That is not to say the crime did not have a significant impact upon him. He noted in his evidence that he was in pain following the incident. Undoubtedly, the surgery would have been difficult for him. His recovery necessitated him taking several weeks off work, which had a financial impact upon him.

You are 32 years of age. You have no relevant prior convictions, although I note in 2011, when you were aged 17, you were formally cautioned by police for a matter of common assault. You have two children. You have a strong work history in the retail sector. You are now self-employed and run your own retail business. By all accounts, you are a successful business owner. I take into account your plea of guilty, although the mitigatory value of that has been ameliorated somewhat by the need for the complainant to give evidence during the sentencing hearing. It is submitted on your behalf that you are remorseful for having caused the complainant the injury he suffered. I accept that immediately following the incident, you did convey to the complainant that you were sorry for what had occurred, but it seems to me that in the period of time since, your remorse has waived and your focus has been on

endeavouring to justify and rationalise what you did, rather than being genuinely prepared to accept full responsibility for your behaviour.

Throwing a heavy glass at someone's head is an inherently dangerous thing to do. Whilst I accept that you did not anticipate that the complainant would be as badly injured as he was, you must have appreciated, given the circumstances in which you threw the glass, that there was an obvious risk of causing him significant injury. Your use of a glass as a weapon, the force with which you threw it, the proximity of the complainant when you threw it, the resultant injury and the fact this assault was committed in a family violence context, all elevate the objective seriousness of your conduct. Family violence of this nature is never acceptable. You say you were concerned about the presence of your children and the risk they may awaken to violent conduct, yet you were the one who used a weapon and elevated the violence to the point of causing a significant injury. The assault requires a salient punishment. A period of imprisonment is the only appropriate sentencing outcome, but because of your lack of prior criminal history and your good prospects, I am satisfied it is appropriate to suspend the period of imprisonment I intend to impose.

You are convicted of the crime of assault. You are sentenced to imprisonment for a period of six months. The execution of that period of imprisonment will be wholly suspended on condition that for a period of 18 months, you do not commit any offence punishable by imprisonment.

Ms Stokes, I must warn you that if you fail to comply with the terms of the suspended sentence, then an application can be brought to activate the sentence and you will be required to serve it unless a judge concludes that it would be unjust to make you do so.