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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 22414543 and 22415719

THE KING

and

WAYNE JNR BADING

(Sentence)

BROWNHILL J

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON WEDNESDAY 27 NOVEMBER 2024

Transcribed by:
EPIQ

HER HONOUR: Mr Bading, you have pleaded guilty to the following charges:

On Count 1, that on 7 March 2024, you committed the offence of theft and used or threatened force on KS to do so, contrary to ss 218 and 219 of the *Criminal Code*, with the circumstances of aggravation that you were in company with Gracie Ann Bading and JC and you were armed with an offensive weapon, namely a fire extinguisher.

On Count 2, that on that same date, you caused damage to property belonging to Liquorland, contrary to s 241 of the *Criminal Code*.

On Count 3, that on 26 April 2024, you caused damage to property belonging to Liquorland, contrary to s 241 of the *Criminal Code*.

On Count 4, that on that same date, you committed the offence of theft and used or threatened force on JJ to do so, contrary to ss 218 and 219 of the *Criminal Code*, with the circumstances of aggravation that you were in company with KM, CP and another co-offender and you were armed with an offensive weapon, namely a wine bottle.

And on Count 5, that on that same date, you attempted to commit the offence of theft and threatened to use force against SKC, contrary to ss 218 and 219 of the *Criminal Code*, with the circumstance of aggravation that you were armed with an offensive weapon, namely scissors.

The maximum penalties for the offences are: for Counts 1, 4 and 5, imprisonment for life, and for Counts 2 and 3, imprisonment for 10 years.

The circumstances of the offending are that, on 12 February 2024, you were granted bail by the Local Court on conditions that you not consume alcohol and submit to testing.

You were 19 and 20 years old at the time of this offending.

At about 7:20 pm on 7 March 2024, you and your co-offenders, Gracie Bading (who was 33) and JC (who was 16), went to Liquorland at Casuarina with the intention of stealing alcohol. As you went to go in, you were spoken to by security staff, KS and UA. You were denied entry because none of you had shoes on. You and your co-offenders stood outside the metal barricade outside the store and KS and UA were inside the store. Another staff member was near the barricade. As you were being spoken to, you walked a few metres away, along the barricade. You reached over the barricade and took a fire extinguisher from the wall. The staff member retreated behind the barricade. You held the fire extinguisher in front of your body and said to KS, "I'm gonna hit you." UA went further inside the store. KS stayed where he was. Your conduct distracted KS and UA while your co-offender, JC, climbed through the metal barricade and entered the store. He walked to where UA was standing. He picked up a bottle of alcohol and held it in his hand. He looked at UA and took a few steps towards him. Fearing for his safety, UA put his

hands in the air and retreated backwards. While this was happening, KS went outside the metal barricade and took the fire extinguisher from you. JC went further into the store, threw the alcohol bottle he was holding at the glass cabinet where the spirits were kept. The glass cabinet smashed. He did that three more times, with three more bottles of wine, smashing more of the glass cabinet. You and Gracie Bading went into the store and joined JC. You reached into the glass cabinet and took three bottles of rum worth about \$150 in total. You then left the store. Gracie Bading and JC took two bottles of rum each from the cabinet worth about \$200 and left the store. That is the offending the subject of Counts 1 and 2. You were summoned to the Local Court in relation to this offending.

At about 6:51 pm on 26 April 2024, you went again to the Liquorland store in Casuarina, this time with co-offenders KM (aged 21) and CP (aged 14), as well as an unknown person. You went inside the store and were told by security staff that you were not allowed in. Your face was partially covered by clothing tied around the lower part of your head. You were holding a pair of scissors. You and KM walked to the glass cabinets. You picked up seven bottles of wine, one at a time, and threw them at the glass cabinets, causing both the bottles and the doors to smash. KM picked up a bottle of wine and smashed a separate glass cabinet door. Your unknown co-offender walked into the store and stole two bottles of wine from a display. While you were smashing the cabinets, KM went to the space facing the cash register, where three staff were standing. He was several metres away from them; he held up both middle fingers at them. You took two bottles of spirits from the smashed cabinet and walked out of the store. KM walked to the back of the store and took a case of wine. You walked back into the store, stole more spirits from the smashed cabinet and walked to the cash register area, where staff member JJ was standing. You pointed at JJ and held a wine bottle in your hand like a club, motioning as if to hit him with it. You said, "You have to give me all your money." JJ felt fear and retreated from the area. You reached over the counter, stole another two bottles of spirits and walked out of the store. CP then went into the store, reached over the front counter area and stole alcohol from behind the counter. You walked back into the store and took more bottles of spirits out of the smashed cabinet and left the store. The total value of alcohol stolen was about \$998. That is the offending the subject of Counts 3 and 4.

After you and your co-offenders left Liquorland, you disposed of the stolen alcohol and walked as a group through the outdoor restaurant part of Casuarina Square, towards the taxi rank. You split away from the group and went into Timezone. Your face was not covered. You leaned across the counter, reached down and tried to open the cash register to steal money. A staff member, SKC, told you to stop what you were doing. You pulled your shirt over the bottom half of your face, walked towards SKC and produced scissors from your shorts. You held them in your hand, pointed them at SKC and said, "Give me all your money." SKC felt fear and ran to the rear office and locked herself inside. She called Police and security. You fled the area. That is the offending the subject of Count 5.

On 28 April 2024, you were arrested by Police at your home. You made admissions to the offending, saying, "I know. I know. I was wasted when I did that."

I have received victim impact statements from the victims.

JJ said that since the incident, he has been experiencing heightened anxiety, especially when at work. The fear of being threatened again has made him feel unsafe in the work environment, where he previously felt secure. He is no longer confident to take evening shifts because he is afraid of something similar happening again. Not doing evening shifts has meant he has lost extra pay for night work, which has added financial stress to the emotional impact he has suffered.

SKC that she suffered physical symptoms of stress and fear, including increased heart rate, palpitations, difficulty sleeping, loss of appetite and fatigue or exhaustion, all of which have had a significant impact on her overall wellbeing. The emotional toll has been profound and long-lasting. She has felt fear and anxiety, especially at work or in similar environments, is jumpy and in a heightened state of alertness at work. She has flashbacks and intrusive thoughts about the incident even months later. Her overall enjoyment of her job has decreased and affected both her work performance and personal relationships. Her trust in others has also been affected, especially strangers and customers. These things have affected the quality of her life and her sense of security in the world.

You are now 20 years old.

You have a minimal criminal history imposed since this offending comprising:

- a conviction for aggravated assault on a woman, causing harm, committed on 17 December 2023 (that is, before the present offending), for which you received a sentence of 3 months' imprisonment, backdated to 22 April 2024; and
- a conviction for breach of bail in relation to your offending on 26 April 2024, for which you received a sentence of 5 days' imprisonment.

You have pleaded guilty to the offences and thereby saved the victims and the community the need for a trial. By that, you have indicated acceptance of responsibility for your actions and a willingness to facilitate the course of justice. The Crown accepts it was an early plea.

You did not assist the victims immediately after the offending, but you did make some admissions about the offending to Police after your arrest.

I propose to reduce the sentence I would otherwise impose for these offences by approximately 25 percent to reflect these matters.

Your barrister has told me some things about you.

Your parents separated when you were an infant. Your father lived on Groote Eylandt and has had no role in your upbringing. You are one of five children. Your mother was an alcoholic and died when you were 9 years old. While she was

alive, a domestic violence order was taken out to protect you and your siblings from harm from your father. Further, your mother did not exercise strict control over you and you spent late nights out with older youths. As a child, you witnessed domestic violence between family members and violence in the Bagot community on an almost daily basis. After your mother's death, you were raised by your older sister. She also did not exercise strict control over you. You were also exposed to alcohol and drug use from an early age.

You went to primary school in Darwin and then to a college in Townsville. You left school after Year 10.

You used alcohol and drugs, mostly cannabis, from an early age. You were drunk when you committed the offences. Whilst in custody, you have self-referred to the alcohol and drugs program, but have not been able to engage with them. You would like to enrol in a carpentry apprenticeship, building houses in Aboriginal communities.

You have an uncle in Numbulwar and told your barrister you would like to live with him, away from the temptations of alcohol in Darwin. You have said that you would be willing to do residential rehabilitation. You told the report writer that, in Darwin, you would like to live with your father and brother at Bagot Community.

This offending is objectively serious. I have mentioned the maximum penalties, which are an indication of the seriousness.

All of this offending was committed whilst you were on bail, which aggravates the seriousness of the offending.

These are three separate instances of brazen offending committed in public during business hours. The bottle shop offending was committed in company (with two others) and was pre-meditated for the purpose of stealing alcohol. I make that finding on the basis of the agreed facts for Count 1, and on the basis that Count 3 involved the same conduct at the same store.

In relation to Counts 1 and 2, you threatened security staff with the fire extinguisher, which created a distraction that your co-offender took advantage of to enter the store. He then threatened staff with a wine bottle to keep them at bay and smashed the cabinet designed to secure the spirits from theft. Clearly, the property damage was done to effect the common purpose of stealing alcohol. It was not in response to being confronted. Once your co-offender had smashed the cabinet, you took three bottles of spirits out while your co-offenders took two each. I do not accept the Crown's submission that you were the principal offender, given that it was your co-offender who smashed the cabinets and threatened security staff inside the store, before you all took alcohol from the smashed cabinet. I consider his conduct to be no more influential in the offending than yours.

In relation to Counts 3 and 4, your smashing of the cabinets with wine bottles was more persistent, involving seven separate actions by you of damaging property,

again to effect the common purpose of stealing alcohol. You tried to disguise your identity to avoid detection for the offending. You had a weapon, a pair of scissors, with you, although you did not use them. You did, however, use a bottle of wine to directly threaten the staff member at the cash register, demanding money, and took more alcohol when they retreated in fear. Your earlier conduct in smashing the bottles would have made your threat of violence more realistic and frightening. You and your co-offenders stole a total of around \$1000 worth of alcohol, damaged the glass cabinets and made a mess of the store. You were clearly the principal offender in this offending, notwithstanding that you were with an older offender. There is no suggestion that you acted in response to his conduct or were led or otherwise influenced by him.

In relation to Count 5, you brazenly entered a gaming arcade, tried to steal money from the cash register, then with a pair of scissors, threatened the staff member with them, and demanded money. That staff member ran to the office in fear and locked themselves in.

I consider the offending in Counts 1 and 4 to be towards the lower end of the range of seriousness for robbery offences, particularly noting that no physical force, let alone causing harm, was actually applied to any person.

I consider the offending in Count 5 to be at the lower end of the range of seriousness for similar reasons.

I consider the offending in Counts 2 and 3 to also be towards the lower end of the range of seriousness for property damage offences.

I accept that the staff of bottle shops are particularly vulnerable to this kind of offending because it is so prevalent. They and the staff of other business premises in shopping centres are entitled to feel safe in their workplaces, and this would have been a very frightening experience for both security and general staff in these places. I do note the ongoing emotional effects of the offending on the victims, as I have described from their victim impact statements.

The offences you have committed are serious and they require a strong punishment. That punishment must be tough enough to make you realise that what you did was very wrong, and that you must not do anything like that again.

Property damage and robbery of people, particularly liquor stores, are all too common and must be discouraged. Such offences cause disquiet in the community. A sentence for this kind of offending needs to warn other people that if they do this kind of behaviour, they will face a strong punishment.

You were drunk when you committed these offences. That is no excuse, but I take into account your childhood exposure to violence and alcohol and drug abuse. These things reduce, to some extent, your moral culpability for the offending and moderate the weight to be given to both general and specific deterrence.

I must also take into account the need to protect the Territory community from your actions and the risk that you might reoffend in a similar way in the future.

You are entitled to lenience on account of youth, because young people do not have the same decision-making capacities and judgment as older people. This also makes your rehabilitation a very important matter in this sentencing exercise.

You have a minimal criminal history, with only one prior instance of violence and only one instance of breaching court orders. You are a young man. There is still time to turn your life around.

You have not had a job and have no vocational qualifications or training, but you wish to obtain employment.

You have a supportive family.

I consider your prospects of rehabilitation to be reasonable, but to depend upon your addressing your alcohol and drug misuse.

Each of the offences is an aggravated property offence within s 78A and 78B of the *Sentencing Act*. Under those provisions, I must take into account the purpose of the Division in s 78A, and, if I record a conviction against you, I must order you to serve a term of imprisonment which cannot be wholly or partly suspended or an Intensive Community Correction Order with home detention, or a Community Correction Order or Intensive Community Correction Order with community work, unless there are exceptional circumstances. No exceptional circumstances were put to me and I find there are none.

You have been in custody since 22 April 2024, so over 7 months, but between that date and 21 July 2024, you were serving the 3-month sentence imposed by the Local Court for unrelated offending. In all the circumstances, I consider that the sentences for this offending should be wholly concurrent with that Local Court sentence.

I am sentencing you for five offences, committed in three or, arguably, two separate episodes of offending. I consider that the criminality of the property damage counts will be wholly captured by the sentences imposed for the robbery counts. They will be wholly concurrent with each other. There will be some accumulation between the three episodes to reflect that each was a different offence with different conduct, but there will also be significant concurrency to reflect the totality principle.

I have received a report about your suitability for supervision, a Community Correction Order or Intensive Community Correction Order. It has assessed you as at high risk of reoffending but says you have not demonstrated any attitudes of concern and have voiced a willingness to change and live a pro-social life. You were assessed as suitable for general supervision, a community work condition (with projects available), but not suitable for home detention, because you do not have a

structured day and your sister was not able to be contacted. I consider that an Intensive Community Correction Order with supervision and community work is the appropriate disposition.

I will now sentence you, Mr Bading.

I convict you of the offences.

On Count 1, I sentence you to imprisonment for 9 months.

On Count 2, I sentence you to imprisonment for 8 months. The sentence on Count 2 will be wholly concurrent with the sentence on Count 1.

On Count 4, I sentence you to imprisonment for 14 months. Eight months of the sentence on Count 4 will be cumulative with the sentence on Count 2.

On Count 3, I sentence you to imprisonment for 11 months. The sentence on Count 3 will be wholly concurrent with the sentence on Count 4.

On Count 5, I sentence you to imprisonment for 8 months. Four months of the sentence on Count 5 will be cumulative with the sentence on Count 3.

That gives a total sentence of imprisonment for 1 year and 9 months, commencing on 22 April 2024.

Pursuant to s 45 of the *Sentencing Act*, you will serve that term of imprisonment in the community by way of an Intensive Community Correction Order. The Intensive Community Correction Order will commence today and will be for the period of 1 year and 3 months from today. That order is subject to various conditions, which I will read out.

- 1) You must not, during the period of the order, commit another offence, whether in or outside the Territory, punishable on conviction by imprisonment.
- 2) You must be of good behaviour for the period of the order.
- 3) You are under the ongoing supervision of a Probation and Parole officer, must obey all reasonable directions and must report to a Probation and Parole officer within two business days from today.
- 4) If the Commissioner has reasonable grounds to do so, you may be required by the Commissioner to:
 - a. reside at a specified place for the period specified in the notice;

- b. wear or have attached an approved monitoring device for the period specified in the notice, and;
 - c. allow the placing or installation in and retrieval from a specified place of anything necessary for the effective operation of the monitoring device.
- 5) You must participate for 150 hours in an approved project as directed by a Probation and Parole officer.
 - 6) You must, if assessed as suitable and as directed by a Probation and Parole officer, enter into the FORWAARD residential rehabilitation program or another residential rehabilitation program and complete that program and do nothing to cause your early discharge.
 - 7) You will not purchase or consume alcohol, and will submit to testing as directed by a Probation and Parole officer or a Police officer.
 - 8) You will not possess or consume a dangerous drug and will submit to testing as directed by a Probation and Parole officer.
 - 9) You will participate in assessment, counselling or treatment as directed by a Probation and Parole officer.
 - 10) You will not associate with any person specified as directed by a Probation and Parole officer.
 - 11) You must not enter or remain at Liquorland or Timezone in Casuarina Square.

Is there anything arising from those orders?

MR AUST: Not from defence.

MS NICHOLS: No, your Honour. Nothing on behalf of the Crown.

HER HONOUR: All right. Thank you.

Mr Aust, I will leave it to you to explain to Mr Bading the meaning of all of those conditions and the effect of the ICCO.

MR AUST: Thank you, your Honour.

HER HONOUR: Yes. Thank you. Thank you both for your assistance in the matter.

Adjourn the Court please.
