

## ***Director of Public Prosecutions (Acting) v J C N* [2015] TASFC 13 (27 November 2015) – Supreme Court of Tasmania**

‘Aggravated assault’ – ‘Assault’ – ‘Bail’ – ‘Breach of domestic violence order’ – ‘Damaging property’ – ‘Exposing children’ – ‘Following, harassing, monitoring’ – ‘History of abuse’ – ‘Physical violence and harm’ – ‘Risk factor - separation’

Charges: Attempted aggravated assault, Breach of family violence order, Common assault, Damaging property

Appeal type: Appeal against order for bail

Facts: The respondent and the complainant had previously been in a relationship for more than two years. The complainant had two children. A family violence order was made against the respondent, restraining him from threatening, harassing or assaulting the complainant. On one occasion when the complainant went to the respondent’s house with her daughter and mother, the respondent seriously assaulted her and her mother. He was charged with two counts of assault and breaching the family violence order and was granted bail. Subsequently, the respondent breached the conditions of bail and the order when the complainant and her children stayed with him. After fighting the next morning, the respondent followed the complainant into shopping centre toilets, kicked in the door and punched her in the face twice. An interim family violence order was then made with a condition that he would not contact the complainant. In breach of that order, the respondent phoned the complainant seven times from prison. The respondent was sentenced for these offences to four months’ imprisonment and a new family violence order was made to protect the complainant and her children.

Just after a month after his release, the respondent seriously assaulted another female, his former partner, and was held in custody. While in custody, he phoned the complainant 19 times. He was then granted bail. After interviewing the complainant, the police discovered that the respondent had assaulted the complainant’s daughter by grabbing her bottom. He also threw a bar stool at the complainant and her son, striking him on the leg. The respondent then forced the complainant’s pants down and attempted to insert a plastic vibrator into her anus, witnessed by the two children. He then punched her five times in the face, bit her ear and pushed a hot cigarette butt into her forehead. The next morning the respondent emptied the complainant’s daughter’s school bag onto the floor and stomped on it, threatening ‘This is going to be your face’. He then grabbed her hair and pushed her against the wall. The respondent then threatened the complainant’s son that he would kill him, his sister and the complainant if the police were notified of the assaults.

In relation to this conduct, the respondent was charged with 35 counts of breaching the family violence order, one count of assault with indecent intent, five counts of common assault, three counts of damaging property, and one count of attempted aggravated assault. The respondent was granted bail, having satisfied the court that bail would not adversely affect the safety, wellbeing and interests of an affected person or child under s 12 *Family Violence Act 2004* (Tas).

Issue: Whether the order for bail should be set aside.

Decision and reasoning: The appeal was allowed and the order for bail was revoked.

In favour of granting bail was that the respondent's mother and father were both ill. His mother was prepared to offer a surety of \$4,000 to secure his attendance at court and compliance with bail conditions. The respondent agreed to comply with a curfew and reporting conditions. However, there was a significant risk he would continue to offend if bail was granted when considering his history of breaching court orders and violent offending. There was also a considerable amount of evidence to prove guilt once at trial.