

S v White [2005] TASSC 27 (21 April 2005) – Supreme Court of Tasmania

‘Assault’ – ‘Bail’ – ‘Damaging property’ – ‘Exposing children’ – ‘People affected by substance misuse’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Risk factors’

Charges: Assault (3 counts), Destroying property, Application for a restraint order

Appeal type: Appeal against refusal to grant bail

Facts: It was alleged that the appellant assaulted his former partner and two of her children, and that he destroyed the windscreen of her car. A police officer also applied for a restraint order as a result of this incident. The magistrate refused to grant the applicant bail.

Issue: Whether the release of the appellant on bail would not be likely to adversely affect the safety, wellbeing and interests of an affected person (the former partner).

Decision and Reasoning: The appeal was allowed and bail was granted with condition as to surety recognisance and a residential condition. There were a number of factors weighing against the appellant: the prosecution had a strong case; this was a case involving not only physical assault but a threat to kill; the appellant used weapons in the commission of the offence; the *Family Violence Risk Assessment* prepared by the complainant immediately following the incident noted alcohol problems, potential mental health issues, jealousy and possessiveness, threats to kill, violence in the relationship escalating and the relationship had only recently broken down; the proposed surety (the appellant’s mother) was not in good health and would be unable to stop the appellant harming his former partner ([14]-[18]).

However, in spite of this, Blow J was satisfied that the release of the appellant on bail would not be likely to adversely affect the safety, wellbeing and interests of his former partner and her children. The appellant had not assaulted his former partner or children prior to this incident. Despite allegations of mental illness, the appellant had not been diagnosed with such a disorder. The appellant’s demeanour in court was ‘ideal and exemplary,’ precautions had been taken to ensure the appellant did not know where his former partner was, and he had a previous good employment history ([19]-[23]).