JURISDICTION	**:**	SUPREME COURT OF WESTERN AUSTRALIA IN CRIMINAL
CITATION	**:**	THE STATE OF WESTERN AUSTRALIA -v- BREARLEY [2025] WASCSR 21
CORAM	**:**	QUINLAN CJ
HEARD	**:**	26 & 27 JUNE 2025
DATE OF SENTENCE	**:**	27 JUNE 2025
FILE NO	**:**	INS 14 of 2023
BETWEEN	**:**	THE STATE OF WESTERN AUSTRALIA
		AGAINST
		JACK STEVEN JAMES BREARLEY
		BRODIE LEE PALMER
		MITCHELL COLIN FORTH
		ALEESHA LOUISE GILMORE
		ETHAN ROBERT MACKENZIE

Offences:

JACK STEVEN JAMES BREARLEY
Deprivation of liberty x 2
Aggravated assault causing bodily harm
Assault causing bodily harm
Murder

BRODIE LEE PALMER
Aggravated assault causing bodily harm
Stealing
Murder

MITCHELL COLIN FORTH
Deprivation of liberty x 2
Aggravated assault causing bodily harm
Assault causing bodily harm
Stealing
Manslaughter

ALEESHA LOUISE GILMORE
Aggravated deprivation of liberty x 2
Aggravated assault causing bodily harm

ETHAN ROBERT MACKENZIE
Aggravated deprivation of liberty x 2
Assault causing bodily harm

Legislation:

Criminal Code (WA), s 279, s 280, s 317, s 333, s 378
Criminal Procedure Act 2004 (WA), s 83(6)
Sentencing Act 1995 (WA), s 6, s 7, s 8, s 9AA, s, 83, s 84, s 90

Sentences Imposed:

JACK STEVEN JAMES BREARLEY

Count 1	Aggravated deprivation of liberty	1 year 3 months imprisonment
Count 2	Assault causing bodily harm	2 years 3 months imprisonment
Count 3	Aggravated deprivation of liberty	2 years imprisonment
Count 4	Aggravated assault causing bodily harm	2 years 9 months imprisonment
Count 6	Murder	Life imprisonment

Total effective sentence: life imprisonment with non-parole period of 22 years

BRODIE LEE PALMER

Count 4	Aggravated assault causing bodily harm	2 years 6 months imprisonment
Count 5	Stealing	5 months imprisonment
Count 6	Murder	Life imprisonment

Total effective sentence: life imprisonment with non-parole period of 18 years

MITCHELL COLIN FORTH

Count 1	Aggravated deprivation of liberty	1 year imprisonment
Count 2	Assault causing bodily harm	2 years 3 months imprisonment
Count 3	Aggravated deprivation of liberty	2 years imprisonment
Count 4	Aggravated assault causing bodily harm	2 years 6 months imprisonment
Count 5	Stealing	5 months imprisonment
Count 6	Manslaughter	9 years imprisonment

Cumulative: Counts 1 and 3 upon count 6
Concurrent: Counts 2, 4 and 5 with count 6

Total effective sentence: 12 years imprisonment
Eligible for parole

ALEESHA LOUISE GILMORE

Count 1	Aggravated deprivation of liberty	1 year 3 months imprisonment
Count 3	Aggravated deprivation of liberty	1 year imprisonment
Count 4	Aggravated assault causing bodily harm	1 year 3 months imprisonment

Concurrent: Counts 1 and 3 with count 4
Conditionally suspended for 2 years months under pt 12 of the *Sentencing Act 1995* (WA)
Programme, supervision and curfew requirements imposed

ETHAN ROBERT MACKENZIE

Count 1	Aggravated deprivation of liberty	6 months imprisonment
Count 2	Assault causing bodily harm	2 years imprisonment
Count 3	Aggravated deprivation of liberty	1 year 9 months imprisonment

Cumulative: Count 1 upon count 2
Concurrent: Count 3 with count 2

Total effective sentence: 2 years 6 months imprisonment
Eligible for parole

Representation:

Counsel:

Prosecutor	:	B F Stanwix SC with T L S Tan
First offender	:	B M Morrow
Second offender	:	C C Porter with K J Pearson
Third offender	:	A G Elliott with A F Kraus
Fourth offender	:	S D Freitag SC with C J Hampson
Fifth offender	:	D C Jones with J C Solliss

Solicitors:

Prosecutor	:	Director of Public Prosecutions (WA)
First offender	:	Legal Aid WA
Second offender	:	Legal Aid WA
Third offender	:	Legal Aid WA
Fourth offender	:	Legal Aid WA
Fifth offender	:	Legal Aid WA

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QUINLAN CJ:

Introduction

1 Like his famous namesake the great Cassius Clay, Cassius Turvey showed great promise from a young age. He was a natural-born leader, whose sense of community, confidence and kindness pointed to a bright and successful future.

2 Unlike his namesake, Cassius Turvey will never be able to fulfil the great promise that he showed in his 15 years of life. While he will always be remembered for the joy, the love and the care that he showed for those around him, Cassius Turvey was robbed of his life and of his promise. The many fruits of that promise and his contribution that he would no doubt have made to his family and to his community must now live in the memories of those who loved him, or have been inspired by his life.

3 All because you killed him, Mr Brearley. You cut short Cassius Turvey's life in an act of aggression, violence and brutality which, regardless of the sentences I impose today, can never be made right. And you too are responsible for his death, Mr Palmer and Mr Forth, in different ways to be sure, but for which the law requires that you be held accountable.

4 Together with you Ms Gilmore and you Mr Mackenzie, it is my duty to sentence each of you for all of the offences for which you have been convicted: a total of 20 offences between the five of you. And it is my duty to find the facts for the purposes of those sentences. The facts that I find must be consistent with the verdicts of the jury, and I will only find facts adverse to you if I am satisfied of them beyond reasonable doubt. Any findings of fact that are favourable to you, I will make on the balance of probabilities.

5 Before turning to those facts, there are a number of important things I want to make clear right from the outset.

6 First, what I am required to do today is to apply the law; to identify the matters that the law requires me to take into account and to apply them objectively in accordance with the sentencing principles that the law requires. Judges in this country are not appointed to impose sentences in accordance with our personal feelings, and we would be betraying our oaths if we thought to do so. We are required to apply the

law and impose the sentence that we understand that the law requires. Nothing more and nothing less. That is what I will strive to do today.

7 Secondly, I want to say something about the impact that Cassius Turvey's death has had, and will continue to have, on the Aboriginal community in this State and in this country. At the commencement of your trial, the State prosecutors made clear that they did not allege that the attack on Cassius Turvey and his friends on 13 October 2022 was racially motivated. That was entirely proper. Your crimes were not racially motivated and you will not be sentenced on the basis that they were.

8 Nevertheless, I want to make this clear. I do find that at the time that the offences were committed on 13 October 2022, a number of you used racially charged language, referring to a number of the kids using racial slurs. You know what I mean by that: calling them 'N-words' and 'black cunts'. You, in particular, Mr Brearley used language like that. So it is no surprise that when a group of non-Aboriginal adult men set upon a group of predominantly Aboriginal kids, using language like that, and one of those adults beats a boy so badly that it kills him, that the kids would think that they were being targeted because they were Aboriginal. And that the attack would create justifiable fear for them, and for the broader community, that this was a racially motivated attack. That fear is real and it is legitimate. By your actions, Mr Brearley, Mr Palmer and Mr Forth, you are responsible for that fear.

9 Thirdly, I will make clear that the law requires me, not only to impose sentences commensurate with the seriousness of the offences you have committed, but also to take into account each of your personal circumstances. Mr Brearley, Mr Palmer and Mr Forth, it would be very easy for me to simply say that you are monsters and to ignore your personal circumstances. The truth, however, is that you are not monsters. The awful truth is that you are human beings, with your own life history, who have committed horrendous crimes. And it would be just as contrary to law for me to ignore your personal circumstances as it would be for me to ignore your horrendous crimes. Indeed, until we as a community accept that people who commit horrendous crimes like yours are fellow human beings, and not monsters, we will have little hope in preventing such crimes from happening again and again.

10 Which brings me to the fourth important matter I wanted to address at the outset. One of the disturbing things revealed in this case is how normalised violence has become in our community. A great

many children and young people gave evidence. To a boy and girl, none of them thought there was anything strange or unusual about going to watch fights as a form of fun or entertainment. They thought nothing of it. As if arranging and watching fights was a completely normal thing to do.

11 I don't say that to excuse any of you or to blame any of those kids; they are kids after all. But when violence becomes normalised in a society, horrific events like those that occurred in this case will keep on happening. A number of the offences for which each of you have been convicted were aggravated by the fact that those offences were committed in the presence of a child. All of you have been convicted of at least one offence committed in that circumstance of aggravation. That is not a mere technicality. The law provides that an offence is aggravated if committed in the presence of a child, at least in part, so as to recognise that violent and other offending in the presence of children normalises that behaviour and leads to more offending in future.

12 This is an important sentencing consideration in the present case: the need for general deterrence against casual, normalised violence. So too, as I will come to, is the need for general deterrence against vigilante behaviour, in which people with grievances, real or imagined, seek to take the law into their own hands.

13 Turning, then, to the facts of your offending.

Offences on 9 October 2022

14 In early October 2022, Mr Brearley and Ms Gilmore, you were in a relationship and living together at the home of Ms Gilmore's father in Mockeridge Circuit in Middle Swan.

15 You were 21 years old at the time, Mr Brearley, and you, Ms Gilmore were 20. While it appears to have been a volatile relationship, you had been together for a couple of years.

16 You were not in steady employment at the time, Mr Brearley, although you worked from time to time brick paving with Mr Forth's father, when he needed an extra hand. Otherwise, you made money selling cannabis for Mr Palmer. And, it seems, you made quite a bit of money. As I will come to, Mr Brearley, it is clear that you thought of yourself as something of a tough guy, who liked to lord it over other people, particularly people who were weaker than you.

17 You Ms Gilmore, were working at the time, at the Stratton Early Learning Centre, although you lost that job during the period of these offences.

18 You appear to have a very conflicted personality, Ms Gilmore. Clearly, at times, you could be immature and aggressive, lashing out at other people like a spoilt child. At other times, you could act with some maturity, and were capable of warmth and tenderness. It is clear that you were protective of your younger brothers Tyler and Cody, particularly Cody, who was 14 years old at the time, and seem to have become something of a substitute mother figure for them. But you were completely ill-equipped to handle that role and, indeed, your desire to fight your brothers' battles for them played a big part in the events that followed.

19 As I have said, Mr Palmer, you came to know Mr Brearley and Ms Gilmore through your dealing in cannabis, which you grew at your parents' property in Wundowie. At 27 years of age, you were older than the others, Mr Palmer. You were in a committed relationship with Katelyn Powell and you had a young son together. You should have reached the stage of your life, Mr Palmer, when you accepted the responsibilities of adulthood not chasing down children over petty grievances like a common thug.

20 You, Mr Forth, were a long-time friend of Mr Brearley's. While, at 24 years of age, you were older than Mr Brearley, in terms of your relationship you were very much the follower and seemed to take on the role of Mr Brearley's underling. Like Mr Brearley, you liked to talk tough, but when push came to shove, you kept in the background.

21 You, Mr Mackenzie were the youngest of the group, barely an adult at 18 years of age. You weren't with the others on 13 October 2022, the day that Cassius Turvey was attacked, but were involved in the offending on 9 October 2022. You too, seemed to be someone who just tagged along with Mr Brearley and Ms Gilmore, although as I will come to, you were an enthusiastic participant in the offences committed on that day.

22 On the afternoon of Sunday 9 October 2022, you were at your uncle Jason's house, Mr Brearley, together with you Ms Gilmore, Mr Forth and Mr Mackenzie.

23 While you were there Ms Gilmore received a phone call and messages from her brother Cody.

24 Cody was in Jane Brook with his girlfriend, [CA], and several others, including his friend [WJ]. Those children gave evidence, which I accept, that Cody was messaging another boy, who [CA] had previously been dating, arranging a fight between that boy and Cody. They had arranged to meet at Talbot Road in Jane Brook.

25 When Cody and the others arrived at Talbot Road for the fight, however, more boys showed up than they expected, and Cody was concerned that he was going to be 'mobbed'. Cody and [WJ] ran away from the group and called you Ms Gilmore, who told you Mr Brearley that Cody was going to be mobbed.

26 The four of you drove to Jane Brook in Mr Brearley's Kia Rio where you located Cody and [WJ]. Mr Brearley was driving. Cody and [WJ] got into the back seat of the car. By that time there were six people in the car.

27 Your group then drove around looking for the other group of boys.

Count 1 – Aggravated unlawful detention of [SM]

28 You found [SM], who was 14 years old at the time. [SM] gave evidence in the trial. He impressed me as an honest young man, and I accept his evidence as truthful and reliable.

29 [SM] was walking along Talbot Road minding his own business, when the car driven by you Mr Brearley pulled up. When he first looked, [SM] saw two people in the car wearing balaclavas. Those two people I am satisfied were Cody Gilmore and [WJ]. [WJ] agreed in his evidence that he had a pink balaclava that day. While there was some disagreement in the evidence as to whether Cody Gilmore and [WJ] got into the car before or after [SM], I prefer [SM]'s evidence that they were already in the car.

30 When the car pulled up, you, Ms Gilmore, got out of the passenger side and immediately yelled at [SM], 'Get the fuck in the car'. At around the same time, you got out of the car, Mr Mackenzie, holding a knife, which was about 30 cm long, and was in a black sheath with the tip of the knife sticking out. You were holding it up at an angle and it was a bit further than swinging distance from [SM].

31 [SM] was scared of the knife, in particular, and hopped in the car because, as he put it 'I didn't know what would have happened to me if I took off'. [SM] remained in the car during all the events that followed

and was later taken back to the house at Mockeridge Circuit, where he remained for over an hour before finally being taken home.

32 I am satisfied that [SM] was deprived of his liberty that entire time. I find that he was not free to move about or come or go as he wanted, from the moment you scared him into getting in the car, Ms Gilmore and Mr Mackenzie, until he was ultimately taken home. I do not accept the submission that the fact that Ms Gilmore's father was at Mockeridge Circuit and that the door was unlocked meant that [SM]'s unlawful detention ended when you all arrived at the house. That doesn't reflect the reality of the situation, which is that [SM] was taken to another house after having been threatened, with another boy who had obviously been been assaulted, and was still with the people who had ordered him into the car. The fact that he remained passive and did not try to escape does not mean that he was free to come and go as he pleased.

33 I do accept, however, that after the initial interaction between Ms Gilmore, Mr Mackenzie and [SM] that the sense of menace gradually decreased and that there were no further threats of violence. In one sense that reflects the fact that the initial interaction was enough to keep [SM] deprived of his liberty. Nevertheless, the absence of further threats and violence does mean, in my view, that the offence was not as serious if [SM]'s detention was accompanied by repeated threats and menace.

34 That offence of unlawful detention was count 1 on the indictment. All four of you are guilty of that offence, Mr Brearley, Ms Gilmore, Mr Forth and Mr Mackenzie, which was committed in circumstances of aggravation, and so carries a maximum penalty of 14 years imprisonment. The circumstance of aggravation was the fact that a child was present at the time of the offence, namely [WJ].

35 Ms Gilmore, you are obviously guilty by the act of yelling at [SM] to get into the car, and, you, Mr Mackenzie, by threatening him with a knife. But all of you intentionally aided in the offence by your presence in the car and by contributing to the force of numbers, which made it clear to [SM] that he could not freely go about his day. And you are all responsible for the impact that the offence has had on him.

Count 2 – Assault of [BT] occasioning bodily harm

36 After the four of you had effectively abducted [SM], Mr Brearley continued to drive the car around looking for the group of boys that you

thought were going to 'mob' Cody. I should add at this point, that I am not satisfied that anyone was actually planning to mob Cody. I am satisfied based on [CA] and [WJ]'s evidence that there was a planned fight between Cody and the other boy; as I have said, this appears to have been a fairly normal thing for the children who gave evidence at the trial. But the only reason Cody seems to have concluded that he was going to be mobbed was that more boys than expected showed up to the fight. But as I have also said, groups of kids watching fights doesn't seem to have been unusual either.

37 After driving around for a while, the four of you eventually caught sight of another group of boys. In that group was [BT]. [BT] had come to the area with [SM]'s brother, it seems for a completely different fight, with another boy, who it turned out didn't want to fight after all.

38 At any rate, neither [BT] nor any of the other boys that were around at the time, were any threat to Cody Gilmore, or anyone else in your group. That didn't stop you, however, Mr Brearley, Mr Forth and Mr Mackenzie. You jumped out of the car, yelled at the boys and began chasing them.

39 [BT] ran away, and the three of you chased him, eventually finding him hiding in Dagmar Way. Some of what happened next was captured on CCTV footage, although the initial assault on [BT] is obscured by bushes.

40 The following things, however, are clear.

41 First, [BT] was a small kid at the time. He was, at 15 years old, small for his age. He was certainly smaller than all of you.

42 Secondly, the three of you attacked him together. Mr Brearley, you were the first to hit [BT], punching him to the head. You suggested in your evidence, Mr Brearley, that you did that because you thought [BT] took a swing at you first. I completely reject that evidence Mr Brearley; it was one of the many lies you told in your evidence. I accept [BT]'s evidence that he didn't take a swing at anyone; and that the three of you, adults, set upon a defenceless child for no reason whatsoever.

43 After you had punched him, Mr Brearley, [BT] went down and all three of you hit or kicked him. At one point during the attack, you, Mr Mackenzie, poked [BT] with the knife you were carrying; the same knife that you had threatened [SM] with, which was in its sheath with

the blade tip poking out. You were holding him at the time, Mr Brearley. Mr Mackenzie, you stabbed [BT] towards the bottom of his rib cage, causing a cut that was painful for about four days. The cut was bleeding almost immediately. A doctor who saw [BT] the following day, Dr Oo, described a superficial wound 1 cm long and 2 mm deep, that looked infected. I am satisfied that the wound described by Dr Oo was the wound you inflicted Mr Mackenzie.

44 [BT] was cross-examined to the effect that he wasn't stabbed, because his description of the timing of events was inconsistent with Mr Mackenzie's movements as depicted in the CCTV. While I accept that [BT] was probably mistaken as to the exact sequence of events in that driveway on Dagmar Way, that is hardly surprising. The whole attack, which occurred very quickly, would have been, and I find was, terrifying for [BT]: three adult men were beating him up for no reason. He was hardly going to have a picture perfect memory of the precise sequence of events.

45 [BT] was, however, clear, and in my view, completely reliable, when he said that he was poked with the knife by you, Mr Mackenzie; the knife that you owned, that was accurately described by both [SM] and [BT] and which was also observed by the independent witness Johan Van Der Wiele.

46 Your act of poking [BT] with the knife and causing him bodily harm, Mr Mackenzie, constituted count 2 on the indictment, assault occasioning bodily harm. You are guilty of that offence as the person who did the act constituting the offence.

47 Mr Brearley and Mr Forth, you too, are equally guilty of that offence, having intentionally aided in the commission of the offence. Indeed, all three of you were aiding and encouraging each other in the attack on [BT]. In those circumstances, I find that you are all equally culpable of the actual assault committed by Mr Mackenzie with the knife. That offence, assault occasioning bodily harm, carries a maximum penalty of 5 years imprisonment.

Count 3 – Aggravated unlawful detention of [BT]

48 After the assault, you, Mr Brearley, dragged [BT] towards the car, which was now being driven by you Ms Gilmore, aided and encouraged by Mr Forth and Mr Mackenzie. From immediately after he was assaulted, all three of you were guilty of [BT]'s unlawful detention,

count 3 on the indictment, and all three of you directly participated in committing that offence.

49 For your part, Mr Brearley, you physically kept hold of [BT] as you dragged and frog-marched him down the street, threatening him: 'I'll rip your head off, cunt'.

50 You, Mr Forth, also physically took hold of [BT] during this time, both in the driveway at Dagmar Way and as you walked towards the car (as depicted in exhibit 9). You also yelled at him: 'don't you run cunt, we'll fuck you up'.

51 You Mr Mackenzie, took [BT]'s shoes off him while he was on the driveway in Dagmar Way. You also took his mobile phone from him and smashed it on the ground. You followed after the others with his shoes and still carrying the knife that you had stabbed him with. Those actions were clearly contributing to [BT]'s inability to leave and the fear that he felt in being dragged away by a group of adults.

52 The three of you eventually got to where Ms Gilmore had driven the car and you forced [BT] into the car. By that time, [BT] had bare feet, his shirt had been torn off and he was bleeding. It would have been clear to anyone around that he had been assaulted and was bleeding. [SM] described him as being covered in blood, shocked and scared. [CA] also gave evidence that when she later looked into the car, she saw [SM] and another boy who 'had blood all over him'. That boy with blood all over him was clearly [BT].

53 By their verdicts the jury was clearly satisfied beyond reasonable doubt that the unlawful detention of [BT] continued after he was in the car. That is for two reasons.

54 First, the jury was satisfied that the offence of unlawful detention, for each of you, was aggravated by the fact that there was a child present, namely [WJ] who was in the car.

55 Secondly, the jury was also satisfied that you, Ms Gilmore were guilty of aggravated unlawful detention. Given that you were not present on Dagmar Way, you can only have been guilty of that offence from the time that [BT] arrived at the car.

56 I accept, Ms Gilmore that when you saw [BT] and what the other three had done to him, you immediately said words to the effect of 'What are you doing to this poor kid', and that you expressed concern

for him. It also became clear very quickly that [BT] had nothing whatsoever to do with whatever the concern was in relation to boys mobbing Cody. As [BT] said in his evidence after he was forced in the car, there was 'almost confusion' in the car after Cody and [WJ] recognised him.

57 None of those things, however, are inconsistent with you being guilty of [BT]'s unlawful detention, Ms Gilmore. Clearly you were aware that he had been beaten up and that he had been forced in the car. To your knowledge he was now the second boy who had been forced in the car, the first of which you had ordered to get into the car. It was obvious to you that [BT] wasn't free to go anywhere and even after the initial violence against him had stopped, he was still in a car with people who had just beaten him up. You might not have wanted him to have been beaten up, Ms Gilmore, but you actively participated in him remaining in the car with his assailants. Indeed, even if you didn't particularly want to be detaining [BT], that is not inconsistent with you intending to assist the others to do so, even if just to ensure that he didn't complain to the police after he was eventually released.

58 As I said earlier, Ms Gilmore, you have a conflicted personality; and this was an example of it. You were being nice to [BT] after you saw that he was injured, but the fact that someone is nice to a person that they have kidnapped or detained, doesn't mean that they aren't actively participating in that detention.

59 [BT] was also taken back to the house at Mockeridge Circuit, where he stayed for over an hour, before being taken home. While he was there he had a shower and was given clothes, shoes and a Nintendo switch. He also said that you 'all sort of apologised'. Ms Gilmore in particular, you assisted [BT] by patching his injury. Some of that, I accept, was genuine care on your part Ms Gilmore, but it was also motivated by your desire, and the desire of the others to avoid [BT] complaining to anyone about what had been done to him.

60 The Nintendo switch, for example, was I find clearly a bribe for [BT] to keep his mouth shut. You also contacted [BT]'s sister [CT], Ms Gilmore, and pretended that you were just helping [BT] out and didn't let on that it was your boyfriend and his adult mates that had assaulted [BT].

61 As in the case of [SM], I am satisfied that [BT] was deprived of his liberty for the entire time, from immediately after the assault, while

he was at Mockeridge Circuit, until he was ultimately taken home. Remember this was a small 15-year-old boy who was beaten up by three adults, forced into a car and was now at the home of one of his assailants, with no way of contacting anyone or otherwise getting home. He was completely under the control of all of you and was hardly free to move about or come or go as he wanted, no matter how 'nice' you were trying to be Ms Gilmore.

62 Indeed, [BT] gave evidence that when he was eventually dropped home, all four of you drove him there and, the last thing that was said to him was you, Mr Brearley and Mr Forth, saying words to the effect 'don't say anything or we'll hurt you'. I accept that evidence. It makes clear that the sense of menace to [BT] was maintained right up until when he was released. It is little wonder then, that in the days that followed he didn't tell his sister or Dr Oo what had actually caused his injuries.

63 Those are the facts relating to count 3 on the indictment aggravated unlawful detention. All four of you are guilty of that offence Mr Brearley, Ms Gilmore, Mr Forth and Mr Mackenzie, which carries a maximum penalty of 14 years imprisonment.

Events of 12 October 2022

64 A few days after these events, on 12 October 2022, at about 4.00 pm, a group of school-aged children went to the house at Mockeridge Circuit and broke a number of the windows on your Kia Rio, Mr Brearley, which was parked out the front. While it is ultimately of little significance, I accept that this may have been provoked by the events of 9 October 2022.

65 I will make this clear, however. Whoever did smash the windows of your car, there was no suggestion that it was either [SM] or [BT].

66 Even more importantly, as I will come to, whoever smashed the windows of the car, the children that were attacked by your group the following day, also had nothing to do with it. There was no evidence that any of the kids that you encountered on Patterson Drive on 13 October 2022 had anything to do with smashing up your car Mr Brearley. They were completely innocent, just as [SM] and [BT] were completely innocent of whatever grievance you had on 9 October 2022.

67 Nevertheless, Mr Brearley, you were clearly angered by the fact that someone had smashed your car windows and, with Mr Forth and Tyler Gilmore, chased the group and tried to find out who was responsible. At some point you got it into your head that [NB] was responsible, it seems just because you saw him riding his bike in Stratton. There was absolutely no reason to think that [NB] had anything to do with it. That didn't stop you, however, from going to the Stratton Early Learning Centre, where [NB]'s mother, Anita Wedding worked with Ms Gilmore, and demanding that she pay for the broken windows. This caused an altercation between Ms Wedding and you Ms Gilmore, which ultimately caused you to lose your job at the Stratton Early Learning Centre.

68 The significance of that interaction is that, not only did it demonstrate your anger at the fact that your windows had been smashed, Mr Brearley, it showed how quickly and easily you were prepared to hold others responsible for that damage, even when they had nothing to do with it.

69 You said in your evidence Mr Brearley that later on that night, Ms Gilmore told you that someone called 'Riggsy' was going to pay for the windows and that the issue was pretty much resolved. I reject that evidence Mr Brearley. It was another lie on your part. You didn't think that the issue with your car windows had been resolved. You remained angry, your anger continued to the following day, and indeed, it got worse.

Offences on 13 October 2022

70 The following day was 13 October 2022.

71 Mr Brearley and Mr Forth, you had done some work with Mr Forth's father in the morning and the two of you ended up back at Mockeridge Circuit at around midday. You were there too, Ms Gilmore, having just lost your job at the Stratton Early Learning Centre, as you told Anita Wedding in a text message at 11.58 am.

72 You, Mr Palmer joined the group, at around 12.55 pm, when you and your partner Katelyn Powell arrived at Mockeridge Circuit.

73 Before turning to the events of that day, I make the following observations in relation to my assessment of both you Mr Brearley and you Mr Palmer as witnesses. You both gave evidence at trial and your evidence was relevant to what happened on 13 October 2022.

74 Mr Brearley, I found you to be a witness completely lacking in any credibility. In my assessment, in relation to almost all of the significant issues in the trial you deliberately lied in your evidence, as you had deliberately lied in your interviews with the police. And you are a very bad liar, Mr Brearley, in the sense that your lies are often obvious and completely incredible. Some of the lies you told the police in your interviews, for example, were almost comical, including your attempt to claim that obvious footage of you that had been taken from Mr Whittington's dashcam only hours earlier was someone else. Your lies to the police also included some of the most serious lies a person could ever tell: you lied about a completely innocent man being present at the attack on Cassius Turvey. As you ultimately had to, you admitted in cross-examination that you had tried to frame an innocent man for the murder of a child. Even then, it was clear from the way you gave your evidence, that you didn't think that was a particularly serious thing to do. Lying about something so serious, with no sense of shame or remorse, in my view, demonstrates a complete disregard for the truth.

75 When you were caught out in further lies in your evidence, Mr Brearley, your explanations were simply incredible and unbelievable. For example, other evidence in the trial clearly established that in the afternoon of 13 October 2022 you went into the alley way at Mockeridge Circuit to break poles off trolleys; that evidence included the damage to the trolleys, the footage of you going into the alleyway, your and Mr Forth's heads seen bobbing above the fence, your possession of an axe, the breaking sounds coming from the alleyway and your statement when walking back into the house saying, 'We got three trolley poles from the alleyway'. You eventually accepted that you might have done those things – once the evidence presented to you was overwhelming – but even then you maintained that you couldn't remember doing so. That, like much of your evidence, was a bald-faced lie. I can rely upon nothing you said in your evidence.

76 Mr Palmer, your evidence, was not as riddled with lies as Mr Brearley's, but I still have serious concerns about the reliability of much of your evidence. Unlike Mr Brearley, you tended not to lie about matters that were obvious and staring you in the face and you were prepared to admit things that put you in a bad light – like your drug dealing – as long as it didn't implicate you in the offences. Nevertheless, Mr Palmer, in my assessment, you were not completely truthful in your evidence and you deliberately downplayed your knowledge and involvement in the events of 13 October 2022. You gave evidence, for example, that you were not aware of the damage to

Mr Brearley's car until you returned to Mockeridge Circuit from Parkerville in the afternoon of 13 October 2022 and that you hadn't heard Mr Brearley talking about the smashed windows before then. That evidence was, in my assessment, completely unbelievable. Not only does the CCTV footage record Mr Brearley talking about the smashed windows right next to your car when you first arrived at Mockeridge Circuit that day, the events of the previous day were a huge issue for Mr Brearley, and for Ms Gilmore, who had effectively lost her job as a result of the incident. You spent a couple of hours with them both earlier that afternoon, including two car trips (to and from Parkerville). The idea that during that whole time, Mr Brearley didn't talk to you about the most significant thing that had happened to him in the past day simply beggars belief. You lied about your knowledge of Mr Brearley's anger about his car windows and, indeed, about your own enthusiastic involvement in the violence of 13 October 2022.

77 Turning back to the events of that day.

78 After you arrived at Mockeridge Circuit, Mr Palmer, the four of you – that is Mr Brearley, Mr Palmer, Mr Forth and Ms Gilmore – together with Ms Powell went back to Mr Palmer's house in Parkerville. You arrived at Parkerville at about 1.48 pm and remained there drinking and talking for the next 40 minutes or so, until Ms Gilmore received a telephone call at about 2.36 pm. It was that telephone call that set in motion everything that followed that day. The call was from Ms Gilmore's brother Cody apparently suggesting that he was being threatened with a fight or a run-through.

79 Pausing there, I am satisfied that there had in fact been an arranged fight, between Tyler and Cody Gilmore, and [PD] and [MD], potentially involving some other kids. I accept the evidence of [PD] and [MD] in that regard, who said that the fight had been organised to take place at the oval on Patterson Drive. [PD] and [MD] actually showed up for the fight but the Gilmores didn't show up so they left. While I am satisfied on the evidence that there had been an arranged fight, I am not satisfied that there was ever a threatened run-through of Mockeridge Circuit. While it seems to have been something Cody Gilmore told his brother Tyler and you Ms Gilmore, there was actually no reliable evidence of anyone actually threatening a run-through.

80 [WJ], who was with Cody that afternoon did not see or hear any message to that effect. Tyler, who gave evidence, only seems to have got the idea from Cody. And significantly, [PD] and [MD], who gave

evidence about the arranged fight, were not even asked whether they had threatened to come to the house if Tyler and Cody didn't show up for the fight. So there is no evidence that there was ever a threatened run through. The threatened run-through could just as easily have been made up by Cody Gilmore, to try and get you all involved.

81 Nevertheless, you were told about the fight by Cody, Ms Gilmore, in that phone call at Parkerville and you told the others. You all very quickly arranged to leave and go back to Mockeridge Circuit. You left at about 2.50 pm. Even at that point, I find that the four of you were going back to sort out the issue with Ms Gilmore's brothers. There may not have been a definite plan at that point, but at least the possibility of violence was already contemplated by you. You got your knuckledusters, for example, Mr Palmer and showed them to Mr Forth before leaving. I reject your evidence, Mr Palmer, that you were just carrying your knuckledusters, in effect, out of force of habit. On the contrary, you specifically got them, because the four of you contemplated the possibility of actual or threatened violence.

82 This is confirmed by what happened when you all arrived at Mockeridge Circuit at about 3.07 pm. All of the kids at the house went straight to the car; they were clearly expecting you. When you got out of the car you almost immediately started talking about potential violence. You, Mr Palmer, said 'where's my dusters anyway'. You, Mr Brearley, said, 'I've got mine but' and you, Ms Gilmore, were talking to the smaller kids about fighting and 'knucklebusters' and asking them 'are you ready?' All of that immediate talk about fighting and violence was not a coincidence. That is why you had travelled down from Parkerville. Mr Palmer, I reject your evidence that there was no conversation in that trip down and I reject your evidence that you were just driving the others back to Mockeridge Circuit expecting to drop them off. You knew perfectly well why you had driven the others to Mockeridge Circuit and the notion that there was no discussion on the 18-minute drive, given how excited everyone was when you arrived, is simply ridiculous.

83 Over the next 40 minutes, all of you made different preparations for violence of some sort. Mr Brearley and Mr Forth, you went into the alleyway next to the house to break poles off trolleys as weapons, while you watched Mr Palmer. You also had hold of a pole Ms Gilmore, when you placed it on the wheel of the car while the others were in the alleyway. You, Mr Forth, picked up other weapons, like the pole you called 'the blue fucking thing' and you also talked about the

knuckledusters. You, Mr Palmer, kept your knuckledusters on and practiced punching with them.

84 You were also saying things that showed you clearly contemplated violence. You Mr Palmer can be heard to say 'Trust me, I love a good throw down. I'll throw down with whoever I get'. Mr Forth you can be heard to say 'Well fuck 'em up. I'm hitting an 18 year old'. By that time, which was about 3.20 pm, I am satisfied that your common intention had changed from potentially planning for a run through, to start looking for [PD] and [MD]. There had by that time been discussion about meeting at the oval and Ms Gilmore had identified when the buses from Midland Train Station were arriving.

85 At 3.22 pm, Mr Palmer and Mr Forth, you drove to the oval to look for [PD] and [MD]. At 3.26 pm after the car had returned to Mockeridge Circuit, you Mr Brearley got into the car a little further down the road. From the CCTV at 14 Mockeridge Circuit, you can be heard to say, over the noise of the car, 'Somebody smashed my car, they're about to die'. While I accept that you were not expressing an intention to actually kill someone at that point Mr Brearley, this showed that you were still clearly angry about your car windows and were determined to get some sort of revenge, and that the car windows were a huge part of your motivation that afternoon.

86 At 3.37 pm, the car returned to the Gilmores' house and at 3.46 pm it left again, this time with all four of you, with Mr Palmer driving, Mr Forth in the front passenger seat and Mr Brearley and Ms Gilmore in the rear seats. There were definitely weapons in the car at that time. I am satisfied that there were at least two trolley poles in the car and you, Mr Palmer, still had your knuckledusters. Your purpose at the time of leaving was to find [PD] and [MD], or other kids that might have been planning to fight Tyler and Cody. At the very least, I am satisfied that you intended to threaten those other kids, with the weapons.

87 At around the same time, a group of kids from Swan View Senior High School and Governor Stirling Senior High School arrived at Midland Train Station. Cassius Turvey was among them. The others included [PM], [EL], [TB], [PS], [BK], [AR], [BD], [CS], [JK], [HS], [KN], [PL], [GG], [VN], [LK], [TM] and [WS].

88 Remember those names, all of you. All of those kids and young people were also victims of your offending that afternoon. All of them would have been frightened by being confronted by a group of adults.

Some of them watched while their friend Cassius was viciously beaten with a trolley pole. And all of them gave evidence in the trial.

89 Let me say this about all of those children and young people. It took great courage for them to give evidence in the trial and to bear witness to what had happened to them and to their friend Cassius. While some of them were wrong or mistaken in aspects of their evidence, and a couple of them admitted to giving evidence about events that they were only told about, I am satisfied that they all generally did their best to give truthful evidence. They should all be very proud of the role they played in achieving justice in this case.

90 And I also want to make this clear. Those children had nothing whatsoever to do with the damage to your car Mr Brearley and they had nothing whatsoever to do with a threatened run-through of your house. They were completely innocent of the petty grievances that you had. A number of the kids gave evidence that they were going to watch an organised fight. I accept that evidence and I find that that is why the group went to Patterson Drive that day. And as I have said, watching fights seemed to be a completely normal thing to these kids. While that is a sad reflection on our society as a whole, I am satisfied that none of those kids posed any threat to you, or to anyone else. The only witness who suggested otherwise was you, Mr Brearley, when you gave evidence that, at one point, the kids said 'we're coming to your house'. That was another lie, Mr Brearley, and I completely reject it.

91 After the four of you left Mockeridge Circuit, you went to the Midland Train Station, looking for the kids you were after. You didn't find anyone there, so you drove back along Lloyd Street, towards Patterson Drive. While on Lloyd Street, you saw the 315 bus, which had all of the kids on it who were on their way to watch the organised fight. The kids got off the bus on Lloyd Street and crossed the street towards Patterson Drive.

92 As you were driving past the kids, you, Ms Gilmore, yelled at them. The evidence was not clear as to what you yelled at them and, in particular, whether it was about the smashed windows or about your brother Cody. In my view, it was more likely, and in your favour that it was about Cody rather than the smashed windows. I have reached that conclusion because, based on all of your behaviour at Mockeridge Circuit, I find that your primary motivation for joining the others was a misguided attempt about protecting your brother, or even fighting his battles, rather than anything to do with the windows. At the very least,

you weren't as focused on the windows, and determined to exact revenge as Mr Brearley was. You didn't say anything about the windows during the preparation at Mockeridge Circuit and you weren't in the car when Mr Brearley said, 'Somebody smashed my car, they're about to die'.

93 This also explains why you were found guilty of the assault on [TB] Ms Gilmore, but not the death of Cassius Turvey. That is because your participation in the common intention to prosecute an unlawful purpose extended only to threatening the kids, or perhaps roughing them up a little, to prevent a fight with your little brother. From your point of view, Ms Gilmore, I accept that it was probably enough for you to scare off anyone from coming near Cody or your house at Mockeridge Circuit.

94 You Mr Brearley, Mr Palmer and Mr Forth, as I will come to soon, had broader motives than a potential fight with Cody, particularly after Ms Gilmore had left the group. As I have said, Mr Brearley, you were clearly intent on some form of revenge for your smashed car windows and, you too, Mr Forth, joined in that motive. By your own admission, Mr Forth, when you first confronted the group, you were yelling at the kids about the windows. And you, Mr Palmer, were essentially getting involved because, as you had put it earlier, 'you love a good throw down'. That was as good a reason as any for you to engage in violence. So while Ms Gilmore was part of a common unlawful purpose to threaten and scare the group with weapons, the rest of you weren't going to stop there, which became clear after your initial interaction with the group.

95 After you yelled at the kids from the car Ms Gilmore, you, Mr Brearley, Mr Palmer and Mr Forth became angry with Ms Gilmore and she left the car near the roundabout on Patterson Drive. At that point, as I have said, you, Ms Gilmore, were part of a common intention to prosecute an unlawful purpose, namely to threaten and scare the group with weapons. It was a probable consequence of that unlawful purpose, that an offence in the nature of an assault occasioning bodily harm would be committed by one of the others in the prosecution of that unlawful purpose, which is exactly what happened.

96 In that regard, I find that Mr Palmer drove the car back towards the group of children and parked on the verge, next to the trees to the east of St Bart's, with the intention of confronting the group. You,

Mr Brearley and Mr Forth, got out of the car and were yelling at the kids about the smashed windows. You stayed near the car Mr Palmer.

97 I am satisfied beyond reasonable doubt that shortly after you arrived at that scene, you, Mr Brearley, armed yourself with a trolley pole. Almost all of the kids who gave evidence described the tall, skinny man with a mullet having a pole; that was you, Mr Brearley. There is no doubt that you were armed with a trolley pole from that point on.

98 A number of the witnesses described another person from the car having a pole or another weapon, sometimes a person meeting your description, Mr Forth, and sometimes a person meeting your description, Mr Palmer. Indeed, some of the witnesses described all three of you having poles. Clearly it was a very fast moving and frightening incident for those witnesses, and it is not surprising, in my view, that there were differences in their recollections in that regard. While it is, in my view, likely, Mr Palmer and Mr Forth, that one of you was armed at that point, I am unable to be satisfied beyond reasonable doubt as to which it was. For that reason, you, Mr Palmer and Mr Forth, will be sentenced on the basis that you were not personally armed, although I am satisfied beyond reasonable doubt that you knew that Mr Brearley was armed.

99 In that context, I find, that prior to Mr Brearley getting the trolley pole, you Mr Forth aggressively yelled, 'Get them cunts, Jack'. [WS] gave evidence to that effect and I accept it. It is entirely consistent with your style, Mr Forth, of acting tough but staying in the background and getting the others to do the dirty work.

100 The first physical interaction with the group was between you, Mr Brearley, and [CS]. You took a swing at him with a trolley pole, Mr Brearley, just missing his head. [CS], I find, showed great courage in standing up to you, and the others, Mr Brearley. [CS] was a bigger kid, and a number of the witnesses described him stepping forward, in effect, to protect the other kids around him. [WS], for example, described [CS] stepping up and puffing himself up to scare you away, Mr Brearley, after which [WS] gave [CS] a knife out of his own bag.

Count 4 – Aggravated assault of [TB] occasioning bodily harm

101 After the swing at [CS], and when some of the other boys had run away, you came back to [TB], Mr Brearley. It says a lot about your complete cowardice, Mr Brearley, that rather than take on the big kid

who had his own weapon, you went back to a 13-year-old boy on crutches, who was left standing there with the only two girls in the group, [PM] and [EL]. You hit [TB] in the face with the trolley pole, causing him to stumble back and lose his crutches and his hat. Not only did [TB] accurately describe you as the person who hit him, you admitted as much after the events when you said back at Mockeridge Circuit: 'I bashed the cunt on crutches and in the bush'.

102 [TB] suffered bruising to his face and his nose hurt for a week.

103 Your act of hitting [TB] with the pole and causing him bodily harm, Mr Brearley, constituted count 4 on the indictment; aggravated assault occasioning bodily harm. That offence was aggravated because it was committed in the presence of a child, [PM], and therefore carries a maximum penalty of 7 years imprisonment.

104 Mr Brearley you are guilty of that offence as the person who did the act constituting the offence.

105 Mr Palmer, Mr Forth and Ms Gilmore, you too, are equally guilty of that offence, it having been the probable consequence of the common intention to prosecute the unlawful purpose of threatening kids with weapons. Once you had all set out with that intention, it was in my view, not only probable but very likely that someone would be assaulted and would be hurt. You all should all have foreseen that consequence and are all responsible for it.

Count 5 – Stealing

106 Immediately after he was assaulted and stumbled back, you, Mr Forth, took [TB]'s crutches and hat and put them in the tray of the ute. [TB] thought that you had done that, Mr Brearley, but he was clearly mistaken, which is not surprising, given that he had just been struck in the head with a trolley pole. It was clearly you Mr Forth who stole those items. Indeed, you admitted as much in your interview with police and pleaded guilty to the stealing offence on 2 December 2024. I also accept the evidence of [PM] that the guy in the tradie shirt, which was you Mr Forth, took the crutches and 'chucked' them in the tray of the ute.

107 Your act of stealing the crutches and hat, Mr Forth, constituted count 5 on the indictment, the offence of stealing. You are guilty of that offence, Mr Forth, as the person who did the act constituting the offence.

108 You are also guilty of that offence, Mr Palmer. You are guilty of that offence because you intentionally aided Mr Forth to permanently deprive [TB] of those items. You admitted in your evidence that, after you saw Mr Brearley swing the pole at [TB], you saw Mr Forth run back to the tray of the ute and chuck something in it. While you said in your evidence that you didn't know what it was that Mr Forth threw into the back of the car, by its verdict of guilty, the jury were clearly satisfied that you knew Mr Forth had stolen those items from [TB] and you intentionally assisted him to steal them, by allowing him to put them in your car and later disposing of them.

109 You, Mr Brearley, were found not guilty of the offence of stealing. Not only does that verdict demonstrate how carefully and conscientiously the jury in this case weighed the evidence, it is also easily explained by the fact that, after you had hit [TB] in the face with the pole, you immediately ran off after the other kids into the field in the direction of Midland TAFE. For that reason you weren't present when Mr Forth took the crutches and therefore didn't know that he had done so.

110 That offence of stealing for which both Mr Palmer and Mr Forth are guilty carries a maximum penalty of 7 years imprisonment.

Count 6 – Murder of Cassius Turvey

111 Up until the point you had confronted the group and assaulted [TB], and consistent with Ms Gilmore's involvement in the initial unlawful purpose, the offences each of you committed might have been explained by Cody Gilmore's suggestion to Ms Gilmore that he was going to be mobbed, or that there was going to be a run-through of Mockeridge Circuit. As I have said, I find that none of those kids confronted by you on Patterson Drive posed any threat to Cody or to the Gilmore home, and there was no reasonable basis for any of you to think that they did. But even if that was the case, after you had confronted the group and assaulted [TB], Mr Brearley, Mr Palmer and Mr Forth, it was clear that they posed absolutely no threat whatsoever. They were all running in the opposite direction other than the kid on crutches still with the two girls.

112 And yet all three of you chased them. Your purpose in doing so was no longer, if it ever had been, anything to do with Cody Gilmore. It was about revenge and terrorising a group of kids for its own sake.

113 I specifically reject the written submission made on your behalf, Mr Forth, that you had a belief at the time that you left the car near the bushland that any of the children intended to go to Mockeridge Circuit and damage that property. Even in your interviews with the police, in which you weren't being fully truthful about your involvement Mr Forth, you said that when you first confronted the group on Patterson Drive what you said was 'So which one of you broken the windows?' and when you were on Lloyd Street at the time of the attack of Cassius Turvey, you were screaming at kids 'Why you fucking break windows for? You fucking pathetic shit?'. You weren't thinking about protecting anyone or anything Mr Forth. You had simply bought into Mr Brearley's revenge fantasy about the broken windows.

114 As I have said, Mr Brearley, you initially chased the kids on foot. You, Mr Palmer, drove the car onto the field south of Patterson Drive, with Mr Forth in the car with you. Mr Brearley, you got back into the car part way down the field. By that time, you were all part of a common intention to catch any of the kids you could and to assault them. Mr Brearley, you were leaning out of the window of the car still holding the trolley pole. [PS] gave evidence, which I accept, that you yelled at him 'I'm coming for you, you little black cunt'. That evidence was consistent with Mr Palmer's evidence that you were yelling Mr Brearley. It is also consistent with your statement to the police, Mr Forth, in relation to your own knowledge, that Mr Brearley was really mad at this point and was yelling at the kids.

115 When the car stopped, towards the creek line, the three of you went in separate directions. Mr Brearley and Mr Palmer, you ran after the kids towards the creek, and you, Mr Forth, ran towards Lloyd Street. I reject your evidence, Mr Palmer, that you just stayed at the car until you heard Mr Brearley call out that he had been stabbed. On the contrary, I find that you and Mr Brearley ran into the bush together, although Mr Brearley was ahead of you. [EL], who in my view had a good view of what happened at that point, gave evidence that she observed the skinny fellow and the bigger guy running into the bush, which I find was the two of you, Mr Brearley and Mr Palmer. That evidence was consistent with the evidence given by [JK], which I also accept, who described two people who got out of the car in the field chasing all of them into the bush.

116 Consistent with the jury's verdict on count 6 on the indictment, I find that, at this point, you, Mr Brearley, and you, Mr Palmer, shared a common intention to chase the boys into the bush, attack them and to

cause them serious harm. The pair of you were actively chasing the boys and were intent on violence. You, in particular, were still armed with a trolley pole, Mr Brearley, and were intending to use it against one of the kids. I cannot be satisfied beyond reasonable doubt that you were also armed, Mr Palmer, although you were clearly part of the common intention with Mr Brearley to catch and seriously harm one of the boys.

117 You on the other hand Mr Forth, as with your conduct generally, didn't get actively involved in the chase through the bushes. As I said earlier Mr Forth, you liked to talk tough, but when push came to shove, you kept in the background. And you did so again at this time. You got to the edge of the bushland but you didn't go through the creek but ran up to Lloyd Street.

118 Nevertheless, I do find, Mr Forth, that you joined in the common purpose of chasing and terrorising the kids. In particular, I find that it was you who yelled out 'get him', as described by the independent witness Ms Ali in her evidence. While Ms Ali said at one point in her evidence that she had assumed it was the person she could see in the tradie shirt, I am satisfied that her assumption was correct. That behaviour was entirely consistent with your conduct generally, Mr Forth, which, as I have said, was to talk tough but to leave the dirty work to the others. You were not armed at the time but, I am satisfied, were aware that Mr Brearley was armed, as he had been in possession of a trolley pole the entire time from when he initially took it out of the car, to when the car arrived near the creek line.

119 What happened next was a matter of significant contest in the trial and in particular, which of you, Mr Brearley or Mr Palmer, attacked and killed Cassius Turvey.

120 I am satisfied beyond reasonable doubt that it was you, Mr Brearley.

121 Indeed, in my view Mr Brearley, the evidence overwhelmingly established that you were the person who attacked Cassius Turvey with a trolley pole, striking him to the head, at least twice, in a fit of uncontrolled rage.

122 And before I come to that evidence, I also make this clear. Cassius Turvey was completely and utterly innocent of any wrongdoing whatsoever. The only reason that he was the person killed by you Mr Brearley, was that he was the person you happened to catch. And in

particular I reject, as a complete fabrication on your part, the suggestion that Cassius Turvey was ever in possession of a knife on 13 October 2022 or that he used a knife to cut the back of your leg. That was an outrageous slur on your victim, Mr Brearley, and was just the last of a number of desperate lies told by you to try to avoid responsibility for your actions.

123 In that context, it is not strictly necessary for me to find how you sustained the cuts to your leg. Nevertheless, I think in all likelihood it probably happened during an altercation between you and [CS] on the northern side of the creek. [CS] was definitely armed with a knife at the time, and in your first account of the events – to the witness Paul Whittington – you described having been cut by a big kid in a grey shirt with a blond rat's tail – an unmistakable description of [CS]. You gave a similar description to the police in your first interview only hours later – saying you had been cut by 'a big sort of Kiwi fella', with a 'blonde rat's tail'.

124 As I have said, [CS] agreed in his evidence that he had a knife when he was running through the bushes. While he denied in cross-examination that he had cut anyone on the back of their leg that afternoon, he was very sheepish in his answer to that question, and I can appreciate that he may not have wanted to admit to using the knife. He need not have been concerned. As I have said, [CS] showed great courage that day and, frankly, if he did cut you Mr Brearley he would have been justified in doing so.

125 Again, as I have said, however, regardless of whether [CS] was the person who cut you, Mr Brearley, I am positively satisfied that it was not Cassius Turvey. No one, other than you Mr Brearley, said Cassius had a knife that day, and none of the witnesses who gave evidence of your attack on him said that he had a knife.

126 The attack on Cassius Turvey was witnessed by a number of the boys who were with him: including [PS], [BD], [BK], [HS], [KN], [PL], [VN], [LK] and [WS]. All of them except [PS], described you Mr Brearley: the tall, skinny man in the light coloured shirt. [PS] described seeing two men hitting Cassius in swinging overhead motions, who he described as 'the short man' and 'the skinny man'. Later in his evidence, [PS] agreed that this may have been a false memory, in the sense that he 'thought it happened but it didn't'. I accept that this is probably the case and that [PS] was honestly mistaken in his evidence.

127 The evidence of the other boys however was very convincing, particularly the evidence of [HS], [KN], [VN] and [WS]. While they understandably differed in relation to a number of the details, in my view, they were consistent as to the essential events when Cassius Turvey and you, Mr Brearley, reached the TAFE side of the creek.

128 After Cassius had crossed the creek, he ran in the direction of the TAFE. You came up behind him Mr Brearley and he had his back to you. While he was running you struck him to the side of the head with the pole that you were carrying. I accept the evidence of [BD], [HS] and [WS] in that regard, who all saw that first blow when Cassius was still standing.

129 Cassius fell to the ground as a consequence of that first blow and you continued to hit him on the head with the pole. Mr Brearley you were swinging the pole with your arms above your head and forcefully bring it down hitting Cassius's head. The grass was long, so it was difficult for the others to see exactly where you were hitting Cassius, but I accept that you hit him multiple times. [HS] initially said that Cassius was hit a couple more times after he went to the ground, and Malaki Knapp, said that he was hit at least three times. In my view, these estimates generally were accurate, even though [HS] was goaded into suggesting later in his cross-examination that you hit him many more times. The injuries to Cassius Turvey indicate that he was hit at least twice in the head. I am satisfied that you struck him more than that but cannot be satisfied beyond reasonable doubt as to exactly how many times.

130 You were in a rage Mr Brearley. You were yelling at Cassius and he was yelling and crying, asking you to stop.

131 At around this point, Mr Palmer you arrived on the scene. [KN] threw a bottle at you, Mr Brearley, and then he described the muscly fellow trying to pull the skinny guy off Cassius. I am satisfied that was you Mr Palmer, interrupting Mr Brearley. That is consistent with [VN]'s evidence that the man in black said to the skinny man, 'Jack, stop, that's enough'.

132 I am satisfied, on the balance of probabilities, that you did tell Mr Brearley to stop Mr Palmer and move him away, and that you did so very shortly after you arrived on the scene.

133 Conversely, I cannot be satisfied that you physically joined in the attack on Cassius Turvey. To reach that conclusion I would need to be

satisfied beyond reasonable doubt. Other than [PS] (who accepted it could be a false memory) the only other witness to suggest that you might have personally assaulted Cassius was [WS], who described you kicking at the ground while Mr Brearley was striking at the ground. [WS], however, said that he could not see what you were kicking and given the fast moving and no doubt traumatic nature of the events, I could not exclude as a reasonable inference that the physical actions described by [WS], were something other than an assault. While their evidence is not necessarily inconsistent with you having physically joined in the attack on Cassius Turvey, in my view the evidence of [KN] and [VN], also does not support a finding to that effect.

134 That is not to say that the attack on Cassius Turvey was not part of your common intention with Mr Brearley, Mr Palmer. As I have said, I am satisfied that the two of you shared a common intention to catch any of the boys you could, assault them and do them serious harm. It is just that, when you arrived, to use your words Mr Palmer, Mr Brearley had done 'enough'. Indeed, I accept that Mr Brearley went further in his violence and rage than even you expected Mr Palmer. That, of course, provides you with no excuse. The law provides that once you embark on the kind of dangerous and violent unlawful purpose that you and Mr Brearley embarked upon, Mr Palmer, you are liable for the probable consequences of it, and you can't be heard to complain when one of your co-offenders goes even further than you predicted.

135 I also reject your evidence, Mr Palmer, that you performed some sort of concussion test on Cassius Turvey, asking him if he was okay, what day it was and holding up your fingers. That evidence was, frankly, laughable.

136 Mr Brearley, when you repeatedly struck Cassius Turvey you intended to cause a serious injury to his head with the pole. I do not find that you intended to kill him, although I am satisfied that in your rage you didn't care, and didn't spare a single thought for the likelihood that what you were doing would kill him. And the injury that you *did* intend to cause Cassius Turvey, a serious blunt force injury to the head, was of a nature that was objectively likely to cause his death. Indeed, any reasonable person would appreciate the serious risk of death resulting from the kind of attack you carried out on Cassius Turvey. Which is exactly what occurred.

137 The blows you inflicted on Cassius, Mr Brearley, split his right ear completely in half, and caused a long straight wound across his

forehead near his hairline. Internally, Cassius was found to have a subdural haematoma on the righthand side of his head and an intraparenchymal haematoma to the righthand side of his brain. While he was discharged for a short period of time, Cassius's brain injury worsened and, despite emergency surgery, he was pronounced dead at 5.10 pm on 23 October 2022.

138 I therefore find, Mr Brearley, that you are guilty of murder as the person who killed Cassius Turvey with the intention to cause him a bodily injury that was of such a nature as to be likely to endanger life.

139 As I have said, my satisfaction beyond reasonable doubt that you are the person who killed Cassius Turvey, Mr Brearley is based principally on the evidence of the eyewitnesses who saw you attack him with the trolley pole. That finding is also supported by the other evidence produced in the trial.

140 The presence of Cassius Turvey's DNA on your shorts, while not conclusive on its own, also supports the finding that you struck him with the pole. While the DNA test itself could not confirm that the source of the DNA was blood, in my view, it is highly likely that it was from Cassius Turvey's blood, given that the DNA was found in the precise location that also showed a positive test for blood. That being the case, I find that the DNA got onto your shorts either by blood splatter from when you struck Cassius or was transferred from the pole.

141 In that context, I find that your evidence that you scuffled with Cassius Turvey on the ground and punched him was also a complete lie. The only time that you bashed him was with the trolley pole. For that reason your statement back at Mockeridge Circuit: 'I bashed the cunt on crutches and in the bush', was an admission, not only of hitting [TB] but also of your attack on Cassius Turvey with the trolley pole.

142 In addition, Mr Brearley, a very strong piece of evidence supporting your guilt and also demonstrating your callous indifference to Cassius Turvey was your telephone call with Christina McGowan later on that night. I am satisfied, beyond reasonable doubt, that it was you, on the telephone call, who can be heard to say: 'He was laying in the field and I was just smacking him with the trolley pole so hard that, he goes – he's learnt his lesson'.

143 I am satisfied that that was you from listening to the recording on the CCTV alone, in which it is clearly your voice in that part of the conversation. Christina McGowan gave evidence. She was a terrible

witness and had a strong vested interest in distancing herself from that phone call, given her own disgraceful role in that conversation, including telling you to get rid of the weapon. Try as she might to muddy the waters in her evidence however, she even admitted it sounded like you, just as she had told the police on the day that Cassius Turvey died.

144 Those are the facts in relation to your conviction for murder, Mr Brearley.

145 You too were found guilty of murder Mr Palmer.

146 As I have found, you were not the person who killed Cassius Turvey, but you are equally guilty on the basis that you shared a common intention with Mr Brearley to prosecute the unlawful purpose of chasing the boys into the bush, attacking them and causing them serious harm. It was a probable consequence of the prosecution of that unlawful purpose that an offence in the nature of murder would be committed; namely that someone would be killed by one of you with the intention to cause an objectively life threatening injury.

147 I return now to you, Mr Forth.

148 You were found not guilty of murder but guilty of the manslaughter of Cassius Turvey.

149 You shared a common intention with Mr Brearley to prosecute the unlawful purpose of chasing the boys into the bush, terrorising and potentially attacking them, but I accept that you didn't share the common intention to do them serious harm. Indeed, consistent with what I have already said about your involvement in all of the events in this case, you gave little thought at all to the consequences of your actions, and were just following along in the excitement of trying to be a tough guy. Indeed, as I will come to, while you are starting to do so, you are still yet to fully appreciate the seriousness of your conduct that day. But, on the day, your actions were even more thoughtless. Given that Mr Brearley was, to your knowledge, armed, it was clearly a probable consequence of the unlawful purpose that you shared with Mr Brearley that someone may be unlawfully killed, hence your conviction for manslaughter, although it could not be concluded, beyond reasonable doubt, that the unlawful purpose that you shared in common with Mr Brearley had as a probable consequence that someone would be killed by one of you with the intention to cause an objectively life threatening injury.

150 Those are the essential facts of each of the offences for which you have been convicted.

151 As I am required to do, I turn now to the aggravating factors in relation to those offences, that is, those matters that increase your culpability.

Aggravating factors

152 There are a number of aggravating factors in relation to each of the offences that increase your culpability and the seriousness of the offences, Mr Brearley, Mr Palmer, Mr Forth, Ms Gilmore and Mr Mackenzie.

153 In relation to all of the offences, a significant aggravating factor is that the victim of every offence committed by each of you was a child. A child is, by nature, a vulnerable victim and violent offending such as that committed by you all against vulnerable children is particularly serious.

154 As I also said at the beginning of my remarks to you, counts 1, 3 and 4 were also committed in the circumstance of aggravation that a child was present. That circumstance is already taken into account by the increased maximum penalty for each of those offences.

155 Secondly, all of the offences were committed by groups of you acting together. While each of you were involved in different offences, in relation to every offence, at least two, and up to four of you, were convicted of the offence. The fact that the offences were committed in company increases their seriousness, particularly those involving violence or threatened violence. The presence of multiple adults offending against vulnerable children, highlights the seriousness of your actions.

156 Thirdly, all of the offences, including the murder and manslaughter of Cassius Turvey were committed as part of vigilante activity. Vigilante violence involves individuals purporting to take the law into their own hands by physically harming perceived wrongdoers. Such conduct is not only an attack on the victims, but also an attack on the rule of law, which requires that members of the community resolve their differences by lawful means rather than personal vengeance.

157 Even worse, in the present case, your vigilante activity was in every instance directed against completely innocent children. None of

your victims, [SM], [BT], [TB] or Cassius Turvey had done anything whatsoever, to any of you. They were completely innocent. It would be bad enough, and deserving of condemnation, for you to have committed these offences in response to your petty grievances if your victims had actually done anything. But in this case none of them had. Your so-called vigilante justice was completely misdirected.

158 The use of weapons in the two offences of assault occasioning bodily harm and in the killing of Cassius Turvey is also an aggravating factor. As I said earlier, a disturbing feature of this trial was how it revealed the normalisation of violence in our community. All of you seemed to think that it was completely normal to engage in casual violence with real or imagined enemies. Adding weapons to an already toxic culture of violence is something that can only lead in one direction, as it did in this case, serious injury or death.

159 Ms Gilmore, your offending was also aggravated by the fact that you were on bail at the time for violent offending for which you have since been convicted. Similarly, at the time of the offending you, Mr Palmer, were on a community based order that was imposed only a week earlier on 6 October 2022. That community based order was imposed for the offence of aggravated common assault.

160 Turning to aggravating features of the murder and manslaughter of Cassius Turvey, in particular.

161 Mr Brearley, your offending was aggravated by the sheer rage and uncontrolled violence with which you killed Cassius Turvey. You continued to beat him with the trolley pole even after you had already knocked him to the ground. And the sustained and brutal nature of your attack occurred in full view of a number of children, some as young as 13. That experience can only have been traumatising to all of them, and indeed, the fear that it created rippled through the whole community.

162 In that regard, I return to what I said at the outset: it is no surprise that when a group of non-Aboriginal adult men set upon a group of predominantly Aboriginal kids, using racial slurs and other racially charged language, that those kids, and the broader community would conclude that the offence was racially motivated and that it would create fear particularly in the Aboriginal community. That legitimate fear and sense of threat in the community, is an aggravating factor for which you are responsible Mr Brearley, Mr Palmer and Mr Forth.

163 Your culpability, and the impact of your offending, is also increased by the glee and celebration you engaged in after the events of that day. The recording of you laughing on the telephone call with Christina McGowan about smacking the kid in the field with the trolley pole so hard that he learnt his lesson, Mr Brearley, demonstrated how callous and lacking in empathy you were after having viciously beaten a child.

164 That observation applies to you too, Mr Palmer and Mr Forth. You both participated in the video recording outside of Greg's Chemist, waving your hands in gangster-like gestures, with you declaring, Mr Forth, 'We got 'em all my nigga' and you Mr Brearley saying 'We got 'em all brother'. That celebration, in which all three of you participated, was a grotesque display of your complete disregard for the lives of the children you had attacked only hours earlier.

165 The final aggravating factor was the active steps that you took to conceal your crime. You disposed of the trolley poles, the crutches and the hat. It is clear, Mr Palmer that you were responsible for disposing of the crutches and the hat. I am unable to conclude which of you physically disposed of the trolley poles, although between the three of you, you clearly did so. And, in that regard, I find that all of you knew that the trolley poles would be disposed of. As revealed in the telephone call to Christina McGowan, you still had trolley poles in the car in the hours following the attack, including one with Cassius Turvey's blood on it, leading Christina McGowan to so callously tell you to 'get rid of the cunt'.

166 And you all told many lies to cover up your crimes, in multiple interviews with the police. The most despicable and shameful of those lies was your attempt, Mr Brearley, to frame a completely innocent man for the murder that you had committed. It is difficult to imagine a worse lie to tell about another person – that they had murdered an innocent child – and yet you took it in your stride Mr Brearley. Even in your evidence at trial you seemed to regard it as no big deal.

167 All of these matters, in their different ways, and applying to each of you in the ways I have described, increase your culpability for the offences for which I must sentence you.

Victim impact

168 Let me to turn to the impact that each of your offending has had on the victims of your crimes.

169 I have received victim impact statements from your immediate victims: [SM], [BT], [TB] and Cassius Turvey's mother Mrs Mechelle Turvey. I will turn to them in a moment, but as I have said, there are countless victims of you crimes, from the children who were terrorised and watched their friend beaten to death, to their families and friends and to the community as a whole. I agree with the submission of the State that your offending Mr Brearley, Mr Palmer and Mr Forth, was immensely harmful in a way that most homicides are not and that very few have the kind of 'blast radius' that your offending has had, and will continue to have.

170 [SM], in his victim impact statement, speaks eloquently of the sense of confidence, trust and safety that he lost as a consequence of your abduction of him, Mr Brearley, Mr Forth, Ms Gilmore and Mr Mackenzie. He now finds it hard to go out in public and leave the house because of the anxiety and fear that he feels out in public and around crowds. Especially affecting is his description of the impact of your offending on his sense of self-esteem, on a teenage boy who is on the cusp of adulthood, where [SM] said:

> It was hard to talk about what happened as I was worried about what other people would think of me. I always thought I would be able to defend myself but I couldn't and I was left feeling scared and shocked. I didn't know how to get myself out of the situation and didn't know how it was going to end.

171 [BT] was also profoundly affected by both the assault committed by you Mr Mackenzie, Mr Brearley and Mr Forth and by his abduction by the three of you and Ms Gilmore.

172 He too was left paranoid, anxious and hypervigilant when out in public, to the point of losing all motivation and experiencing suicidal thoughts, which he sought to numb with drinking and smoking a lot. Like [SM], he felt feeling belittled by what happened to him and made to feel that he was weak. He said:

> I have forgotten how to be the person I was before this all happened. I have lost my confidence and find it hard to handle unfamiliar situations. [and he said that that the] experience ruined my ability to trust people. This has impacted on all parts of my life including friendships, family relationships and with my partner.

173 [BT] had to put his apprenticeship on hold during the trial as he wasn't coping and felt like he had put his whole life on hold. Every day he has to think about what happened to him, and to Cassius Turvey,

because he has to drive past the spots where he was assaulted and where Cassius was attacked.

174 [TB]'s victim impact statement describes the impact on him, not only of the assault on him but of the loss of Cassius. He too was stressed and anxious about the court process, which affected his sleep. [TB] concluded his statement saying:

> I feel like my life is not the same without Cassius and I think about him a lot. I think about what happened on the day and when I got told he passed away. His presence, he was always joyful and always had a smile on his face. He was a gentle giant in our friend group. He would always make us laugh. I was so sad to hear him go.

175 You all heard Mechelle Turvey's victim impact statement read to the court. Mrs Turvey spoke not only of her own devastating loss but of the grief and shock experience by the whole community over the senseless violence that lead to the death of her beautiful child. I won't attempt to describe the indescribable loss that a mother experiences over the loss of their child. I will let Mrs Turvey's words speak for themselves:

> There are no words that can fully capture the devastation of losing someone you love to violence. Cassius was not just a part of my life, he was my future, my family, my home. The day he was taken from us is the day my world shattered.
>
> He was murdered. That truth is something I live with every single day. It's not just the absence of his presence, it's the silence where his laughter used to be, the emptiness in moments we were supposed to share, and the unbearable weight of knowing he didn't get to live the life he deserved.
>
> The trauma of his death is something I carry every day. I will never see him grow older, never hear his voice again, never feel the comfort of his embrace. The pain is constant, and the grief is immeasurable.
>
> What was taken from me was not just a person, but a lifetime of memories we were meant to create. I live with the ache of what could have been, and the injustice of what was stolen.

Maximum penalties for each offence

176 I come now to the maximum penalties for each offence. In imposing sentences commensurate with the seriousness of each offence, I must take into account those statutory penalties.

177 I have identified the statutory penalty for a number of the offences already:

(a) the maximum penalty for counts 1 and 3, aggravated unlawful detention, is 14 years imprisonment;

(b) the maximum penalty for count 2, unlawful assault occasioning bodily harm, is 5 years imprisonment;

(c) the maximum penalty for count 4, aggravated unlawful assault occasioning bodily harm, is 7 years imprisonment; and

(d) the maximum penalty for count 5, stealing, is 7 years imprisonment.

178 In relation to your conviction for manslaughter Mr Forth the statutory penalty is a maximum term of life imprisonment.

179 In relation to all those offences, there if no tariff, which means that there is no automatic sentence that applies. Offences like unlawful detention, assault occasioning bodily harm and manslaughter can cover a very wide range of conduct and it can be very difficult to compare one case to another, because the circumstances differ so much. For example, there is a big difference between an unlawful detention that takes place for minutes or hours and one that takes place for days, weeks or even months. Likewise, there is a difference between a manslaughter where the person doesn't intend to do any harm and a manslaughter where the person does intend to do harm. What I am required to do is determine, as far as possible, where your particular offences stand in the scale of seriousness, in light of all of the circumstances, and of course, I am also required to take into account your personal circumstances.

180 In relation to your convictions for murder, Mr Brearley and Mr Forth, the statutory penalty is a mandatory term of life imprisonment, unless that sentence is clearly unjust given the circumstances of the offence and your personal circumstances, and it is also unlikely that you will be a threat to the safety of the community when ultimately released.

181 If I determine that it is appropriate that you receive a sentence of life imprisonment for the murder, Mr Brearley and Mr Palmer, I must set a minimum period of at least 10 years before you could be eligible for release on parole.

Parity

182 In a moment, I will turn to each of your personal circumstances, any matters of mitigation and the sentences that I will impose on each of you.

183 You are all, in different ways and in different combinations, co-offenders. In determining your sentences, I am required to apply what is called the parity principle, which exists to ensure appropriate consistency in the sentencing of co-offenders. So I must take into account your relative roles in each offence, and your individual culpability for each offence, and, so far as the law permits, treat like with like. But this is not a mathematical exercise, because all of the different sentencing considerations can give rise to differences in your relative sentences; for example, differences in relation to age, background, criminal record, general character, as well as the part that each co-offender has played in the offending.

184 So it is necessary to address each of you separately, in light of all of those factors, while keeping steadily in mind the need for consistency of treatment between you. In doing that I will address you in the following order: Mr Mackenzie, Ms Gilmore, Mr Forth, Mr Palmer and Mr Brearley.

Common matters of mitigation

185 Before turning to each of you individually, I will identify two common matters of mitigation that apply to each of you.

186 The conduct of the trial on your behalf is to your credit. While it was a long and complicated trial, you each make a number of important concessions and admissions in the course of the trial which narrowed the issues for determination and assisted in its efficient running. The trial could have been a lot longer and a lot more complicated. The formal admission as to Cassius Turvey's cause of death, in particular, avoided the need for detailed, and potentially distressing, evidence as to Cassius' final days and also enabled his mother to attend the trial from its outset. As the State accepts, the conduct of the trial, is a matter of substantial mitigation.

187 Secondly, I accept in relation to each of you that you have spent a considerable period of time on remand, in circumstances in which the remand conditions in this State are sub-optimal to say the least and in which you are unable, for example, to participate in targeted programs.

I also accept that your time in custody has been, and in all likelihood will continue to be, made more difficult by reason of the security measures necessary to ensure your own protection. At one level, of course, that is due to the predictable notoriety of your crimes, for which you are responsible. But it is a matter that I take it into account.

Ethan Mackenzie

188 Turning then to you, Mr Mackenzie.

Mackenzie – Personal circumstances

189 As I said at the beginning, Mr Mackenzie, you are the youngest of the group and were 18 years old at the time of your offending on 9 October 2022. You are now 21 years of age.

190 You were born in Perth and raised by your mother, who was a heavy user of methylamphetamine, including during her pregnancy with you. Indeed, it is reported that you were born in an ambulance while your mother was under the influence of methylamphetamine. In your childhood, you were exposed to violence and drug use by your mother and other deprivations, such as homelessness and lack of schooling. You left school in year 8 to sell cannabis, after a significant record of disruptive behaviour during your primary school years.

191 You also started using a variety of different drugs yourself from a young age. You started smoking cannabis at age 12, and moved on to opiates and benzodiazepines (mainly Xanax), of which you would consume ten or more pills a day. You also used hallucinogenic drugs (including LSD and DMT), as well as ecstasy and 'lean' made from prescription grade cough medicines containing codeine and promethazine.

192 I have received a neuropsychological report in relation to you from Dr Brenton Maxwell. Dr Maxwell described your formative years and childhood in the following terms:

> Mr Mackenzie was confirmed to have been exposed to methamphetamine in-utero, in addition to other adverse early life events including his mother's substance use, anti-social behaviours and domestic violence. While Mr Mackenzie was physically healthy, the information available does suggest that he experienced early childhood trauma which can have significant impacts on the developing brain.
>
> …

> Mr Mackenzie became involved with anti-social/negative peer influences from late primary to early adolescence, including early use of a range of substances known to impair normal brain development, including cannabis, alcohol, benzodiazepines, opioids etc. Mr Mackenzie's criminal lifestyle started early with him resorting to selling drugs in his early teens rather than pursue self-improvement through education or training. In addition to these lifestyle factors, he was also exposed to normalisation of violence and aggression and use of substances for everyday coping, and has a persistent history of violent behaviours when he is unable to regulate his emotions and/or is heavily intoxicated.

193 Dr Maxwell identified a number of neuropsychological weaknesses in your attention span, working memory and aspects of your executive functioning, such as problems with inhibition and planning. In other respects, your cognitive abilities were unimpaired, and indeed, Dr Maxwell found that you were much more intelligent than your behavioural history would suggest. He identified the main contributors to your weaknesses as to your drug use, and in particular your early and chronic cannabis use.

194 In your interview with police, you described being intoxicated at the time of your offending on 9 October 2022. While voluntary intoxication cannot mitigate your offending in any way, I accept that you were probably intoxicated to some extent, consistent with your heavy use of drugs generally. I do not, however, accept your account that you had no memory of the events, which Dr Maxwell reported was not supported by formal testing of your memory, outside the immediate aspects of intoxication.

195 In that regard, Dr Maxwell also concluded that your offending itself was not causally related to your neuropsychological weaknesses:

> While weaknesses in inhibition can contribute to impulsive behaviours in the timeframe of milliseconds to seconds, they cannot account for planful, executed complex criminal behaviours. As such, the cognitive results cannot account for Mr Mackenzie's behaviour during the Subject Offences and so the contributory factors should be considered psychosocial in nature.

196 Your criminal record is relatively short, but very serious in a number of respects. You have convictions, as a child, for criminal damage and going armed such as to cause fear, as indeed you did on 9 October 2022 with your knife.

197 Most significantly, on 11 October 2022, that is, two days after the offences for which I must sentence you, you committed the offence of aggravated armed robbery, with the same knife that you used on [BT]. For that offence you were sentenced to imprisonment for 18 months, which was ordered to commence on 25 January 2023. You have been in custody since that time, first as a sentenced prisoner and, since 25 August 2024, on remand for these current offences.

198 Perhaps not surprisingly, Mr Mackenzie, you do not have any significant employment history, apart from reportedly working for 12 months in an abattoir in 2021.

199 You are in good physical health and, having been off drugs since being in prison, have been functioning better, although you have expressed a desire for counselling on your 'frustration and anger' issues and for psychiatric care.

200 You have no children and you are not in a relationship.

Mackenzie – Mitigating factors

201 Turning to the mitigating factors in your case, Mr Mackenzie.

202 You do not have the benefit of a plea of guilty and I find no evidence of any remorse for your offending.

203 Nor, in light of your criminal record, do you have the benefit of prior good character. Of course, that cannot aggravate your offending and, as a young man, who prior to this offence had spent no time in prison, I accept that your criminal record prior to the commission of these offences was relatively limited.

204 The two mitigating factors in your case, Mr Mackenzie, are your age and your dysfunctional and deprived childhood.

205 Your youth is a significant mitigating factor. As I have said you were only 18 years of age at the time of the offences. You are still a young man. Despite your difficulties in life there is still good reason to hope that you can benefit from determined efforts at rehabilitation. It is in the long term interests of the community that those efforts be made.

206 Returning to your childhood, Mr Mackenzie.

207 I have already referred at length to the vulnerability of children, in relation to your victims and the victims of the others. Great harm can be

done to the future of children who are deprived of a normal childhood and exposed to the normalisation of violence and antisocial behaviour from a young age. That is why it increases the seriousness of your offences that your two victims were children.

208 But the same goes for you too, Mr Mackenzie. You were a vulnerable child, when you were exposed to violence, drug use and other deprivations from a young age. I can hardly take into account the vulnerability of your victims because they were children and at the same time ignore your own deprived upbringing, which you neither asked for nor deserved. It would be contrary to law for me to do so. The effects of a deprived childhood do not go away easily and they reduce the moral culpability of an offender whose background compromises their capacity to learn and mature from experience.

209 I accept that this is a factor that applies in your case, Mr Mackenzie. The effects of your deprived childhood have not gone away and they reduce your moral culpability.

210 At the same time, as Dr Maxwell concluded, the effect of your background means that you have unresolved issues with aggression and violence that could be addressed through prison counselling programs. Those issues with aggression and violence point to a risk of you offending again and the need for protection of the community, whatever the cause or explanation of those issues. So you can see, Mr Mackenzie, that the effect of your background include factors that pull in different directions in relation to your sentences. And I must take into account all of those factors.

Mackenzie – Sentence

211 I come then to your sentences, Mr Mackenzie.

212 The main sentencing considerations in your case are punishment, rehabilitation, deterrence and the protection of the community. As in the case of the others, the sentences I impose must act as a deterrence against the kind of casual, normalised violence, engaged in by you, and against the sort of vigilante activity engaged in by all of you. I accept that given your age and background, general deterrence is not as pronounced a factor as it is in relation to the others, but it is still relevant in your case.

213 The need for your rehabilitation and the protection of the community go hand in hand. The community will not be safe from

future offending by you if you don't make a concerted effort to stay away from drugs and address your aggression and violence. While you have been off drugs in prison, your other issues haven't been addressed and you will need significant assistance to stay off drugs when you are eventually released. Those matters need to be addressed, in prison, before you are released. For that reason, in addition to the need for punishment, in my view the only appropriate sentences for you are terms of immediate imprisonment.

214 In relation to count 1, the unlawful detention of [SM], I accept, Mr Mackenzie that you weren't the ringleader. The offending wasn't planned or initiated by you. It was initiated by Ms Gilmore and Mr Brearley, in response to Cody Gilmore's call that he was going to be mobbed. You and Mr Forth were, effectively, along for the ride. But once you got to the location, it was you who waved the knife at [SM]; it was you, who with Ms Gilmore yelling, were the one who initially forced [SM] to get in the car. For that you must accept responsibility, including for the whole time that [SM] was detained after your initial actions.

215 Aggravated unlawful detention is a serious offence, and in the present case it had a number of serious factors, including the vulnerability of the victim, the presence of a weapon and the fact that you were in company. Nevertheless, as I have said, unlawful detention can be committed in an extremely wide range of circumstances, including for very lengthy periods and with sustained physical restraint or threats. As I have also said, after [SM] was in the car, the sense of menace gradually decreased and there were no further threats of violence. In all of the circumstances this particular offence was therefore not at the upper end of seriousness in relation to offences of this type.

216 Taking into account all relevant sentencing considerations, including your substantial mitigation, in my view, the appropriate sentence for that count is 1 year of imprisonment.

217 In relation to count 2, the assault on [BT], again, I accept that you were not the ringleader, even though it was your physical act of poking [BT] with the knife that constituted the offence. That offence was committed as part of a general attack on [BT] that was started by Mr Brearley. In my view, the three of you were all equally responsible for the assault physically committed by you.

218 While the bodily harm suffered by [BT] was not particularly serious, the circumstances of the assault would have been, and I am satisfied were in fact, terrifying for him. It was the surrounding circumstances, rather than the bodily harm itself, that make this an offence that calls for a term of imprisonment.

219 Taking into account all relevant sentencing considerations, in my view, the appropriate sentence for count 2 is one of 2 years imprisonment.

220 Count 3, the unlawful detention of [BT] was a more serious example of that offence than the unlawful detention of [SM]. It involved the use of force and the threat of more violence, in circumstances in which [BT] had already been assaulted and so was fully aware of the risk of further violence if he tried to leave.

221 Taking into account all relevant sentencing considerations, including your mitigation, in my view, the appropriate sentence is one of 1 year and 9 months imprisonment.

222 As I have said, in my view, the only appropriate sentence is one of immediate imprisonment. I have considered whether, in light of all relevant considerations, I should suspend your terms of imprisonment and I am positively of the view that it would be inappropriate to do so.

223 As I am sentencing you for multiple offences, I have to decide whether the sentences for the individual offences should be made cumulative or whether they should be served together, having regard to the totality of the overall sentence that I impose. I must impose a total effective sentence that reflects the overall criminality of all of the offences you have committed. The total sentence that I impose must be a sentence that is not disproportionate to the whole of your offending.

224 That assessment is complicated in your case, Mr Mackenzie, by the fact that you have been in custody since 25 January 2023 and, since that time have served the entirety of another sentence imposed with respect to the offence you committed on 11 October 2022. Part of your time in custody can be taken into account by me ordering that the sentences that I impose start from the time that you have been in custody on remand. There is no doubt, however, that, had you been sentenced for these offences earlier, the sentences would have taken into account the sentence for aggravated armed robbery as a matter of totality and, in addition, these pending charges meant, that as a practical reality, that you could not receive the benefit of parole on that other

sentence. For that reason, in my view, the totality principle applies, at least by way of analogy, such that I should take into account that earlier sentence.

225 In my view the total effective sentence should reflect the fact that there were two victims. I would therefore order that the sentence for count 1 be cumulative on the sentence for count 2, and that the sentence for count 3 be concurrent with the sentence for count 2. I would also reduce the sentence for count 1 to 6 months for reasons of totality, including in relation to the sentence you have recently served, recognising that the 18-month sentence that you previously served was, in my view, lenient.

226 Your total effective sentence will therefore be 2 years and 6 months imprisonment, which will be ordered to have commenced on 25 August 2024.

227 In the interests of your rehabilitation and the need for supervision in the community upon your release, I will order that you be eligible for parole. That means that you will be eligible for release on parole on 25 November 2025.

Aleesha Gilmore

228 I turn then to you Ms Gilmore.

229 Ms Gilmore, I must sentence you for two counts of unlawful detention and one count of unlawful assault occasioning bodily harm. Each of those offences was committed in a circumstance of aggravation, being that a child was present.

230 It is important that I recognise, Mr Gilmore, that you were charged with, but found not guilty of the murder of Cassius Turvey, and also found not guilty of the alternative count of manslaughter. Based on what has occurred during your time in custody, Ms Gilmore, including the nature of the threats that have been made to you, it is clear that there are people who hold you, at least in part, responsible for the death of Cassius Turvey. Your name will likely always be associated with the death of Cassius Turvey and there will no doubt be people who will continue to hold you morally responsible for his death.

231 But this is a court of law, Ms Gilmore. I must impose the sentence that the law requires for the offences you have committed, not for an offence for which you were charged and found not guilty. And as a

matter of law I must not, and I will not, take into account an offence for which you were charged and found not guilty in determining the appropriate sentence, according to law, for the offences that you did commit.

Gilmore – Personal circumstances

232 Ms Gilmore you are now 23 years old and, as I have said, you were 20 years old at the time of the offences.

233 You were born in Western Australia, and have two younger brothers, Tyler and Cody. You describe your early childhood as 'ok'.

234 This changed when you were eight years old, when your mother started using methylamphetamine. Your parents separated due in part to your mother's drug use, with you and your brothers initially forced to live with your mother, causing your father severe depression.

235 In late 2011, your father won custody due to your mother's entrenched drug habit having resulted in neglect. As your father worked nightshift, it fell to you, Ms Gilmore, to care for the home and your brothers. You were only 10 years old at this time, and were in charge of making dinners, lunches, doing laundry and other general domestic and household duties. At 13 years old you became tired of 'playing the mother' and returned to live with your mother and grandmother.

236 It was within this home that you witnessed your mothers drug use, domestic violence between your mother and her partner, as well as other 'random people' within the house using drugs. When you were 13 years old, your mother introduced you to methylamphetamine. You became addicted to it and used it consistently for the next couple of years. I don't need a psychological report to know that your mother would have had a terrible effect on your upbringing, Ms Gilmore. I saw her give evidence in the trial and I saw firsthand the disgraceful way in which she treated your little brother in the CCTV footage that was tendered at trial.

237 Your drug habit resulted in a number of stealing convictions when you were a child and during this time, you dropped out of school and commenced what turned out to be an abusive relationship with an older boy.

238 To your credit, you started to turn your life around in 2017. You enrolled in a school for troubled teenagers and completed your

Certificate II in General Adult Education and, in order to distance yourself from drug use, you moved to Newman to live with your grandmother. You completed high school, completed a Certificate II in Business and commenced a traineeship at the youth centre, where you worked closely with Police, helping disadvantaged and troubled children. You thrived in Newman completing several courses, assisted in running programs and you were recognised and won trainee of the year in 2018. You had a very stable and productive period between 2017 and 2021.

239 Your grandmother moved back to Perth due to a cancer diagnosis in 2021 and while you wanted to stay in Newman you no longer felt safe without your grandmother.

240 You returned to live with your father and brothers again which is where you met Mr Brearley, who was a friend of your brother Tyler. You commenced a relationship with Mr Brearley shortly after he came to live at your house due to his own issues at home. Your relationship with Mr Brearley was volatile and there were several occasions you tried to end the relationship, with no success. During the relationship you started using drugs again, and regularly used cannabis, which Mr Brearley supplied, up until the time of your arrest in January 2023.

241 You found yourself back in a home environment where you were caring for your brothers, who were constantly getting into trouble at school and within the community. You were obviously completely ill-equipped to deal with their issues.

242 Turning now to your criminal record, Ms Gilmore. As I have stated, you amassed a significant criminal record when you were still a child, including stealing, disorderly behaviour and assault. You have adult convictions for assaults that were committed in March 2022, but which were dealt with by the court just prior to your arrest on these offences in January 2023. You were on bail for those offences when you committed the current offences.

243 While your prior criminal record is not an aggravating factor for the purpose of sentencing, it does demonstrate that you do not come before the court as a person of prior good character. Nevertheless, the gaps in your offending, particularly in that period when you were in Newman, suggest that, in the right circumstances and in the right environment, you are capable of living a law-abiding lifestyle.

244 In terms of employment, in 2021 you worked as a COVID cleaner and later as a florist. In 2022 you started employment at Stratton Early Learning Centre, and worked there until you were fired on 13 October 2022.

245 As to your health, in 2021, you were diagnosed with type II diabetes. You suffer from PTSD, anxiety and depression due to your teenage years living with your mother and your experience in custody. You have been medicated since March 2023 but still regularly have nightmares.

246 You have been in custody since you were arrested and charged with murder on 19 January 2023. While in custody you have been assaulted on several occasions and regularly threatened, which has meant that you have spent significant periods of time locked down for you own protection and have been moved between various prisons for your own safety. Needless to say, the fact that your offending was committed as part of vigilante activity, can in no way excuse or justify vigilante behaviour directed towards you. Vigilante behaviour is always unacceptable, no matter who does it and no matter who it is directed at.

Gilmore – Mitigating factors

247 Turning to the mitigating factors in your case, Ms Gilmore.

248 You also do not have the benefit of pleas of guilty or any tangible evidence of remorse.

249 Nor do you come to be sentenced as a person of prior good character. Despite the significant gap in your offending between 2018 and 2021, you have an extensive criminal record including for offences of violence.

250 Your youth remains a significant mitigating factor. You were still only 20 years of age at the time of the offences and I accept that your childhood, particularly the malign influence of your mother, meant that you did not have the opportunity to mature in a meaningful way.

251 You are still a young woman, Ms Gilmore, and you still have time to turn your life around. It is to your credit that despite the difficult security arrangements in relation to your time in custody, that you have completed a significant number of educational and vocational courses.

252 As I have said, despite the difficulties of your early teenage years, your experience in Newman suggests that you are capable of living a

law-abiding life. With the right support I am therefore satisfied that you have reasonable prospects of rehabilitation. But it not going to be easy by any means. If you fall back into the same antisocial patterns, your future will be very dark indeed.

Gilmore – Sentence

253 I come then to your sentences, Ms Gilmore.

254 I referred to the required sentencing considerations when dealing with Mr Mackenzie. I need not repeat them.

255 In relation to count 1, the unlawful detention of [SM], you bear a similar responsibility to Mr Mackenzie for the act of him being forced into the car. Indeed, it was you who yelled at him to 'Get the fuck in the car'. You also had a critical role in initiating the offending. It was you who took it upon yourself to go looking for boys in a completely misguided attempt to defend your little brother. For that reason, in my view, your culpability is greater than that of Mr Mackenzie, even though he had the knife. In that regard, as your counsel accepted, I find that you were aware of the presence of the knife. Your youth and difficult upbringing, while of some mitigation, are also not as pronounced in terms of mitigation as those of Mr Mackenzie.

256 On that basis, taking into account all relevant sentencing considerations, in my view, the appropriate sentence on count 1 is 1 year and 3 months imprisonment.

257 While, count 3, the unlawful detention of [BT] was a more serious example of that offence than the unlawful detention of [SM], your culpability was less than that of Mr Brearley, Mr Forth and Mr Mackenzie. You weren't involved in the initial violence or use of force to get him to the car and, I accept, you immediately reacted with anger at the others for what they had done to him. In that sense your participation in that offence was more passive than in relation to count 1, although you were clearly aware that [BT] wasn't free to go anywhere, even after the initial violence against him had stopped, and you assisted the others to keep him with you.

258 In relation to your behaviour back at Mockeridge Circuit, I accept that you displayed some genuine care towards [BT], by patching his injury, getting him to shower and getting him some clothes. Nevertheless, I find that at least part of your motivation was your

desire, and the desire of the others, to avoid [BT] complaining to anyone about what had been done to him.

259 Taking into account all relevant sentencing considerations, including your reduced culpability compared with the others, in my view, the appropriate sentence for you on count 3 is also one of 1 year of imprisonment.

260 In relation to count 4, the aggravated assault occasioning bodily harm of [TB], your responsibility for that offence arises from the fact that it was a probable consequence of the common intention that you were part of to prosecute the unlawful purpose of threatening kids with weapons. As I have earlier said, once you, Mr Brearley, Mr Palmer and Mr Forth all set out with that intention, it was not only probable but very likely that someone would be assaulted and would be hurt. You are all responsible for that offence, but you are all not equally culpable.

261 The person with the most culpability for that offence, Ms Gilmore, was Mr Brearley. He was the person who assaulted [TB] and caused him the injury. But looking at that offence in isolation, as it is the only offence committed on 13 October 2022 for which you were convicted, I find that your culpability for the offence was at least equal to that of Mr Palmer and Mr Forth, even though you were not physically present and they were.

262 Indeed, in some respects, Ms Gilmore you are more culpable for the assault on [TB] than Mr Palmer and Mr Forth. While each of them went significantly further in their offending than you commonly intended at the time that you got out of the car, much of the reason that the group of you had come down to Middle Swan and had gone looking for kids was again because of your completely misguided attempt to come to the aid of your younger brother. You were the one who took the initial phone call and were heavily involved, if not the driving force, in the decision to sort out their issue.

263 You were therefore part and parcel of the vigilante motive for being out in the car that afternoon. Not primarily, as I have found, Mr Brearley's vigilante motive of revenge for his smashed car window, but the vigilante motive of scaring kids off from coming near your younger brother. For that you must take significant responsibility.

264 While the physical harm suffered by [TB] was at the lower end of the scale, the surrounding circumstances, including the presence of other children and the vigilante motive, are such that count 3 remains a

serious offence, which requires a term of imprisonment to denounce that conduct.

265 Taking into account all relevant sentencing considerations, in my view, the appropriate sentence for you on count 4 is one of 2 years and 6 months imprisonment.

266 Properly applying the totality principle to those sentences, so as to reflect the overall criminality of all of the offences you have committed, Ms Gilmore, would in my view result in a total effective sentence of 3 years and 9 months imprisonment. That total effective sentence would be achieved by ordering that the sentence on count 1 be cumulative on the sentence for count 4, and that the sentence for count 3 be concurrent with the sentence for count 4.

267 There is a real difficulty with imposing that sentence in the present case, however, Ms Gilmore, which is that you have already spent a considerable amount of time in custody awaiting trial. As I have said, you have been in custody since 19 January 2023, almost 2 years and 6 months, and you are entitled to have that time in custody taken into account as part of your sentence.

268 If I were to impose a sentence of 3 years and 9 months imprisonment today, and backdate it to 19 January 2023, you would have been eligible for parole in December last year and you could have been released on parole back then. You would have well and truly served the non-parole period of your sentence. Likewise, if I imposed that sentence today, you would immediately be eligible for parole and might be released immediately.

269 The problem with that is that you would then only have a relatively short time under supervision in the community upon your release and, in my assessment, not enough time to provide the necessary assistance to avoid you falling into your old patterns of antisocial behaviour. That is not in your interests, and it is not in the interests of the protection of the community. In my view, you require more substantial supervision and control in the community in order to create the best conditions for you to turn your life around in a way that benefits you and benefits the community.

270 If you were not released on parole but rather released without supervision in a year's time, the prospects of you reoffending and the harm to the community would in my view be even worse.

271 For that reason, while I am satisfied that the aggregate terms of imprisonment for your offending of 3 years and 9 months is appropriate, having regard to the significant time that you have spent in custody and the need for your close supervision in the community, I have concluded that you should be sentenced to a term of imprisonment commencing today, and that the term should be conditionally suspended.

272 So rather than backdate your sentence to 19 January 2023, I will reduce the terms of imprisonment that I propose by an appropriate period to take account of the time you have served. I will do that by reducing the sentence in relation to count 4 by 1 year and 3 months, which, with all of the terms for the other counts to be served concurrently, give a total effective sentence of 1 year and 3 months commencing today.

273 Having regard to the considerations I have referred to, those sentences will be conditionally suspended for a period of 24 months, and I will order that, in addition to the standard conditions, you be subject to a programme requirement, a supervision requirement and a curfew requirement.

274 The programme requirement means that you will need to undergo assessment and treatment ordered by your community corrections officer for the factors that contributed to your offending. I particularly have in mind that you be assessed to deal with your history of substance abuse.

275 The supervision requirement is to allow you to be regularly monitored in the community and to receive regular counselling for the purpose of your rehabilitation. I expect you to be subject to regular monitoring for drug use.

276 And finally, the curfew requirement is a requirement that you remain at specified places for specified periods as ordered by your community corrections officer. That can include short periods of home detention. I will set the term of the curfew requirement as the first six months of your term of conditionally suspended imprisonment which is the maximum amount required under the law.

277 I can tell you, Ms Gilmore, that this sentence is not an easy option for you. The period of supervision is greater than it would be if you released on parole now and I expect that the supervision will be greater and more intense. And if you commit any offence punishable by

imprisonment during the suspension or breach the conditions you will be liable to be brought back before this Court to be ordered to serve what, in effect, is the balance of the 3 years and 9 months imprisonment that I have concluded is the appropriate total effective sentence.

278 I have reached that decision because it is in the interests of the protection of the community, Ms Gilmore. But it is also obviously in your interest not to waste the opportunity to turn your life around and make something of it.

Mitchell Forth

279 I turn to you now Mr Forth.

280 You were the only one of the accused to be convicted of an offence in relation to every count on the indictment, although on count 6, you were convicted of the alternative charge of manslaughter. The fact that you were a party to every count on the indictment says a lot about you, Mr Forth. At every point in this shameful course of events, you were never the main offender but you were always there; in the background most of the time, but always there. As your own counsel said to the jury in his closing address, and as I said at the beginning of today, you are a 'follower'. And you followed Mr Brearley all the way to a conviction for manslaughter.

281 And in your case Mr Forth, it is all such a terrible waste. As I will come to, I have received, and carefully read, eight letters as to your character from your family and from family friends. You obviously have a loving and supportive family, Mr Forth, and, despite some learning difficulties, have always been a hard worker and were in a position to make a valuable contribution to society. And now you are going to spend many years in prison before you get the chance to see if you can pay back the love and support that has been offered to you.

Forth – Personal circumstances

282 You are now 27 years old. You were 24 years old at the time of your offending.

283 You were born in Western Australia and have one older sister.

284 Your early childhood was happy and healthy. Your parents separated when you were nine years old, which created some instability, but the separation was amicable. You initially went to live with your father while your sister lived with your mother, but

throughout your teenage years into early adulthood you have lived with both your mother and your father at different times.

285 You have had one long-term relationship which lasted a year.

286 You attended Parkerville Primary School and later Mundaring Christian College, finally completing year 11 and 12 at Governor Stirling Senior High School.

287 School was difficult for you, Mr Forth, as you were diagnosed with both ADHD and dyslexia as a child, and had difficulty reading. You were also expelled from one of the schools for smoking cannabis on a school bus in year 10.

288 You had commenced using cannabis when you were 13 years old, and smoked it on occasion throughout your high school years. You did not use any other illicit substances and said you stopped using cannabis six months prior to October 2022, although you say that you 'lapsed' into occasional use after you were interviewed in connection with these offences. You have not used any other illicit drugs.

289 Since graduating from high school you have always been in steady employment. You have commenced a number of apprenticeships, although they didn't work out for various reasons, and you have spent most of your adult life, until your arrest, working for your father. You worked with your father for about seven years.

290 You have no physical health concerns and aside from your ADHD and dyslexia, you have no other mental health issues or impairments. While you once took prescription medication for your ADHD, you no longer take any regular medication.

291 Other than some minor offending when you were a child for which you received spent convictions, you have no criminal record to speak of Mr Forth, and the State accepts that you may be treated as of good prior character for the purposes of sentencing.

292 Your otherwise prior good character is also demonstrated by the character references I have received from your family and friends.

293 Let me say this in relation to those character references. Talk is often very cheap in relation to matters and often character references provide very little insight into an offender or their circumstances that is useful. But having carefully considered the character references given

to me on your behalf, there are three matters that stand out from your character references that are in your favour, Mr Forth. And as I will come to, they stand in stark contrast to those provided on behalf of Mr Palmer.

294 First, almost all of those references clearly acknowledge and, often, commence with, the recognition of the enormous pain and suffering that you and your co-offenders have caused to your victims and in particular the suffering you have caused Cassius Turvey's family. And, indeed, the authors acknowledge the reality that their suffering from the consequences of your actions pales into insignificance compared to the suffering of your victims. While that might be thought to be an easy thing to say, I find it to be genuine. By contrast, not one of the many references provided for Mr Palmer even refers to his victims.

295 Secondly, the references I have received from your mother, your father, your stepfather, and your sister, Mr Forth, all accept, without reservation the jury's verdict that you are guilty of manslaughter. And most of them have done so having sat through large portions of your trial, as I have been able to observe. So they have seen the evidence against you. They have seen the footage of your disgraceful behaviour towards [BT], your preparations for violence at Mockeridge Circuit and your grotesque celebration with the others afterwards. And yet knowing all that, and offering no excuse for it, they are still prepared to stand by you.

296 And finally, those references paint a vivid picture of a loving and supportive family that has come together to work towards your rehabilitation. You may not think it now, Mr Forth, but you are a very lucky man.

Forth – Mitigating factors

297 Turning to the mitigating factors in your case, Mr Forth.

298 Other than your plea of guilty to count 5, the charge of stealing, you do not have the benefit of pleas of guilty. Your plea of guilty in relation to the stealing charge was entered late in the day, approximately two months prior to trial. While you are entitled to some discount for that plea of guilty, the extent of the discount must be determined by 'the benefits to the State, and to the victim of or witness to the offence, resulting from the plea'. In the case of your plea of guilty to the stealing charge, those benefits were very small, if not miniscule.

The plea of guilty to the stealing charge would not, in my view, have affected the preparation for, or the conduct of the trial in any discernible way. All the same witnesses would have been called and all the same questions would have asked. The only real benefit in this case was that the guilty plea secured the conviction of a person who had committed an offence. But even then, the particular charge was, in the scheme of the trial as a whole, very minor and the State case that you had committed the offence was very strong. You admitted the offence in your final interview. In all of the circumstances, I would allow a deduction of 5% from the head sentence for your plea of guilty to count 5.

299 You were 24 years old at the time of the offences, Mr Forth, although in my assessment quite an immature 24-year-old, as demonstrated by your subservience to Mr Brearley, who was younger than you. You are effectively on the cusp of the age where youth is no longer a mitigating factor. I do give it some weight, but in the circumstances your age is not a significant mitigating factor. You were old enough, smart enough and brought up to know better.

300 I turn to the question of remorse. This is a very difficult matter to assess in your case Mr Forth.

301 Your mother, father, stepfather, grandfather and sister all describe you as demonstrating 'remorse', 'self-reflection', 'profound regret' and an acceptance of not only your wrongdoing but of the verdict after trial. Your letter to me is in similar terms and, I must say, reads like it comes from a person who has genuinely confronted his guilt. Unlike the letter written to me by Mr Brearley, which I find to be completely insincere, you actually name your victims: Cassius Turvey, his mother and his family. And you don't ask for leniency. You letter is eloquent, in a way that I might have thought it was written by someone else, if it were not for the fact that it was obviously written by someone who struggles with dyslexia and has problems with literacy.

302 And yet, Mr Forth, actions speak louder than words, and it is difficult to find remorse when a person does not admit their guilt up front, but expresses remorse only after they have been found guilty following trial. You didn't plead guilty to any of the violent offences for which you have been convicted. Even in relation to the assault on [BT], whose assault was practically caught on camera, you maintained your innocence. I accept that you were found not guilty of murder, but there is no evidence of you having offered to plead guilty to manslaughter.

So while I think you are beginning to understand the gravity of what you have done, and you are beginning to develop a genuine sense of contrition for the harm that you have caused, your remorse is still only in its early stages.

303 In that respect, Mr Forth, you have had to come a long way. Of all of your co-offenders, Mr Forth, I find that you have had the most difficulty admitting to yourself what you have done. It was clear, by comparing the evidence of your conduct on 13 October 2022 and your interviews with the police, that you accepted responsibility when it suited you. When you were around your co-offenders you were happy to take responsibility for being part of what happened that day, saying things like 'Fuck, We done it. We done', when you returned to Mockeridge Circuit, and 'We got 'em all my nigga', in the video outside of Greg's Chemist. You wanted to be part of those responsible; you wanted to be the tough guy. But when interviewed by the police, you effectively pointed the finger at all the others, and said that it was all of them. No longer did you want to be part of those responsible; you wanted to be the good guy. As you are now discovering, Mr Forth, it doesn't work like that.

304 Mr Brearley knew perfectly well what he had done wrong. He just didn't care, which is why he so brazenly lied about practically everything. You, on the other hand, perhaps only now, are beginning to understand that you are actually responsible as well for the death of Cassius Turvey. It is good that you are, and I give you credit for it, but you still have a long way to go. The real test will come after today. You have said that you will accept with respect, whatever sentence I consider is just. The test will be whether you actually do; whether you accept the sentence, use your time in prison to improve yourself and contribute meaningfully to others, as you have told me you want to do.

305 If you can do that, Mr Forth, I consider that you have good prospects of rehabilitation. And you clearly have many people around you who are prepared to support you now and into the future. Do not let them down. Use every opportunity you have in the time available to you.

Forth – Sentence

306 All of the relevant sentencing considerations are applicable in your case, Mr Forth: including punishment, rehabilitation, general deterrence and the protection of the community. In particular, as in the case of the others, the sentences I impose must act as a deterrence against the kind

of casual, normalised violence, engaged in by you, and against the sort of vigilante activity engaged in by all of you.

307 In relation to count 1, the unlawful detention of [SM], I accept, Mr Forth that you were guilty as an aider to the others and, like Mr Mackenzie, you were effectively along for the ride with Mr Brearley and Ms Gilmore. Unlike Mr Mackenzie's initial actions in waving the knife near [SM], however, your intentional acts were your presence in the car and your contribution to the force of numbers.

308 Taking into account all relevant sentencing considerations, in my view, the appropriate sentence for you on count 1 is the same as that for Mr Mackenzie namely 1 year of imprisonment. While Mr Mackenzie's physical actions had a greater contribution to [SM]'s detention, increasing his culpability, that is offset in comparison to you by the additional mitigation available to Mr Mackenzie due to his much younger age and the impacts of his deprived upbringing.

309 Similarly, in relation to count 2, the assault on [BT], while it was Mr Mackenzie who wielded the knife, given that the assault occurred during a broader attack, I consider that you are all equally responsible. You are not entitled to the same mitigation as Mr Mackenzie in light of his youth and upbringing, and so, in light of all relevant sentencing considerations, in my view, the appropriate sentence for you on count 2 is 2 years and 3 months imprisonment.

310 The same applies to count 3, the unlawful detention of [BT]. Your culpability is the same as that of Mr Mackenzie, but your mitigation is less. In my view, the appropriate sentence for you on that count is a sentence of 2 years imprisonment.

311 In relation to count 4, the aggravated assault occasioning bodily harm of [TB], in my view, your culpability is the same as that of Ms Gilmore, although for different reasons. While Ms Gilmore bears more responsibility for initiating the plan to come down from Parkerville to sort out Cody's issue, you were present at the scene when the offence was committed and yelled out 'Get them cunts, Jack'.

312 For those reasons, in my view, the appropriate sentence for you on count 4 is one of 2 years and 5 months imprisonment.

313 In relation to count 5, stealing the crutches and hat from [TB], you were obviously the principal offender, as it was you who took the crutches and the hat. I accept that you did this impulsively and as an act

of humiliation to a boy who had just been assaulted. In all of the circumstances including the 5% discount for your plea of guilty, the appropriate sentence on count 5 is 5 months imprisonment. While the law ordinarily prevents the imposition of a sentence of less than 6 months imprisonment, in your case I am able to do so as the aggregate of the terms that I will impose will be more than 6 months.

314 Your conviction for the manslaughter of Cassius Turvey is obviously the most serious of the offences for which I must sentence you.

315 Of course, when assessing the extent of your culpability it is relevant that you did not directly kill Cassius Turvey, or indeed physically attack him or any of the other boys at all on 13 October 2022. While you are legally responsible for Cassius' death, your culpability is not as great as it would be if you had been responsible for the lethal blows inflicted on him.

316 Your conviction for manslaughter, rather than murder, also necessarily means, I find, that you did not have an intention to do any of the children serious harm. As I have said you gave little thought at all to the consequences of your actions, and were just following along with the others in the excitement of trying to be a tough guy. Nevertheless, general deterrence requires that thoughtless, casual violence be denounced, just as it requires that vigilante behaviour be condemned in the strongest possible terms.

317 In your case, Mr Forth, in my view personal deterrence is a less significant sentencing consideration. As I have said, you are beginning to understand and to accept your responsibility for Cassius Turvey's death and there is good reason for optimism that the support of those around you, which I accept to be genuine and sincere, will enable you to continue on that path. That leads me to conclude that you have good prospects of rehabilitation, and the prospect of you reoffending is low.

318 Nevertheless, these matters, while of real weight, cannot eclipse the great harm wrought by the death of a child and the need for the law to punish those responsible. I have dealt with the aggravating factors earlier and most of them, as I identified them, apply to you. Your prior good character and your good prospects reduce the sentence that I would otherwise impose, but it must nevertheless be substantial.

319 In all of the circumstances, and taking into account all relevant considerations, in my view, the appropriate sentence for your conviction for manslaughter is 10 years imprisonment.

320 You have been convicted of six offences and will be sentenced to six separate terms of imprisonment. Totality must therefore play an important part in the imposition of your sentence. As I said to Mr Mackenzie, the law requires I must impose a total effective sentence that reflects the overall criminality of all of the offences you have committed.

321 It is also sometimes said that I must not impose a sentence that is crushing, in the sense that it would destroy any reasonable expectation of a useful life after release. That doesn't really apply to you, Mr Forth, as you are still a relatively young man and still have many years of life ahead of you. In another sense, however, given what I have said about your prospects of rehabilitation, the objectives of sentencing also mean that the total effective sentence should not crush your newfound commitment, as you put it in your letter to me, 'to make amends, to grow and to transform'.

322 That said, the law requires that I recognise that you have been convicted of multiple offences, on separate days, which should be reflected in some accumulation of your sentences. In my view the total effective sentence that properly reflects the overall criminality of all of the offences you have committed is one of 12 years imprisonment. In all of the circumstances that is best reflected, in my view, reducing your sentence on count 6 to 9 years for reasons of totality and by ordering that your sentences for your convictions of aggravated unlawful detention be served cumulatively on your sentence for manslaughter and on each other. As I have said, with the other sentences being served concurrently, that produces a total effective sentence of 12 years imprisonment.

323 It is in your interests and in the interests of the community that you have the opportunity for supervised release when you are ultimately released from prison. I will therefore order that you be eligible for parole.

324 In light of your time spent in custody, your sentence will be ordered to have commenced on 19 January 2023. That means that you will be eligible for release on parole on 19 January 2033.

Brodie Palmer

325 I turn to you Mr Palmer.

326 I must sentence you for three offences: aggravated assault occasioning bodily harm, stealing and murder.

327 In addition to the submissions made on your behalf, Mr Palmer, I have received, and considered, 10 character references written on your behalf. I have also received a pre-sentence report and a psychological report from Dr Kathryn Riordan.

Palmer – Personal circumstances

328 Mr Palmer, you are now 30 years old and were 27 at the time of the offences.

329 You were born in Western Australia and are an only child. You were raised by both parents, who remain married today, and with whom you maintain a close relationship. You appear to have had a positive childhood, were physically active and engaged in several sports up until your late teenage years.

330 You reached all physical, social and emotional developmental milestones without suffering any trauma or adverse childhood experiences.

331 You have had four intimate relationships. The most recent was with your ex-wife, Ms Powell, with whom you have a son, who is now 4 years old. Ms Powell also has two older children from previous relationships, in relation to whom you took on the role of stepfather.

332 Your relationship with Ms Powell was marred with substance abuse, on both sides, and verbal disagreements. That relationship also included a physical altercation in September 2022, following which you were charged with one count of aggravated common assault. As I said earlier, you pleaded guilty to that offence on 6 October 2022, and as a result were on a community based order at the time of these offences.

333 The Department of Communities were involved with your family at this time. Your stepdaughters were removed from the care of your ex-wife and now reside with their fathers. Your son was also removed and is in the full-time care of your parents, who have facilitated regular visits with you in prison.

334 You completed schooling until year 10. Following which you completed a Cert IV in mechanical engineering at Thornlie TAFE. You hold a trade qualification as a diesel mechanic and were employed in that trade, including in FIFO work, until 2021. You ceased employment due to family issues.

335 You are in good health. Aside from an injury to your finger sustained in 2022, you have no other physical injuries or impairments. You have no diagnosed mental illness.

336 You do, however, have a history of drug abuse. You commenced smoking methylamphetamine when you were 18 years old and also used cannabis, steroids and consumed alcohol on a regular basis. At around 20 years of age you also began using ecstasy recreationally.

337 Once you ceased employment, your use of methylamphetamine increased as did your consumption of alcohol. You used up to a gram of methylamphetamine a week, which you were using around the time of your offending in October 2022. In addition, you estimate you consumed one bottle of spirits a fortnight during your period of unemployment. While you were drinking on the day of the offences, and had taken tramadol as pain relief for the injury to your finger, you had not used methylamphetamine or cannabis on the day.

338 Turning now to your criminal record, Mr Palmer.

339 Your criminal record is relatively limited and includes a drug possession offence and the offence of aggravated common assault against your ex-wife, to which I have previously referred. While you do not have a long criminal record, the evidence reveals that, in some respects, that was a matter of luck. As you admitted in your evidence, as you had to, at the time of this offending, and for a significant period prior, you were actively involved in drug dealing, producing significant quantities of cannabis for distribution into the community.

340 For these reasons, you do not come to be sentenced as a person of prior good character.

341 You have many family members and friends who remain supportive of you. As I have said, I have received ten written references from your parents, your grandparents, your ex-wife and a number of friends. All of those references describe you as a man of integrity and loyalty and a man of good standing who is 'selfless', 'responsible',

'considerate', 'kind', 'compassionate' and a 'devoted father and family man'.

342 I have great difficulty giving any weight to those references Mr Palmer. Not a single reference accepts your responsibility for the serious offences for which you have been convicted. A number of them refer to the verdict of the jury, but appear to be updates of previous letters, referring to 'charges' and 'allegations'. They do not accept the verdicts and indeed say that you are 'not capable' of committing the crimes and that they are 'at a loss to understand how [the jury] came to [their] decision based on the information put forward in court'. I highly doubt that many of the authors even know what evidence was tendered in court. They maintain your innocence, just as you do, in complete denial of the facts.

343 That includes your parents, Mr Palmer. What am I to make of a reference from them that protests your innocence, fails to mention that you were using up to a gram of methylamphetamine a week while apparently being a committed family man and leaves out the fact that you were running a successful drug dealing operation from their own property?

344 I have no doubt, Mr Palmer, as all of the references attest, that you love your son and you want what is best for him. That is obviously to your credit. But that is the bare minimum required of any parent. It does not provide substantial mitigation of your sentence for the murder of someone else's son, whose parents loved him and wanted the best for him.

345 I have a similar difficulty with the pre-sentence and psychological report prepared for the purposes of sentencing. I have carefully considered those reports, but they suffer from the same degree of denial and unreality as the character references. Dr Riordan can only go on, for the most part, the history and the narrative that you provide. And while it is clear that, even based on your own account, she found aspects of your stance incredulous, the opinions that she is able to express are limited by the reliability of the information she is given. Indeed, as your counsel properly submitted, there are many things in the report that are appropriately adverse to you, and not surprisingly, he did not place any great reliance on the report. Consistent with that submission, Mr Palmer, neither do I.

Palmer – Mitigating factors

346 Turning to your mitigating factors, Mr Palmer, other than the credit for the admirable conduct of the trial and the conditions in prison on remand, which you share with the other offenders, there really are none.

347 You do not have the benefit of a plea of guilty, you do not have the benefit of youth and you do not have the benefit of good character.

348 While there are expressions of remorse recorded in Dr Riordan's report they simply cannot be squared with your refusal to acknowledge any meaningful responsibility for the offences for which you have been convicted. Dr Riordan, in particular, reported that you had 'expressed considerable regret, remorse and a sense of disbelief that [you were] involved in an incident that resulted in the death of the victim'. That is not a genuine expression of remorse. Saying that you were 'involved in an incident that resulted in the death of' a person, is a long way from an acknowledgment that you had a legal or moral responsibility for that death.

349 Accordingly, you do not have the benefit of remorse.

350 Nor, unlike, Mr Mackenzie and Ms Gilmore, is there anything in your childhood or upbringing that might serve to explain or mitigate your offending.

351 Your counsel submitted that I should find, on the balance of probabilities, that, when you arrived on the scene on the TAFE side of the creek during the incident that you did tell Mr Brearley to stop and you moved him away. I do find that you told him to stop, and that you did so very shortly after you arrived on the scene. And I have made that finding. I have also found that Mr Brearley went further in his violence and rage than even you expected Mr Palmer.

352 Whether those matters can be regarded as mitigatory, or whether they simply demonstrate that your culpability and that the degree of your culpability for Cassius Turvey's death is less than that of Mr Brearley, I take them into account. They certainly make clear that, while you are both guilty of murder, Mr Brearley's culpability and criminality is greater than yours.

353 Your counsel also submitted that those matters also demonstrated 'some small flicker of decency and restraint'. I accept that they do. But a

small flicker of decency and restraint, in the context of the murder of a child, does not weigh heavily on the scales of the discretion that I must exercise.

Palmer – Sentence

354 In sentencing you for the three offences I have again taken into account all of the required sentencing considerations.

355 In relation to count 4, in my assessment, your culpability is the same as that of Mr Forth. He was more vocal in confronting the kids and encouraging Mr Brearley at the time, but you have none of the mitigating factors available to him.

356 For those reasons, in my view, the appropriate sentence for you on count 4 is also one of 2 years and 6 months imprisonment.

357 Likewise I would impose the same sentence for count 5, the stealing offence, that I imposed on Mr Forth. He is marginally more responsible for the offence, as the principal offender, but also had the benefit of mitigation, including for the plea of guilty. The appropriate sentence for you on count 5 is 5 months imprisonment.

358 Turning to the sentence for murder.

359 There are two issues for me to determine, Mr Palmer. First, whether I should apply the exception to the mandatory term of life imprisonment and, secondly, to set a minimum non-parole period.

360 In relation to the first matter, there can be no suggestion that, given the circumstances of the offence and your personal circumstances, it would be unjust to impose a sentence of life imprisonment.

361 For the offence of murder, I will therefore sentence you to life imprisonment.

362 I must then determine a minimum period before you may be eligible for release on parole, of at least 10 years.

363 Before I turn to that period, I should make this clear, Mr Palmer, because there is often some confusion in the community about what a minimum non-parole period for a life sentence actually means. It does not mean that you will be released after that period and it is not the effective length of the sentence.

364 The sentence is life. And that means what it says. It is a sentence for your life, which you will serve unless the Governor-in-Council releases you following a report from the Prisoner's Review Board. The minimum non-parole period simply identifies the period after which the Governor is first permitted to do so. Whether you are ever released on parole after the minimum non-parole period is a matter for the Governor-in-Council. The fact remains that the sentence is one of life imprisonment.

365 A non-parole period is the minimum period of imprisonment that justice requires an offender to serve and must be determine by reference to all the relevant sentence considerations, including punishment, retribution, personal deterrence and general deterrence. And of course, I must place your offence somewhere in the scale of seriousness for sentences and minimum non-parole periods imposed for offences of murder generally.

366 That might sound like a strange thing to have to do, because obviously all murders are serious. But that is what the law requires me to do, by looking at the circumstances of this case, and your culpability, in light of other cases to determine where it fits in the scale of seriousness. One of the ways to understand that is by looking at the difference between you and Mr Brearley. As I will come to, Mr Brearley is more culpable than you, and so his minimum non-parole period will be greater than yours. And in the same way, Mr Brearley's minimum non-parole period will be less than some other people convicted of murder because they have factors that are not present in his case.

367 I have already referred to a number of the aggravating factors that make the murder of Cassius Turvey a very serious case of murder. I won't repeat them in detail. They include the fact that Cassius Turvey was a vulnerable child, the fact that there were multiple offenders, the fact that this was part of vigilante activity carried out against completely innocent kids, the use of a weapon, the impact on the community, including because of the racially charged language used during the incident and the steps taken to conceal the crime. All of those aggravating factors apply to you.

368 However, as I have also found, while he had the required intention for murder, Mr Brearley did not intend to kill Cassius Turvey. And you did not intend to kill him either. So that makes the offence less serious

than if those matters were present and you both went out intending to kill someone.

369 Indeed, as I have found, Mr Brearley went further in his violence than even you expected Mr Palmer. And, of course, you were not the person who actually killed Cassius Turvey, but are responsible because of your participation in the unlawful purpose you shared in common with Mr Brearley. So you are equally responsible, but not equally culpable.

370 Taking into account all relevant sentencing considerations, and bearing in mind the purpose of a minimum non-parole period, in my view the appropriate minimum period is one of 18 years.

371 For the offence of murder I will therefore sentence you to life imprisonment with a minimum non-parole period of 18 years.

372 As a matter of law, the other sentences must be served concurrently with that life sentence and your sentence which will be ordered to have commenced on 19 January 2023. That means that you will be eligible for release on parole on 19 January 2041.

Jack Brearley

373 Finally turning to you Mr Brearley.

374 You have been convicted of five offences: two counts of aggravated unlawful detention, one count of unlawful assault occasioning bodily harm, one count of aggravated unlawful assault occasioning bodily harm and the offence of murder.

375 In addition to the submissions from your counsel, I have also received a bundle of material on your behalf, including a letter from you and another one from your father. I have also received a pre-sentence report and a psychological report from Ms Catherine Korda. I have read and considered all of the material provided to me.

Brearley – Personal circumstances

376 Mr Brearley, you are now 24 years old, and were 21 at the time of the offences.

377 You were born in Kalamunda and are the eldest of three brothers. You describe your early childhood being raised by both of your parents as generally positive. You enjoyed motorcross as a child and were

engaged in the sport at a national level between the ages of 8 and 15 years.

378 This remained the case until your parents' separation when you were 15 years old. It seems, at least from your perspective, that you were abandoned by your mother who left without warning. You have limited contact with your mother and the relationship is strained. Due to your father working away your grandfather looked after you and your brother.

379 You have a close relationship with your father. As a child you appear to have had some strains in your relationship with your father as a result misbehaviour and conduct issues. Your relationship with him improved over time and he remains supportive of you.

380 Your offending has caused significant strain on your family. Your father and stepmother have since separated and the mental health of you brother has declined. Since being in prison, the health of your grandfather, with whom you have a close relationship, has deteriorated and has been unable to visit you in custody due to health concerns.

381 You were in a long-term intimate relationship with Ms Gilmore, which ended after you were remanded in custody. You commenced living together when you were 19 years old. Your relationship with Ms Gilmore was I have already observed volatile and marred by arguments, drug use and trust and control issues.

382 You completed high school to year 10. Upon leaving high school you completed a Certificate III in housing construction. You have worked in labouring jobs, including as a bricklayer, paver and concreter, one of which as for Mr Forth's father.

383 Since being in custody, you have completed year 11 and 12.

384 You commenced smoking cannabis at around 16 years of age, and in your words were addicted to it, smoking it on a daily basis. You also describe drinking alcohol regularly from 19 or 20 years of age and using Xanax on casual basis from about 17 years, which escalated to problematic levels for a period of time. You also acknowledge your recreational drug use, including ecstasy, cocaine, hallucinogens, nitrous oxide bulbs and methylamphetamine. You admit that while you did not particularly like the effects of methylamphetamine you used twice while on bail, just prior to being remanded in custody.

385 You are generally of good health, although you have a residual back injury as a result of a motorcross accident in your mid-teens which causes ongoing issues for you. You report no concerns with mental health other than feeling generally anxious about these proceedings.

386 Since being in custody you have engaged with Psychological Health Services on multiple occasions due to risk assessment, support and monitoring.

387 Turning to your criminal record, Mr Brearley. You too have a limited criminal record. Your record as an adult includes convictions for drug possession, possession of prohibited weapons, property offences and driving offences. Like Mr Palmer, however, your criminal record does not reveal the extensive period over which you were selling cannabis as part of Mr Palmer's drug dealing operation.

388 Your criminal record, while not aggravating, is such that you do not come to be sentenced as a person of prior good character

389 Both your pre-sentence report and Ms Korda's report that you maintain your innocence and, in light of your plans to appeal, you would not discuss the details of the murder offence or your post-incident conduct. You also denied that you were involved in or witnessed the assault of [TB]. In light of my findings as to your offending, that was, I find, a lie, as is you claim of innocence for Cassius Turvey's murder. Given that as with the report in relation to Mr Palmer, the author is largely dependent upon the reliability of information provided by you. The fact that you have maintained your false denial of offending is such that I can place no reliance on what is recorded in Ms Korda's report. For example, a risk assessment using the Violence Risk Scale rated your risk for violent recidivism as Level III (Average Risk). It is apparent that this assessment relies upon information you have provided and your 'expressed sentiments'. Given that I cannot accept the reliability of your self-report, I can give no weight to that assessment.

390 You have completed a number of courses while in custody, as evidenced by the copies of certificates provided to me.

Brearley – Mitigating factors

391 Apart from the credit for the conduct of the trial and the conditions on remand, the only mitigating factor of any weight in your case is your

age. Some very limited weight might be afforded to the fact that you have taken up some educational opportunities while in custody.

392 You do not have the benefit of prior good character.

393 And whether you have any prospect of rehabilitation remains to be seen. Much will depend upon whether you are able to finally acknowledge what it is that you have done and the suffering that you have caused, and sincerely resolve to change. As matters currently stand, I cannot conclude that you have reasonable prospects of rehabilitation.

394 Nor do you have the benefit of any pleas of guilty. While you offered to plead guilty to the offence of manslaughter instead of murder, I accept the submission of the State that your offer to do so cannot be regarded as affording you any mitigation. On the contrary, it is apparent from the offer you made, that it was made on the basis of the same false factual basis that you maintained at trial. The fact that you offered to tell the same lies for the State as part of its case that you ultimately told as part of your case, simply serves to demonstrate your complete lack of remorse.

395 In relation to the matter of remorse, I find that you have no remorse whatsoever. Your letter to me says that you have an 'immense sense of remorse'. Those words are hollow. It is telling, for example, that you express regret for your 'actions and behaviours' but nowhere in your letter do you say what those actions were or even mention the name Cassius Turvey. It is not possible to be remorseful for something that you don't accept that you have done. You cannot make amends when you don't acknowledge the pain that you have caused. You cannot be remorseful when, in an effort to avoid responsibility for what you have done, you seek to frame an innocent man and, when that does not work, you give false evidence that your co-accused was in fact the killer. And you cannot be remorseful when, right up until the bitter end, you falsely accuse the completely innocent boy that you killed of attacking you with a knife.

396 As I have said, the only mitigating factor of any weight in your case is your age. You were a young man at the time and you are a young man now. As I have said, time will tell if you are able to be rehabilitated; but as with any young person who has committed a horrendous crime, we must never give up hope of genuine rehabilitation, and even redemption. The law demands it of us.

I therefore must, and I do, recognise that your youth is a significant mitigating factor.

Brearley – Sentence

397 Taking into account all relevant considerations, I have determined that the appropriate sentences in your case Mr Brearley are as follows.

398 In relation to count 1, the unlawful detention of [SM], while you were not the person who forced [SM] into your car, the offending as a whole was initiated by you and Ms Gilmore. Your culpability is the same as hers. On that basis, in my view, the appropriate sentence on count 1 for you is 1 year and 3 months imprisonment.

399 Similarly, in relation to count 2, the assault on [BT], again while it was Mr Mackenzie who wielded the knife, given that the assault occurred during a broader attack, I consider that you are all equally responsible Indeed, your role as the ringleader is such that, in my view, the appropriate sentence for you on count 2 is 2 years and 3 months imprisonment.

400 In relation count 3, the unlawful detention of [BT], your culpability is the greatest as, in my assessment, you were clearly the ringleader forcing [BT] towards the car. While your culpability marginally greater than Mr Forth's, your age affords you greater mitigation. In my view, the appropriate sentence for you on that count is the same as that for Mr Forth, namely 2 years imprisonment.

401 In relation to count 4, the aggravated assault occasioning bodily harm of [TB], in my view, your culpability is the greatest of all the offenders. For those reasons, in my view, the appropriate sentence for you on count 4 is one of 2 years and 9 months imprisonment.

402 In relation to the offence of murder, as with Mr Palmer, there can be no suggestion that, given the circumstances of the offence and your personal circumstances, that it would be unjust to impose a sentence of life imprisonment.

403 For the offence of murder I will therefore sentence you to life imprisonment.

404 In relation to the minimum non-parole period, all of the aggravating factors I identified in relation to Mr Palmer apply equally to you: Cassius Turvey was a vulnerable child, there were multiple offenders, you were engaged in vigilante activity, you used a dangerous

weapon, you have profoundly and irreversibly impacted your victims and, indeed, the whole community, and you attempted to conceal your crime.

405 You have those factors in common with Mr Palmer. But your culpability goes further, Mr Brearley. You were the person who killed Cassius Turvey in that fit of range and brutality. You went onto that field looking for someone, anyone, to inflict serious injury on and you carried out that intention with unpitying violence. While you did not intend to kill Cassius Turvey, your attack was persistent and sustained and only stopped by the arrival of Mr Palmer. You did not even have a small flicker of decency and restraint.

406 And your conduct after the offence was more egregious than the others. You revelled in what you had done, boasting of it to Ms McGowan and when you were caught tried to frame an innocent man for murder, you lied about your co-offender carrying out the killing and you even lied about your victim attacking you.

407 Those additional matters substantially increase your culpability over that of Mr Palmer and must result in a longer minimum non-parole period. It is only your youth, and the hope that comes with it that at some time in the future you will change, that prevents that minimum non-parole period from being even greater.

408 Taking all of those matters into account, in my view the appropriate minimum non-parole period is one of 22 years.

409 For the offence of murder I will therefore sentence you to life imprisonment with a minimum non-parole period of 22 years.

410 As a matter of law, the other sentences must be served concurrently with that life sentence and your sentence which will be ordered to have commenced on 23 October 2022. That means that you will be eligible for release on parole on 23 October 2044.

411 Whether you are released after that time is for others to decide.

Sentences imposed

Jack Steven James Brearley

412 Jack Steven James Brearley, I sentence you as follows:

1. On count 1, aggravated unlawful detention, I sentence you to 1 year and 3 months imprisonment.

2. On count 2, assault occasioning bodily harm, I sentence you to 2 years and 3 months imprisonment.

3. On count 3, aggravated unlawful detention, I sentence you to 2 years imprisonment.

4. On count 4, aggravated assault occasioning bodily harm, I sentence you to 2 years and 9 months imprisonment.

5. On count 6, murder, I sentence you to life imprisonment with a minimum non-parole period of 22 years.

6. The sentences on counts 1, 2, 3 and 4 are to be served concurrently with the life sentence on count 6, which is ordered to have begun on 23 October 2022.

7. The effect of the sentence is that you will be eligible for release on parole on 23 October 2044.

Brodie Lee Palmer

413 Brodie Lee Palmer, I sentence you as follows:

1. On count 4, aggravated assault occasioning bodily harm, I sentence you to 2 years and 6 months imprisonment.

2. On count 5, stealing, I sentence you to 5 months imprisonment.

3. On count 6, murder, I sentence you to life imprisonment with a minimum non-parole period of 18 years.

4. The sentences on counts 4 and 5 are to be served concurrently with the life sentence on count 6, which is ordered to have begun on 19 January 2023.

5. The effect of the sentence is that you will be eligible for release on parole on 19 January 2041.

Mitchell Colin Forth

414 Mitchell Colin Forth, I sentence you as follows:

1. On count 1, aggravated unlawful detention, I sentence you to 1 year of imprisonment.

2. On count 2, assault occasioning bodily harm, I sentence you to 2 years and 3 months imprisonment.

3. On count 3, aggravated unlawful detention, I sentence you to 2 years imprisonment.

4. On count 4, aggravated assault occasioning bodily harm, I sentence you to 2 years and 6 months imprisonment.

5. On count 5, stealing, I sentence you to 5 months imprisonment.

6. On count 6, manslaughter, I sentence you to 9 years imprisonment, reduced from 10 years for reasons of totality.

7. I order that the sentence for count 1 and count 3 be served cumulatively upon the sentence for count 6 and upon each other. All other sentences will be ordered to be served concurrently with count 6, which is ordered to have begun on 19 January 2023.

8. That results in a total effective sentence of 12 years imprisonment.

9. I order that you be eligible for parole.

10. The effect of the sentence is that you will be eligible for release on parole on 19 January 2033.

Aleesha Louise Gilmore

415 Aleesha Louise Gilmore, I sentence you as follows:

1. On count 1, aggravated unlawful detention, I sentence you to 1 year and 3 months imprisonment.

2. On count 3, aggravated unlawful detention, I sentence you to 1 year of imprisonment.

3. On count 4, aggravated assault occasioning bodily harm, I sentence you to 1 year and 3 months imprisonment, which I have reduced from 2 years and 6 months to take into account the 891 days that you have already spent in custody.

4. I order that those terms be conditionally suspended under pt 12 of the *Sentencing Act 1995* (WA) for a period of 24 months, subject to:

(a) the standard obligations in s 83 of the *Sentencing Act*;

(b) a programme requirement under s 84A of the *Sentencing Act*;

(c) a supervision requirement under s 84B of the *Sentencing Act*; and

(d) a curfew requirement under s 84C of the *Sentencing Act*. The term of the curfew requirement is 6 months. It is a requirement of the curfew that you must remain at any location specified by a Community Corrections Officer for specified periods ordered by that Officer, and you must submit to surveillance or monitoring as ordered by a Community Corrections Officer.

Ethan Robert Mackenzie

416 Ethan Robert Mackenzie, I sentence you as follows:

1. On count 1, aggravated unlawful detention, I sentence you to 6 months imprisonment, reduced from 1 year for reasons of totality.

2. On count 2, assault occasioning bodily harm, I sentence you to 2 years imprisonment.

3. On count 3, aggravated unlawful detention, I sentence you to 1 year and 9 months imprisonment.

4. I order that the sentence for count 1 be served cumulatively upon the sentence for count 2. The sentence on count 3 will be ordered to be served concurrently with count 2, which is ordered to have begun on 25 August 2024.

5. That results in a total effective sentence of 2 years and 6 months imprisonment.

6. I order that you be eligible for parole.

7. The effect of the sentence is that you will be eligible for release on parole on 25 November 2025.