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THE CHILDREN'S COURT OF

WESTERN AUSTRALIA

PE 3570-3571 of 2020
PE 3574 of 2020
PE 4768 of 2020
PE 4770 of 2020
PE 4966 of 2020
PE 41-42 of 2021
PE 941 of 2021
PE 1270-1271 of 2021
PE 1273-1274 of 2021
PE 1408 of 2021
PE 2920 of 2021

THE STATE OF WESTERN AUSTRALIA

and

DR

QUAIL P

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 3 SEPTEMBER 2021, AT 2.15 PM

MR P. CAVAGIN represented the State of Western Australia.

MS N. ANDERSON appeared for Youth Justice Services.

MR M. FORT appeared for the accused.

THIS PROCEEDING WAS CONDUCTED BY TELEPHONE CONFERENCE

Associate: All rise. Please be seated. Calling the State of Western Australia v DR. DR, is that name?

DR, MS: Yes.

HIS HONOUR: All right. DR, you're here today; good. Where's your mum? Is she coming in today? Mr Fort?

FORT, MR: Your Honour, I've been trying to get in contact with her. I just had a phone call from her and so she's just on the phone. I can ask her to be joined by phone, if you like.

HIS HONOUR: Is she on her way, is she? Is she on her way?

FORT, MR: She wasn't aware of it. I tried calling last night. I spoke to her sister.

HIS HONOUR: She was here yesterday. Wasn't she in the back of the court yesterday? Who was that in the back of the court?

FORT, MR: No, she wasn't here yesterday.

HIS HONOUR: All right. So she says she's not aware of it. Is she on her way?

FORT, MR: No, but I can get her on the phone because she just called me on the phone.

HIS HONOUR: No, I don't want her on your mobile phone from the bar table.

FORT, MR: I'm sorry.

HIS HONOUR: It's an urgent review. We will proceed without her mum being present, insofar as it's possible. Now, so since yesterday, Mr Fort, I see you've been hard at work. I've received some submissions just a short while ago, but I've had the chance of reading them. I've got a letter from ALS; it's from the youth engagement program. So that's new material really that was not before the magistrate. And then, I've now read the transcript, which you handed up yesterday, of the sentencing before Magistrate Hogan. There are the reports which have been prepared at that time.

There is an update of the court report of 16 August, 15 April, 5 February. There's also a breach report on 15 April and then the neuropsych report, on 1 May. I've had the report of 1 June. And I had a look at DR 's record. And a serious matter being that attempted aggravated armed robbery going back to August '20. I have read the facts, but I won't be reading in the transcript, given that this is a review, and it was a little confusing from the transcript. Anything else I should have, counsel?

FORT, MR: No, your Honour.

HIS HONOUR: All right. Although it's a review, it's a review of sentence. Mr Cavagin, if I could hear the facts because, as I say, it was a little bit confusing to try to track it through the transcript.

CAVAGIN, MR: Yes, your Honour.

HIS HONOUR: With all the different charge numbers there were.

CAVAGIN, MR: If we can go down the list, your Honour, starting off at the first charge on the list is Perth charge 3570 and that occurred on 24 August 2020, your Honour. The facts in relation to that - this is a steal motor vehicle, your Honour, that's the - so 342, to give a background on 24 August 2020.

HIS HONOUR: This is a year ago. This is - yes, go on.

CAVAGIN, MR: Yes, your Honour. Is that DR and four others were around Tarocash store in Lakeside Joondalup Shopping Centre, 420 Joondalup Drive. Now, some of the girls have entered into a conversation with an assistant manager who was the only employee on at the store at that particular time and has been distracted.

Somebody has gone into the rear of the store, located the victim's handbag and taken some keys there, which included the vehicle keys that specifically respond - sorry, refer to the charge 3570. So once they've got the keys from there, a short time after that, DR and the four others were seen around the victim's personal vehicle in the shopping centre carpark and then they've utilised those keys from the handbag, and they've driven away in the car taken from that burglary at the Tarocash shop.

3571, your Honour, which is the threats. Now, that's 4.30 pm on 23 August 2020. DR and others were at McDonalds Mandurah Forum and that's 350 Pinjarra Road.

They've approached two 16 year old girls that were sat in the booth within the restaurant and gathered, crowded around them in an attempt to intimidate them. None of the parties were known to each other at the time. DR has yelled at the victims and abused them, demanding money and pretending to punch the victims.

They were threatened during the course of the dispute and threats. The victims were threatened to be stabbed during this incident. Now, it sounds like this has gone on for approximately 40 minutes time and that timeframe can be guided by the fact that the incident was captured on CCTV, your Honour. So that refers to 3571. Also on the same day is 3574, which is the attempted armed robbery, your Honour.

Now, the victim in this one, obviously it's a previous re-sentence and this was perhaps highlighted as one that was perhaps the most serious of the offences before your Honour today. The victim (indistinct) was 44 at the time and was 160 centimetres tall. At 5.30 pm on 23 August, DR and the others were at Woolworths Petrol Station, Pinjarra Road in Mandurah. They've approached the victim who had just gone back to a vehicle, which was a Honda CRV station wagon. She had just paid for her fuel at the petrol station.

DR has prevented the victim from shutting the car door and initially requested the victim take them to a bus station, to which the victim has obviously declined. At one point, one of them has sat in the victim's driver's seat. DR has then pointed a 15 centimetre blade, a flick knife, at the victim and threatened to kill her if she didn't do as they say. The others with DR at the time have reiterated those threats to kill the victim and demanded the keys to the victim's vehicle. She has refused to hand over the keys, due to the threats made and has obviously abandoned her vehicle. One can only assume because of the fear that she has felt at the time at the service station.

HIS HONOUR: And so she was 11 then, when that offence is committed, I think; is that right?

CAVAGIN, MR: Sorry.

HIS HONOUR: DR was 11, yes.

CAVAGIN, MR: Sorry, I thought you were talking about the complainant. And DR at the time, 23 August - yes, your Honour, she would have been 11. Yes, your Honour.

HIS HONOUR: And how old were the others with her, do you know? If it tells you in your facts.

CAVAGIN, MR: That's not within the contents of the brief and I don't believe it's in the transcript, which I've gone through and also read through the other briefs and there's no indication of any co-offender facts. There is some (indistinct) now, your Honour, which I could, if your Honour - - -

HIS HONOUR: No, no, that's all right. Go on; continue.

CAVAGIN, MR: I did try and get that information at the time. The officer was unavailable, your Honour. The knife has been pointed. She has essentially left the area on foot. DR has chased the victim but unable to reach her prior to getting into a place of safety. Again, that incident was also captured on the CCTV. That deals with the incidents on 23 August.

HIS HONOUR: All right. Before we go on from - because I just want to keep track of things as we go. Mr Fort, do you know how old the people she was in company with were?

FORT, MR: I think there was one co-accused, KM, I believe it was.

HIS HONOUR: Sorry?

FORT, MR: KM, I believe it was.

HIS HONOUR: Yes, KM, yes.

FORT, MR: And that was dealt with, I believe late last year or earlier this year. I believe that they were placed either on a - - -

HIS HONOUR: I'm not interested in that. How old?

FORT, MR: No, no.

HIS HONOUR: How old? I will get to parity later.

FORT, MR: I don't know their age but they're certainly older. They were a number of years older, your Honour.

HIS HONOUR: Were the kids you were with older than you or not?

DR, MS: Yes.

HIS HONOUR: All right, thank you.

FORT, MR: They were a number of years older.

HIS HONOUR: All right, thank you for that. And we will get to parity later but if they're much older, parity is probably not so relevant. And again, before we move to the next lot of facts - so that goes back to 23 August 2020. The guilty plea is a year later; why is that? Or almost a year later. Does anyone know?

CAVAGIN, MR: I think there was a number of negotiations that have taken place in relation to this. I wasn't the file manager going through the notes. This (indistinct) correspondence in relation to submissions made, pleas of guilty for drops.

HIS HONOUR: Yes.

CAVAGIN, MR: But other than negotiations, I'm unaware of any other (indistinct). My learned friend has given mention to a KM. Now, KM's date of birth is [REDACTED]. So at the time - we're talking about the same incident, she would have been coming up for 15 at the time, your Honour.

HIS HONOUR: And again, Mr Fort, do you know why the plea is delayed until, well, almost a year?

FORT, MR: They were serious charges that were brought when she had no record at all before this court, your Honour.

HIS HONOUR: Yes.

FORT, MR: Naturally, we sought just to plead out from an early stage but then there was matters that weren't clear and we made a plea offer to the State early on. Eventually, one matter was refused. That went to trial and was subsequently discontinued. And after that point, pleas were entered. So it was a rather long process. One matter went to trial, but it was discontinued and then some other matters were discontinued as well and eventually these were
- - -

HIS HONOUR: But this one didn't go to trial. This was a guilty plea.

FORT, MR: This was a guilty plea. Yes, that's right. But the guilty plea wasn't entered straight away. It was attempted to be resolved by negotiations initially.

HIS HONOUR: Yes, but a one-year delay is highly unsatisfactory for a 12 year old girl. Anyway, let's keep going with the facts.

CAVAGIN, MR: If I could assist any further with that, your Honour.

HIS HONOUR: Yes.

CAVAGIN, MR: So there was - other than negotiations, it doesn't appear, going through the history, which I went through last night, to be any obvious delay. The first appearance that we have on our records is 21 January and then the 29th, there has been some pleas to some. And then, from there, it has gone off to some call overs and that was - we're now gone forward to end of April where it has gone off to a callover and trial was listed in August for one of the charges not before you today, your Honour. And all others were then put off for mention, I believe to go with those at trial, your Honour. So again, so we're now - and then we have a warrant issue for that, and we delayed it for a couple of weeks.

HIS HONOUR: Keep going.

CAVAGIN, MR: With the facts or the history, your Honour?

HIS HONOUR: No, just with the facts.

CAVAGIN, MR: Okay. The next ones, your Honour, would be 4768 and 4700. They were the ones which, on the sentencing day, were for a breach. Then the facts in relation to 4768 of 2020, that was on 1 December 2020. At 5.30 pm, she and two others - and that's AM and DS - regarding the Garden City Shopping Centre in Booragoon. They walked around the shopping centre before one of them has entered Silk Laser Clinic at shop 152.

The clinic was closed with a security (indistinct) pulled across. They walked around the counter and stole the victim's handbag, containing the keys to the victim's Hyundai Elantra, IEQK 006. They walked to the carpark before all three rummaged through the victim's handbag, locating her car keys and stealing the vehicle parked in the shopping centre. It was captured on CCTV at the time. 6 December, she was arrested from police. AM, she has just mentioned in that. Her date of birth is [REDACTED].

HIS HONOUR: Yes, I know AM. So there won't be much parity issue there with an 11 year old with no record.

CAVAGIN, MR: Moving now to 4966, your Honour.

HIS HONOUR: Yes.

CAVAGIN, MR: And that's, again, another (indistinct) notes for you. Called 6 pm, 3 December. Again, with AM and two others. The group, they were at Lakeside Shopping Centre. They've walked into Clear Skincare Clinic before going in and walked around the shop when they were approached by a staff member who asked them to leave. They leave the shopping centre, walked out of the centre before returning a few minutes later.

They go back into the store, whilst one of them remained outside as a lookout. They stole the victim's purse, which contained her car keys, which was a Mazda SUV, IERE 363. And the vehicle has subsequently been stolen. 5 December, that vehicle was recovered after a short pursuit, and she was arrested in relation to that on 16 December. Then move on to 421 and 422, your Honour.

HIS HONOUR: All right, so these are January '21.

CAVAGIN, MR: These are Perth charges 2021.

HIS HONOUR: Yes.

CAVAGIN, MR: Yes. But they relate to end of December offences.

HIS HONOUR: Yes.

CAVAGIN, MR: First of - charge 421, should I say, which is the aggravated burglary. Sorry, this is beginning of 2021, 5 January 2021, 4.40 pm. At the Cockburn Gateway Shopping Centre in Beeliar Drive, Success, in company with three others at the time of the offence. One of them has gained entry to the rear staff room by speaking with the victim whilst the others stayed at the front of the store.

The victim has allegedly returned to the staffroom and realised that her car keys have been stolen from a counter and DR, she had allowed inside, was no longer there. She immediately went to the carpark to inspect her vehicle and discovered that that vehicle, the Hyundai i30, had been stolen. On 6 January 2020 - so some seven hours later - this is 1.05, she's arrested in the stolen vehicle after another incident - a short police chase.

A responsible adult was unable to be found, hence she wasn't interviewed at the time. Also, the 42 charge that

goes with that is the stolen - is the vehicle charge. So we now move on to 941, your Honour. And that's a steal motor vehicle. On 7 March 2021, the victim's white Mitsubishi ASX was stolen from the carpark at the Midland Gate Shopping Centre. That was on the afternoon of 7 March. At 11.07 pm (indistinct) captured on CCTV at the Puma Dayton in Repton Street, Dayton.

The CCTV captured DR getting out of the stolen vehicle and return to it a short time later before driving off. She was sat in the rear passenger side. 11.40 pm, 7 March, it was captured on CCTV in Henley Brook BP in Gngangara Road, where CCTV captured it parked alongside one of the pumps. She got out of the rear passenger side again. Just under 31 litres of petrol was put into the vehicle and she got back into the car and drove away. There was a police pursuit on (indistinct) Street and forgive the pronunciation. I think it's called Kabaldi. She has then run away from the vehicle.

HIS HONOUR: And that offending from March occurs a month after she's put on a YCBO in February.

CAVAGIN, MR: Yes, your Honour; 5 February, the YCBO.

HIS HONOUR: Yes, and what she was put on the YCBO for was December 2020 offences, even though, as we know now, there were plenty of others still floating around, which have now been dealt with.

CAVAGIN, MR: Yes, an aggravated burglary and a steal motor vehicle, on top of other stealing charges.

HIS HONOUR: Yes, all right. So she's on the YCBO but you keep going.

CAVAGIN, MR: Yes. So we're now up to 1270, your Honour, which is another aggravated burglary. This was another one that's a shopping centre. Is the Midland Gate Shopping Centre. And is between 2 pm and 4.30 pm on 28 March 2021. They've entered the yd store. Or I don't know if it's pronounced yard store, where they've entered the rear staff office while the staff were busy dealing with customers. They've located the victim's purse, containing the vehicle keys and left the store without being detected at that point in time.

They entered the underground carpark of the shopping centre, pressed the vehicle fob a number of times until obviously the vehicle identified itself, being a red Holden Barina, 1DRB 844. They've gone on and left the centre.

This was all again captured on CCTV. AT 4.30 pm, they were seen at DFO Factory Outlet Store where they've abandoned the vehicle in the carpark and gone into the DFO store where they were seen wandering around the DFO on the CCTV. Again, they were arrested in relation to that on 3 April.

HIS HONOUR: All right. And so, all these March offences, when there's a spree, obviously she's still on bail for all the other matters.

CAVAGIN, MR: Yes.

HIS HONOUR: But it's also the YCBO, which is now not effective - in breach of.

CAVAGIN, MR: Yes, yes, your Honour.

HIS HONOUR: Keep going.

CAVAGIN, MR: The 1721, I just read the facts for your Honour. 1723, which is between 3 pm and 4.30 pm on the day after now, 29 March. They've attended Westfield Shopping Centre in Booragoon. Entered the Cotton On store. They've gone to the rear staff room, which the staff were busy dealing with customers. They found again the victim's handbags, containing the vehicle keys. Left the store, entered the underground carpark.

Again, done the fob numerous times and this time they found a Subaru G 5X, 1GSG 553. Again, they've got in the vehicle and left and again this was all captured on the CCTV and also within the Cotton On store. 10.45, 31 April, police saw that Subaru travelling along Altone Road in Lockridge, where it's involved in a police pursuit. DR and the others were arrested after a short pursuit as they attempted to run from the police, after the pursuit ended.

Her mobile phone was seized and has taken video footage of herself driving in a stolen Subaru over several days or engaged in police pursuits. It also shows her taking selfies of herself wearing the same clothing that was seen on the CCTV at the previous two - at the shopping centres. 1274, we've heard those. Now, we go on to 1408, your Honour. It's at 10.20, going back a day, back to 28 March and this is I think alleged to the DFO here. So this was at the DFO centre.

That was about 4 pm on 28 March. They've entered the DFO in - by Perth Airport. Arrived in a stolen red Barina, that 1DRB 844 previously mentioned. Abandoned in the

carpark and then gone inside the DFO. They've entered the Matchbox store, then speaking to a staff member in order to distract them while one of them has gone in the staff room. The staff office, behind closed door and has a Staff Only sign on it. They found the victim's purse with the keys, left the store.

Witnesses heard one of the girls say, "I've got the keys". And all three began to head towards the exit, towards the carpark and as a result, security were notified. Sighted DR and he has requested them to stop. They immediately ran as the security gave chase. Ran through the carpark. They've turned and thrown the keys back towards the security, who've picked them off of the ground. One of the co-accusers held onto the purse and didn't throw that away. They were captured on CCTV outside the DFO.

They were arrested subsequently in relation to that. And that's - we're now left with 2920, your Honour. And that's between 1 am and 5.30 am on 28 July 2021, the victim's BMW was stolen from a - during the course of a burglary in Landsdale. Then I'm moving forward two days to 30 July to about 10 am. DR was in that stolen BMW on Altone Road near Reid Highway in Beechboro.

Police doing patrols saw the vehicle, identifying it as a currently outstanding stolen vehicle and have activated their emergency lights and sirens in an attempt to get the driver to stop. Police attempted to intercept it on that Altone Road near Reid Highway. The driver has gone through the red traffic lights to avoid police and accelerated heavily on that road towards Benara Road. Police attempted to intercept there. Reached the traffic control light.

When reaching the light, the driver pushes through two civilian vehicles stopped at the lights, impacting both of them, causing significant damage. The driver has gone through the intersection, attempted to turn left onto Benara Road and has impacted with traffic control light, causing further damage. She and four the others then got out of the vehicle and ran off in different directions. She was stopped after a short foot chase and subsequently arrested. Now, your Honour, those are all the facts on the list today, your Honour.

HIS HONOUR: Mr Fort.

FORT, MR: Yes, your Honour. So when I lodged the section 40 review documents, I lodged the matters for which his

Honour imposed detention. There were other matters, such as associated stealings. There was a breach of bail. I think there was a single gains benefit by fraud charge, which were - - -

HIS HONOUR: Mr Cavagin has only read out the ones which attracted the sentences of detention.

FORT, MR: That's right.

HIS HONOUR: Yes.

FORT, MR: And that's what my focus is going to be on as well. So I didn't think that there would be any issue taken with the section 67s that were otherwise imposed.

HIS HONOUR: No, no. All I'm worried about is the six-month detention sentence.

FORT, MR: Yes. I raised two factual disputes at the initial sentencing hearing in relation to that attempted aggravated armed robbery. That was - sorry, one in relation to the attempted aggravated armed robbery and another in relation to one of those latter steal motor vehicle charges. The attempted aggravated armed robbery was raised - the dispute was that she didn't chase after the victim afterwards, but the victim clearly did run across the road to another venue and that's where she sought assistance from the police. In my submission, I don't think that would have made a material sentence - difference to sentence in any event but that's disputed by me - raised.

HIS HONOUR: If that was the dispute, Mr Fort, I can't understand how it took a year to resolve it.

FORT, MR: No, no, that - I just am saying that the hearing on Thursday a week ago, I raised that as an issue and his Honour - - -

HIS HONOUR: I think his Honour disposed of it in your favour in one line, didn't he?

FORT, MR: That's right, yes.

HIS HONOUR: Yes, so - - -

FORT, MR: But there were other charges, your Honour, that were part of the negotiations. Some were discontinued.

HIS HONOUR: But related to this incident?

FORT, MR: That Tarocash burglary was discontinued.

HIS HONOUR: Which one, the - - -

FORT, MR: I think it was Tarocash that was mentioned.

HIS HONOUR: Yes.

FORT, MR: Is that the one - and it was replaced with just a stealing, and it was just - - -

HIS HONOUR: Yes, what did it have to do with this robbery?

FORT, MR: Specifically the robbery?

HIS HONOUR: Yes.

FORT, MR: Nothing. It was a similar time - around that time, I believe.

HIS HONOUR: Yes, well, that's what I'm saying. When you've got an 11 year old, why - what did the robbery have to do with the negotiation on the Tarocash? I'm trying to understand why the plea gets delayed for 11 months.

FORT, MR: Okay. Your Honour, one of the issues was section 29 capacity.

HIS HONOUR: Sorry?

FORT, MR: One of the issues is section 29 capacity, particularly with somebody like DR who is so young, coming before the court with such serious charges. And she did present having some language issues, which is confirmed - - -

HIS HONOUR: Has ALS always represented her?

FORT, MR: Yes.

HIS HONOUR: Well, if there was a capacity issue, then how is it possible for her plead to all the other stuff she pleaded to before then and was put on an order before?

FORT, MR: No, I did plead her to those charges subsequently, your Honour. She did plead to those charges subsequently and she was placed on that order. The intention being to try and assist DR to get some rehabilitation in the community. There was some suggestion - I don't exactly; I can't recall why but she could have

gone to the Juvenile Justice team for some charges but that didn't happen.

She was placed initially on a youth community-based order. And it's not the fact that there was no compliance at all. There has been some compliance with that youth community-based order in my submission. And the report from the youth engagement program backs it up, I think. With some additional supports provided to DR, she can comply, and she can comply very well and that was demonstrated, I think, in the three and a half weeks leading up to the sentencing exercise on 26 August, when she complied with very strict bail conditions.

She also attended the Youth Justice office with the assistance of Ms G, as noted in the report. So she can attend supervision sessions and she can comply with strict court-imposed conditions. And she also has had a long issue with missing out on school, which is very important to be addressed in my submission.

And that's why it was put forward - a number of different schools have been put forward but more recently, with stable accommodation and her mother's new residence, where she has complied with her bail conditions, there's a nearby school in [REDACTED], which DR has expressed interest in attending and Ms G has confirmed in that letter for your Honour for your court today that she has enrolled her. Sorry, she has lodged the enrolment forms, but they said - - -

HIS HONOUR: Sorry, which - I read in the Youth Justice report that you had given her an enrolment package.

FORT, MR: Yes.

HIS HONOUR: But where's the - are you saying she's enrolled now; is that right? Where do I get that from?

FORT, MR: On the letter from Ms G. It was provided today, your Honour.

HIS HONOUR: On 19 August, yes. Seems to have completed - well - - -

FORT, MR: And there needs to be a meeting and that's standard.

HIS HONOUR: Look, I'm glad someone is doing it, but it wasn't her mum.

FORT, MR: No. Look, I'm not going to defend her mum or - but in this situation, I understand the mum did want her to go to that school and had got the documents but hadn't
- - -

HIS HONOUR: Yes, let's get to the point. Right, DR is 12. She needs support; she needs assistance, right.

FORT, MR: That's right.

HIS HONOUR: I know ALS are doing everything they can through the youth engagement program, but I'm concerned, when I read the Youth Justice report - and I will speak to Ms Anderson in a moment to see if there's any updated information - that Mum has got this new residence. She actually doesn't sound that keen, to be frank. That's why I was hoping she would be here, and we might still have to try and get her on the line and speak to her.

She seems more concerned about whether she might lose the residence because of the number of people that are there. You've identified [REDACTED]. Again, youth engagement program trying to do the right thing. Mum was given the enrolment package and I'm still not actually seeing a great deal of support where DR would actually be living, which would give me confidence that she's going to have the family support which she needs. That's my concern.

And the consistency in residence - all the things she has been missing, which are obviously clearly the reasons for her offending in March. I mean, she's living here, there and everywhere and doesn't have a lot of support in her life. There's only so much Youth Justice can do. So where's the family who are going to look after a 12 year old as they should be.

FORT, MR: Well, her mother was here on 26 August. Obviously there has been a very quick turnaround in terms of lodging the forms yesterday and then trying to get this organised.

HIS HONOUR: Because she's in detention and you want to get her out.

FORT, MR: Absolutely, yes.

HIS HONOUR: That's why I thought she would be here today.

FORT, MR: I did speak to DR 's sister last night or yesterday afternoon. She has confirmed that she would like

to have DR back at the house. The reports have alluded to DR 's sister on a number of occasions because part of the issue is that Mum's perceived conflict between - - -

HIS HONOUR: Okay, let's say, Mr Fort, that I am persuaded that the magistrate ought not have - or certainly I on review - ought give her the opportunity of an intensive youth supervision order - and DPP conceded an intensive youth supervision order on the last occasion - she is a 12 year old girl with - as the magistrate properly identified - a spree of pretty serious offending. Although, the most serious was right at the start. She has made some efforts as best perhaps a 12 year old can without the support of adults around her. Let's say I'm persuaded that she should get an IYSO now - - -

FORT, MR: Yes.

HIS HONOUR: - - - where's Mum? Who's going to look after her when she walks out the door?

FORT, MR: I did have Mum on the phone, just when the matter was called.

HIS HONOUR: That's not the same thing, is it. Mum on the phone is not the same as Mum, "Here's my 12 year old. This is where we're going to be sleeping tonight. And she's going to go to school on Monday morning". What's the plan?

FORT, MR: The plan is to organise that meeting with the school at [REDACTED]. DR needs to attend that meeting. She needs to be there, so they can talk about what's going to be reasonably expected of her should she commence at the school. It's very normal in this situation for a child that has been disengaged from school for a long period of time to have that meeting because they won't put her on a full five-day a week schedule initially.

HIS HONOUR: No, sure.

FORT, MR: She will be on a two or three day schedule. Something that is reasonable, so that she's not set up to fail. But that won't happen for some period of time, unless she's released. So I would be submitting that an intensive youth supervision order is appropriate to be imposed, so that that can be moved ahead. Her mother - I'm sorry, your Honour, was just purely a timing issue.

I haven't been able to speak to her, but I can say, which is positive, she did call me immediately just prior

to this sentencing hearing commencing. I spoke to her on the phone and said, "I'm sorry, I need to go right now because his Honour is being called in". DR said she spoke to her mother two days ago and she is willing to have her back, according to DR. Youth Justice has advised me that they have spoken to her mother as well. Somebody - - -

HIS HONOUR: I will hear from Ms Anderson in a moment.

FORT, MR: Somebody else, other than Ms Anderson, spoke to her and confirmed the updated plan that she's willing to have her. There's obviously concerns because the mum has gone to some effort, I believe, to set herself up with this new house, with her partner and she wants to keep it stable. Of course she doesn't want to lose it because - and there have been issues in the past but that's not a good reason, in my submission, that she shouldn't be allowed to be given the opportunity on an order. She should; she has that stable accommodation at home.

HIS HONOUR: Detention isn't a parking place for people who have got nowhere else to go. You're completely right.

FORT, MR: Yes.

HIS HONOUR: But I want to know what's going to happen.

FORT, MR: There are a number of supports, which in my submission are actually starting to work because of that period of compliance just prior to 26 August. Although there's reoffending within a month - within two months, sorry - of the order being put in place back in February, there has actually been overall, I would submit, a reduction in offending over a period of time. In July, it's a steal motor vehicle offence.

There's a dispute - another one, which was resolved in her favour, about whether she was ever the driver of a car. It's not alleged in any of these particular charges that she was a driver of a car for these matters, but it's stated in the facts of one of these that she was a driver of one of those cars in a video on another occasion. Now, she disputes that. I raised that before, but it doesn't appear that that's the subject of a particular charge. So I don't think that would be relevant in any event.

HIS HONOUR: Mr Fort, there is a preoccupation with lawyers in this jurisdiction - - -

FORT, MR: Yes, your Honour.

HIS HONOUR: - - - in arguing about matters of fact, which make absolutely no difference to sentencing children. And that's where a dispute on the facts is important, where it might make a difference to sentence. That is not going to make any difference at all to whether I let DR out or not.

FORT, MR: Yes, your Honour.

HIS HONOUR: Nor on plea before the magistrate. So - - -

FORT, MR: I might quickly go back to the actual submissions because I think they are important.

HIS HONOUR: I've read them. And I'm concerned about the time because I want to know what's happening with that. So I will come back to you.

FORT, MR: Okay.

HIS HONOUR: You can finish your submissions if I need to hear it.

FORT, MR: Yes.

HIS HONOUR: Ms Anderson, have you got an update on the report that was before the magistrate?

ANDERSON, MS: Yes, your Honour. There's no change in the circumstances.

HIS HONOUR: Sorry?

ANDERSON, MS: There are no change in circumstances since the report dated 16 August.

HIS HONOUR: Yes.

ANDERSON, MS: Youth Justice has spoken to Ms D, and she is willing to have DR reside with her at [REDACTED].

HIS HONOUR: Yes.

ANDERSON, MS: Now, this plan is applicable for the supervised release order, as well as should - - -

HIS HONOUR: All right. So it's the same plan that would be going up to the board.

ANDERSON, MS: That is correct, your Honour.

HIS HONOUR: Yes.

ANDERSON, MS: So there's no changes in her family situation. In relation to the application for [REDACTED], it has been confirmed with [REDACTED] that that application has been received. However, they have advised that there is a wait list.

HIS HONOUR: Yes.

ANDERSON, MS: And they were unable to provide any timeframe of when DR would be able to commence, should she be offered a place. Other education options were explored. However, DR only wants to go to [REDACTED]. She has got some strong - DR has some strong supports that have been visiting her at Banksia from the community. That's Beyond Youth Justice.

HIS HONOUR: All right.

ANDERSON, MS: As well as Ms G from the ALS youth engagement program.

HIS HONOUR: Who wrote the letter, yes, yes.

ANDERSON, MS: Both of those agencies are providing DR with mentorship and support in attending appointments, reporting to the - had been reporting for supervision. The family are also open to Child Protection, the intensive family support team.

HIS HONOUR: All right. Well, let's call that a no. Have we got an agenda?

ANDERSON, MS: I will provide the court with an agenda, your Honour.

HIS HONOUR: Yes?

ANDERSON, MS: Yes.

HIS HONOUR: Mr Cavagin, what's your view?

CAVAGIN, MR: Certainly at the outset, having regard to the seriousness of the offences, I think we would probably have to jump straight to the two with the threats of violence. So that would be the aggravated robbery and the threats. Both of those are serious and certainly detention is - immediate detention is open to your Honour and also that was considered at the earlier sentencing.

And the State would submit and all the factors relevant were considered in depth and covered in depth by his Honour at the prior sentencing. Due regard was given to all the relevant youth justice sentencing principles. But this is a fresh sentencing, your Honour. So at the outset, I would say detention is certainly open, having regard to the seriousness. Now, the last sentencing, the State conceded that, having regard to the amount of time that she has already spent in custody, that an IYSO was certainly open to the court.

Now, some of my concerns I guess have just been slightly mitigated by Ms Anderson and that's in regards to the support that DR is getting in the community. And it's a very good assistance being given to her by the - also the DCP intensive family support and the Beyond Youth Justice and the ALS youth engagement, which do a very good job. But my only concern is that there is still some instability.

And without meaning to guess the reason behind the sentencing at the last one, that I would submit is something which the courts need to consider, the degree of instability that DR may have at home and whether there is sufficient support. We know there's support in the community.

There's three very good supports but where the support needs to be given is at home and is there enough stability in the household to support DR at such a young age, without setting her up to fail. And obviously, reoffending has got to be a massive risk for DR, having regards to the nature of offending, vast offending over such a long period of time. It's going to be a big ask if there's an order if DR is put on it for her not to reoffend within the period of the order. So my only concern would be if sufficient home support is in place for DR.

HIS HONOUR: Thank you, Mr Cavagin. I don't need to hear anything further from you at this stage. Mr Fort, what we're going to do is adjourn briefly, so that, Mr Fort, you can give the number to Ms Associate; we can get DR's mother on the line, and I can have a chat to her. And agenda, Ms Anderson, how long will it take you to do?

ANDERSON, MS: I can do it right here, your Honour. I can handwrite an agenda.

HIS HONOUR: Well, I will adjourn briefly to give you time to prepare an agenda to pick up all those matters.

ANDERSON, MS: Yes, your Honour. Would it be intensive youth supervision order?

HIS HONOUR: Yes, an intensive youth supervision order for five months, is what I'm thinking about.

ANDERSON, MS: Thank you. Without detention?

HIS HONOUR: Without detention.

ANDERSON, MS: Certainly, your Honour.

HIS HONOUR: But I want to be sure - as I say, I want to speak to DR 's mum first and be sure that she can come and get her. Otherwise I might have to come up with another short-term plan.

(Short adjournment)

HIS HONOUR: All right, thank you. All right, Ms D, you can just stay a bit longer if you will because I've just got to give some brief reasons for what I'm going to do.

D, MS: Yes.

HIS HONOUR: And then I will explain the practicalities when I've finished that, all right?

D, MS: Yes, no worries. Thank you.

HIS HONOUR: DR, I've got to explain it to you as well, all right. And it won't take very long. This is a section 40 review, which has been brought before me by Mr Fort on DR 's behalf, to review the sentence of - or sentences, rather, of Magistrate Hogan on 26 August, when he imposed six months detention, backdated by 103 days to the 15 May of this year.

D, MS: Yes.

HIS HONOUR: The principles for a section 40 review are well established. The preconditions for a review are established in this case. There's no need to establish error or manifest excess. I consider the matter afresh, as a new sentencing exercise and have regard, as I have done in this case, to some additional information. The additional information really has come from speaking to Ms D.

There's not a great deal extra in terms of Youth Justice or new information, given that the sentencing exercise occurred very recently. It seems to me, having heard the facts - and I don't need to go through those - they are accepted that differences - that there are, are very minor and indeed resolved in DR 's favour by the magistrate at the time of the original sentencing. It's also not necessary now for me to go through DR 's background, save to say that I've read all of the materials and the reports.

It is my view that although what the magistrate intended by his sentence of six months detention, was to as he said, impose the shortest sentence that he possibly could and it's clear, although he didn't say so expressly, that he intended that DR would be released on supervised release, subject to the decision of the board, very quickly and indeed his sentence was such that the board could have reviewed, and the earliest review date was prior to his sentencing.

Whilst the backdating was taken into account, the board, though - and, again, there's no criticism to be made of them, a plan has to be prepared and put before them - the board didn't sit immediately and is now due to sit next week in relation to DR 's matter. Now, the plan that is to be put before the board next week is indeed the same plan that Youth Justice have for her if she's placed upon an order and - can I have that agenda, Ms Anderson, if it's floating around?

I will go through the agenda in a moment with DR. But the plan seems to me to be a reasonable plan. Whether it's under the auspices of supervised release or whether it's under the auspices of an intensive youth supervision order. DR is still very young and that is in fact a primary consideration when it comes to sentencing her. Her record is not lengthy, but the magistrate was right to observe that there has been a really concerted spree of offending over the last year and a bit.

In fact, she's only coming before me now for sentencing and indeed was before the magistrate for sentencing in relation to her most serious offence, which was one of the first offences that she committed back in August of 2020. It is the case that, as the magistrate observed, the offending has continued pretty consistently since then, that she's in breach of the youth community-based order that she was placed on. It was the first order that she was placed on.

She's also in breach of bail because a lot of this offending has occurred whilst she has been on bail for various of the offences. Mr Fort is also right to observe that there has been, apart from the re-offending, some compliance with the youth community-based order but more importantly, more recently, there have been some gains in improvement in her compliance and she has been engaged with ALS through - where's that letter? If I can just find it again - through the youth engagement program, who've worked quite hard with her and have a plan in relation to continuing support.

The most important consideration though - and this was before the magistrate but there's certainly some additional material being placed before me now in speaking to Ms D - is there is some indication of an improvement in DR's personal circumstances, in that her mother has now gained secure accommodation and not only secure but away from Lockridge, which is not something which - the significance of which was appreciated on the earlier sentencing.

One of my biggest concerns is that DR has been committing these offences in company with mostly older girls who are well known to the court and with significant records. And it seems to me, based upon what I've read as well, being led astray, and hanging around with peers who are not a good influence on her. So I hope that her mother is right, that by living well away from there, that she will make a break from that peer group and manage to stay out of trouble. Mum is at home and obviously able to look after her. Her mum is keen to have her home.

Again, one of the earlier reports indicated that Mum perhaps wasn't certain about that but, having spoken to Mum, I'm satisfied that that history of conflict will no longer, she thinks, be a problem because there's less people in the house and it's calm in the house now and that in fact, in those circumstances, she is happy to have DR home with her and provide her with supervision.

Obviously I'm still concerned about schooling but she's on the wait list at [REDACTED] and hopefully with the assistance of Ms G and also, as I've now heard, the ongoing support of the Department of Communities and as Ms Anderson has also explained to me, the assistance of Youth Justice. Some more structure can be put in place, so DR has continuing support in the community, as well as mentoring.

In light of all of those matters, I do think in fact that, although he was trying to do the right thing because he thought there might be an immediate release and it would then only be with three months of risk hanging over her head, I do think the door was in fact open to the magistrate on the original sentencing to conclude that not only an immediate sentence of detention was open - and that is primarily just because DR is still so young and we've got to exhaust all the rehabilitative opportunities first, being the point that Mr Fort has made in his written submissions about that.

The importance of rehabilitation principles of Youth Juvenile Justice are fundamental. And although the magistrate concluded that community protection is the paramount consideration and required a sentence of immediate detention to be imposed, I don't agree that is the case. Whilst community protection is important, there are some signs of improvement. DR is still very young, and I don't think we had reached the stage where immediate detention was the only appropriate disposition.

The DPP conceded on the sentencing on the last occasion that an intensive youth supervision order was open. In my view, that was a concession properly made. And it seems to me now that it is appropriate to release DR on an intensive youth supervision order, provided she agrees to the conditions of that order. It is - well, look, I will say something more about it in just a moment, but I should - in fact, I should say it now because it might affect DR 's consent to the order or otherwise.

As I said yesterday to Mr Fort, sometimes what is right in law doesn't necessarily accord with what is the pragmatic and correct outcome. Because, as I've said, what I'm contemplating is putting DR on a five month intensive youth supervision order. That means that these charges are not closed off; that they will continue to hang over DR 's head for a period of five months and she will be at risk of breach and having to be dealt with again should she not comply with conditions of the intensive youth supervision order.

Now, had she taken a chance with the Supervised Release Board, it may well be that she would have been released on Tuesday or Wednesday anyway, with exactly the same type of order and she would only have three months hanging over her head, albeit with a risk of an immediate return to detention in breach. But nonetheless, that's the dice, as I say, DR and others have chosen to roll. So it's her right to do so. You understand that, Mr Fort?

FORT, MR: Yes, yes.

HIS HONOUR: And DR understands that?

FORT, MR: Yes, she does, yes.

HIS HONOUR: All right. All right, DR, it is my view that you should get a chance at an intensive youth supervision order, all right. So last time you were on a youth community-based order. This one is more intensive; more things for you to do and it will be hanging over you for a period of five months from today, if you agree to it, okay. Now, I'm going to go through the conditions of the order with you.

So you've got to stay at [REDACTED] with your mum, all right. You're not allowed to commit any other offences. You've got to be of good behaviour. You have to comply with the directions of your Youth Justice Officer, and you've got to tell them if you want to move or change address. Do you understand that?

DR, MS: Yes.

HIS HONOUR: All right. You've got to report to your Youth Justice Officer at the South East Metro office, no later than 6 September and then twice a week after that. Do you understand that?

DR, MS: Yes.

HIS HONOUR: All right. And the address of the Youth Justice office is on here. Now, that's your obligation to do it but Ms G, at the youth engagement program, will help you with that and your Youth Justice Officer will also tell you how to make sure that you comply with that supervision condition. Do you understand that?

DR, MS: Yes.

HIS HONOUR: Now, there has also got to be some attendance by you - is attendance directed enough at this stage, Ms Anderson?

ANDERSON, MS: I believe so, your Honour. There weren't any identified issues with substances.

HIS HONOUR: Yes, yes.

ANDERSON, MS: And I think they were going to look at any psychological counselling, if it was deemed necessary in the future.

HIS HONOUR: All right. So if you need to have some counselling or other assistance, then - and Youth Justice will organise it for you and tell you to go along, you've got to do that as well. Do you understand that?

DR, MS: Yes.

HIS HONOUR: All right. Are you prepared to comply with the conditions of that order?

DR, MS: Yes.

HIS HONOUR: What happens if you breach it?

DR, MS: Go back to Banksia.

HIS HONOUR: Well, that is a pretty good likelihood and you've been there now for 103 days. I've taken that into account and that's one of the reasons that I've come to this conclusion. So that that's absolutely clear, I've given you credit for that time that you've spent in Banksia. In fact, it's more than 103 days now. So that 103 days is gone, all right. You breach this order, the magistrate is not going to, "Well, you've spent 100 days in custody, I will give you credit for that". It's gone now. You understand that?

DR, MS: Yes.

HIS HONOUR: All right. Now, you're on bail on some other charges. So Supervised Bail will have to sign you out on those charges. So this order, you can't just walk out the door with this order in your hand today. Supervised Bail have got to make arrangements to get you back to your mum's place and they've got to be happy that you stay at your mum's place. Do you understand that?

DR, MS: Yes.

HIS HONOUR: So that might only happen tomorrow or so. Ms Anderson, is there anything I've neglected to cover in that order from your perspective?

ANDERSON, MS: I don't believe so, your Honour. Thank you.

HIS HONOUR: Anything else from your perspective, Mr Cavagin?

Fort, MR: I was asked by Ms G to request leave to obtain a copy of that neuro-developmental report, your Honour, for the assistance - - -

HIS HONOUR: Yes, the neuro-developmental report, you can have leave to retain that for the youth engagement program, so that they can continue to assist and mentor DR because I've, in coming to that conclusion, I've had regard to the assistance that youth engagement program are offering and the fact that they say they are going to carry on with the mentoring, which is also important in assisting with the education plans.

All right. I think I've covered everything there. One other thing I should have said - although it doesn't matter a great deal. Just in terms of the formalities. So I do discharge the previous order. I've substituted this new order. The magistrate cancelled the previous YCBO. That obviously remains cancelled. So this is a new IYSO on all of those charges which have come up for review.

And although it doesn't make a great deal of difference because it's a global intensive youth supervision order, I will just record, as I must, that I have given credit for the pleas of guilty, varying between 10 and 25 per cent. 25 per cent for the very early ones for those March offences but for the ones which were delayed by a year - which, as you will have gathered, Mr Fort, I'm not very happy about - there's only 10 per cent on those. That's it, counsel. The court will adjourn.

AT 3.46 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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