

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Not Restricted

S ECR 2023 0168

IN THE MATTER of the *Bail Act 1977*

- and -

IN THE MATTER of an application for bail by COREY KEATING

BETWEEN:

COREY KEATING

Applicant

- and -

VICTORIA POLICE

Respondent

JUDGE: CHAMPION J
WHERE HELD: Melbourne
DATE OF HEARING: 1 September 2023
DATE OF JUDGMENT: 5 September 2023
DATE OF REASONS: 13 October 2023
CASE MAY BE CITED AS: Re Keating
MEDIUM NEUTRAL CITATION: [2023] VSC 594

CRIMINAL LAW – Application for bail – Compelling reason test – Charges of theft, unlicensed driving, reckless conduct endangering serious injury and life, intentionally causing serious injury – Extensive criminal history – Limited delay – Intervention orders – Pregnant partner – Mental health issues – No compelling reason – Unacceptable risk shown – Bail refused – *Bail Act 1977* (Vic), ss 1B, 3AAA, 4, 4AA, 4C, 4E, 18, 18AA, 18AB.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Applicant	Paul Kounnas Elarya George	RA Criminal Lawyers
For the Respondent	Almedina Buzo	Victoria Police

HIS HONOUR:

Introduction

- 1 This is an application for bail by Corey Keating [‘the applicant’]. He seeks bail on the following charges laid by Detective Senior Constable Talissa Croxford on 14 June 2023, relating to events alleged to have occurred on five separate occasions between 30 March and 3 June 2023, namely:
 - (a) theft of a motor vehicle;
 - (b) unlicensed driving (three charges);
 - (c) reckless conduct endangering serious injury (two charges);
 - (d) failing to stop a motor vehicle on police request;
 - (e) theft;
 - (f) reckless conduct endangering life; and
 - (g) intentionally causing injury.
- 2 On 14 June 2023, the applicant was arrested, charged, and remanded into custody. On 14 July 2023, he was refused bail in the Dandenong Magistrates’ Court, on the basis there was an unacceptable risk he would commit an offence while on bail and endanger the safety or welfare of any person.
- 3 There are no other outstanding matters.

The alleged offending

Background

- 4 The complainants in this matter are SA, NL and SF. SA lives in Pakenham in a unit next door to the applicant’s mother; NL is SA’s partner; and SF had no connection to the applicant prior to the alleged offending.
- 5 The applicant is alleged to have committed the following offences, described in more detail below.

First incident

Charges 1 and 2: theft of a motor vehicle and unlicensed driving

6 On 30 March 2023, the applicant and an associate met with SF in relation to a black Holden Commodore that SF had advertised for sale online. The applicant asked to test drive the car with SF's husband, but drove off before SF's husband could enter the passenger seat. The applicant was alleged to be driving whilst unlicensed at the time. The vehicle has not been located.

Second incident

Charges 3 and 4: reckless conduct endangering serious injury and unlicensed driving

7 On 9 May 2023, NL was walking on SA's street in Pakenham when he observed a silver Holden Commodore drive over a nature strip and onto the footpath in front of him. NL recognised the driver as the applicant. It is alleged that the applicant revved the engine while yelling abuse at NL, making racist remarks, and threatening to run him over. The applicant then reversed the car, nearly hitting NL, before driving off. Again, the applicant was unlicensed at the time.

Third incident

Charge 5: failing to stop a motor vehicle on police request

8 On 20 May 2023, police observed a silver Holden Commodore driving in the Patterson Lakes area at approximately 140km/h in an 80km/h zone. Police attempted to intercept the car while it was stopped in Carrum Downs, by activating police lights, placing tyre deflation devices under the front and rear left wheels, and approaching on foot while directing the driver (alleged to be the applicant) to stop. The driver drove off before they could be intercepted.

9 Police later found a photo on the applicant's phone of a silver Holden Commodore with the front and rear left wheels deflated, with a caption reading, "thanks to highway patrol for spike stopping me. And popping my tyres".

Fourth incident

Charge 6: theft

- 10 On 1 June 2023, SA was returning to her unit and was confronted by the applicant, his mother and his sister. It is alleged that, at or around this time, the applicant found a key to SA's unit and took it.

Fifth incident

Charges 7-10: reckless conduct endangering life; reckless conduct endangering serious injury; intentionally causing injury; and unlicensed driving

- 11 On 3 June 2023, SA was at home with her cousins when the applicant's mother began yelling over their shared fence, saying "You're a black dog" and "My son is gonna come soon because he has your house key and he is gonna put you down". Two of SA's cousins approached the applicant's mother's unit and asked her to stop.
- 12 SA went outside and asked her cousins to return inside. The applicant's mother then exited her unit and yelled, "My son is going to come soon and fuck you over" at SA. The applicant's mother and SA became involved in a physical altercation in their shared driveway, during which one of SA's cousins – who was standing in the driveway – was struck by a Mazda SUV, before the Mazda proceeded further down the driveway and struck SA as she remained on the ground scuffling with the applicant's mother. It is alleged the applicant was driving the car. The applicant then opened the door of the Mazda and said to SA, "Cunt you're going to die today", before striking her several times with the car door and then reversing back and forth and hitting her several times with the car.
- 13 The applicant's mother returned to her unit as SA, who remained in the driveway, sat upright. The Mazda then reversed and then drove back at and struck SA, the force of which pushed SA into some nearby bins. The Mazda left as SA lay motionless near the bins for approximately 20 seconds, before sitting up and limping back to her unit.
- 14 The applicant was unlicensed at the time he drove the car.

15 The incident was partially captured on CCTV. The vision shows that the vehicle struck the victim with force, and pushed her body some distance, following which she lay still for some time before getting up and then walking unsteadily into the building.

16 SA suffered a fractured jaw, a loose tooth, a missing tooth, and a swollen foot because of the incident.

Arrest and record of interview

17 The applicant presented himself at the Pakenham Police Station on 14 June 2023 for a police interview, during which he expressed hostility towards SA and described tensions between his family and SA (for example, stating that SA breaks his mother's windows, damages his sister's car, stands out the front of his mother's house, and threatens to have her raped by Africans).

18 The applicant made various comments in relation to the alleged offending, including that he had located SA's keys in some mud near his mother's garage and, with respect to the incident where SA was injured, also that:

- (a) he thought his mother was being assaulted, and that the best thing for him to do was to "*disable one of them, show them I'm not fuckin' around*"; and
- (b) he remembers driving through the crowd and smashing his door into SA and trying to hit her with a baseball bat; and
- (c) he could not stick around because he did not have a licence.

19 The applicant denied knowledge of the incident involving SF on 30 March 2023, the incident involving NL on 9 May 2023, and the police evasion incident on 20 May 2023. A full copy of the transcript of the record of interview has been provided by the respondent in a Supplementary Affidavit in Response filed on 30 August 2023. The applicant gave a frank account of the relevant events, including:

O.K. So on the Saturday night I had a fight with my partner. I loaded the car full of all my belongings, everything I owned in that car apart from my tools and shit and I drove to my mum's house. I parked right outside my mum's house. I recall maybe three African men plus a female coming out to my car. They said, "Hey, bro, open your door." And I said, "What for?" They said,

“Open your door.” I said, “Fuck that, why would I do that?” And they’re like, “Open the door.” I said, “No, fuck that.” So I put my car in reverse. I reversed slowly out the driveway, got on the phone to my mum to let her know there are Africans outside her house. I drove off and for some unknown reason my mum has opened the door to these people. I don’t know why she would do that. So I’m sitting down the road on the phone to my mum listening to their conversation. They’re saying, “Who assaulted [SA]? Who bashed her? Who took her fuckin’ stuff?” rah rah rah. My mum is saying, “No, we don’t know anything about it.” And then there was, like - I heard a scuffle and then I heard my mum saying, “Corey, Corey, Corey, quick please - please come.” So I turned my car around. I drove up the driveway. I screamed at these fuckin’ scumbags that were getting tough and then they come out. They were, like, acting so - they come towards my car. I hit one of them to get them out of the way. He went to the side and then the rest of them run off. They come back and they’re, like, “Bro, you just ran our mate over.” And I said, “Well, don’t get tough. What, youse wanted to get tough but you don’t want to get tough now? What’s the fuckin’ deal, mate?” So then they stood in a line and then I noticed my mum getting hit by [SA], the African chick, so then I just lost my temper and I remember just driving through the crowd. I drove next to [SA]. I was hitting - I thought I was hitting my mum too but I just thought I was breaking it up. I was smashing the door into them on the car, which stopped it. It was the best thing I could have done smashing the door into them. I was looking out as I was doing it, smashing the door. Now, I lent out the window with the baseball bat and tried to hit [SA]. I was missing her. And by that stage she was already like - like this. She wasn’t - she didn’t want to fight any more and then I didn’t want to get out of the car because I thought it was the African blokes behind me, which I think there was. They were all screaming and that. So then I just reversed and I just drove off, yeah. And the reason I done that is because my - I thought my mum was getting assaulted and I drove up, these cunts are getting tough and they’re coming at me. I didn’t know what to do. The best thing for me to do was to disable one of them, show them I’m not fuckin’ around, which - which is what I did and they didn’t want to fight any more, and then I seen - you know what I mean? You see your mum getting bashed by someone what are you gunna do?

The applicable legislation

Guiding principles

- 20 When interpreting and applying the *Bail Act 1977* (Vic) [‘the Act’], the court is required to have regard to the guiding principles in section 1B(1) of the Act.¹

The compelling reason test

- 21 Because the applicant is accused of committing an indictable offence (recklessly cause serious injury), in the course of which he is alleged to have used a car as an offensive

¹ The Act, s 1B(2).

weapon,² the ‘compelling reason’ test applies to this application in accordance with sections 4AA(3), 4C and Schedule 2, item 23, of the Act. It is understood that this same test was applied in the Magistrates’ Court.

22 As a result of the above, bail must be refused unless the applicant can satisfy the court that a compelling reason exists to justify the grant of bail.³ In determining whether a compelling reason exists, the court must take into account the relevant surrounding circumstances, including, but not limited to, those set out in section 3AAA(1) of the Act.⁴

The unacceptable risk test

23 If satisfied that a compelling reason exists, the court must move to consider the unacceptable risk test.⁵ Bail must be refused if the respondent satisfies the court that a risk of the kind set out in section 4E(1)(a) of the Act exists, and that the risk is unacceptable.⁶ In determining this, the court must again have regard to the surrounding circumstances and consider whether there are any conditions of bail that may be imposed to mitigate the risk so that it is not unacceptable.⁷

Family violence risks

24 Section 5AAAA(1) of the Act requires the court to make inquiries of the prosecutor as to whether a family violence intervention order [‘FVIO’], family violence safety notice, or recognised domestic violence order is in force against the applicant.

Intervention orders

25 The respondent has confirmed the applicant is currently subject to the following intervention orders:

- (a) an interim FVIO made on 3 May 2023 in the Frankston Magistrates’ Court, naming PG (the girlfriend of the applicant’s brother), as the affected family

² The meaning of ‘offensive weapon’ for the purposes of the Act is the same meaning given by s 77 of the *Crimes Act 1958* (Vic), which is any article made or adapted for use for causing injury to or incapacitating a person.

³ The Act, ss 4AA(3) and 4C(1)–(2).

⁴ *Ibid* s 4C(3).

⁵ *Ibid* ss 4C(4) and 4D(1)(b).

⁶ *Ibid* ss 4D(2)–(3) and 4E(1)–(2).

⁷ *Ibid* s 4E(3).

member. The order contains full no-contact conditions and remains in effect until final order; and

- (b) a final personal safety intervention order [‘PSIO’] made on 14 June 2023 in the Dandenong Magistrates’ Court, naming SA (the primary complainant in the alleged offending) as the protected person. The order contains full no-contact conditions, was made with the consent of the applicant (without admissions) and remains in effect until 12 June 2026.

The applicant’s personal circumstances

26 The applicant is 29 years old. According to a report by psychologist Lisa Jackson, filed and dated 15 August 2023:

[The applicant] grew up in the Cranbourne area raised by his mother. His father left when he was very young, he only recalls one visit with him when he was six and never saw him again. He did learn that his father was a violent alcoholic. His mother had other relationships and his two sisters now aged twenty-six and twenty-eight were born to his stepfather. [The applicant] said this man was very violent and he was both witness and victim to violence throughout his childhood. They were forced to move often to escape this violence or when his mother was unable to manage the rent and as a result, he attended multiple schools. His mother was a sex worker and had an addiction to methylamphetamines and for a long time, he thought this childhood was “normal”.

[The applicant] described himself as a chaotic and anxious child. He had problems at school and in the community. He came to the attention of the police in his early teens and was in and out of the youth justice system from the age of fifteen. Typically he returned home following his release where he was exposed to further chaos in the home. He said there was little incentive to finish school, settle into employment or avoid antisocial behaviours.

27 It is noted that the applicant’s affidavit in support and a Court Integrated Services Program [‘CISP’] report dated 11 July 2023 refer variously to the applicant being placed in foster care at age four or five, sexually assaulted at age six, and having a 13-year-old son and a three-year-old daughter. These matters are not referred to in Ms Jackson’s report.

28 The applicant completed up to Year 10 at secondary school and served his first adult sentence of imprisonment at the age of 18. Upon release, he moved to Queensland and quickly became caught up in an antisocial peer group and further criminal

activity, serving multiple custodial sentences before returning to Melbourne in January 2023.

29 Shortly after arriving in Melbourne, the applicant obtained full-time work as a carpet layer and commenced a relationship with his current partner, CMD. CMD has three children and is currently pregnant with the applicant's child (due December 2023). The applicant intends to live with CMD and the children if he is granted bail.

Criminal history

30 The applicant has an extensive criminal history, between 2007 and 2014 in Victoria, and 2015 to 2021 in Queensland, largely comprised of property, dishonesty, driving, bail, weapons, violence and drug offences, and breaches of court orders. The applicant has served numerous terms of imprisonment for these offences and has spent limited time out of custody as an adult.

The applicant's contentions

31 The applicant relies on the following matters, in combination, to show a compelling reason that justifies the grant of bail.

Criminal history and outstanding matters

32 The applicant concedes that he has a criminal history, however, notes he was not on bail or subject to any other conditional liberty at the time of the alleged offending.

Family violence intervention order in force

33 The applicant notes he consented to the imposition of a final PSIO without admissions, which protects SA as the primary complainant in the alleged offending.

Employment

34 The applicant states that, prior to his remand, he was working full-time as a carpet layer.

Family support, stable accommodation and surety

35 The applicant has the support of his pregnant partner, CMD, and proposes to reside with her and her three children in Dandenong if released on bail. In an affidavit affirmed on 30 August 2023, CMD deposes that:

- (a) she met the applicant in January 2023 through long-term mutual friends, and the two commenced a relationship and moved in together in March 2023. She is currently pregnant with the applicant's child;
- (b) her relationship with the applicant is respectful and supportive, and having him live with her makes her feel safe. She is aware of the applicant's history, including that he has served several terms of imprisonment;
- (c) on the day of the alleged offending, she was in a heightened state due to her ex-partner sending her abusive messages. She and the applicant got into an argument, and decided it would be best to have some space apart. The applicant agreed to stay with his mother;
- (d) she currently works as a traffic controller and domestic cleaner, and is studying a course in mental health, alcohol and other drugs. However, as her pregnancy progresses, her need for the applicant's support, especially financial support, will increase;
- (e) she fully supports the applicant living with her, and there is a home and family waiting for him if he is granted bail. She will not tolerate any drug-taking in the home, and the applicant is aware of this and her general expectations of him as a partner (including being home at reasonable times to assist with the children); and
- (f) she is willing to support the applicant as he endeavours to make changes in his life, and to this end has made enquiries about supports for him if he is granted bail, including the Salvation Army Positive Lifestyle Program, and obtaining a mental health plan that would allow the applicant to participate in a men's counselling service.

36 CMD also proposes to offer a \$2,000 surety by way of bank cheque.

Special vulnerability

37 It is submitted that the applicant has a special vulnerability. The applicant was assessed by psychologist Lisa Jackson on 7 August 2023. In her report filed on 15 August 2023, Ms Jackson notes that the applicant self-reported a history of anxiety and symptoms consistent with post-traumatic stress disorder ['PTSD']. The applicant was unaware whether he had been diagnosed with any formal mental health diagnoses in the past but reported experiencing an episode of drug-induced psychosis in 2011 while in custody. In that instance, he was treated with antipsychotic medication over several months and his symptoms stabilised. He reported no further history of formal mental health interventions.

38 In addressing recent mental health presentation, Ms Jackson notes that the applicant completed a self-report assessment using the DASS-21 (Depression, Anxiety and Stress Scale) to measure emotional states in these categories over the period of a week. The applicant's results fell into categories of severe for stress and depression, and extremely severe for anxiety, for the week preceding the self-assessment.

39 In her report, Ms Jackson reports:

The events of [the applicant's] childhood and his mother's problems regulating her own emotions have resulted in an overly protective response from [the applicant] which was evident from his teens and associated with his current charges. A history of untreated mental health problems in [the applicant's] history has also contributed to unstable behaviours with the results of testing confirming clinical results in the severe and extremely severe categories.

40 Ms Jackson states that the applicant has recognised that, in order to address offending risks, he needs to engage in treatment. Ms Jackson recommends the applicant engage with mental health supports, drug and alcohol counselling, and a men's behaviour change program.

Availability of treatment or bail support services

41 The applicant relies on the support of CISP.

42 A report compiled for the applicant's previous bail application, dated 11 July 2023, notes that the applicant reported:

- (a) being removed from his mother's care when he was five years old due to her alcohol dependence and being the victim of sexual abuse at six years old whilst in foster care. He is currently pursuing a compensation claim through the Royal Commission as a result;
- (b) experiencing symptoms of depression and anxiety for most of his life, and attempting suicide whilst in custody in 2012. The applicant reported no current suicidal ideation;
- (c) completing drug and alcohol programs while in custody, and currently being prescribed buprenorphine (for opioid drug dependency);
- (d) his current relationship being loving and supportive and the best thing that has ever happened to him; and
- (e) being ready and willing to receive formal support to address his trauma history and maintain abstinence from illicit substances.

43 At the time of the 11 July 2023 report, CISP recommended the applicant for case management and proposed he meet with a general practitioner for medical and mental health review, meet with an accredited drug and alcohol worker for assessment, be referred to a psychologist or therapist to address emotional regulation and trauma issues, and participate in screening for an acquired brain injury.

44 The applicant also relies on a more recent CISP report, dated 31 August 2023. It is noted that the report identifies a number of issues that require follow up and action on the part of the applicant, and recommends the applicant for case management by the Dandenong CISP team, with a review after four weeks.

Delay

45 The applicant has been in custody since his arrest on 14 June 2023. The matter is next listed on 4 September 2023 in the Dandenong Magistrates' Court for mention. The

applicant intends to contest the charges against him, which he submits will lead to delay in the matter finalising.

Unacceptable risk

46 It is submitted that any unacceptable risk alleged by the respondent can be moderated to an acceptable level with the imposition of the following conditions of bail:

- (a) reside at an address in Dandenong, Victoria;
- (b) comply with the Personal Safety Intervention Order;
- (c) not contact any witnesses for the prosecution, except for the informant;
- (d) not associate with his mother;
- (e) be excluded from Pakenham;
- (f) pay \$2,000.00 in surety;
- (g) report to Victoria Police at Dandenong three times a week;
- (h) be subject to a curfew condition;
- (i) present to Victoria Police during curfew hours;
- (j) not attend any domestic or international points of departure;
- (k) remain in the state;
- (l) not drive a motor vehicle; and
- (m) comply with CISP.

The respondent's contentions

47 The application for bail is opposed on the basis the applicant has not discharged the burden of satisfying the court as to the existence of a compelling reason that justifies the grant of bail. Further, the respondent submits the applicant poses an unacceptable risk of committing each of the matters outlined in section 4E(1)(a) of the Act.

48 In response to the applicant's contentions, and in addressing the surrounding circumstances and unacceptable risk, the respondent relies on the following circumstances.

Surrounding circumstances

Criminal history

49 The respondent notes the applicant has an extensive criminal history in both Victoria and Queensland. In addressing a reference in the CISP report dated 7 July 2023 to the effect that the applicant has no history of violent offending, the respondent notes that this is inaccurate and that the applicant has previous findings of guilt for intentionally causing injury, making threats to kill and contravening an FVIO, involving the applicant assaulting his then-girlfriend (who is also the mother of one of his children) in a service station, by choking her and hitting her in the face.

Employment

50 The respondent notes that the CISP report dated 11 July 2023 indicates the applicant may have employment available to him if granted bail, but states that this has not been confirmed by the respondent.

Personal supports

51 The respondent notes that:

- (a) there are discrepancies within the applicant's material as to the length of time the applicant has known his partner (some material indicates he has known her since he was a child, while other material states he met her earlier this year);
- (b) the applicant relies on the support of his partner, but this support was available to him at the time of the alleged offending and did not act as a deterrent. In addition, notwithstanding that the applicant's partner allegedly encouraged him to surrender himself to police, it is asserted that following the alleged offending she also incorrectly advised police that he had fled to Queensland; and

(c) the CISP report dated 11 July 2023 cites comments made by the applicant to the effect that he was sick of his lifestyle and had written off old friends. The respondent takes issue with the sincerity of this statement, noting that the alleged car theft on 30 March 2023 was committed in company with an associate.

Complainant's views on bail

52 It is noted that the primary complainant, SA, has expressed that she is extremely fearful of the applicant. She states that she would not feel safe if he were to be granted bail.

Delay

53 In relation to the applicant's statement that the prosecution's application to uplift the matter to the County Court will cause delay, the respondent notes the application has already been heard and refused.

Unacceptable risk

Endangering the safety and welfare of any person

54 The respondent notes that the applicant is alleged to have committed violent offences and driven a car without a license and attempted to evade police, posing a risk to the community. The respondent submits there is a risk the applicant will again offend in a dangerous manner.

Committing an offence while on bail

55 The respondent relies on the applicant's history of breaching orders, including FVIOs and a youth supervision order, as demonstrative of a disregard for court orders. The respondent submits that previous periods in custody have not deterred the applicant from committing offences upon release, and that it is unlikely he will abstain from committing offences if he is released on bail, notwithstanding any conditions that might be imposed.

Interfering with a witness or otherwise obstructing the course of justice in any matter

56 The respondent expresses concern that the applicant knows where the witnesses live. In circumstances where he is alleged to have previously taunted and threatened SA, and later followed up those threats with violence, the respondent submits there is a real risk the applicant will interfere with SA or any other witnesses.

Failing to surrender into custody in accordance with the conditions of bail

57 The respondent submits that the applicant has strong ties to Queensland and may try to leave Victoria to avoid prosecution. It is conceded that the applicant surrendered himself to police, but noted that this was 11 days after the alleged offending, during which time it is asserted that the applicant hid the car used to cause injury to SA.

Analysis and conclusions

58 The parties agree that, in order to receive a grant of bail, the applicant must show there is a compelling reason to justify his release. If the court is satisfied the test has been met, it must then consider whether the respondent has proven that the applicant poses an unacceptable risk.

Compelling reason

59 The phrase ‘compelling reason’ is not defined in the Act. In *Rodgers v The Queen*,⁸ Justices Beach, Kaye and Ashley summarised the relevant principles:⁹

- (1) For an applicant for bail required to show a compelling reason, a synthesis or balancing of all relevant matters (including those identified in s 3AAA) must compel the conclusion that the applicant’s detention in custody is not justified.
- (2) It is not, however, necessary for an applicant required to show a compelling reason, to show a reason which is irresistible or exceptional.
- (3) A compelling reason is one which is forceful and therefore convincing – a reason which is ‘difficult to resist’.

60 The applicant relies on a combination of circumstances, as he is entitled to do, to satisfy the compelling reason test. Essentially, he relies on the following matters, as discussed

⁸ [2019] VSCA 214 (Beach, Kaye and Ashley JJA).

⁹ Ibid [43] (footnotes omitted).

below. In contrast, the respondent argues the test has not been satisfied, and that the application should be refused.

Strength of the prosecution case

61 The applicant has informed the court that some of the charges he faces will be contested, in particular the charges of driving and being pursued by the police, and the charges involving assaulting behaviour by using a motor vehicle. The applicant submits that the prosecution case on the charges to be contested is weak. On the other hand, the respondent submits the case is strong, noting that the applicant does not contest some of the charges.

62 Given there are multiple charges alleging various different types of offending, it is difficult to determine with any precision the likely outcome of the contested charges. Nevertheless, in the face of the evidence available, it is not possible for the court to conclude that the prosecution case appears foredoomed to fail. The fact that there may be triable issues does not mean the charges should be regarded as weak. Further, I note that the court has viewed the CCTV vision of the events alleged to have occurred on 3 June 2023. In large part the vision speaks for itself, and clearly shows the events that occurred.

Delay

63 As above, the prosecution applied to uplift some of the applicant's charges to the County Court. That application was refused on 2 August 2023.

64 The applicant has also indicated his intent to contest at least some of the charges laid against him. The applicant therefore submits that there will be some degree of delay, such that the time he is likely to spend on remand if he does not receive a grant of bail will exceed any such sentence he receives for all or some of his charges. As to this argument, the respondent submits that the expected delay does not amount to a compelling reason, even when considered with other factors.

65 In my opinion, the delay the applicant faces is not a strong factor in this application. It can be noted that the matters will remain in the Magistrates' Court, such that the

applicant will not be subject to the degree of delay that might be expected if the matters were to be dealt with in the County Court. With the applicant's criminal history considered, should he be found to have committed some or all of the offences alleged, he can expect to receive a custodial sentence that is unlikely to be less than the period he will spend on remand. Some of the alleged offending is serious, particularly the charges that relate to the use of a motor car as a weapon against unprotected persons. In one instance, it appears from the CCTV vision that SA was lying on the ground and in a defenceless position at the time she was allegedly hit by the car. It is open on the evidence for a fact finder to conclude that the applicant drove the car at her deliberately. Further, the applicant is alleged to have struck her by opening the door forcefully, hitting her, before she was finally knocked by the moving vehicle.

Employment

66 The applicant was working full-time as a carpet layer prior to his remand. He submits that, should he receive a grant of bail, employment will be open to him through another source. This is noted in the report of psychologist Lisa Jackson, dated 15 August 2023. No further evidence in relation to prospective employment was provided to the court. On the other hand, the respondent submits that given the fact the applicant was employed at the time he is alleged to have committed his offending, future employment does not represent a protective factor in all the circumstances.

67 I have nevertheless considered that the applicant has reasonable prospects of employment should he be granted bail, but in the circumstances I remain unconvinced that future employment should be regarded as a significant protective factor in all the circumstances, as the applicant is alleged to have committed the relevant offending when he was employed.

Family support, stable accommodation, and surety

68 The applicant argues a significant factor in this application is that he is supported by his partner, with whom he proposes to reside, along with her three children. The evidence before the court is that she is currently expecting her fourth child, and that

the applicant is the father of the expected child, who is to be born later this year. As with future employment, the applicant has argued that the relationship is a protective factor, however, it may similarly be noted that the applicant's alleged offending occurred when he was in his current relationship. Further, his partner was expecting a child, a fact that the applicant was likely to have known at the time of at least some of his alleged offending. Similarly, I remain unsatisfied that his relationship will materially contribute to the circumstances which the applicant submits satisfy the 'compelling reason' test.

Special vulnerability

69 I have the applicant's submission that he has a number of vulnerabilities described in the report of Ms Jackson. In determining this application, I have taken into account the opinions expressed by Ms Jackson, which are to some extent based on self-reporting by the applicant. I also note her view that the applicant would benefit from treatment, mental health support and alcohol counselling.

Availability of treatment or bail support services

70 The applicant has relied on two reports from CISP, the first dated 11 July 2023, and the latest dated 31 August 2023. The latest report recommends the applicant for case management by the Dandenong CISP team. The writer notes that the applicant has expressed strong motivation to participate in the CISP program, also noting that the applicant may not require the full four-month case management episode.

71 I have taken into account the matters raised in both reports. However, I am left unsatisfied that the applicant can be supervised to the extent required to alleviate the concerns of the court. In my opinion, too much depends on the applicant's voluntary engagement with the services open to him. There is little in the way of a concrete plan to assist the applicant, which does not provide a sense of confidence to the court.

Conclusion on the compelling reason test

72 Having considered all the matters put forward on behalf of the applicant, I am left unpersuaded that he has met the compelling reason test. In other words, even when

evaluated in combination, there is insufficient evidence to establish a compelling reason which is forceful, convincing or difficult to resist.

73 In coming to this conclusion, I have had regard the surrounding circumstances, as I am required to do. Furthermore, I have had regard to the effect of the provisions of the Act which require the court to give consideration to the fact that the applicant has been charged with family violence offences.

74 In these circumstances I will dismiss the application.

Unacceptable risk

75 Having concluded that the applicant has not satisfied the compelling reason test, it is not strictly necessary for me to address the question of unacceptable risk. However, in the circumstances I will indicate that had the applicant satisfied the 'compelling reason' test, I would have nevertheless refused a grant of bail on the basis that the applicant represents an unacceptable risk of committing further offences, and of being a risk to the community. Furthermore, due to his ties with Queensland, there is a risk that he may fail to appear on bail when called upon.

76 The applicant has a deplorable criminal record, spanning many years from 2014 up to 2023, noting that the matters before this court are yet to be proven. His criminal record involves multiple instances of dangerous driving, reckless conduct endangering life, theft of motor vehicles, dishonesty, contravention of FVIOs and criminal damage in Victoria. He has also committed offences of a broadly similar nature in Queensland from 2015 to 2021. Having learnt little from being found guilty of offences in Queensland, he appears to have returned to Victoria and allegedly continued to commit similar crimes. The applicant has spent many periods in imprisonment, none of which seem to have deterred him.

77 Having considered the nature of his prior convictions, his record of incarceration, and his age of 29, it can be said the applicant has a formidably depressing history, involving many instances of violent behaviour. In my opinion, the court can have little confidence that the applicant would not continue to commit similar conduct if

released on bail. Further, and of particular importance, in my opinion he represents a risk of committing further violent conduct, and placing other individuals and the broader community at risk. It is to be noted that the applicant has committed many offences whilst driving a motor vehicle, and his criminal history demonstrates that the fact he has been unlicensed has not discouraged or prevented him from driving and misusing motor vehicles. The latest instance of such misuse is the applicant's alleged assault on a vulnerable female by using a motor vehicle to strike her forcefully. If proven, this represents a particularly dangerous act.

78 In these circumstances, I would have also regarded the applicant as an unacceptable risk and refused bail on that basis.

CERTIFICATE

I certify that this and the 19 preceding pages are a true copy of the reasons for the decision of Justice Champion of the Supreme Court of Victoria delivered on 5 September 2023.

DATED this 13th day of October 2023.



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Associate