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THE CHILDREN'S COURT OF

WESTERN AUSTRALIA

MD 3 of 2015

THE STATE OF WESTERN AUSTRALIA

and

AJP

JUDGE D. REYNOLDS

TRANSCRIPT OF PROCEEDINGS

AT MERREDIN ON TUESDAY, 4 AUGUST 2015, AT 9.57 AM

MR S. STOCKS represented the State of Western Australia.

MR S. VANDONGEN SC appeared for the accused.

ASSOCIATE: Calling the matter of AJP.

HIS HONOUR: AJP, is it?

VANDONGEN, MR: Yes, your Honour.

HIS HONOUR: Thanks, AJP. Just take a seat on the chair. Yes, I will just take appearances. Yes, you're appearing.

VANDONGEN, MR: Yes, your Honour, Vandongen, with MR SHACKLETON, for AJP, your Honour.

HIS HONOUR: Thank you. Mr Stocks.

STOCKS, MR: Your Honour, if it please, for the State.

HIS HONOUR: All right. And I think Ms Laird from Youth Justice - - -

LAIRD, MS: Yes, Ms Laird, your Honour, representing the Department of Corrective Services.

HIS HONOUR: Thank you. And we have the video link and members of the family of the deceased who are able to see - - -

....., **MS:** Yes. Hi.

HIS HONOUR: - - - and hear. Can I just check that we have the link so people can see and hear what's going on here?

....., **MS:** Yes. Yes, we can hear you, (indistinct)

HIS HONOUR: Right. Thank you for that. Is everyone ready to proceed? I take it that we are?

STOCKS, MR: Yes, from the State's perspective.

HIS HONOUR: Right. Can I just put one thing on the record. The parties would have received a presentence report - an adult presentence report. Can I just make a few comments in relation to that. Having gone through the file, it seemed to me, given that the court located itself here in Merredin, I wanted all of the sentencing options open. I didn't want a situation where - not knowing what the submissions would be - that I may have to adjourn for some report.

So the purpose of obtaining that report is simply to put everything in front of the court, which I assure you has an open mind, but for the purposes of ensuring that there's no adjournment of the proceedings today, in light of whatever submissions may be, because it's my view that once the court's located here, people are here physically, there are people on the video link to participate, and observe the proceedings, the last thing that I wanted was to have to adjourn because there was some loose end somewhere.

So for completeness, there is it is, and now I'm ready to hear what everyone has to say. Mr Stocks.

STOCKS, MR: Your Honour, if it please. Excuse me. I propose to read out the statement of material facts and then just read out the three victim impact statements that have been provided to the court. And I will also just expand the statement of material facts insofar as the accused's video record of interview is concerned, by referring to some passages from the transcript. I understand your Honour should have the transcripts, the video - - -

HIS HONOUR: I've got that.

STOCKS, MR: - - - record - thank you. Your Honour, in relation to one charge of manslaughter, the facts are that on Friday, 20 March of this year, the offender, his mother, his stepfather, and three adult males, including the deceased, AM, were at the offender's address. That's (removed). The group had formed to participate in the annual Red Card hunt for vermin, and I just pause to explain that it's a government department program to eradicate vermin in farming properties. It's one scores points for the type of animal that one shoots. And so that was the purpose behind the group all getting together at the property.

Prior to heading out, the group participated in a firearms safety briefing, that was chaired by both the deceased and the offender's mother, which included the individual's arc of fire while positioned in the rear of the utility that the group intended on using. There was a set-up, your Honour, whereby the offender's mother and stepfather were in the front of the ute. The - I think - it may be - they were driving. The offender and three other males.

HIS HONOUR: Stepfather was driving.

STOCKS, MR: Stepfather was driving. The offender and the three other males were sat in - or in the ute tray. The offender was at the back passenger side, and the deceased was at the front passenger side of the tray respectively. Now, the group also discussed their relevant levels of firearms experience. The offender, the deceased, and the two other males loaded into the rear tray of the utility, while the offender's stepfather drove and his mother assisted with spotting.

The offender initially took possession of a .22-250 calibre rifle, and whilst was positioned, as I say, in the rear passenger side of the utility tray, whilst the victim was positioned - or the deceased was positioned in the front passenger side of the tray. During the course of the shoot the group searched for and shot vermin on the offender's property, before moving into an adjacent paddock on Quanta Cutting Weira Road.

At some point the offender took possession of a .410 shotgun, which was preloaded with two shells. The offender fired one round at a rabbit, leaving one round in the firearm. A short time later the offender began tracking another rabbit, with the shotgun moving - or tracking it with the shotgun, moving the arc of the firearm toward the front of the vehicle where the deceased was seated, facing forwards. The offender fired one round in the direction of the rabbit whilst the firearm was pointing toward but above the head of the deceased.

As the offender fired, the deceased stood up and was struck to the rear of the head by the shotgun round. The deceased immediately fell into the arms of the offender and onto the rear tray of the utility, and did not recover from the injury, despite attempts at CPR by both the offender's mother, and subsequently attending ambulance officers, and I say attending ambulance officers. Your Honour will note from the brief that what happened was that the ute drove toward the main road to meet with an ambulance - - -

HIS HONOUR: They met up somewhere away from the scene.

STOCKS, MR: Yes. And there's certainly no suggestion that what was done immediately following the tragic incident was anything other than what could properly be done for the deceased. The offender took part in an interview with police. Readily admitted to shooting the deceased by accident, saying - and I will just - the police summary was saying he didn't realise the safety was off on the firearm and felt a bump, which caused him to fire the weapon. However, I think the position is perhaps more

complex than that, so I will just refer to certain passages of the video record of interview.

At page 10, the transcript, when B - bottom of the page:

When B handed you that particular one, do you know if the -

Page 11:

...safety was on or off?---I thought it was on.

You thought it was on. Okay?---But I shot a round out of it at a rabbit before. Me and AM hit a rabbit together.

So certainly the offender was - had taken off the safety prior to shooting the first round. He then says:

Well, I think I put the safety back on.

Insofar as the bump's concerned, at page 12:

What was it like, the terrain out there? Is it bumpy, flat?

Answer:

Bumpy.

Bumpy?---Yes.

So, like, were you getting jostled around a bit, or, like, how was it?

And he says:

A little bit.

And then insofar as discussing the shooting's concerned, about - toward the bottom of the page, Sergeant Green:

So if you were about to shoot, would you say something, or you just knew you had to shoot that to the left?

He said:

I would say something first.

Yep. What would you say?---I'd say, 'I'm shooting.'

At page 16, referring to the fact that the deceased had fallen into the offender's arms:

So that was almost instantaneous, was it?---Yep.

All right. Had you yelled out that you were going to shoot? Yep.

Answer:

Mmm.

The offender:

But I had the rabbit in my sights because I was keeping an eye on it.

Is that right, you tracked the rabbit over the front?---Yes.

At page 15:

We were going towards what we thought would be a light

-

And this is about halfway down:

...like a fox. And there was a bunny that come running past me and I was following it, and I had - well, I had

-

Page 15 for my friend's benefit:

...I had - I thought I had the safety on and I was following it, and Ash was sitting down. Like, he was crouching and I said - I said, 'Has it got to the front of the ute?' I had my finger near the trigger, and we hit a bump.

Oh, okay.

At page 17:

All right. So do you know if he saw you, as in what you were doing?

Answer:

Probably didn't.

That's a reference to the deceased. And further down at page 17:

Yeah. All right. So when he's sitting and you're standing, what would - how far above him would you be standing with your firearm?---I had the firearm that far above.

So what did you actually say as you - - -?---I'm shooting.

Sergeant Green:

'I'm shooting'?---Yep.

Did you know if he acknowledged that or - - -

Answer:

He just stood up.

And then referring to the first shot that he had taken with the shotgun at page 18:

I had done a shot earlier in between them and they were totally okay with it, and I shot a rabbit. I was standing. I jumped over the esky and stood between them and shot.

That was on the same night, though?---Yep. Yeah.

And what, was that with the 410, or the - - -?---The ten, yep.

Okay. So the shot that you took before with the 410, that was - - -?---Yeah, I jumped - I jumped between them and stood between them.

And then further on on page 19:

All right. Was there any reason why you didn't change positions that time?

And this is the reference to the fatal shot. Answer:

Because it was rough. So that it was rough.

Says AJP. Sergeant Green:

The car was rough?---Yeah. Well, I moved with a loaded gun. That was stupid.

So I think there is a little perhaps more developed sense of the offender's account of the actual event of the shooting.

Your Honour, those are the facts. They incorporate into the State's statement of material facts the prosecution brief, the exhibits attached thereto, and, of course, the entirety of the video record of interview. There are then three victim impact statements.

The first I will read is from JM. She's aged 10. She's the youngest daughter of the deceased:

I miss dad very much. When we were all at home it would make me feel good, but now that dad is gone I don't feel like that. I wish he was here. When dad was around I felt really safe, because I knew he'd never leave us if he didn't have to. When mum is upset it makes me upset, because I don't like seeing mum upset. It's really hard for me. It's not fair to RM, because everything happened on her birthday, and now we have to try so hard to make RM's birthday good.

It's making it hard for me to concentrate on things. We all cry a lot because dad isn't there. We all wish dad could be with us, because it's very hard for us to not have dad here. At grandma's mum got so upset that she locked herself in the closet. I get worried that something might happen to mum, because I don't have dad there. I really miss dad's smell, because it was a nice smell. I try to find things with dad's smell, but I never find anything.

I really miss helping dad in his shed, because it was really fun. I miss dad's Jamie Oliver meals, because they were really yummy, even though some were not that good. I miss dad's golden chicken and battered fish. We were going on a camping trip with some friends, but we couldn't after everything happened. I feel really angry that I can't see dad anymore. Every day there's something I want to tell dad, but I can't. I love dad so much, and now I can't see him anymore. JM.

From RM, who's 13. It's addressed to the President of the Children's Court:

My dad was a great father, friend. Even though we had our moments, I always knew that he was always there when I needed him, but now he's not here and I miss him every day. My dad was there whenever anyone needed his help, and he was kind to everyone he ever met. He has

many people who cared about him and he was happy. I remember when we were at a new years party this year, he was so happy. My mum and dad had a couple of friends over and he was dancing, laughing, and talking to everyone. It was one of the best nights in my whole life to see my parents happy.

My dad taught me so many things, but not everything I wanted him to teach me. He's never going to be at my sister's and my wedding. He's never going to be able to teach me how to drive. I miss him and I will never forget him. I love my dad. Thank you. RM.

And then this from TM, who you see, your Honour, on the video link:

To the President of the Children's Court. I would like this opportunity to let you know how this tragedy has affected my children and I. On the night this happened it was my daughter RM's 13th birthday, so on such a major life experience for her, her world was shattered. Every year from now on RM will wake up, and what should be an exciting and fun day for her, and all she will do is relive a truly horrid event in her life.

Both my girls have lost a loving father, teacher, and the person that made them feel safe and sound. Our life has been turned upside down. All our family plans for the future, gone, in the blink of an eye. I've been with AM for 14 years, and married for nine years. We've managed to go through so many hard times and come out on the other side stronger than ever. He was my best friend, my strength, and my support. Every day is extremely hard without him.

Ashley was the main income earner in our house. I worked, so we had a bit extra, and to keep myself busy. We put a lot into building AM's career. He was a medic in the mine, working for Evolution Mining, and trying to work up into health and safety. He always loved to help everyone, and was a major part of the community. He was the driving force in helping to get the ambulance service back into Westonia. He wasn't perfect, but I loved him anyway, and you can't replace the love or the joy he brought into my life and the life of his girls, RM and JM, or his family and friends.

He was a huge personality. He brought fun and happiness to so many in any situation, and there will never be a day in which as a family we won't wish he was still here with us. Thank you. TM.

Your Honour, those are the facts.

HIS HONOUR: Thank you. Mr Vandongen.

VANDONGEN, MR: Thank you, your Honour. Does your Honour have the video record of interview transcript there?

HIS HONOUR: Yes, I've got that.

VANDONGEN, MR: There was one passage I don't think I heard my friend take you to, which is page 16 of the transcript.

HIS HONOUR: I've got that page.

VANDONGEN, MR: And I won't read it out, because I don't want to distress anybody, but your Honour can see the - I think the first time that AJP gives the answer to a question there, "as he stood up", and you can see what occurred, according to him, immediately after the shooting took place. That's the only other passage that I wanted to take your Honour to in that.

HIS HONOUR: Right.

VANDONGEN, MR: Can I say, your Honour, I'm going to deal with the facts. I'm then going to deal with matters personal to AJP. I'm going to deal with some matters specifically in mitigation. I'm then going to turn to the cases that have been referred to your Honour, and in that regard I hope your Honour's been provided with copies of the cases that my friend's referred to, but also the copy of the case that we refer to, DPP v Smith.

HIS HONOUR: Yes, I've received all of those and read them.

VANDONGEN, MR: Thank you, your Honour. And then I'm going to deal with some principles. I know your Honour's - I'm not going to tell your Honour the principles of juvenile justice, clearly, but some of the principles are relevant in an assessment of this particular case, and I will deal with those. Before dealing with the facts, it's my understanding that the State's position in relation to this matter is that the only disposition appropriate is one of immediate imprisonment, or detention.

And given AJP's age, that inevitably means that whilst detention now in a detention centre, the prospect of imprisonment in an adult prison looms large. Given that's the State's position on sentencing, as I understand it, and without going into this in too much detail at this stage, because I will develop this, in my submission, what that will do is to take a tragedy, which this clearly is, and to compound it by putting at risk the future benefits that AJP AJP has to offer to the community, and having regard to some of the matters that are referred to in the various reports that your Honour's been provided with, putting at risk his future wellbeing; in particular, his future mental health wellbeing.

In terms of the future benefits that he has to offer, there is - apart from all the various positive things that are mentioned in the report - there was one particular thing that I wanted to take your Honour to, to indicate what AJP's potential really is, particularly in terms of his taking responsibility for his actions. If your Honour looks at the supplementary court report, and if I could take you to the second page, under the heading Involvement With Youth Justice Services.

If you look at the second paragraph under that heading, which says "AJP and his mother", and you can see that there that there was an event in the Merredin's Children Court on 5 May 2015, when AJP approached TM and offered his apologies for what had occurred, and was able to provide her with an account of what happened, at her request. He was only able to do part of that, until he was overcome with emotion, and his mother had to step in and explain the rest.

But can I tell your Honour that was not something - sometimes you see apologies by people which has been generated by suggestions from lawyers, or from other people. This action of his was generated by him. He felt that it was the right thing to do, as the report indicates, and it gives a very clear indication of the benefits to the community from having this person outside detention, outside imprisonment, notwithstanding the seriousness of the offending behaviour.

Can I then - I said I promised that I would deal with the offence, and I will deal with the facts now. The facts in the statement of material facts are admitted, except to this extent: to the extent that the material facts implies that AJP deliberately fired the shotgun, that is not accepted. The firing or the discharge of the firearm was

not a deliberate act, and the death of AM was an accident.

By his plea of guilty AJP accepts that he caused AM's death, and he's criminally responsible because he had the shotgun under his control, and he failed to use reasonable care and precaution in its use, so as to avoid danger from it. He accepts that his failure was such that in all of the circumstances it constituted a crime. So, in other words, he accepts that his criminal responsibilities stems from criminal negligence in his handling of a dangerous weapon.

The psychological report which your Honour has, at page - or paragraph 35, and because what your Honour's going to be required to do, in light of the position that AJP takes, that this constitutes criminal negligence, is to make an assessment of the degree of criminality and the degree of negligence that was involved. Obviously the starting point is that it constitutes criminal negligence, but within the range of what constitutes criminal negligence there is a wide variety of culpability, and my ultimate submission will be that the culpability represented by this offence, albeit criminal negligence, falls right at the bottom of the range of the scale.

The psychological report, at paragraph 35, gives a very good and pithy summary of what occurred. If your Honour has that report at - - -

HIS HONOUR: I've got that.

VANDONGEN, MR: - - - paragraph 35. And you can see there that the psychologist, I think, quite insightfully, indicates that the shooting was unintended and resulted from the combination of AJP using a new shotgun - and I will come back to that in a moment - his momentary lack of focus, resulting in him not following expected safety protocols, and bad luck.

Now, it is true that the shotgun had been used by him only on that day. It had only just been bought. He had used it earlier that morning, but had only shot it once during the course of the vermin hunt. But it is not the case that he was inexperienced with shotguns, or firearms generally, and had, in fact, shot a 410 shotgun previously. So yes, it is true that that particular firearm was new to him, but not that particular type of firearm. So I will just make sure your Honour appreciates that.

His position is as I explained to your Honour, and as explained in his video record of interview, that he was tracking a rabbit with the shotgun. He believed - thought that the safety was on, because that's what he normally does after firing it, he having already fired it once that evening. That he had his finger on or near the trigger of the firearm, whilst he was tracking the rabbit, and he allowed himself to track the rabbit over the top of the head of AM, who was sitting in the front of the tray near the - just behind the passenger seat of the ute.

The car was moving. The ute was moving, albeit not at a great speed, it would appear, and it hit a bump. The bump caused him to pull the trigger on the rifle, and in a perfect storm situation that happened to occur at precisely the same moment that AM, as he was entitled to do, of course, was to stand up. So all of those - that combination of events occurred, unfortunately, and I think that's what the psychologist is referring to as bad luck, in combination with him going outside the arc of safety, to cause this unfortunate and terrible tragedy.

This is consistent with what he told his mother immediately after the event. My learned friend tendered the brief, so I assume that your Honour's had an opportunity to read the statements - - -

HIS HONOUR: Yes, I've read them all.

VANDONGEN, MR: - - - of the various witnesses. At page 23 of the brief, in the statement of his mother, KB, at paragraph 23, you can see his immediate response to his mother at the time of the incident, and my friend has taken you to the various passages in the video record of interview, particularly those at pages 15 through to 16, which are consistent with what I've just explained to your Honour as what had occurred.

Having tracked the rabbit, he was not intending to shoot. As I said, he thought the safety was on, but he didn't check to make sure that it was, in fact, on. He had his finger on the trigger, or about the trigger at the time, and he moved outside the safety arc, contrary to the instructions that were provided to him at the briefing that had occurred before the shoot had occurred, or began. There was a bump, the trigger was pressed, and unfortunately it resulted in AM's tragic death.

Now, this all occurred against the background of a family that took firearms very seriously, and the safety in the handling of firearms very seriously. The statement of

material facts refers to there being a safety briefing before this occurred. The statements in the brief go into some more detail about what that was all about, but it gives you an indication of the seriousness with which safety with firearms was treated by all of those who were concerned in this shoot, including AJP.

He told the police - and I can tell your Honour that he's experienced with firearms. His mother describes him in one of the reports as being the most responsible of her children, particularly with the use of firearms. The family has never had an accident or an incident involving firearms. This was an organised, responsible government sponsored vermin eradication program, in which AJP was participating as a responsible and safe member.

This is not one of those situations which you often hear about where drunken yobbos decide to get into a ute with firearms and go around in paddocks shooting rabbits. This is not that situation. This is not a situation in which there is any degree of recklessness. It is pure negligence on his part, albeit criminal. And I will come to the cases in a moment, but each of the cases that my friend has referred your Honour to all involve a degree of recklessness - in a range, of course - but recklessness nonetheless. This case does not have any of those features in them.

He momentarily broke the rules of the shoot. That is, the rule not to shoot outside the arc for safety. Momentarily broke that. He didn't check the safety, but he assumed it was on, because that's what he always did. He was on bumpy terrain, and, as I say, tragically all of those things coincided with the result that upon AM standing up at the wrong time - not his fault, of course, I'm not blaming him for that - but at the wrong time for everybody, resulted in his death.

And it has led to a moment, I think it would be fair to say, that AJP will never, ever forget. For somebody at the age of 17 to have gone through this experience of having shot somebody in these tragic circumstances, to have seen the immediate effect of it, to have AM fall back into his arms and to deal with that, then to deal with the aftermath of it, the immediate aftermath of it, involving driving him to an ambulance and so on, and then to deal with the ongoing daily reminder of what occurred, is something that no one really should have to bear - certainly not somebody of the age of 17 years.

Now, it's accepted that his failure to stay within the safety arc, his keeping his finger on the trigger, in circumstances in which he had not checked that the safety was on, when he knew he was on bumpy terrain, altogether amounts to criminal negligence in the handling of a gun in those circumstances, and hence the plea. But in the circumstances in which I've described them, as I said, and I emphasise not one ounce of recklessness involved, quite the contrary, and unfortunately it has culminated in the unfortunate and tragic death of AM.

Can I deal with matters personal, your Honour. They're comprehensively covered in the psychological report, which is, in my submission, a very useful and insightful document. It's also dealt with in the supplementary court report. What I wanted to do - and I've explained to AJP that your Honour has read all of those reports, and that you don't need me to tell you what's in them again, in terms of his matters personal. So what I wanted to do was to deal with some specific matters that are mentioned in those reports, perhaps by way of explanation, and in some cases by way of expansion.

The first specific matter that I felt that I should deal with, which is referred to in the reports, is the fact that he was expelled from school and suspended. And you might have picked up from the reports that there was an occasion in his life when he was about 14 or 15 when he was in Mukinbudin, and went to school in Mukinbudin, and it seems that around that period of time he was having some difficulties coping, and that seems to have resulted in some minor trouble at school.

The expulsion, which is probably the more serious of the results, because of the troubled period of his life, occurred in this way, as I understand it: he got into some trouble at school, nothing terribly serious. The principal said he was going to ring his mother and tell her what had occurred. Now, his mother, at that stage, was driving large trucks, and AJP was very concerned that his mother would not be told what had occurred at school, in circumstances in which she was driving these trucks, and it may cause her herself to have an accident, and he became very concerned about that happening.

And so to be frank and to be fair to AJP, he basically lost the plot at the principal, concerned that he was going to be putting his mother's life at risk by informing her of these events during the course of her driving the trucks. And it resulted ultimately in the school not accepting him back to Mukinbudin High School.

But apart from that - I mean, these are - as I understand it, these events were really very minor events at school, and it was AJP - the expulsion occurred because he was trying to protect his mother.

And at about the same time the reports also talk about him going - being referred to the juvenile justice team for some burglaries, and again, this all occurred in the context of him having a very difficult time around that particular period of time. What's encouraging about the juvenile justice team experience is that it told AJP what might happen to him if he got into trouble, and it was really a line in the sand for him, and - I mean, this is what the juvenile justice teams were set up for, is to make sure that kids in his position don't turn to a life of crime. And it actually had that result in AJP's position, because he had had no problems since then. Certainly not a criminal justice problem.

So those are the two matters that I wanted to deal with specifically. One thing that comes out of the reports, and in particular the psychological report - and if your Honour could take up the psychological report - paragraphs 34 and 41 show quite clearly that he has an enormous degree of empathy for the children and the wife of AM, who I know can hear via video link what's occurring. The report - all of the reports, and certainly in my discussions with AJP, it's abundantly clear that he understands the hole that has been left in their lives as a consequence of his momentary negligence, and his remorse for what has occurred is evident when you speak to him.

He's getting a little bit annoyed about having to speak about it again and again. Everyone wants to hear him tell them what had occurred, and the reports talk about his avoidance strategy in not wanting to talk about it, which is actually a very accurate insight into the way in which he - or the place that he's in at the moment. But what is very, very clear is he understands the enormity of what he has done, and is extremely remorseful about it.

The real - I've already mentioned this, but the real and concrete evidence of evidence of his empathy and remorse is the apology to TM. Now, he felt that it was his obligation to do that; that it was the right thing for him to do, and after asking his mother whether it would be okay for him to do that, he went over to TM outside this court and apologised to her about what had occurred. And I've already told your Honour, but he told her what had happened, because that was one of the things, I understand, TM really wanted to know from him. He

was able to give her some explanation, but was just unable to continue, and his mother had to finish the explanation for him.

And this is - and it can't be forgotten - this is something that was done by a 17-year-old boy, who had the courage - and quite frankly, he ought to have done it, but not many people of that age - not many people of far more advanced age have the courage to do what he did on that occasion. The other thing that I wanted to point out in terms of empathy and remorse is that in discussions with him the idea was hatched - I don't want to use that word, but it's the only one I can think of - to have the sentencing here in Merredin, rather than have it in Perth, where people who live in this area would have to travel to - not him, but other people - to hear what had occurred on this occasion, was something that he agreed to, to ensure that - at that stage TM, I think, was living in this area, not in Victoria. To facilitate their ability to be here while this proceedings took place. And again, that reflects, in my submission, a very mature and insightful and empathetic and remorseful individual.

He has read one of the victim impact statements. He wasn't able to read the other two, but he has heard them read out today in court. I think your Honour was watching him during that occurring. When he read one of the victim impact statements back in Perth it upset him greatly, as you might expect. He obviously wishes this had never occurred, and obviously wishes that, you know, the pain and suffering that has been caused to those people who are listening in Victoria at the moment, had never been visited upon them.

Can I turn to deal with the effect on him. He appreciates that the effect of this incident on him is nothing compared to the effect that has been visited on TM and her children, but there have been significant adverse effects on him. Now, they're summarised in the psychological report. You will find them at paragraphs 22 to 24, and into paragraph 38. There's reference made there to the potential for him to have suffered post-traumatic stress disorder, which, quite frankly, would not at all be surprising, given the circumstances that occurred on this day.

He has refused to take medication to deal with it. He seems to be one of these people who wants to deal with these things on his own. He wants to deal with it in a natural way, to use his words, without the assistance of medication, and he knows that if he keeps busy, then he's

able to deal with these things, but to be fair to him, I don't think that there are other people who are more qualified share that view.

One of the most surprising things about this matter is that there have been a number of agencies who have come together, which is referred to in the reports. I don't think I've seen that before where there has been such an organised meeting of minds by professional organisations, all with a view to making sure that AJP deals with what has occurred, and that his mental stability is maintained, and is not put at risk, because there are professional people who are clearly very worried about him.

They're very worried about the effect of this incident on him, not only having shot somebody, but then having to deal with the aftermath of the shooting, and then dealing with the consequences of what occurs today. They are extremely concerned about his mental health and wellbeing. And that's probably not surprising. At the age of 17, having your whole life in front of you, to have it effectively now defined by this event that occurred earlier this year, and his life will be forever shaped by that, I imagine.

In the - the effect on him was immediate, and if you look at the statement of one of the police officers, Reece Evans, which is at page 59 of the brief. This is in the early hours of the morning, the following morning, when AJP was at the police station. If you look at paragraph 10 on page 59, the male person that was lying on the floor underneath the desk crying and howling was obviously AJP. That was the effect upon him immediately. And it's going to be difficult, I would suggest, for that kind of event, for him to eventually cope with it.

Now, there are some things that are not in the reports that might give you a little bit more about AJP personally. He's trying to work out what he wants to do with the rest of his life, I think would be fair. I think he wants to be - to do an apprenticeship of some form or another when he finishes school. He's not quite clear, I don't think, about which particular apprenticeship he wants to do, and wants to make decisions about that.

One of the things he loves doing is cooking. When he was boarding - when he was at high school boarding - he used to work in the kitchen. His brother is a chef, and I think recently he had some time working with him in a kitchen in Perth. That's one of the things that he really likes doing. He also likes playing football. He plays at

one of the local clubs, and he's very proud - he's very proudly told me and Mr Shackleton that on the weekend he played his second game of league. So he's a very - it sounds like he's a very talented football player, and despite perhaps his size, it would seem that he has the ability to play league football at a very high level in the country.

I think in the reports there also there's a mention that he has got a CBH job over summer. I'm not sure whether that's in the reports, but that's something he has told us as well.

HIS HONOUR: Yes, I've read that.

VANDONGEN, MR: Yes. So, you know, he - - -

HIS HONOUR: Whether he has it - I'm not sure whether he had it, or he wanted to do it.

VANDONGEN, MR: No. It has been organised, as I understand it, and one of the things about the CBH job - I'm sure your Honour knows about those sorts of forms of employment, and this probably is why he has sought this out, is because it involves a great deal of hard work over long hours, which is really the way in which AJP seems to cope with this matter. So those are the matters personal that I wanted to highlight for your Honour.

Can I deal with some factors in mitigation. Probably the most important factor in mitigation, apart from his relative youth, is the plea of guilty. It's a plea, I would submit, at the first reasonable opportunity. He pleaded guilty on 7 July 2015, but there was an indication by Mr Shackleton by email to the DPP on 2 June - - -

HIS HONOUR: Sorry, is there any issue about this, Mr Stocks?

STOCKS, MR: No, your Honour.

HIS HONOUR: No. Well, I've - given the magnitude of the - - -

VANDONGEN, MR: Yes.

HIS HONOUR: - - - offence alleged, the timing, I've looked at the prosecution notice. I don't have any problem reaching that conclusion.

VANDONGEN, MR: I didn't think your Honour would. But I did want to - look, the case of DPP v Smith contains - they're not binding on your Honour. They're just observations made by the particular sentencing judge in that case, but it refers to things such as sparing witnesses and family of the deceased of the trauma of a trial. Now, I suppose AJP could well have taken this matter to trial, but he chose not to. He chose to accept responsibility immediately for it, and that must have relieved AM's family of the trauma of not necessarily participating in the trial as witnesses, but from the trauma of the unknown, the delay, the unknown, the waiting, and he has saved them - so he has done what little he can to mitigate the trauma that has been visited upon them, by sparing them the need for a trial in this matter.

Equally, there were four people in the back of that ute; three people, including - four including AM - all of whom witnessed a very distressing event. There was, of course, his mother and his stepfather who were in the front of the cabin, and he saved them the trauma of having to re-live what must have been a truly horrific incident. And, in addition to that, he has saved the State the expense of a trial; saved the State witnesses, the police officers that were involved in the matter, from needing to give evidence.

In addition to the plea, there is concrete evidence of remorse, acceptance of responsibility, and a willingness to facilitate the course of justice. Now, those are matters that your Honour can take into account outside the plea of guilty, in addition to the plea of guilty. I've already made mention of many of those things. I won't repeat them. Other than to simply highlight again the apology and the fact that there was a facilitation of sentencing taking place in Merredin, together with the other things that are referred to in the psychological report, in terms of remorse and empathy.

Youth is obviously a matter that your Honour will take into account as being a significant mitigating circumstance, and finally, and perhaps most importantly, is that this case does not involve recklessness. Now, it might be said - well, the absence of recklessness simply means that's not an aggravating circumstance. In my submission, it is a mitigating circumstance, and it is mitigating, and it shows that this offence, in terms of its culpability, is towards the lower end of the range of the scale.

HIS HONOUR: Well, just on that - - -

VANDONGEN, MR: Yes.

HIS HONOUR: - - - I hear those sort of submissions a fair bit, about whether there's something's mitigating because the offence is not aggravated by the existence of that circumstance.

VANDONGEN, MR: No.

HIS HONOUR: I think the best approach is to say that something that's not there is not something that can be said to be mitigating. Rather, the approach is look at what is there, and make an assessment of what is there, so far as the - - -

VANDONGEN, MR: I think that's right.

HIS HONOUR: - - - conclusion needs to be reached on what is the level of seriousness, or where does this fit in the overall scheme of things. You do that by looking at what's there.

VANDONGEN, MR: I agree with that, with respect. I suppose it's one of those lawyer things, isn't it, where we chase around and round in circles until we end up vanishing. It really is, in an assessment of where it fits in the range, the absence of recklessness brings it towards the bottom end of the range of the scale.

HIS HONOUR: Yes, but in order to understand where it fits, you need to also have an understanding of what's not there, otherwise you can't make that assessment - - -

VANDONGEN, MR: That's right.

HIS HONOUR: - - - as to the relativity, or where it fits in the overall scheme of things.

VANDONGEN, MR: That's right.

HIS HONOUR: I understand that, but I don't take to the submission - and you're not pushing it - - -

VANDONGEN, MR: No.

HIS HONOUR: - - - that something - because something's not there, that therefore that is mitigating. That's not the approach.

VANDONGEN, MR: No, I know that's a common submission. I certainly don't make that submission.

HIS HONOUR: Right.

VANDONGEN, MR: But it's also important because the cases that my friend has referred to - and I do need to take you to those cases, and I know that can be laborious, but they all exhibit a degree of recklessness, some very reckless behaviour, some not so reckless behaviour. In the case of Smith that we provided to your Honour - and can I put this rider over all of this - that they are all first instance decisions. They're not ones that have been reviewed on appeal.

So they are of very limited utility. I would, you know, have to accept that. But the case of Smith is a case which is not directly comparable to this case, but is much more comparable in terms of the circumstances and the cases that have been referred to by the State. I'm not suggesting that Mr Stocks somehow didn't refer your Honour to this case deliberately. I'm certainly not suggesting that. It's just a case that we've found, but it's a case which is much more on all fours with what occurred here. In fact, it's probably more serious than this one. This one - - -

HIS HONOUR: I think the thing about that case is that he obviously mistook the deceased for a - - -

VANDONGEN, MR: For a deer.

HIS HONOUR: - - - deer, but he positively shot at the target. So I suppose that's a key difference - - -

VANDONGEN, MR: That's right.

HIS HONOUR: - - - on what you're saying happened here.

VANDONGEN, MR: Yes. Well, in fact, all of the cases that have been referred to, with the exception of perhaps one, maybe two, because one is not very clear about what actually happened, are all cases of deliberate firing. I don't mean deliberate discharge, but a deliberate pulling of a trigger, a pointing of a gun, at somebody. That's not this case at all. That is not AJP's case at all. And I suppose the tragic thing, as Mr Shackleton pointed out to me this morning about Smith, is that the brother of the deceased in that case actually told the person who shot the rifle, "Take the shot". Not knowing that that was the brother, not a deer, that was behind the trees.

Your Honour I'm sure has read all of the cases that my friend's provided to you.

HIS HONOUR: Yes, I've read those.

VANDONGEN, MR: Yes. I don't want to - I mean, you could spend forever pulling out the differences and the similarities. Perhaps I will just pull out some of the more important ones. Does your Honour have the comparative sentencing table? That's probably the - - -

HIS HONOUR: Yes, I've got that.

VANDONGEN, MR: - - - easiest way of dealing with it. MEF, which was a single instance decision of Miller J, obviously was a 13 year old, and so a very young offender, but he had some experience with firearms, having been involved in kangaroo shoots. There was psychological evidence that he knew how dangerous rifles were, and how to use them. His Honour found that the conduct there was reckless. It involved the deliberate pointing of a gun at a person, albeit in circumstances in which he didn't believe that it would fire. He thought that they were blanks or dummy bullets, but described by Miller J as a high degree of recklessness, which is, again, not this particular case at all.

In Luong, again, that was a deliberate pulling of the trigger, in a house - in fact, in a room - a bedroom - in which there were lots of people who were present, in circumstances in which he didn't check to see whether the gun was clear. The gun was an illegal gun, and just on that point, your Honour, in this case there's no suggestion at all that AJP was not permitted from - permitted to use the firearm, or either of the firearms. And in case your Honour was wondering, the Firearms Act provides for exemptions in the case of AJP's situation.

They're contained in section 8 of the Firearms Act. They concern - one of those concerns circumstances in which the family member of a licence holder on a farm, using firearms for the eradication of vermin, is not required to hold a licence. So he was perfectly entitled by law to use the firearm. In many of the cases, if not all of them that have been referred to by my learned friend, there was no such arrangement.

In Luong, I think it was a sawn-off shotgun which had been purchased for \$70 from a drug dealer, and was fired accidentally, but in circumstances which were extremely dangerous, in a domestic situation, in a bedroom where there were a number of other people who were there. Paragraph 22 of that decision, the sentencing judge found:

The fact remains that he brought about the loss of another's life by conduct which, as I think no person of ordinary good sense could dismiss as merely an accident carrying no true moral and legal culpability.

Well, I think, in my submission, the event that resulted in AM's death could truly be described as an accident, and the high degree of culpability in Luong does not exist in AJP's case.

If you then look at SF, which is the next case on my friend's list. That was a plea of not guilty. Again, an illegal gun, in circumstances in which the gun was pointed at the victim. At paragraph 64 of that decision there's a summary, because there was a factual dispute in that case of the facts that were found, beyond reasonable doubt, and they include that the offender, when he received the gun, he opened it, and either removed or replaced the bullet and saw the cartridge in the gun, then closed it, cocked it, and pointed it towards the deceased. That's clearly not the situation here.

The next case is a case of Doe, on page 3 of the schedule. Can I just correct one thing. The sentence that was imposed in that case was three years, with 18 months non-parole, but it was a periodic detention. So in New South Wales one of the options is periodic detention, and that was what was chosen in that case. But the sentence was not revealed. This is an appeal case. There was an appeal against conviction and sentence, but the appeal against sentence did not proceed. So that case did not review the sentence that was imposed. And again, that was a plea of not guilty.

Barnwell - if you look at paragraph 10 of Barnwell. I'm sure your Honour's familiar with this, but I'm sure my friend's not suggesting this is in any way comparative to what occurred here. Paragraph 10 - and I'm summarising it - the offender came into possession of the gun. It would have been obvious from a cursory look that it had been loaded, and he play-acted with the weapon, jumping around various rooms, pointing the gun, and pretending that he was someone like Al Pacino, in circumstances in which I think the firearm was a sawn-off shotgun, and he was not familiar with guns.

The next one was Sippett, who was an adult. Now, this one did not involve the pointing of a firearm, but the court was particularly minded to impose a significant sentence on this particular offender, because of the need to deter the bringing of firearms into domestic quarrels,

and that's referred to at paragraphs 30 and 32 of that decision. What the offender did there was he decided to kill himself, and to do that he was going to bring the gun to the house of his former partner and shoot himself in front of her.

He had the firearm wrapped in a sheet. When he arrived at the victim's house they wrestled over the sheet and the firearm went off accidentally. That - even though that case does not involve the deliberate presentation of a firearm, believing it to be not loaded, that is a far cry from what occurred in this case, in my submission.

The next case of Nguyen, the only thing I need say about that are two things. (1) he was 46 years of age, and the second is he was intoxicated at the time of being in possession of the firearm, in circumstances in which he had no right to have the firearm.

The final one is Raccanello. It's very difficult to use this case for anything, because there are no real factual findings about how the firearm was discharged. There's a hole in the facts. Clearly the case - or the court in that case, however, was concerned about generally deterring the use or the presence of firearms in a domestic setting, and for that reason imposed a generally deterrent sentence, and the offender in that case had many prior convictions, which AJP does not have.

So I'm sure my friend wasn't providing them to your Honour as directly comparable, but I thought it was important to go through some of those things, to show that they are far from being comparable. They - - -

HIS HONOUR: Well, I don't know. I will let Mr Stocks speak for himself, but usually these cases are put up in this court, and sometimes cases are actually cases involving adults. They're referred to more by way of principles - - -

VANDONGEN, MR: I'm not criticising Mr Stocks. Please don't think that I am. I understand - I don't know what he's going to say about them either. In fact, I'm pretty sure he will say that they're not directly comparable. I'm fairly confident he will say that. They are on no level comparable, in my submission, because they all involve that degree of recklessness, to various degrees. In any event, those cases cannot set the limits - outer limits or otherwise - for the sentence that's appropriate in this case. They could only ever be used as broad comparators,

and - well, in my submission, they are of very limited utility.

Can you turn finally to deal with some principles. I don't intend, as I said, to deal with principles of juvenile justice, because your Honour is more than capable of knowing those principles. Can I make these submissions, however, that in this case there is absolutely no need for personal deterrence. AJP has said to the psychologist that he doesn't intend shooting again - in the near future at least. I doubt that he will want to shoot again.

But, in any event, there is nothing in any of the materials - in fact, the materials suggest completely the otherwise, that he will never come before this court again. There are no criminogenic issues that have been identified by any of the professional report writers in this matter, and this offence ought not provide any basis for thinking there needs to be any personal deterrence.

In terms of general deterrence, I think I would have to accept that general deterrence plays a limited role - a limited educative role - in cases of this nature, but the question that rhetorically arises is by general deterrence what would the court be seeking to generally deter by using this case. It could be readily understood why in a case in which there was reckless shooting, albeit criminal negligence, why a court might impose a sentence that has an element - in fact, a great degree - a great element of general deterrence. Where there's a degree of reckless behaviour, where there is bringing firearms into a domestic violence situation, where there is the use of illegal firearms, where there is intoxication by drugs or otherwise: those are the kinds of cases where general deterrence would loom large.

But here it's difficult, conceptually, to see what element of general deterrence would be achieved by imposing a sentence for that reason. Because what occurred here is that he momentarily breached the agreed safety margins, by meeting outside the arc. He was truly negligent, to a criminal degree, but momentarily. And, in my submission, even if there is a need for general deterrence, the need for general deterrence - the need to educate people about the need to be safe with firearms - could be adequately met, in these circumstances, without an immediate term of detention or imprisonment.

Further, there's no need to protect the community. Of course the predominant principle in juvenile justice is

rehabilitation, but that be overcome, and can be tempered by the need to protect the community. In this case there is no need, in my submission, to protect the community from AJP whatsoever. As I said, these are tragic consequences caused by a few seconds of negligence by a 17 year old, and it would be a tragedy on tragedy if he was to have to serve an immediate term of imprisonment as a consequence of that.

HIS HONOUR: Can I just decide this idea of an imprisonment. I can't recall ever actually imposing imprisonment on someone less than 18.

VANDONGEN, MR: Detention is what I mean.

HIS HONOUR: Sorry. All right. If that - - -

VANDONGEN, MR: I know. I know. That's my - I know. The Young Offenders Act talks about imprisonment.

HIS HONOUR: No. I understand that. Yes.

VANDONGEN, MR: Or serving in a detention centre. But I know what your Honour's saying.

HIS HONOUR: I understand that.

VANDONGEN, MR: Paragraph 38 and 39 of the psychological report contain the recommendation of the psychologist, and they are of significance in terms of - obviously it's a matter for your Honour about the ultimate sentence to be imposed, but the recommendations of the psychologist are of significance. You can see, in the first sentence of paragraph 38, that he's assessed to require a mental health intervention rather than a forensic intervention.

But there is an absence of criminogenic factors underpinning the current offence, and the catastrophic consequences of the incident, and exposure to the death of the victim in such a manner, resulted in traumatic psychological impact for AJP, for which he requires ongoing intervention. Paragraph 39:

It is critical that AJP's living arrangements be consistent and non-punitive.

And I emphasise the word "critical". Now, your Honour ordered an adult pre-sentence report. And your Honour has already made mention of that, but I assume your Honour was thinking about section 50A of the Young Offenders Act?

HIS HONOUR: Yes. There's provision in the Young Offenders Act if someone is over 17 but comes to be sentenced when they're less than 18 then you can impose a community order under the Sentencing Act.

VANDONGEN, MR: Yes.

HIS HONOUR: And there are issues in relation to whether or not you have a report for the purposes of the Sentencing Act if you have a report for the purposes of the Young Offenders Act.

VANDONGEN, MR: Yes.

HIS HONOUR: Within the Department of Corrective Services there's a clear distinction. There's no interaction, so someone who is over 18, or approaching 18 - a youth justice officer is doing that report and it is not taken to be a report by a corrections officer for an adult report.

VANDONGEN, MR: No.

HIS HONOUR: There is reference to the need for a report under the Sentencing Act in order to make sure that there's no argument about whether a report under the Young Offenders Act can do for the purposes of the Sentencing Act, given that provision in the Young Offenders Act. Whether or not I use it is another matter, but it needs to be added as one of the options open, for completeness. And to avoid any argument, and any potential adjournment, I called for it.

VANDONGEN, MR: No, I understand why your Honour called for it, because your Honour, I think, is prohibited from imposing intensive supervision orders - community based orders - without that report being provided.

HIS HONOUR: That's right.

VANDONGEN, MR: Well my submission is, having been provided with that report - which effectively summarises the psychological report and the other report, in any event - that your Honour ought not accept the State's submission, if it's made, that detention is the only appropriate disposition in this matter, and that one of those options is available, and is appropriate to impose upon AJP, in these circumstances.

Whether that be a conditional release order under the Young Offenders Act - whether your Honour considers that to be the appropriate mechanism for dealing with this matter -

or whether it's an intensive supervision order, I'm acutely aware of the fact that the report writers don't
- - -

HIS HONOUR: The conditional release order under the Young Offenders Act has two components. One component is detention.

VANDONGEN, MR: I understand that.

HIS HONOUR: The other component is an intensive youth supervision order.

VANDONGEN, MR: Yes.

HIS HONOUR: So in order to impose a conditional release order under the Young Offenders Act, you need to be satisfied that detention is appropriate.

VANDONGEN, MR: Yes.

HIS HONOUR: But not immediate.

VANDONGEN, MR: My submissions are directed towards immediate imprisonment and imprisonment altogether, but if your Honour is against me on the imprisonment part of it
- - -

HIS HONOUR: I'm not saying I'm against you at all. I'm saying - - -

VANDONGEN, MR: No, I know. No, no, I'm not saying that, but, ultimately, if your Honour decides, in the exercise of your discretion, that imprisonment - detention - is the only appropriate disposition, then, in my submission, that could be dealt with by way of a CRO - conditional release order. I understand there's a detention aspect to that, but, given that he is 17, and that there are significant mental health issues that are ongoing, and that the reports indicate need of ongoing treatment, then your Honour could deal with this matter by way of an intensive supervision order under the Sentencing Act.

And ultimately my submission is detention is not the only appropriate disposition, and therefore you get to that conclusion of intensive supervision order, or a youth community based order. But if your Honour's against me on that - if your Honour considers, in the exercise of your discretion, that detention is the only appropriate disposition - in my submission an immediate term of

detention is not the only appropriate disposition and it could be dealt with by way of a conditional release order.

HIS HONOUR: All right.

VANDONGEN, MR: I hope that's clear. I do understand the Young Offenders Act, your Honour, but those are my submissions.

HIS HONOUR: No. I follow what you're saying. That's fine.

VANDONGEN, MR: Those are my submissions.

HIS HONOUR: All right. Mr Stocks.

STOCKS, MR: I will deal with the cases first, as they sort of occupy the end part of my friend's submissions. And, though the State doesn't rely on those cases as providing a start or an end point, or any boundaries to any perceived tariff, they're simply provided in that it's very difficult to find offences that the courts have dealt with where somebody is shot with a gun in circumstances where there was actually no intention to shoot somebody with a gun.

And the State accepts there was no intention to shoot somebody with a gun, but I do need to qualify that a little bit, having regard to the argument and the facts that are put forward by my friend. I think what's suggested by - so I just say that, insofar as the cases are concerned, that they are provided as a set of cases where the facts are all very dissimilar, but all fundamentally involve the discharge of a firearm in circumstances where the discharge of the firearm was not an intended event at the point at which the firearm was discharge.

And they provide your Honour with assistance, the State says, insofar as the factors that the court has looked at in each individual case in assessing the culpability of the individual offender. It should also be noted that each of those cases deal with a lesser maximum penalty than the maximum penalty that your Honour is dealing with. They all deal with manslaughter as a 20 year maximum; of course manslaughter is now life.

And, therefore, those sentences don't reflect the offence as it currently stands. The offence is obviously now deemed to be more serious than it previously was. Can I deal with, firstly, the facts. What is suggested is that there was - perhaps it might be that my friend interrupts

me if I have this wrong, and I apologise if I do. But one's taking notes and listening at the same time to the next thing that's being said.

If it's suggested that the accused, at the time that his finger pulled the trigger, did not mean at that instant to pull the trigger, that's one thing which the State isn't in a position to comment on, because that's what's in the offender's mind. If it's the defence's position that when the gun was being tracked from the rear to the front of the car - of the ute - that there was no generalised intention on the part of the offender to pull the trigger, then the State wouldn't accept that, because he told everybody - - -

HIS HONOUR: Well can I - maybe we will just clear that. I don't understand what Mr Vandongen said to - I do not accept that that's the position. But he's best to clarify that.

STOCKS, MR: Your Honour.

HIS HONOUR: As I understand it, he was tracking, and it's accepted that he breached the safety briefing in relation to tracking.

STOCKS, MR: And he said, "I'm shooting".

HIS HONOUR: (indistinct) by tracking - - -

STOCKS, MR: Yes.

HIS HONOUR: - - - outside the arc. As I understand it, that's accepted. But you can confirm that, on comment on what I've just said.

VANDONGEN, MR: Can I comment on that after my friend has made his submissions, your Honour?

HIS HONOUR: All right.

STOCKS, MR: And so I will develop that further, then, in those circumstances. Because the offender says this, "I said" - sorry, page 17: "I had the firearm about that far above". "Yep, alright. So what did you actually say as you" - answer: "I'm shooting". When one takes into account the tracking, the absence of safety catch, the finger at or near the trigger, in combination with, "I'm shooting", whilst he may not have developed an intention to pull the trigger at the precise moment that he pulled the trigger, the State does not accept the proposition that he did not intend to pull the trigger at all.

And there is, I think, a significant difference between those two positions. It may be seen to be subtle, but I think, particularly having regard to the issue of recklessness that my friend has developed, it is an issue that needs to be resolved. Because when one looks at the circumstances, the offender is following a rabbit in order to shoot the rabbit. There's no other reasonably available explanation for what he says and the conduct of the offender taken as a whole.

In the process of doing that, he has breached the significant safety rule that was agreed on before they set out - the principal parameter for how the conduct was going to be engaged in - that you stay to your corner of the ute. And the reason that that was the principal parameter is because if you were to breach that parameter you would bring your firearm into an arc whereby it presented a significant risk to the person who was immediately adjacent to the quadrant that you were responsible for.

He would not have known, before commencing to track the rabbit, where the deceased was. He has followed the rabbit around. He's following the rabbit; he's not looking at where people are. He has lost track of where he is. He has lost track of what he's doing. The bump in the road is not unforeseen. He tells the police that the track they were on was bumpy. And it's in those circumstances that the firearm has been brought around through a significant degree of arc. It has been brought around so that it's point directly at - albeit above, but directly towards - the deceased.

Still following the rabbit - "I'm shooting" - pulls the trigger. Acknowledges the deceased would not have seen him - would not have known that he was coming around with the firearm. And, notwithstanding, still did it. That is recklessness. That is not a tragic accident. It is tragic, but it's not an accident. Not in the true sense of that word. It was a clearly foreseeable risk in the minds of all of the participants of that event, which is why they had had a discussion about where you were to stay.

Now, at page 18, the police say this: "Alright, now you said before the bump you thought the safety was on, but you'd made the decision you were going to shoot". "Not really". He says, "Not really". Now, that's inconsistent with, "I'm shooting". And, as I say, there is a difference between - maybe he hadn't made a decision to shoot at that precise moment in time, but his finger had to be on, or very close to, the trigger to be dislodged by a bump that

would have been an expected event, and he clearly intended to shoot. That's why you say, "I'm shooting".

He had already that evening shot over the front of the ute, albeit in different circumstances, where he had moved to the front of the vehicle so that he would not be shooting over people, but would be shooting, rather, between them, in circumstances where they would clearly be behind the operative end of the firearm. But, in this case, who knows why - the thrill of the chase, not really thinking about it, being disappointed about his inability to get the long range shot with the foxes - you will see that in the brief earlier on.

He had gone to the shotgun because he hadn't had an opportunity to take out a target. He gets the earlier rabbit, here's another one - wanting to feel a sense of belonging - a sense of participation - and loses sight of what it is that he's going around him. Even if he didn't intend to pull the trigger at all - even if he had no intention to shoot - it would still be recklessness. The circumstances surrounding the event are still the same.

He has tracked around, he has gone significantly past the arc that has been predetermined, the firearm is loaded, and known to be loaded, by him. He's unaware whether the safety is on and his finger is proximate to the trigger. I didn't provide your Honour a copy with Omodei, because I - perhaps incorrectly - assumed your Honour would be aware, generally, of Omodei, and my friend would be aware of Omodei. It's the main case in the State of Western Australia around responsible use of firearms.

It's because of Omodei that the offender has to plead based on what he says in his account - based on the account that he gave to the police. I accept it's an early plea. Absolutely. Your Honour would, I think, accept an early plea even if had gone all the way to 19B. There was some disclosure (indistinct) but relatively minimal, and he is certainly an early plea. And I'm not suggesting your Honour discount the strength of the plea for the strength of the prosecution case, but the reality is that the plea was inevitable, based on his own account and based on the authorities in the State of Western Australia around negligent use of firearms.

This is a tragedy, but it's a tragedy that had a cause. It's a tragedy for which one person is responsible. And that's why it's a tragedy that plays out in this court room, because the offender is criminally culpable for his conduct. He's criminally culpable for holding a loaded

firearm proximate to where somebody would be. He's pointing it in their direction. He has not suggested that the deceased moved from side to side. It's not suggested that he lurched.

Just, simply, that he stood up. That he stood up into a position that he had been occupying for the entire period of the shoot. And his presence, and the risk, would have been well known to anybody paying attention to their surroundings - was well known to this offender. I appreciate he's the youngest of the group, but he's not inexperienced insofar as firearms are concerned. To the contrary.

He may not have been experienced with the use of this firearm particularly, but there is no suggestion that he didn't familiarise himself with the firearm prior to setting out. Indeed, we know he did familiarise himself with that firearm. He is familiar with firearms generally. This is not an offender - I forget the one in the case I've provided where the accused didn't realise the gun was loaded. He knew it was loaded. He knows how to use the gun.

HIS HONOUR: It might have been the Leonora case.

STOCKS, MR: Sorry, your Honour?

HIS HONOUR: It might have been the Leonora case Miller J dealt with.

STOCKS, MR: No. In that case he thought the gun was loaded with a blank.

HIS HONOUR: A blank, yes. It was a blank.

STOCKS, MR: He knew the gun was, in fact, loaded.

HIS HONOUR: All right.

STOCKS, MR: The one with the open breach - the gun that fired from the open breach, in the authorities that I've provided with your Honour. But put that to one side. This offender knew there was a live round chambered. He knew that the gun would fire if he pulled the trigger. And, to that end, that's the significant difference between the other cases that I've provided with your honour. This offender knew the gun would shoot a live round.

The authorities I've referred to your Honour - the significant difference between them and this is that they

knew they were pointing a gun at somebody, but didn't think it was live. Except in Smith's case, who knew the gun was live, and knew he was pointing it at something, but didn't think that thing was a person. It's not that the offenders in the authorities that have been provided to you are more or less culpable, it's just that the culpability arises by way of a different operation.

If other words, in order to commit the offence you have to be pointing the firearm - ultimately, at the point of the pulling of the trigger - at someone, and that firearm has to discharge. Now, this offender didn't realise that he was pointing it directly at somebody until the trigger's pulled - at the same time. Effectively, they are contemporaneous events. It's not suggested that the offender would have been able to anticipate the deceased standing up at the point at which he did.

It's not the case that we say he deliberately pulled the trigger at that point. We do say that he was transitioning into a position of firing the firearm. That he had a putative intention to do so. And he is developing that intention whilst pointing the firearm in a dangerous direction. As I say, this event has one person who caused it. Only one. The responsibility lies solely with the offender. The event has proved tragic.

The birthday of RM - something that will be carried forward by not only her, but also by the rest of her family. It's the trigger, isn't it. I mean, it's always difficult for anyone to lose somebody, and to lose somebody in such tragic circumstances, and to lose somebody in the middle of their life. And it's always going to be - any anniversary is going to be traumatic, whether it's associated with a birthday or not. It's always going to be tragic. It's always going to be a time of deep remorse and sadness. That's the consequence.

That's why manslaughter is considered to be such a serious crime - because it results in the death of somebody. And the Young Offenders Act recognises that manslaughter, like all offences of homicide, is to be treated in a slightly different way. In the ordinary course, convictions in this court have a shelf life. This conviction does not. It's a specific alteration of the normal circumstances contained within the Young Offenders Act, to reflect the seriousness of an offence of homicide, of which this is one.

I accept that - I mean, he was in a bit of trouble leading up to this. It's not relevant to these

proceedings. He's not the first teenage kid who has got into a spot of bother along the way. This isn't a premeditated offence. It's not an offence where the fact that he got kicked out of school has any real relevance to it, at the end of the day. It's not an intended consequence. It wasn't an intentional act, if I can put it in that general sense.

Although my friend has referred to - and it's mentioned in the reports, otherwise I wouldn't have raised comments about it at all. It clearly - the antecedent history, really, if anything, stands in his favour. But this isn't the sort of offence where one anticipates there to be a significant antecedent history. This is gross carelessness. Gross negligence. Recklessness rather than somebody seeking to - necessarily - act in a dangerous way.

I don't think this offender - I don't think, your Honour, that the court would come close to even accepting that this is an offender who set out to act in a dangerous way. It's not an offender who swung the firearm around, being cognisant at that point in time that what he was doing was dangerous. But when he picked up a loaded gun, the law - and morality - required him to think, and to make those assessments, and he failed to do so.

And it's his failure to do so - it's his failure to properly consider the circumstances surrounding his carriage of the firearm - that results in the death. Now, that is reckless. It is recklessness that carried a significant potential for harm, and it is that offence that your Honour is required to sentence for. And it's a serious offence, and it's an offence which warrants a sentence of detention. I know my friend made comment, at the start of his submission, about how it puts him at risk of, effectively, future incarceration in an adult institution.

Well certainly an application could be made, pursuant to section 178, depending on the circumstances of the length of the sentence, and how was to go. But ultimately that's a matter that the court has to make a decision on. And a court would no doubt consider the circumstances of the offence and the offender when it came to consider that application. Whilst it's something which is alive as a possibility, it's not a factor that the State says will properly go to the exercise of your Honour's discretion.

There are mechanisms in place to ensure that offenders are dealt with appropriately, and only transferred if, in the opinion of the court, it's considered to be an

appropriate way to deal with an offender who has turned 18. And, of course, as your Honour's aware, the vast majority of cases of those who turn 18 remain incarcerated in the detention centre, provided that their sentence is prior to turning 18, which is the case here.

The State accepts that the psychological report shows that the offence has had a significant impact on the offender. My friend has made comments about remorse, and it's self-evident. I think it's evidenced in the plea, and in his presentation proximate to, or immediately after, the offence. It's evidenced in the care that he attempted to offer, insofar as he could, to AM at the point at which he had shot him.

That certainly shows that - what it does is show that it wasn't an intended consequence. That he probably hadn't given real thought to what he was doing. Which established where the criminality lies. It's in that lack of thought. This is not an offender for whom personal deterrence is going to occupy your Honour to any great extent. I'm not suggesting that personal deterrence is warranted in this case. There is a need for general deterrence.

There is a need for those who are going to use firearms to appreciate that they are using something which has the potential to cause loss of life, and in relation to which there are significant obligations, on the part of the holder of the firearm, to ensure that it is only utilised - in other words it is not a question where you are seen to be less culpable because you didn't know somebody was there, because you should have checked to see if somebody was there.

The lack of knowledge of the danger, when that lack of knowledge arises exclusively from a lack of an assessment of the circumstances, is not mitigatory. In fact, it is where the culpability comes from. And there is a need for general deterrence to ensure, as in the case of Omodei, that those who are going to use firearms are going to take proper precautions to ensure that harm does not come to those who are around and about them. Proper precautions.

Positive steps to ensure that when the trigger is pulled - even if, as in Omodei - Omodei didn't intend to pull the trigger. Omodei - there was cord wrapped around it, potentially. It was pulled and was, perhaps, an accidental pulling of the trigger. That's similar to what's suggested in this case, but the court - it wasn't the Court of Appeal, but an appellant decision from a Magistrate - a single judge - made the point in Omodei that

if you create the circumstances, it's the circumstances that go to create the risk.

And if you haven't dealt properly with the circumstances, and that's where the risk comes from, that's where the need for general deterrence rises. There is a need. My friend says there's no need for general deterrence. I disagree with that. I say there is a need for general deterrence; that people who use firearms understand their ongoing responsibility - their ongoing obligation - to positively ensure the safety of that firearm.

And then we come to the seriousness of the offence. It's an offence which results in the loss of life. It's an offence for which the highest penalty of the law provides is life. It's an offence which carries special consequences in the Young Offenders Act as a reflection of its seriousness. The culpability was gross.

The conduct of the accused, at best, is to be described as gross negligence, in those circumstances, applying the principles in the authorities that you've been provided with. Applying the principles of juvenile justice, in which the seriousness of the offence is a relevant factor, the State says the only appropriate disposition is a sentence of detention, and that sentence is held to be immediately served. May it please.

HIS HONOUR: Ms Laird, did you want to add anything to the reports?

LAIRD, MS: If I may, your Honour. I would just like to reiterate a few points in the report. Your Honour, I would just like to make a few major comments that are in the report. AJP hasn't - obviously - been previously to a community based order. The psychological report notes that he has been assessed as having no (indistinct) factors likely to result in further offending, or further violent offending behaviour. Nor does there appear to be any criminogenic factors underpinning the current offence that require interventions from youth justice.

In light of these points made, should your Honour wish to place AJP on a community based disposition, the case management plan will be revolving around supporting AJP's current mental health plan. We will be regularly liaising with the school to ensure that a behavioural risk management plan is upheld and supported. Supervision will be conducted on a regular basis at Morawa Agricultural

College. We will be attending there on a weekly basis to ensure that things are progressing well.

We will liaise with CAMS and ensure that counselling is progressing well. Obviously when he finishes school one of the concerns would be that, when he transfers from school back to Merredin, he needs full time employment. CAMS is currently located in Geraldton. Therefore we will ensure that counselling support to transfer here to Merredin, and that AJP is full supported through that transition, and that counselling services don't fall away through that period.

Therefore, that's what our case plan will be revolving around. Obviously, as stated, there's very minimal criminogenic needs that need to be addressed. Therefore it's going to be concentrated on his wellbeing. That's going to be our priority.

HIS HONOUR: All right. Thank you for that. Mr Vandongen.

VANDONGEN, MR: Your Honour asked me about the tracking issue. Page 17 of the video record of interview, which is what Mr Stocks took you to, at the bottom of the page - the last third of the page - Sergeant Green is asking him what happened with the firearm and where he had it. Sergeant Green says, "Yep, alright. So what did you actually say as you?", and AJP's recorded as saying, "I'm shooting". "Did you know if he acknowledged that or", and AJP says, "I don't know". "You don't know?" Over the page, AJP says, "He just stood up".

And then Sergeant Green says, "Now, you said before, about the bump, and that you thought the safety was on, but had you made a decision you were going to shoot?" So the first thing to note is that he thought the safety was on, so you can't shoot the gun with the safety on. And the second thing is that he hadn't made a decision about whether he was going to shoot or not, at that stage. Mr Stocks, I don't think took you to that.

And then Sergeant Green goes on to talk about where the firearm was when it went off - which direction he was pointing in - and it was right above his head when it went off. And then Sergeant Green goes on to ask him questions about how the rabbit was tracking, and he talks about it being five metres off the front of the ute. And then, significantly, what AJP goes on to talk about, about halfway down the page, is that he had done a shot earlier in between them, and they were totally okay with it.

And he goes on to explain how he jumped over the esky - there was an esky in the back of the ute - and stood between them and shot. What AJP tells me is that's what he was intending to do on this occasion again, having done that before. So there was no decision. The safety, he thought, was on. No decision that he was going to shoot at the point that the rifle - the shotgun - went off, and that he was intending to do as he had done before - to move between the two of them to shoot towards the front of the ute, as he had done before.

STOCKS, MR: Can I just (indistinct) my friend.

VANDONGEN, MR: And then over the page there are some questions there about why he didn't move at that time. "Because it was rough at the time". So you can see that at about two thirds of the way down the page. But the intention was to move from where he was to the front of the ute, to fire towards the front of the ute. And I emphasise that he thought the safety was on. And you can't fire the shotgun when the safety is on.

HIS HONOUR: I'm just wondering, really, if there's any
- - -

VANDONGEN, MR: Whether it matters.

HIS HONOUR: - - - point of difference. I don't quite see a point of difference between the two of you - - -

VANDONGEN, MR: I don't either.

HIS HONOUR: - - - inasmuch as the prosecution case is that if you put a combination of these things together, accepting that he didn't deliberately pull the trigger at that time - but the State says that, in any event, he tracked beyond his arc.

VANDONGEN, MR: Yes.

HIS HONOUR: He knew the firearm was loaded. He didn't know if the safety was on. His finger was on or near the trigger.

VANDONGEN, MR: Yes.

HIS HONOUR: He knew that it was bumpy.

VANDONGEN, MR: Yes.

HIS HONOUR: I'm not sure if I've left anything out, but if you put those things in combination - - -

VANDONGEN, MR: And that's what I put to your Honour right at the beginning of the plea.

HIS HONOUR: That's right. That the State says, well, that's recklessness. Well however it's described, that's the totality of the circumstances, so it needs to be considered, having regard to the combination of all of those circumstances. And that's as I understand it now.

VANDONGEN, MR: Yes.

HIS HONOUR: Whether he intended at some point to go up towards the front end, more directly in between - well maybe, maybe not. Anyway, let's just go back to what the circumstances were at the time when the firearm discharged.

VANDONGEN, MR: And I put to your Honour that the plea to manslaughter on the basis of criminal negligence - right at the beginning of my plea - was on the basis of all of those factors. That they, in combination, illustrated that this was beyond mere negligence, but criminal negligence. So I don't think there's much difference between the two of us there. My friend characterises it as recklessness.

Now, of course, there is some confusion, with respect to him, in what he says about that, because I don't think it's disputed that the discharge of the firearm was an unwilled act, in the sense that he did not intentionally, or by way of a willed act, discharge that weapon. So that's the first thing. The second thing is my learned friend himself said that it could not have been anticipated that the deceased would stand up, which means that the death - the event of the death of AM - was also not reasonably foreseeable, which means that it was an accident.

And it's because of those - one or both of those two things - that you get into criminal negligence in the first place. Now, in terms of recklessness, there's no definition of what that means, but in my submission what it means is somebody who has thought about the risk and the consequences and has decided to ignore it. That's not what occurred here. Yes, there's negligence, and all the factors that my friend put to you, or all the factors that I put to you, your Honour, in my submission, which amounts to criminal negligence, but they don't involve a conscious decision to ignore the risk - having thought about the risk deciding to ignore it.

The maximum penalty is life. I accept that. It doesn't necessarily follow that's a reflection of the seriousness of the offence in all cases. It can be a reflection of the fact that manslaughter can be committed in such a wide range of circumstances that penalties from zero through to life imprisonment are open. It doesn't follow from that - - -

HIS HONOUR: Well no one's arguing with that. I don't think that has been stated.

VANDONGEN, MR: That's right. That's the point. And I'm acutely - - -

HIS HONOUR: What I was trying to - sorry to interrupt. I was just trying to sort out if there was any differences between the parties, going back to this point.

VANDONGEN, MR: Tracking.

HIS HONOUR: I don't want to get hung up on someone saying it's reckless and someone saying it's not reckless, or someone saying it's criminal negligence not recklessness. It's always good to go back and look at what the actual circumstances are, and make the decision based on a combination of all of those circumstances.

VANDONGEN, MR: Yes.

HIS HONOUR: What you call it is another thing.

VANDONGEN, MR: What label you can - - -

HIS HONOUR: What label you give it. You can look at the circumstances and label it wrongly and get yourself into trouble because you haven't focussed on the circumstances.

VANDONGEN, MR: Yes. You're just putting a gloss on it. No, I understand that. And, as I said right from the start, it was going outside the arc, it was knowing that it was loaded; believing that the safety switch was on but not having checked - so not having actually checked to see if it was on - to then track a rabbit while your finger is on or near the trigger, on bumpy terrain, while the car was moving.

HIS HONOUR: All right. Maybe if I can just go to you, Mr Stocks. As I understand it, the State are not saying that, at the point that the firearm discharged, AJP knowingly, willingly discharged it at that point in time. As opposed to saying, well, if it was the bump his finger is near the

trigger and that has caused the trigger to be activated and the firearm discharged. Whatever the situation is there, by looking at the combination of those things that I've just said to Mr Vandongen - you put all of those things together and that brings about his criminal liability in relation to the offence of manslaughter.

STOCKS, MR: Yes. I mean, the State says that he created the circumstances in which the risk crystallised, and that's where we weigh the gravity of offending is. So yes.

HIS HONOUR: So the State's not saying at the time the firearm discharged he deliberately and knowingly pulled the trigger at that point.

STOCKS, MR: That's right. That's right. What we dispute is the assertion that he had no intention to pull the trigger. If your Honour says - a general intention. Not at the precise point, but my understanding was it was said he had no intention to pull the trigger. Not only did he not have an intention to pull the trigger at the precise point, he had no intention to pull the trigger during the whole tracking process. And that's what we take issue with. That latter part.

Now, if your Honour's saying, well, you will deal with the matter from the perspective of the point at which the trigger was in fact pulled. What were the circumstances there? Well there's no difference between the parties in relation to that point in time. Yes, I accept that.

HIS HONOUR: All right.

STOCKS, MR: Insofar as - in the course of developing his arguments, my friend referred to me being inconsistent. It may well be a poor choice of words. As far as the deceased standing up is concerned, we say it's a foreseeable risk, but it wasn't foreseen. We accept it wasn't foreseen by the offender at the time. Of course he wouldn't have known that he was going to stand up at that precise point, but we do say that there was a foreseeable risk that he might change his position, as he had been standing up previously. And, sorry, he wouldn't have known that there was no reason for him not to stand up.

HIS HONOUR: I must say, coming at this, one of the things that strikes me - I'm not sure where you take it, but there are six people here and only one of them is a juvenile. And there are five adults. I know there was some safety plan discussion, but it just seems to me, when there's a young person - even a young person who may have had some

experience with firearms - the fact that that person's a young person in company with five adults - maybe a safety plan needs to factor in that one of these persons is a young person, and maybe there may need to be a different safety plan when one of the persons is young person, as opposed to all persons being adults.

STOCKS, MR: Yes. I mean - - -

HIS HONOUR: I don't know if that's something that anyone wishes to comment on.

STOCKS, MR: Look, I mean, I think, in terms of the general proposition, I wouldn't disagree with your Honour. In terms of the specifics of this case, as the State understands the position, the offender's an experienced shooter who had been involved in this type of activity before. So it's not a question of - whilst he's a young person, he's not a novice. So one can be young, but the State would just say that there's a separation between age and experience.

You may have an inexperienced adult and a very experienced and accomplished young person, so in this case, clearly, the offender's mother and stepfather had no concerns about his ability. Now, it may well be that ultimately it's the youth that causes somebody to get lost in the chase, as it were, although one could also see that happening to an adult. So I don't - - -

HIS HONOUR: Well it could do, but there might be good argument to say that, well, an experienced youth is better than an inexperienced - or someone with no experience - adult.

STOCKS, MR: Yes.

HIS HONOUR: But that doesn't necessarily mean that an experienced youth should be treated the same as an experienced adult.

STOCKS, MR: No. No. And I don't think - it hasn't been suggested in the plea that youth plays a part, per se. So other than making those general comments in response, I can't really develop it in this case. I think we would need to know more about the offender, but, as I say, from the State's perspective, we understand he's an experienced shooter, and that's referred to in the statements and the brief.

HIS HONOUR: All right.

STOCKS, MR: In fact, was seen as the best shot to handle the rifle.

HIS HONOUR: Anyone else? You don't want to respond? All right. Well I will stand the matter down until 3 o'clock. I don't want to make a promise that I will be in position there, but I will do my best. I won't proceed to sentence if I'm not of the view that that's what I think is appropriate. If I think I need more time, I will give myself more time.

VANDONGEN, MR: Certainly, your Honour.

HIS HONOUR: But at this stage I will say 3 o'clock.

VANDONGEN, MR: Is there a prospect that it will be tomorrow? I only ask - - -

HIS HONOUR: Well there's always a prospect, but the extent of it - otherwise, if everyone's happy, I could just say tomorrow. It has been listed for two days.

VANDONGEN, MR: I know.

HIS HONOUR: The reason I listed it for two days - I thought we would be finished today, in terms of submissions, but I didn't want to just listen to what everyone had to say and then launch into a sentence on something so serious.

VANDONGEN, MR: Absolutely. I mean, I don't want to rush your Honour at all. I wasn't aware that it was listed for tomorrow. I've got an appeal tomorrow, and I think Mr Shackleton has got something on tomorrow as well, but I'm sure one of us could adjust our timetable. I'm not sure.

HIS HONOUR: Well can I approach it this way. I'm always telling Magistrates just put your foot on the brake and go away and come back another time.

VANDONGEN, MR: Yes.

HIS HONOUR: Okay. It's not about doing things quickly, it's about doing things properly.

VANDONGEN, MR: Absolutely.

HIS HONOUR: So that's the way I work. So I will confidently stand the matter down until 3 o'clock, and if I'm not in the position where I think I can do it properly, I won't do it. But to give everyone the opportunity of

meeting other commitments tomorrow, I will adjourn to this afternoon on that basis.

VANDONGEN, MR: This is far more important than our commitments tomorrow, your Honour.

HIS HONOUR: Yes. Yes.

VANDONGEN, MR: So please don't take it that I was rushing you on - - -

HIS HONOUR: No. No, I understand. All right. So I will extend bail until then.

VANDONGEN, MR: Thank you, your Honour.

HIS HONOUR: Thank you.

(LUNCHEON ADJOURNMENT)

HIS HONOUR: Firstly, can I just thank everyone for their patience. I'm a bit longer than what I said but anyone who knows anything about lawyers and judges probably knows that when we say a time you can probably add something to it. So I apologise for that but, in the end, I think late today is probably better than asking everyone to come back tomorrow. And I thank those people in Melbourne, I think - am I right? Are you in Melbourne - Melbourne somewhere? All right.

....., **MS:** Yes, we are.

HIS HONOUR: All right. Thank you for that. I'm conscious - I wanted to let you know I'm conscious that there is a - a time difference, so it's a little bit later in the afternoon for you. So I appreciate your patience and forbearance as well. There's just one issue that I want to raise with counsel before I go any further. And I meant to but forgot before we rose on the last occasion. And that is I wanted to raise the issue of section 106 of the Sentencing Act of firearms licence disqualification.

It seems to me that that section arguably applies when you look at the definition in (4a). Section 106 subsection (1) refers to:

A court sentencing an offender for an offence specified in subsection (4a).

(4a) in turn, subparagraph (a), refers to:

A firearms offence.

And then in subsection (5):

A firearms offence means an offence where a party to the offence (whether that party is charged or not) uses or is in possession of a firearm or ammunition during the commission of the offence.

So I just wanted to raise that with counsel. When one refers back to section 102 of the Sentencing Act - and this is under Part 15 - an order under this Part forms part of a sentence. So does anyone wish to make any submissions in relation to the operation of that provision as a matter of law in a case like this and, if so, make some submissions to it?

STOCKS, MR: Your Honour, I certainly accept it applies. Reading it on its face, it's open to your Honour to make that order. To make an order for a term that your Honour considers is appropriate.

HIS HONOUR: All right. Did you wish to say anything in relation, Mr Vandongen?

VANDONGEN, MR: May I take some instructions on that?

HIS HONOUR: Certainly.

VANDONGEN, MR: I don't wish to be heard on that. Thank you, your Honour.

HIS HONOUR: All right. Thank you for that. Can I just make some preliminary remarks concerning the court presiding here in Merredin. Can I just mention to you, AJP, just remain seated. It will require some patience on your part, as well as everyone well, because I've got a lot to say, and you will no doubt be interested to hear what I do have to say. So stay comfortable sitting down. So in relation to the court being here, I just wanted to make the point that it reflects the seriousness of the matter.

And it's a case of the court wanting to go to a country town in relation to serious matters so the people of the town - knowing that there has been an incident in or about the town - have the opportunity of coming to the court to see justice in action in their town in relation to a matter that has arisen in or about their town. So the court in being here wants to show the particular country community - in this case the community in and about

Merredin - that it regards offences like this involving the use of a firearm as particularly serious, and wants to highlight to the community the danger, and so the need for great care when using firearms.

There are, of course, practical reasons for the court to be here. It's easy for people in and about the place who are concerned to attend this court, as opposed to travel to Perth. And I was mindful that there are members of the deceased's family who weren't in Merredin or Perth, and they could be properly accommodated by video link.

Can I start off in giving my sentencing remarks to firstly recognise the grief suffered by the family of the deceased. And that grief is, in part at least, set out in the contents of the victim impact statements that I've had the opportunity of reading. And I recognise the grief not just of the family of the deceased but also friends of the deceased, whether they be in this courtroom appearing and observing the proceedings by way of CCTV or wherever they may be. It's clear that the impact on the deceased's family has been devastating, as one could reasonably expect.

Can I assure you all that in quiet solitude after reading the victim impact statements I've sat and thought long and hard in an attempt to understand the nature and extent of your grief, as best I can, to ensure that I properly recognise it and factor it in to this sentencing exercise which, I must say, carries some difficulties. First of all, there's the impact statement of RM, a daughter of the deceased. As has been mentioned in the course of submissions, this incident happened early on the night of her birthday.

And, as has been mentioned, no doubt her birthdays from here on in will be distressing, in the sense that her mind will go back to what happened on her birthday this year. I won't mention everything that has contained in the victim impact statements but I will refer to parts of them. For example, RM makes reference that she always knew that her dad was always there for her, and that she will miss him every day. There's also the victim impact statement of JM, the deceased's other daughter.

Her victim impact statement includes comments that she always felt safe around her dad. She gets upset when she sees her mum upset as a result of what happened. She has referred to crying a lot, as one could understand. Generally missing her dad for a variety of reasons and good reasons. And also makes reference to the anguish of not

being able to see her dad anymore. And then lastly but by no means least, the victim statement of TM, the deceased's wife.

It's telling, I think, that she in her victim impact statement makes reference to her children first. She comments on how it has impacted on the children for both of them to have lost their father. And as one could imagine in part - but not to the extent that she's suffering it because only she lives and breathes this and really fully understands - but as much as we can try to - it's very difficult - family plans have now been lost.

She had been living with the deceased for 14 years, and married for nine of those years. And so it has been extremely hard for her without him. She has made reference to him being a driving force helping to get the ambulance service back into Westonia, and gone on to just talk about how he cannot be replaced. And not a day will go by when she and the family don't wish that he was there. So all of that, I think, needs to be properly recognised, and I thank them for their attendance in one way or another today. And for the future, as difficult as it may be, I hope you can deal with the devastating grief.

So far as manslaughters are concerned - as has been mentioned during the course of submissions - manslaughters are not necessarily unique but characterised by there being such a wide variety of factual circumstances and conduct which go to make up manslaughter offences. It carries a statutory maximum penalty of life imprisonment, as has been mentioned. And that has only a few years ago been increased from previously 20 years imprisonment by way of a maximum.

Manslaughter, of course, doesn't involve any intention to kill or cause grievous bodily harm, and so in cases such as this there can be a death resulting from a wide range of circumstances. In this case - a case involving criminal negligence - there's actually no intention to harm at all. It's a case of negligence to the requisite degree such that it can be said to amount to criminal negligence, and therefore requires some criminal sanction.

So in the context of criminal negligence, this is a case where the extent of the shortfall from the standard of care which a reasonable person would have exercised is such that it can be properly said that the young person is criminally culpable. And the risk involved in this particular case was extremely high and actually resulted in death. Of course, if the risk is one where there could

have been death or grievous bodily harm then it would come within the operation of the section.

Can I just say that when there's a reference to the reasonable person in the context of this area of law, it needs to be understood in this particular case that it means a reasonable young person. And I will refer to AJP's youth later in the course of these reasons. Can I first cover the role of AJP in the circumstances of this particular offence because every sentence must have regard to the particular factual circumstances of the offences, as well as those of the offender.

There had been a safety briefing before the group - including you, AJP - went out on the hunt for vermin. And the reference to vermin is clearly a reference to rabbits and/or foxes, animals of that kind. The safety briefing had covered the rule that each of the four shooters on the open back tray of the utility keep within his own quadrant, and so not arc his firearm around into the quadrant of any others. AJP, I'm under - of the understanding that you are an experienced young person with firearms and hunting with firearms, and so you knew this rule and of the importance of it in the context of firearm safety when hunting.

I need to set out the factual circumstances which in combination make you criminally responsible, AJP, and on which my sentence is based. Now, earlier this morning you heard both counsel refer to descriptive terms such as recklessness, gross carelessness and criminal negligence. I will make some comment on those terms later, but for the moment I just want to stay focused on outlining the facts which in combination make up the circumstances of the offence.

So I'm going to set out the factual circumstances that apply in your particular case, AJP, because when anyone comes to look at my sentence they will want to know, well, what are the factual circumstances upon which that sentence was based. Does that make sense to you? So the factual circumstances are these. And before proceeding to set them out, can I just outline the various positions in the cab of the ute and on the back tray of the ute of the various people that were out on the hunt.

Now, AJP's stepfather was the driver, and so in the cab behind the driver's wheel. AJP's mum was in the front passenger seat to operate the spotlights. And then on the rear tray - open tray - of the utility there were four persons. The deceased, AM, was up the front of

the tray immediately behind the passenger side or the passenger on the passenger side. There was another person to his right behind the driver. AJP, you were at the back behind the deceased - so on the passenger side - and then there was another person off to your right at the rear of the tray on the driver's side.

So that meant that if you were pointing your firearm forwards - forward towards the cab - and if the deceased was in front of you, and you were pointing the firearm to a rabbit which was in front of the utility, then the deceased would be between you and the rabbit. So going back to the factual circumstances. Firstly, you had participated in a safety briefing which had covered each shooter not going outside his arc of safety.

Secondly, you tracked significantly beyond your arc, to the point where you were tracking your firearm above the head of AM, the deceased. And the second aspect of this is that you knew that AM was facing forwards, and so he had his back to you and couldn't see what you were doing. Three, you knew that your firearm was loaded. Four, you did not know whether your safety was on. Five, you had your finger on or very near the trigger of your firearm.

Six, you knew that the utility was moving, albeit at a very slow speed. Seven, you knew that the road or the track that you were on was bumpy. Eight, you were moving to some extent. By that I mean you were not stationary on the back of the tray. And I take that from what you said during the course of your record of interview with the police. So you were moving to some extent when you were knowingly holding a loaded firearm. And, nine, the utility went over a bump and the firearm discharged when the deceased stood up in front of you, which in turn resulted in him being shot to the back of the head.

So they are the factual circumstances which in combination, AJP, make you criminally responsible for AM's death. Now, having set out all of those factual circumstances, I also wish to set out some further factual findings that I've reached which are relevant to sentence. Firstly, you tracked significantly beyond your arc of safety and you did so with the intention of eventually shooting at the rabbit which you were tracking.

Secondly, when you called out, "I'm shooting", you were giving notice to the others, including AM, that you were going to - I will start that again. When you called out, "I'm shooting", you were not giving notice to

the others, including AM, that you were going to deliberately pull the trigger at that instant or at that particular point in time. Rather, you were giving notice that you were aiming at or targeting a vermin - and that was the rabbit - with the intention of eventually shooting at it.

Three, the utility going over a bump caused your finger, which was on or very near to the trigger, to activate the trigger and cause the firearm to discharge. So while you were intending to eventually discharge the firearm, you did not deliberately discharge it at that particular point in time. Having set out all of those facts, which form the factual basis of the offence for the purpose of reaching my decision on sentence, can I now make some comment on those descriptive terms that I mentioned earlier.

The combination of those facts clearly establishes criminal negligence, and so your plea of guilty, AJP, is appropriate and proper. When I talk about criminal negligence, I mean that your negligence is of such a high degree that you should be held to be criminally responsible in the circumstances. Recklessness is, in my view, not an extreme level of carelessness. Recklessness exists where a person is knowing or mindful of a risk or risks, but nevertheless goes ahead and commits or does an act with indifference to those risks which are known.

That is not the situation in your case, AJP. It seems to me that you probably got caught up in the moment, and became so keen and focused on shooting the rabbit, that your thinking was distracted away from complying with the rule that I've spoken about in relation to keeping within the arc of safety. I raised the point during submissions that the hunting group was made up of six people. Five adults and the sixth person, AJP, who was the only young person.

All I wish to say further to that, in the context of criminal culpability, is that while it is true that, AJP, you were experienced with firearms and that you had used the firearm in question earlier in the day for the first time, and so before the hunt - and while it is fair comment that an experienced young person is probably better equipped in a situation such as the one you were in than an inexperienced adult - it is nevertheless proper in my view for AJP's criminal culpability to be judged by taking into account the fact that he was a young person of 17 years of age at the time of the offence.

Having commented on the factual circumstances of the offence, can I just make some comments in relation to the cases that have been provided to me for my assistance. There has been reference to these cases in the course of submissions, and in fairness to the learned prosecutor it's not suggested that the cases are comparable. But rather principles can be picked out from them, and factors can be picked out from them, that the court has had regard to.

I don't propose to go into any detailed analysis of the cases, and the differences in factual circumstances between each and every one of those cases and the factual circumstances in this case. All I think I need to say for current purposes is that I think each and every one of those cases can be distinguished on the facts from this particular case concerning the offence committed by AJP. And the differences come down to one or more of the following: age; or intoxication; or involvement of domestic disputes; or pointing a firearm directly at someone; or playing around with the firearm; or something to do with the behaviour of the firearm.

None of the cases are put before me to be said to be comparable. Rightly so because none of them are comparable, as I've said. And whilst there's something to be gained from them, they're not very useful really in deciding this particular case, which has its own particular set of circumstances so far as both the offence and the offender are concerned. Having made all of those comments, can I just go on and deal with personal deterrence and general deterrence. I'm not sure if you understand what deterrence means, AJP. Do you know what deterrence means?

AJP: Yes.

HIS HONOUR: All right. Well, just so there's no confusion and we're on the same page. To deter someone means to stop them or persuade them not to do something. So deterrence is about persuading someone not to do something. And the idea of deterrence in the context of sentencing is that someone looks at what someone did. They look at the sentencing outcome, and they reach a conclusion, "Well, I better not do that or something like it, otherwise there's a consequence of that sort. And I don't want that consequence, therefore I won't do whatever that act was because I don't want to put myself in the position of having to incur that consequence."

So when I talk about personal deterrence, I mean deterring you. You personally. When I talk about general

deterrence and when others have, it means deterring all other young people. So having said all of that, it seems to me that there's no need at all for personal deterrence to be weighted into this sentencing consideration. You don't need to be personally deterred of anything. You know the safety issues and the seriousness of handling firearms with safety.

You have suffered a lot in relation to this, in the sense that you've been carrying the outcome with you since it has happened, and that has been a very heavy load to bear. So I don't think there's any weight to be attached to personal deterrence at all. So far as general deterrence is concerned, I think there is need to give some weight to general deterrence to impress upon young people the need for care in the use of firearms.

But having said that, I think that it's likely the case that there is a general awareness of young - by young people that there needs to be a great deal of care when handling firearms. But I think the decisions of the court in cases involving the use of firearms need to reinforce that awareness, and so there is a need for some weight to be attached to general deterrence. But having said that, I think when attaching weight to general deterrence you must have regard to the particular factual circumstances of the case, and what is it about the case that warrants general deterrence being factored in.

And my end conclusion in this particular case is that whilst there is a need for some weight for general deterrence in considering the appropriate sentence, it is limited. So having made all of those comments, which really relate to the circumstances of the offence and deterrence, can I move on and now talk about some factors that are personal to you and concerning how you've engaged in the court proceedings. Firstly, of course, I want to talk about your plea of guilty and your cooperation with the police in the recorded interview.

It's accepted, properly, that you entered your plea of guilty at a very early stage. That shows to me that you readily accepted responsibility in relation to this incident. It also reflects remorse, but I will come to speak about that quite separately because whilst the plea of guilty reflects remorse, remorse is a separate mitigating factor in its own right. So by your plea of guilty, AJP, you've avoided the need for a trial.

A trial would have caused a great deal of distress to the family of the deceased, and also friends of the

deceased, particularly immediate family. It would have delayed the resolution of the charge, and delay only adds to distress, as well as prolonging it. As has been properly mentioned earlier today, a delay resulting from a trial having to be listed would have created a lot of uncertainty, and uncertainty is not a good thing for anyone.

Any trial would also have taken its toll, not just on members of the family of the deceased but on all of those that were present on the occasion of the hunt. All of those who would be required to be called as witnesses who were present at the time. And, of course, it would take its toll on all witnesses generally. Your plea of guilty is of significant value, both emotionally to many people and also in practical ways.

And the practical ways are time, cost and inconvenience. But I'm putting the emphasis on that emotional cost that people would have to endure if the matter was listed for trial, and that has been avoided by your plea of guilty. So that plea is of great value to the family of the deceased and to the community, and it must be properly recognised and properly weighted into the sentence. The Sentencing Act provides for a percentage discount for a plea of guilty, and that applies in relation to matters in the Children's Court, as well to matters in the adult court.

And I give you maximum discount in relation to your plea of guilty, AJP. The other factor I want to talk about is remorse. I've touched on it in the context of talking about your plea of guilty but it is a separate factor. Now, you've shown extreme remorse, AJP. Your extreme remorse is unquestionably real and genuine. Indeed, the incident has had a very profound effect on your own mental or emotional health. You've showed empathy and remorse by going up to TM, the widow of the deceased, on 5 May last when the matter was listed in this courtroom, and she obviously, for good reason, attended to see what transpired.

And on that occasion, outside of this courtroom building, you went up and apologised to her for your actions. Now, for a young person like you, whilst one might say, well, that's the least you could do, you did it and it took a lot of courage to do it. Also, going back in time, your conduct immediately after the incident reflects remorse on your part. You assisted as best you could in an extremely traumatic situation, and then later - the following morning back at the police station - it's clear

from what's contained on the brief that you were extremely distressed.

And then there's the evidence before me in the reports that subsequent to this incident you've suffered from post-traumatic stress disorder. There have been suicidal thoughts, and all of that is reflective of extreme remorse on your part. And having said all of that, I should impress upon you, AJP, to continue to work with people to assist you through this ordeal. I think it was mentioned by Mr Vandongen that you've been stoic in not taking medication, trying to sort this out naturally.

Well, I understand where you're coming from but sometimes people who are experts need to be listened to, and taking medication is not a sign of weakness. It's just a form of treatment. So sometimes you need to listen to what they say, and take on board, and put into play what they advise you to do. There's this other factor of youth. You were born on 1 December 1997, and so when this incident happened on 20 March this year you were about 17 years and four months of age or thereabouts. And so you're now 17 years and eight months of age.

So very young, and that's a very powerful mitigating factor. The next factor I want to refer to is that you've got no prior convictions at all. There has been some mention about some problems when you were around 14, 15, or thereabouts, and problems at school. None of that detracts from the fact that you've got no prior convictions. And can I add to what I've just said that from the reports you present with no criminogenic risk factors. So all of that's very powerful as well.

So far as your personal circumstances are concerned, AJP, we're in a public courtroom. I don't want to go into this in too much detail, but I need to make a few comments. You're one of five children. There has been limited contact with your biological father. You've been exposed to violence from your stepfather. Your mum and stepfather are separated, as I understand it. I get the impression from reading everything that you've got a very strong mother.

You've got a very supportive family. There's accommodation which is stable - whilst you're not there at the moment - you're at boarding school. That's probably a case of, well, that's where you need to be to have your education, but there's probably a bit of a lingering of you being happy to be at boarding school to maybe sometimes be away from some violence at home. By no means to be away

from your mum who, as I've said, seems very strong, loving, caring, and supportive.

So currently you're at the Morawa agricultural college in Year 12 as a boarder, planning to work at the end of this year. I'm not sure that you actually have got that work sorted out. You have got it sorted out or you're just applying for it. You've got it sorted out. In addition to all of that, can I just say your prospects in the future seem to me are excellent. A young person with no criminogenic factors. Very strong family support. Very strong base with your mum. And there's good reason to think that you will be a very valuable member of the community in many respects.

So far as the legal principles are concerned, I need to apply the objectives and principles as set out in the Young Offenders Act. Those objectives and principles include rehabilitation; protection of the community; punishment; enhancement of family to bring about rehabilitation. There's a very important principle in the Young Offenders Act, which is also found in the Sentencing Act for adults, and that is custody. In the case of a young person, detention is a sentence of last resort.

And, of course, if imposed it needs to be for the shortest necessary time. There has been a case referred to me by your legal team. The case of DPP Victoria v Smith. There is a passage that I will refer to from the judgment of Bongiorno JA on - I was going to say the page but I've looked at the page and it hasn't got a page number on it. But the passage I want to refer to is this, where he says:

The law requires a court when sentencing an offender to impose a sentence calculated to punish the offender justly, to deter the offender and others from committing similar offences, to facilitate the rehabilitation of the offender, to denounce the offender's conduct and to protect the community.

And then in the context of the circumstances of that case he went on to say:

I am satisfied that these purposes can be adequately met without the imposition of a term of imprisonment.

Turning to your particular case, AJP, and having regard to everything that I've said as a whole, on an overall consideration of the statutory maximum penalty - life imprisonment - the combination of all of the factual circumstances in your particular case, as I've outlined - I

don't think there's any need for personal deterrence. The need for general deterrence exists but it is limited. And, of course, as I've said, in weighting that in I need to have regard to how does it come to play out, given the particular facts of your case.

What is it that needs to be deterred? And so my view is that its weight is limited in your case, given the factual circumstances. You've pleaded guilty. Very powerful mitigating factor, for which I've given you maximum credit. Your youth, which is very powerful. Remorse - again, very powerful. No prior convictions - again, very powerful. You've got very favourable personal circumstances and excellent prospects of being a valuable member of the community.

So all of those factors that I've just mentioned need to be considered overall, when also applying the principles that I've spoken about that are provided for in the Young Offenders Act. So when I do that, I've reached the view that immediate detention, and also detention in the form of a conditional release order - and I should mention to you that a conditional release order, AJP, is a combination of detention and also a community order. Those two things together are called a conditional release order, but you don't serve detention in a detention centre.

You would be permitted to go back into the community on the community order, but with that detention hanging over your head. And if you were to breach the conditions of the community order component, or if you were to re-offend, then that detention could descend. So in my view on an overall assessment, we haven't reached the stage in your particular case of immediate detention or detention in the form of a conditional release order.

On my overall assessment I think the appropriate sentence in this case, AJP, is an adult intensive supervision order, which is available by reference to the operation of section 50A of the Young Offenders Act, as has been mentioned earlier. The term that I think is appropriate is two years. Now, I think that that term of two years properly reflects the seriousness of the nature and circumstances of your offence, and of your particular personal circumstances.

Can I also say in relation to choosing to impose this order, I'm also mindful that you're going to turn 18 at the end of the year - 1 December this year - and the majority of the time on an order of two years duration would be for when you're an adult. So I think that an adult order is

appropriate for that reason also. The order is subject to conditions, AJP, and those conditions are supervision. Also that you comply with education and vocational programs that are presented to you.

And they obviously would be after consultation with you and for the purpose of assisting you. And also that you attend psychological counselling as directed. Now, in addition to that, I've made reference this afternoon when I came into the court to the provisions in section 106 of the Sentencing Act in relation to disqualification of you holding or obtaining a firearms licence, and that such a disqualification would form part of the sentence.

And it's my view that the sentence overall should include a period of disqualification pursuant to section 106. So one looks at the totality of these orders when it comes to assess the sentence. And so in addition to that intensive supervision order, there's also an order that you be disqualified from holding or obtaining a firearms licence for five years. I think that deals with everything.

STOCKS, MR: Yes, your Honour.

HIS HONOUR: All right. Thank you. I will adjourn.

AT 4.08 PM THE MATTER WAS ADJOURNED ACCORDINGLY

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