

[the Firm]
[the Firm address]

19 August 2021

The Officer in Charge
Office of the Director of Public Prosecutions NSW
63 Archer Street,
Chatswood NSW 2067

RE: Police v [the Defendant] — Proposal for Early Resolution

Dear Prosecutor,

We act for Ms [the Defendant], who faces three charges arising from an incident at a convenience store: robbery whilst armed (s 97(1)), stealing (s 117), and common assault (s 61) under the Crimes Act 1900 (NSW), together with a separate charge of stealing from a supermarket (s 117).

We write to propose an early resolution. [the Defendant] instructs us that she will plead guilty to both stealing charges. In our submission, the evidence does not support the s 97(1) armed robbery charge or the s 61 common assault charge, and we invite the prosecution to consider withdrawing them in favour of a plea to the lesser offences. Resolution on this basis would allow the matter to remain in the summary jurisdiction.

The Evidence

Having reviewed the full brief, including the statements of Toni Brown and Detective Senior Constable Hamilton and the CCTV footage, the following is clear:

- [the Defendant] entered the convenience store carrying a diabetic insulin pen. The pen had no needle attached to it. A full pack of sealed, unused needles was found separately in her car. The object was a medical device, not a weapon.
- Ms Brown acknowledged in her statement that she could not clearly see what the object was and only thought it might be a syringe because her grandmother uses one. Her identification of the object as a weapon was speculative.
- The CCTV footage shows [the Defendant] briefly holding the pen and then returning it to her bag. She made no sustained display of the object and no physical threatening gesture.
- [the Defendant] said words to the effect of "I have this. Give me something." Her instructions are that she was communicating that she was diabetic and needed food. She did not demand money.
- When Ms Brown placed \$100 on the counter, [the Defendant] did not touch it. She took only a packet of sandwiches valued at \$8.90 and left. This is inconsistent with an intent to rob.

The Charges Cannot Be Sustained

The s 97(1) charge requires proof beyond a reasonable doubt that [the Defendant] was armed with an offensive weapon and committed robbery. An "offensive weapon"

must be used, intended for use, or threatened to be used for offensive purposes. The insulin pen had no needle attached and was returned to [the Defendant]'s bag during the interaction. It does not satisfy the statutory definition.

Robbery, as defined in *R v Foster* (1995) 78 A Crim R 517, requires that the victim be compelled by force or fear to submit to the theft. [the Defendant] did not touch the \$100 placed on the counter. The item taken was a packet of sandwiches worth \$8.90. The evidence does not establish that Ms Brown was compelled by force or fear to hand over any property.

The s 61 common assault charge similarly cannot be established. There is no evidence of any physical contact or of a threat that caused Ms Brown to apprehend immediate unlawful force in circumstances that go beyond what the evidence shows.

Proposed Resolution

[the Defendant] is a 67-year-old retired schoolteacher with no prior criminal history. She was homeless and diabetic at the time of the incident, living in her car. She took sandwiches because she was hungry and had no money. She instructs us that she did not intend to threaten anyone.

We propose the following resolution:

- [the Defendant] pleads guilty to stealing under s 117 in relation to the convenience store incident;
- [the Defendant] pleads guilty to stealing under s 117 in relation to the supermarket incident; and
- The charges of robbery whilst armed (s 97(1)) and common assault (s 61) are withdrawn.

This outcome reflects the true nature of the conduct, avoids the time and expense of committal proceedings, and allows the matter to be finalised in the summary jurisdiction. We invite the prosecution to consider this proposal and respond at your earliest convenience.

Yours sincerely,

Kelvin Yeung