

The defendant, Damien Paul Lynch, aged 41 years at the relevant time has pleaded guilty to one count of wounding.

The defendant and the complainant, aged 29 years at the relevant time, had been in a significant relationship on and off for approximately 5 to 6 years. The parties do not live together however the defendant would spend time at the complainant's residence in Gagebrook a few nights each week.

They have no children together, however, the complainant has 3 children from a previous relationship, two daughters aged 11 years and 10 years and a son aged 8 years. The eldest child resides with his father and the younger children reside with the complainant. The defendant has adult children from a previous relationship, none of whom reside with him.

On Friday 10 May 2019, a Police Family Violence Order ("PFVO") was issued against the defendant for the protection of the complainant. This order did not prevent the parties from having contact, but included the condition that the defendant not directly or indirectly threaten, harass, abuse or assault the complainant. This PFVO was issued as a result of a verbal argument between the parties and was in force at the time of the crime.

On Tuesday 6 August 2019, the complainant was at home with the defendant and her two younger children. The children took some time to settle that night and the complainant permitted them to watch television in their bedrooms to help them in getting to sleep.

The defendant expressed his frustration with the children being up late on a school night as it was around 10:30p.m. He said words to the effect "*so the kid's TV's are not going to be turned off then?*" The complainant replied "*it's my house, my kids. If you don't want to do the Dad sort of stuff you have no right to say that to me, you can go if you don't like it*". It was not uncommon for the parties to argue about the children as they had different parenting views.

The complainant remained in the lounge room with the coffee table in front of her doing craft work. She was using embroidery scissors at the time. They continued to argue about the children's bed time and the complainant waved the scissors around in her hands. The defendant grabbed the scissors from her and started to walk away from her towards the kitchen.

At this time, the defendant was standing approximately 1 – 2 metres away. There was a coffee table between them and the complainant remained seated on the couch. The complainant said to the defendant "*give me to the fucking scissors*". The complainant was facing him however turned her head slightly to the right as she feared that the scissors would be thrown at her or the wall next to her.

The defendant then said "*fucking have them*" and flung the scissors in the direction of the complainant. The blade connected with the left side of her forehead. This caused a laceration which bled freely. The complainant started to panic and ran around the house looking for her mobile phone to call an ambulance. The defendant was also in a state of panic and tried to assist the complainant.

Police attended the residence at approximately 11:00p.m and spoke with the complainant. She had a small laceration to the left side of her forehead and was covered in blood.

She was taken to the Royal Hobart Hospital via ambulance however she left the hospital prior to seeking any medical assistance. She returned home and took some pain medication. At some stage that evening the defendant returned to the complainant's residence and slept on the couch. At 7:25a.m the next morning, the police re-attended the complainant's residence and arrested the defendant.

The Crown accepts the defendant assertions in his interview with police that he did not intend to wound the complainant however it is submitted that he acted in a reckless manner when throwing the scissors and should have foreseen the likelihood that his actions may have wounded the complainant.

The complainant attended an After Hours Clinic on 8 August 2019. She was examined and presented with bruising around the left side of her face, a small puncture wound under her left eye and a small 0.5 cm long puncture wound to her left forehead. The injuries were healing naturally and did not require any medical intervention.

The defendant has an unenviable history of driving, traffic, dishonesty and minor drug offences, however, he has no prior convictions for offences of violence.

He is a single, Aboriginal man who grew up in Hobart and enjoys a close, supportive family. Prior to this offence, he lived in his public housing rental property which he has leased for approximately 7 years. He is bailed to reside at his parents' home and lives there with his parents, brother, brothers' family and his eldest son. I am informed that he maintained his rental property during this time.

Notwithstanding the anxiety and depression from which he suffers, the defendant had an industrious employment history until approximately 6 years ago.

Six years ago the defendant's eldest son at 13 years of age, was passenger in a motor vehicle involved in an accident travelling when the vehicle rolled. The defendant's son assisted the other passengers out of the car and his but his girlfriends 4 year old sister was trapped inside the car and she tragically died.

This incident had a profound effect on the defendant's son, who has since tried to commit suicide several times and lives with ongoing depression and mental illness. The entire extended family was effected by the event, and the defendant reports that his own depression and anxiety has been exacerbated as a consequence of dealing with his son's poor mental health and life changing issues since the accident.

I accept that it was an unfortunate spur of the moment act in flinging the scissors and while reckless was wholly unintended. Fortunately the injury to the complainant was minor and resulted in no lasting injury.

The defendant's plea of guilty can be regarded as an early plea and the defendant is entitled to a discount on an otherwise appropriate sentence in respect of that plea.

The Crown makes application pursuant to s 27(4)(a) of the *Sentencing Act* 1997, to breach the suspended sentence imposed on 17 May 2019 in the Hobart Magistrates Court in relation to

complaint numbers 2542/18 and 4250/18. In my view, it would be unjust to invoke those sentences and I make no order.

The Crown makes application pursuant to s 11(1)(a) of the *Crime (Confiscation of Profits) Act* 1993 that the scissors be forfeited to the State of Tasmania, pursuant to s 16 of that Act. For the purpose of s 16(4) the Crown asserts that the value of the property is \$5.00. I make that order.

These are crimes to which s 13A of the *Family Violence Act* 2004 applies, and I order that they be recorded as such.

Wounding is a serious crime even when committed recklessly, because of the risk of serious injury and the need to deter others from such conduct. This case must however be regarded as at the lower end of the scale and involved conduct which appears to be out of character for the defendant.

The defendant is convicted of wounding and sentenced to 9 months' imprisonment, which sentence I wholly suspend on condition that he commit no offence punishable by imprisonment for a period of 12 months, and I make a community correction order for a period of 12 months with the usual core conditions and with a condition that the defendant undertake 49 hours of community service. It shall also contain an order that the defendant must during the operational period of the order, undergo assessment and treatment for drug and alcohol dependency as directed by a probation officer, and that the defendant must, during the operational period of the order, submit to medical, psychological or psychiatric assessment or treatment as directed by a probation officer. The final condition is that the defendant attend, participate in and complete the Family Violence Intervention Program as directed by a probation officer.

I direct that the defendant attend Community Corrections immediately upon leaving Court, at Highfield House.