

STATE OF TASMANIA v LACHLAN JUSTIN PLUMMER
COMMENTS ON PASSING SENTENCE

6 NOVEMBER 2020
ESTCOURT J

The defendant, Lachlan Justin Plummer, aged 20 years at the time of the offence, has pleaded guilty to one count of causing grievous bodily harm contrary to s 172 of the Criminal Code.

On Saturday 29 June 2019, a party was held at the Claremont Bowls Club to celebrate the 50th birthday of the defendant's uncle, John McDonald. There were about 100 people in attendance, including the defendant and the complainant Nathan Hack, who is a very close friend of Mr McDonald.

At approximately 11:15pm the crowd had started to thin out but there were still a number of people on the dance floor, including the defendant and the complainant.

There were some balloons on the dance floor, and the complainant popped a balloon. This appeared to anger the defendant, who was approximately 1m away from the complainant at the time.

The defendant approached the complainant in an aggressive manner, telling him to stop popping balloons.

The complainant 'scruffed' the defendant as he wanted to get the defendant away from him. The defendant bit the complainant's thumb while the complainant was holding his shirt. The complainant told the defendant he wasn't interested in fighting, pushed him away and walked off the dance floor towards the bar.

Approximately one to two minutes after that altercation, the complainant was standing at the bar with his back to the dance floor. The defendant approached the complainant from behind and punched him to the left side of the head. The complainant was not looking at the defendant or facing in that direction when he was hit. As a result, he had no warning he was about to be struck and dropped to the ground unconscious.

The complainant's family and others nearby went to the aid of the complainant. The complainant was trying to stand up but kept falling down. His left eye was immediately swollen closed, and there was a large amount of blood on his face and on the floor.

The complainant, while unsteady on his feet, got up and left the bowls club, walking to his parent's house a short distance away. Upon arriving home, the complainant's mother gave him an ice pack and he went to bed.

At approximately 1:00am, the complainant started vomiting blood and an ambulance was called. He was taken to the Emergency Department at the Royal Hobart Hospital where scans revealed fractures to the orbital and medial orbital wall, with bleeding behind the eye. He underwent emergency surgery to reduce the pressure in the ocular cavity and prevent the optic nerve being crushed. This was considered necessary by doctors in order to save the complainant's eyesight.

The complainant remained in hospital for observation. He had issues with nausea and vomiting as a result of the injuries, and was discharged on 2 July 2019.

The defendant participated in a video interview at the Glenorchy Police Station on 11 July 2019, and declined to make any comment, as was his right.

The complainant has ongoing injuries as a result of the fractures to his eye socket. In total, he has undergone five surgeries. His treating medical practitioner Dr Lucy Goold has advised it is difficult to predict a likely prognosis for the complainant given he is still in the post-operative period following the latest surgery on 18 August 2020, but has indicated he may require further treatment, which I am now told is the case with the complainant requiring further surgery in approximately 3 months.. The complainant may also retain some degree of double vision, blurred vision, cheek numbness or facial asymmetry into the future.

The complainant also received a fracture to his upper left canine tooth. This has required ongoing dental work and there remains the possibility of complications into the future, including root canal treatment or extraction of the tooth.

The Crown assert that the defendant was reckless in that he knew grievous bodily harm was a likely consequence of his act, and he did that act regardless of the risk. By his plea of guilty the defendant has accepted that.

I have received a victim impact statement from the complainant who states that for him the date will forever be remembered as the day he lost my trust in people, and the day his independence was taken from him.

As I have said, he has had 5 separate surgeries to date and has been left with double vision, no feeling to his left upper lip, teeth, gums, cheek, nose, eye area and forehead. He has lost his sense of smell and his taste sensation has been impacted. The constant watering of his left eye and almost permanent running nose is unsightly, embarrassing and humiliating to him.

His ability to drive has been taken from him and as a result his employment as a State based Specialist Medical Representative of 6.5 years has ended. He feels that the burden he has become on his family and friends is sad and unfair. The mental anguish he continues to experience each and every day he finds overwhelming.

The defendant has no record of prior convictions.

I have received a pre-sentence report which records that he reported an employment history consisting of hospitality, retail, and manual labour occupations since 2015. He advised he is currently employed as a concreter and labourer at Visualise Kerbing and Concreting, and has maintained stable employment since late 2017.

He advised that his rostered hours, schedule, and work locations are sporadic and that he would be unable to provide adequate notice of his weekly working schedule if subject to a Home Detention Order. This was confirmed by his employer.

He advised that he could potentially lose his employment should he be subject to a Home Detention Order and that this would negatively impact his finances and mental health. Community Corrections hold these concerns as well.

When discussing a potential Home Detention Order, the defendant advised while he did not believe such an order was appropriate or fair, he understood the consequences of his actions and expressed the belief, in hindsight, he made the wrong decision.

He advised that he would not do the same again in the future, claiming similar future actions would be stupid. He advised he would instead ignore, leave, or remove himself from similar situations. While he recognised his actions resulted in injury to the complainant, he described him unfavourably and was unable to elaborate on any potential effects it could have had on the complainant due to not knowing him.

The defendant reported taking action to address his risk of reoffending by ceasing excessive alcohol consumption and avoiding potentially violent situations. Further, he reported considering the consequences of this behaviour for potential victims, should he demonstrate this behaviour in the future.

The defendant has pleaded guilty and is entitled to a discount on any sentence of imprisonment to take account of that fact. I am also of course, acutely aware of his youth, his absence of any prior convictions and the fact that it is not suggested that he intended to cause grievous bodily harm. However, there was absolutely no need for the attack on the complainant and it has caused him very serious life consequences. In all of the circumstances a sentence of imprisonment is clearly called for.

In *DPP v Pearce*, the Court of Criminal Appeal rejected a prosecution appeal against the adequacy of a wholly suspended sentence of 12 months' imprisonment in a case in which the offender had stabbed his brother in the back twice with a kitchen knife. The victim required surgery and hospitalisation but made a full recovery. Pearce J, with whom Blow CJ and Porter J agreed, said at [13]:

"The crime of causing grievous bodily harm does not necessarily require a sentence of actual imprisonment in every case. The sentencing data available to me lists numerous examples of the imposition of wholly suspended sentences for the crime, commonly with terms between six and twelve months and sometimes longer."

Having regard to the discussion in the case of *Director of Public Prosecutions v Harwood (No 2)* [2019] TASCCA 13, I am of the view that an appropriate sentence is one of a term of imprisonment and community service.

The defendant is convicted and is sentenced to 2 years' imprisonment, wholly suspended for a period of two years from today on the condition that the he is not to commit any offence punishable by imprisonment during that period. I also make a community correction order with an operational period of three years, and I order that within that period the defendant is to perform 210 hours of community service.