

The defendant, Luke Robert McConnon, has pleaded guilty to one count of causing grievous bodily harm and a summary offence of common assault.

On 17 June 2022, the complainant, Daniel Leigh Warwarek, was out socialising with friends. During the evening, it was decided that they would continue drinking at a residence where one of them lived at Rifle Range Road. This was the same road where the defendant lived.

The complainant was quite intoxicated but not excessively so. At approximately 10:00 pm, he decided to leave his friend's house and walk to his partner's home in Brighton. When he left, he became disoriented as his friend's residence has a very long driveway of approximately 400 metres. He ended up at the gate of the defendant's residence. The defendant became aware of the complainant's presence outside his front gate as his dog began barking. The defendant's CCTV camera showed the complainant outside his front gate.

The defendant went to the front gate armed with a fire poker and approached the complainant. The complainant was leaning his arms on the gate. The defendant asked the complainant how he was going, or something similar. The complainant lifted his head up and tried to speak but slurred his words and was swaying on his feet. The defendant hit the complainant with the metal object, striking his right hand.

The complainant asked the defendant why he had hit him. The defendant telephoned triple zero and requested police assistance, describing the complainant as an aggressive trespasser. In fact, the complainant was not trespassing and was not behaving aggressively.

The defendant then told the complainant to stay where he was and that he would kill him. He opened the front gate, again saying he would kill the complainant. The complainant backed away from the defendant.

The defendant approached the complainant armed with the poker and the complainant ran down the driveway, with the defendant chasing him. He struck the complainant to the left leg with the metal object, amounting to an assault.

The complainant managed to get away and walked along Brighton Road, where he was located by police. He was distressed, intoxicated, and bleeding with an obvious serious injury to one of his fingers on his left hand. The complainant's father attended and took him to hospital.

Soon after, police arrested the defendant near his front gate. He participated in a record of interview. He told police the complainant was aggressive and attempted to enter his property and that he thought the complainant and his friends from across the road had tried to get into his property that night, and also previously. None of that was, in fact, correct but it was a truthful account of the defendant's perception of events. The defendant told police about difficulties with his neighbours, that he had ongoing issues with trespassers, and that he had a fire poker because he was scared.

The account that Mr McConnon gave to police was truthful. On the night of the incident, he woke to an alert on his phone and saw on the camera a young man who he thought was trying to get over the gate. He was fearful that the young man was entering his property. He thought the complainant was going to open the gate and enter, and he heard other people nearby and

thought others were coming to assault him. The defendant was very afraid and swung the poker in a chopping motion onto the gate as a warning, to scare the complainant, to try and get him to leave. He did not know he had struck the complainant's hand. There was an exchange when the defendant told the complainant to leave, but the complainant did not. The complainant yelled at him and the defendant tried to chase him away. In hindsight, the defendant realises that the complainant was not acting aggressively.

In speaking with police, the defendant admitted hitting the complainant on the leg with the poker with the intention of getting rid of him, and that he told the complainant he was going to kill him several times in order to scare him. He agreed his actions were neither necessary nor reasonable.

The defendant is guilty of the crime of causing grievous bodily harm on the basis that, at the time he struck the complainant to the hand with the fire poker, his act was reckless, he foresaw the prospect that such harm may result, and yet he proceeded regardless.

The complainant sustained a comminuted fracture to a bone in one of his fingers on his left hand, the fourth middle phalanx. It was a serious fracture, displaced by approximately 9 millimetres, and the fragments of bone were foreshortened or driven into each other. He has required corrective and reconstructive surgery that involved the insertion of K-wire and pins. He had a cast for 4 weeks and underwent extensive physiotherapy. His prognosis is good but his finger will not ever return to its pre-injury state. The complainant is a carpenter and is left with an injury which will continue to affect him.

The complainant has provided a victim impact statement which outlines that the crime has affected him not only physically but emotionally, and has affected various aspects of his life to a significant degree. Before the attack, he was, as a 23-year old, a young man with a positive outlook, living a healthy life with a full social and family life, and enjoying work, sport, and other interests. Now, due to the psychological effects of the crime, his relationships have been affected and he is anxious, vulnerable, and feels irritable and depressed. He was unable to work for eight weeks due to his injuries and he lost wages, leading to financial stress. He is unable to ride motorcycles due to his injury. He was passionate about boxing as a sport and hoped to compete, but now has lost any enjoyment in that sport.

The defendant is now aged 44. He has no history of violence. He has a number of convictions for driving whilst disqualified and drink driving offences, and has been subject to wholly suspended terms of imprisonment on more than one occasion, as well as community service and probation. His last such offence was in 2007.

The defendant operates his own joinery and construction business and is an industrious person who has supportive relationships with his parents and siblings. He is not someone who has an aggressive disposition or a propensity for violence. Significant factors that led to his offending were fear and a heightened perception of threat.

I am been provided with a report from Clinical and Forensic Psychologist, Dr Jennifer Wells. She has assessed the defendant and, in her opinion, he meets the criteria for post-traumatic stress disorder which, in her opinion is, "severe in its functional impact". He developed this disorder as a consequence of being severely assaulted when he was 19 years of age. The attack upon the defendant and his father, who came to his assistance, was prolonged and vicious, and Mr McConnon feared for his life and his father's life. This event was followed by a protracted

period of harassment by his neighbours and the defendant ultimately moved to another neighbourhood where he was living at the time of offending but, unfortunately, this has also proved to be problematic and he has been subject to harassment and aggression which, in Dr Wells's view, exacerbated his PTSD. In consequence of this harassment and aggression, the defendant installed motion sensor cameras at this home which sent alerts to his phone.

Dr Wells has considered the defendant's state of mind and the impact of his PTSD at the time of committing this offence. In her opinion, the defendant was in a heightened state of anxiety and hyper arousal. He was physically and mentally affected, and his symptoms included a racing heart and difficulty processing information. In her view, this state altered his perception of threat from the complainant and made him feel more at risk of harm than he actually was.

In Dr Wells's opinion, the defendant's cognitive distortions, a symptom of his condition about the world being unsafe, and feelings of helplessness and hyper arousal impaired his mental functioning. In particular, his ability to exercise appropriate judgment, to make calm and rational choices, and his ability to think clearly contributed causally to the offence. This is not to suggest that his mental condition was the only cause; the defendant was awoken from sleep and had consumed alcohol that evening and, in her view, those factors probably contributed somewhat to his reactions. However, his PTSD symptoms led to him responding in the extreme manner he did and, in her view, his reaction was driven by fear. I regard his moral culpability as reduced to a significant extent.

Relevant to sentencing options, Dr Wells notes that the defendant continues to experience the symptoms of PTSD. Community Corrections advise that the defendant is not suitable for community service because of mental health and other health concerns.

In Dr Wells's view, the defendant would benefit from psychological therapy to assist him to overcome his anxiety symptoms and to work through the cognitive distortions about his safety. This would address the risk of him reacting in a similar way in the future. Dr Wells notes that psychological treatment using cognitive behavioural therapy would be highly beneficial for him and the defendant has expressed willingness to engage with a psychologist.

The defendant has expressed regret for his actions and distress about the injuries he has caused the complainant. Dr Wells notes that the defendant is "highly distressed" by what he has done. The report from Community Corrections notes that the defendant expressed feelings of disgust and horror regarding his actions, and that he understands the cost of his actions upon the victim's life.

Mr McConnon, this is, as you know, a serious crime. The complainant has suffered physical permanent injury as well as psychological harm, which may well have lasting adverse effects on his life. The sentence must reflect that harm. The sentence must also, though, reflect your personal circumstances and the significant matters in mitigation. This is not a crime of wanton violence, but rather a crime driven by heightened fear.

Having regard to your psychological condition, your reduced moral culpability, and your genuine remorse; the insight you have now gained about your condition and the need for psychological treatment; and your motivation to undertake that treatment, I consider that a gaol sentence wholly suspended on strict conditions is a just and appropriate sentence.

I record convictions. In relation to the crime of causing grievous bodily harm, I impose a term of imprisonment of 14 months wholly suspended for two years on the following conditions. You are not to commit any offences punishable by imprisonment for two years from today. You are to be the subject of supervision of a probation officer for that period, and must submit to the supervision of a probation officer as required by the probation officer. As a condition of the suspended sentence, you must comply with all the reasonable and lawful directions of your probation officer. You must report to a probation officer at 75 Liverpool Street, Hobart, no later than 4:00 pm today. You must report as required by your probation officer, and must not leave or remain outside Tasmania without the permission of a probation officer. You must give notice of any change of address or employment before, or within two working days after, the change. Further, as a condition of the suspended sentence, you must submit to medical, psychological, and psychiatric assessment or treatment as directed by a probation officer.

I record a conviction in relation to the offence of common assault.