

COMMENTS ON PASSING SENTENCE**WOOD J**

The defendant, James Howard Dicker, has pleaded guilty to one count of wounding. The defendant and the complainant, Andrew William Filipek, were known to each other as Mr Filipek was the owner of a commercial complex in New Norfolk and the defendant leased a warehouse from him for his business. There had been ongoing disputes between them stemming from the conditions of the defendant's lease and tensions had become heightened in the months before the incident that led to the wounding.

On Wednesday 2 August 2023, the complainant came by the warehouse at approximately 11:30 am and removed two signs that the defendant had positioned outside his warehouse and the defendant then called police. The defendant placed another sign outside his warehouse and was waiting for the police to arrive when, at approximately 3:30 pm, the complainant moved that sign to another position as he considered it was obstructing the driveway.

The defendant came out of the warehouse carrying an axe handle. He walked towards the complainant and struck him twice to the head. The complainant sustained a wound to the back of his head.

The complainant and the defendant struggled with one another over the axe handle and the complainant got hold of it and swung it at the defendant, striking him to the body. They continued fighting on the ground before the complainant got on top of the defendant and punched him to the face.

The complainant punched the defendant to the face a second time. The complainant grabbed the axe handle and placed part of it across the defendant's throat, at one stage pushing down.

The complainant took one hand off the axe handle to check the back of his head for injuries, and the defendant grabbed a Stanley knife from his pocket and slashed the complainant across the chin.

The complainant got up and fled, and both the complainant and the defendant independently contacted the police and ambulance. The altercation was captured on CCTV footage.

Police arrived at the scene and spoke to the defendant who admitted assaulting the complainant. The complainant was taken to hospital by ambulance and was treated for a 5 cm laceration to the chin and a 2 cm laceration to his scalp, both requiring sutures.

I have a victim impact statement from the complainant. After the assault, he suffered from headaches for 4–6 weeks. He has been left with a 5 cm scar on his chin and constant numbness in that area. Now, since the incident, he is more withdrawn, and on alert when dealing with members of the public. He operates a business and is reluctant to engage with his customers. On a daily basis, he has to come into contact with the defendant, given the location of their respective businesses, and he is fearful of another attack.

The defendant participated in a record of interview with police. He spoke about the tensions with the complainant and said, "something flipped in me". He struck the complainant with the axe handle and he told police he was not proud of that. He said in the struggle when the complainant was on top of him, he slashed him with a knife he had in his pocket, saying, "I just wanted to get him off me". He said he was unaware if he "got him" with the knife.

The defendant is 57 years of age and has no relevant prior convictions. Initially, he and the complainant had an amicable landlord/tenant relationship, but the situation soured in early 2023

over a particular clause in the lease which was due for renewal. The defendant was assaulted by the complainant in April and June 2023. He complained to police about those assaults and in June 2023 he took out a restraint order against the complainant, resulting in interim orders. Ultimately, after the wounding incident, the complainant was charged with two counts of common assault and recently, he pleaded guilty to those charges and he has been fined.

At the time of the wounding, the situation between them was heightened and difficult. The complainant had assaulted the defendant twice in the months before and not yet been charged, and on the day in question had tampered with the defendant's property and the police had not attended, which contributed to the defendant's frustration. The dispute in relation to the lease had not yet been resolved.

In light of that background, on seeing the complainant, the defendant came out of his warehouse with an axe handle expecting a confrontation and concerned he may be assaulted. I accept he was in a heightened state of stress. I note, too, that he has health conditions which contributed to a sense of physical vulnerability at the time, including type 1 diabetes and arthritis. He approached the complainant and struck him. That conduct was entirely without any justification. A physical confrontation ensued.

During the struggle, it can be seen from the CCTV footage that the complainant had the upper hand, delivered a number of blows to the defendant, and overwhelmed him with the axe handle pressed against his chest or throat area. It was in that moment that the defendant retrieved the knife from his pocket, which happened to be there, and used it to defend himself. He appreciates the nature of his act was excessive in the circumstances and therefore not legally justified.

The defendant does not have a violent propensity and I am satisfied his response was spontaneous and out of character, and arose from the unfortunate circumstances of dispute and conflict that existed at that time. As I have noted, he telephoned the police and ambulance and was co-operative with police. He was shocked to see the photographs of the wound that he caused to the complainant's face and sorry to hear about the impact upon the complainant.

The defendant has a productive history, having established a carpentry and joinery business in New South Wales, and later New Norfolk when he and his family relocated there. Since relocating, he and his partner have separated and he lives with his adult son. He has an aqua-hydroponics business that he runs from the warehouse and provides him with a modest income. Imprisonment would have an adverse effect on that business.

There is a need to mark the seriousness of this conduct, the injuries sustained, and the emotional harm and distress caused to the complainant. In sentencing you Mr Dicker, the Court also needs to deter others who may be tempted to resort to violence in circumstances of conflict. The Court is conscious that the complainant could easily have sustained a grave injury given the conduct involved a blow to the head with an implement and slashing of his chin with a knife. The knife could easily have caused a wound to the complainant's throat given the physical confrontation and the movement between you both.

I am satisfied that the appropriate sentence which adequately reflects those objectives, as well the circumstances of the offence that I have outlined in some detail, the defendant's lack of prior history of offending, and his remorse is a wholly suspended sentence of imprisonment.

I record a conviction and I impose nine months' imprisonment, wholly suspended on condition that the defendant commit no offences that could attract a term of imprisonment for a period of two years from today.