

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS]

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CRI-2023-019-000160
[2023] NZDC 24142**

THE KING

v

JASON TEOINGA CLOVER

Hearing: 1 November 2023

Appearances: P Noorland for the Crown
J Keung for the Defendant

Judgment: 1 November 2023

ORAL JUDGMENT OF JUDGE R G MARSHALL

[1] Mr Clover faces one charge of wounding with intent to cause grievous bodily harm. That arises out of an incident that is said to have occurred in Hamilton on 13 January this year.

[2] The incident occurred at a motel in Hamilton where Mr Clover was living in a unit at that motel with his partner and the pair's child. He was staying at Unit 2 and been there some three to four months. Another acquaintance of his, Daniel McGaffin, was also staying at the motel as well as Mr Clover.

[3] It appears that [name deleted] had been living there, [the complainant], at Unit 11. It appears that Mr McGaffin and [the complainant] knew each other and from time Mr McGaffin would give [the complainant] some assistance. It appears that there was a form of friendship that developed between the two certainly as far as [the complainant] was concerned. [The complainant] at the time was aged 74 years old, needed the assistance of a walking frame from time to time and had a mobility scooter in his unit.

[4] On the afternoon of 13 January 2023 it appears that Mr McGaffin was in [the complainant]'s unit in around 2 o'clock or thereafter. [The complainant]'s recollection which he admitted was not the best due to his age and the trauma of events, was that Mr McGaffin had come in uninvited and started rummaging around papers that were on his kitchen table, was asking [the complainant] for passwords and he was a little unclear as to exactly for what. "For accounts" he was saying.

[5] [The complainant] was sitting on the bed at the time after initially standing. He did not want Mr McGaffin in his unit uninvited and told him to leave. His next recollection was Mr McGaffin letting a person he did not know in and it is accepted that that person was Mr Clover.

[6] Mr Clover went into the room and what is not in dispute is he then attacked [the complainant] with a steel bar. [The complainant] described it as being 10 to 12 inches in length verbally but when he was giving evidence by way of closed circuit television the size he indicated seemed to be a little bit in excess of that.

[7] [The complainant] said he was on his bed and he was then approached immediately by Mr Clover who said nothing and proceeded to strike him a number of times. [The complainant] said he held up his right forearm as the first blow was coming at him. That struck his forearm he indicated between his elbow and his wrist and then there were another half a dozen strikes to his arm area. He said during that time he asked Mr Clover what he was doing and received no reply. He said Mr Clover did not talk to him. He thought that the, as I say, the aim was for his head. When he demonstrated the strike or how he was struck, he indicated that the right arm of the person was above the shoulder and then come down swiftly towards the waist area.

[8] [The complainant] was cross-examined and obviously some of his finer points of his evidence he could not recollect that clearly although the main evidence of being assaulted did not seem to be challenged.

[9] There was a memorandum of agreed facts and further agreed facts that were filed by counsel which form part of the record. The first memorandum of agreed facts informs that [the complainant] was taken to the Waikato Hospital Emergency Department by ambulance. He assessed as having a fracture in his right ulna bone with an overlying wound and several fractures of his fourth and fifth metacarpals which relate to his hand. He was provided with pain relief, underwent surgery to fix the ulna fracture and overlying wound and then underwent further surgery to fix using wire the metacarpal fractures, that is the fractures to his hands. He was discharged from hospital some five days later on 18 January 2023.

[10] Dr Bonning reviewed the notes from [the complainant] and considered that the fractures of the ulna bone and the inner forearm bone are typical of a person holding their arm up to defend themselves from being struck with a hard object. He, however, could not rule out other causes of such an injury.

[11] The further evidence from the agreed facts shows that at about 14:34:29 Mr Clover entering [the complainant]'s unit and at 14:34:52 exiting the unit, indicating he was there for a relatively brief period of time.

[12] Footage of CCTV was briefly shown, a 30 second odd clip to [the complainant] showing that and showing that the door was open at the time where [the complainant] thought it was closed. What was obvious particularly when Mr Clover left the property was a long thin object concealed on the inside of his right leg of his shorts. It does not take much to infer that that was the iron bar.

[13] The photograph evidence also shows that a large amount of blood had flowed from the wounds caused to the fractures and injuries to [the complainant]'s right arm and that can be seen in the photograph booklet which is exhibit 1, photos 11 and 12 on page 6 and photos 9 and 10 on page 5 which show a large amount of blood on the side of the bed where [the complainant] said he was sitting at the time of the assault.

[14] Mr Clover gave a video interview on 17 January 2023 to then [Constable 1]. During the course of that initially he said at the beginning of the interview that he had been staying at Unit 2 for three to four months with his partner. That she had reported that [the complainant] had been playing with himself while there were children in the pool. He found that reasonably disgusting. He said he had nothing to do with [the complainant], did not know who he was. Then he talked about the cops turning up and he had been in his room playing on his Xbox during that time. He talked about his partner wanting to know [the complainant]'s name to check whether he was on the child sex register. He said he stayed in the unit the whole day apart from maybe going to the carpark area for four or five minutes. He said he did not really know anything about police being there. He talked about his partner referring to what she had seen or heard about [the complainant] to the manager and that is confirmed also in the agreed facts that that occurred about 2.17 pm and then significantly at a point in the interview Mr Clover was shown photographs of him going in and out of [the complainant]'s unit.

[15] Then after a significant pause he said that he did go into the unit and more or less said he would fess up to what had occurred. He said there was an old man there sitting on his bed and the other one, referring to Daniel, who he said he had known for a month or so, was standing in the kitchen.

[16] He admitted it was him and he said he only wanted to teach him a lesson. He said that is because his partner and him were victims of sexual abuse and he assaulted him he said just with a weapon, just with "a little pole thing".

[17] He said he whacked him on his hands, that is all. Asked how many times, he said he was not sure. He said: "It was just a lesson, that's all it was and the person was crying and sorry for what they did." He said he stopped because he did not want to go too far and he described it as a steel pole and then several passages of [the complainant]'s statement were put to Mr Clover.

[18] He denied that he had tried to hit [the complainant] in the head. He said that was a lie. He said he knew instantly that that is what would have happened and that [the complainant] was holding his hands down and he was whacking his hands just to

teach him a lesson and that was his chief goal. He said he did not know anything about items stolen from the room.

[19] Ms Noorland submits for the charge to be made out against Mr Clover it must be proved beyond reasonable doubt. Mr Clover does not seem to dispute there is a wounding.

[20] The Crown must prove beyond reasonable doubt that firstly there was a wounding, that is a break in the continuity of their skin evidenced by the flow of blood. Here, having looked at the photographs and the injuries to [the complainant]'s right hand there does not seem to be any dispute about the fact there was a wound. I find that proved beyond reasonable doubt.

[21] For the charge to be proved the second element must also be established that at the time that Mr Clover caused the wound he intended to cause [the complainant] grievous bodily harm which means really serious harm. That is where the argument lies.

[22] Mr Keung on behalf of Mr Clover says that the most that the Crown can prove is an intent to injure. An intent to injure is to cause someone actual bodily harm, that is harm that is calculated to interfere with the health and comfort of someone but must be more than transient or trifling. Matters such as bruises and abrasions and the like can amount to actual bodily harm. Mr Keung submits it falls far short of really serious harm.

[23] Mr Clover, as he is entitled to, did not give evidence but Mr Keung relies on Mr Clover's video interview with [Constable 1 – now Detective 1] on 17 January this year. That is evidence I can take into account and give such weight as I consider appropriate in all the circumstances of the case.

[24] Mr Keung talks about Mr McGaffin getting a towel from Mr Clover's room, giving it to Mr Clover's partner at 2.10 pm. Seven minutes later she complained about what she saw to the manager. Mr Keung said that Mr Clover then proceeded to do

what he did and refers to him acting independently although I notice in the agreed memorandum of facts Mr McGaffin has pleaded guilty to this charge.

[25] Putting that to one side though, he said that he admits hitting the hand of the complainant. He hit his hands and his arm but he did not intend to attack the head as the complainant said, that is [the complainant] said, and as [the complainant] recognised it would be obvious he would be in no position to prevent Mr Clover hitting [the complainant] in the head. He refers to the video interview with the detective where Mr Clover says he did not want to go too far and he did not certainly target the head.

[26] Ms Noorland refers to the fact that he went armed with a steel bar, that is Mr Clover. He hit a number of times with force and that [the complainant] was vulnerable.

[27] Obviously, you cannot see inside someone's mind to see what is going on so the Court is entitled to draw inferences and must consider whether those inferences can establish beyond reasonable doubt the intent that the Crown maintains that Mr Clover had at the time the wound was caused to [the complainant].

[28] The process of drawing inferences is where there are a number of circumstances or facts that the Court finds proved, whether that combination of facts or circumstances is sufficient to draw an inference beyond reasonable doubt that Mr Clover intended to cause [the complainant] really serious harm. As I say, Mr Keung's position is no and he relies on the interview. I do note that Mr Clover commenced the interview by lying to the police so there is a considerable impact on his credibility when considering his truthfulness, when considering what I make of that interview. However what is not in dispute is that [the complainant] was struck a number of times with an iron bar and sustained injuries, namely the wound and broken bones.

[29] I consider the circumstances that I find are that Mr Clover was angry at what his partner had told him about [the complainant], that he went over to [the complainant]'s unit, that Mr McGaffin was there, that there was an understanding

between that had been pre-arranged. I am not sure what the precise nature of that understanding was but Mr McGaffin remained in the vicinity whilst Mr Clover then immediately advanced on [the complainant].

[30] [The complainant] was frail. He is evidently frail. Anyone can see that if they look at him giving evidence on the television screen he is not someone that could match Mr Clover in any way physically. He is 74 years of age and has the assistance of a walking frame from time to time.

[31] Mr Clover had armed himself with a steel bar. That was what seemed to me from [the complainant]'s description and also the clip, at least a foot long and that he brought that down a number of times on [the complainant]'s forearm and hand with force. It does not make any sense that [the complainant] sat there mutely with his hand at his side while Mr Clover bashed him with it.

[32] I think as soon as the bar was raised, so was Mr Clover's arm and then it did not take Mr Clover long to strike that arm a number of times with force. He did so when he was angry and he must have realised that striking an elderly person's arm with an iron bar was going to cause him really serious harm and that is exactly what he did.

[33] Blood flowed, bones were broken in the arm and bones were broken in the hand. That is what happens when people are struck with iron bars and if you add all those circumstances together it would have been obvious to Mr Clover at the time he struck [the complainant] that he was going to cause him really serious harm, not just something calculated to interfere with the health and comfort of someone.

[34] Mr Clover could easily have dealt to [the complainant] without the assistance of a weapon. Physically, he was immensely stronger than [the complainant], much, much younger and very strong compared to a frail old man. The taking of the bar indicated the intention to cause really serious harm.

[35] I accept that Mr Clover was not there to smash [the complainant]’s head in as such but he was certainly there to cause him serious harm. I find the charges proved beyond reasonable doubt.

Judge RG Marshall

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 03/11/2023