

FACULTY OF LAW AND BUSINESS
Thomas More Law School
SEMESTER 1, 2021
LAWS106: Criminal Law and Procedure

ASSIGNMENT 1
INSTRUCTIONS

Your task is to examine the attached document and provide the requested opinion/advice. The document presents a hypothetical scenario involving a criminal law problem. The scenario needs to be read carefully, and in conjunction with your reading in this course. You are advised to start EARLY, as the issues here reasonably complex, and will require a good deal of background reading for you to recognise them.

Your task is to **write a memorandum** that sets out the law and evidence that explains your view on:

- 1) The likely charge or charges, and why;
- 2) Whether the matter should proceed as an indictable or summary offence.

You are required to identify the specific law you are relying on, the explanation/interpretation of that law, and its application to the evidence available in reaching your conclusion.

In providing your opinion, please apply the law relevant to the State in which you are located.

ASSIGNMENT CONDITIONS

1. Your work is to present in the form of a MEMORANDUM. Copies of Memos are available on the LEO site if you need a template.
2. Students shall, unless unforeseen circumstances arise, present assignments in a word-processed form.
3. Your work should be in 12 font, and not exceeding 1500 words. Your paper must be fully referenced and footnoted in compliance with the Australian Guide to Legal Citation.
4. This assignment is worth 15% of course marks.
5. **This assignment is due no later than 5.00pm on FRIDAY, 2 APRIL, 2021.**
6. Your assignment needs to be submitted via the Turnitin Portal on the LEO Site under the "Assessments" Tile.
7. Please note that timely submission is expected. Extensions, if granted, will be minimal.
8. **This work must be your own. You are not permitted to work with any other person in this assignment. Any academic misconduct will be referred for disciplinary action.**

ANNEXURE

State Police FACTS SHEET

Date of Arrest :	07/04/2021	Time of Arrest:	15:33
Accused :	GREEN, GERARD		
Address :	55 NORTHLAKES STREET STATE CAPITAL CITY		
Nationality :	Australian	D.O.B. :	1/5/2000
Occupation :	Unemployed	CNI :	46789031

ANTECEDENTS

The accused has a lengthy history of violence. He was first charged with offences at the age of 12. He served a period of 4 years in juvenile detention between the age of 14 and 18. He is a known user of methylamphetamine (“ice”) and cannabis. He was on parole at the time of the current offending, having served 12 of 18 months for a domestic assault committed in 2020. As he was on probation at the time of the arrest, bail was refused. He is currently in prison at CityEdge Prison.

FULL FACTS

Gerard GREEN was released on probation from CityEdge Prison on 17 February 2021, having served 12 months in prison for an assault of his defacto partner, Alicia WATERS, on 25 December 2019. Charges included a contravention of a domestic violence order. The couple have been in a relationship since 2018. They have a daughter (Tabatha), aged 3. GREEN resumed cohabiting with WATERS on release at NORTHLAKES STREET on the day of release.

On 7 April 2021, GREEN was arrested at a unit located at 3/177 BURNET ROAD after police were called by neighbours reporting a violent altercation at that address. On arrival at approximately 15.33, Senior Constable MOORE and Constable BLOOM were immediately confronted by the sounds of screams within the unit. After forcing entry to the premises, they found a male person standing over another male, tied to a chair with an electrical cord, with the offender in the act of pouring boiling water from a kettle over the victim’s head.

The offender was immediately restrained by MOORE, while BLOOM called an ambulance to assist the victim, before wrapping the victim in wet cold towels. Ambulance officers arrived at 16.15 and rushed the victim to ST MARY's HOSPITAL, where the victim was placed into Intensive Care with significant burns and pain. He remains in hospital with significant scarring and was placed in a medically induced coma for three weeks. Subsequent medical reports confirmed 3rd degree burns to 30% of the victim's body.

Following arrest, the offender was identified as Gerard GREEN. GREEN participated in an electronic record of interview (ERISP), where he made statements to police in the following terms. GREEN identified the victim as Troy HINTON (23 years of age). HINTON was known to GREEN through mutual friends. Indeed, GREEN thought HINTON was a "mate". GREEN explained that in the hours leading up to the attack on HINTON he had been at his home address with WATERS and their daughter. He explained that their relationship was "under stress" because he had not been able to find work, and because an investigator from "social security" had visited their address in the morning. GREEN hid from the investigator. WATERS refused the woman entry. Questions were asked about whether GREEN and WATERS were living together, which was a problem because WATERS was the recipient of a single parent's pension. GREEN explained that after the investigator left, an argument between GREEN and WATERS erupted over money. During this argument GREEN then shifted the argument to a rumour he had heard that while he was in prison HINTON and WATERS had a sexual relationship. WATERS denied it, but GREEN did not believe it. GREEN then explained he jumped into his car "in the heat of the moment", drove to HINTON's address in BURNET ROAD, and got into an argument with HINTON. Like WATERS, HINTON denied "having an affair", but again GREEN refused to believe him.

GREEN then stated that he attacked HINTON and slapped him around the face "a few times", called him a "lying cunt", and then wrestled HINTON to the floor. He remembered screaming a lot of abuse at HINTON, but could not recall much of what he said. He then dragged him to a chair. By this time, according to GREEN, HINTON was "crying like pussy", and begging GREEN to stop hitting him. GREEN then demanded HINTON "confess" to him. HINTON again denied any sexual relationship with WATERS. GREEN stated that he then grabbed an electrical cord off the kitchen bench and tied HINTON's wrists together behind his back and

through the timber framework of the chair so that he could not move his arms. He then turned on the kettle and again demanded HINTON “confess”. HINTON again denied any “wrong”. GREEN stated that he then ripped off HINTON’s shirt, and then poured boiling water onto his back. He then poured a lot more onto his head. It was at this time Senior Constable MOORE tackled him to the ground.

GREEN remains in custody.

File notes also show that SECON MOORE sustained a splash burn to his face (which blistered) and a burn to his left arm which required medical treatment.

ADVICE SOUGHT

This matter has been referred to you as a solicitor for the State Police. You have been asked to advise on the proper charge, or charges, and advise whether this matter should be referred to the Director of Public Prosecutions as an indictable offence, or be dealt with by a Police Prosecutor in the Local/Magistrates’ Court.