

SUPREME COURT OF QUEENSLAND

CITATION: *R v Hearn* [2026] QCA 121

PARTIES: **R**
v
HEARN, Trevor James
(appellant/applicant)

FILE NO/S: CA No 188 of 2022
DC No 698 of 2022

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction & Sentence

ORIGINATING COURT: District Court at Brisbane – Date of Conviction: 19 August 2022; Date of Sentence: 26 August 2022 (Kent KC DCJ)

DELIVERED ON: 30 June 2026

DELIVERED AT: Brisbane

HEARING DATE: 18 August 2025

JUDGES: Bond JA, Bradley JA, Cooper J

ORDERS: **1. Appeal dismissed.**
2. Application for leave to appeal against sentence refused.

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – MISCARRIAGE OF JUSTICE – PARTICULAR CIRCUMSTANCES NOT AMOUNTING TO MISCARRIAGE – MISDIRECTION OR NON-DIRECTION – where the appellant was convicted of assaulting an ambulance officer, emergency ambulance driver, and two police officers – where the Crown case at trial was that the assaults arose in the course of the officers detaining and sedating the appellant to transport him to a treatment or care place pursuant to powers under s 157B of the *Public Health Act 2005* (Qld) – where the appellant contended at trial that the officers acted unlawfully in sedating and detaining him – whether a miscarriage of justice arose from a failure of the trial to direct the jury on the lawfulness of the appellant’s detention and sedation – whether s 282 of the *Criminal Code* (Qld) was applicable in assessing the lawfulness of the use of sedation in the circumstances

CRIMINAL LAW – APPEAL AND NEW TRIAL – MISCARRIAGE OF JUSTICE – PARTICULAR CIRCUMSTANCES NOT AMOUNTING TO MISCARRIAGE – MISDIRECTION OR NON-DIRECTION – where the appellant was convicted of assaulting an

ambulance officer, emergency ambulance driver, and two police officers in the course of being detained and sedated by them – where the trial judge directed the jury to acquit the appellant of the assault charges if it was not satisfied beyond reasonable doubt that his detention and sedation were lawful – whether a miscarriage of justice arose due to the trial judge not further directing the jury on the defences of self-defence and provocation – whether the trial judge erred in not directing the jury on the defence of honest and reasonable, but mistaken, belief, as to the lawfulness of the appellant’s detention and sedation

CRIMINAL LAW – APPEAL AND NEW TRIAL – MISCARRIAGE OF JUSTICE – PARTICULAR CIRCUMSTANCES NOT AMOUNTING TO MISCARRIAGE – OTHER IRREGULARITIES – where the appellant was unrepresented at trial in the District Court – where the appellant had the benefit of legal representation earlier in the proceeding however withdrew his instructions on two separate occasions – where the appellant was given a grant of Legal Aid but declined to comply with its conditions – where the appellant contends he was completely unable to raise a credible, or proper, legal argument at trial in the absence of legal representation – whether a miscarriage of justice arose in the circumstances

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – SENTENCE MANIFESTLY EXCESSIVE OR INADEQUATE – where the appellant was sentenced after trial to imprisonment for two years for the unlawful assault of an ambulance officer – where the appellant was ordered to serve lesser concurrent sentences of 12 months’ imprisonment each for assaulting two police officers, aggravated by spitting and causing bodily harm respectively, and six months for the unlawful assault of an emergency ambulance driver – where 812 days of presentence custody was declared as time already served – where the appellant seeks leave to appeal against his sentence on the ground that it is manifestly excessive – where the appellant contends his sentence ought to have been moderated because he had already served in excess of the term to which he was imprisoned – where the appellant contends a much lower sentence was called for due to “very extenuating circumstances”, being that the assaults were reactive rather than pre-meditated, and occurred when the appellant was suicidal and taken by surprise – whether the sentence was manifestly excessive in the circumstances

Criminal Code (Qld), s 282

Public Health Act 2005 (Qld), s 157B, s 157C, s 157D, s 157L

Dietrich v The Queen (1992) 177 CLR 292; [1992] HCA 57, applied
Horne v Coyle; Ex parte Coyle [1965] Qd R 528, applied
MacPherson v The Queen (1981) 147 CLR 512; [1981] HCA 46, cited
R v Benson [2014] QCA 188, considered
R v Brown [2013] QCA 185, considered
R v Greer (1992) 62 A Crim R 442, applied
R v Pham (2015) 256 CLR 550; [2015] HCA 39, applied
Towse v Bradley (1985) 60 ACTR 1; (1985) 14 A Crim R 408, cited

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M A Green for the respondent

SOLICITORS: Ashkan Tai Lawyers for the appellant/applicant (pro bono)
Director of Public Prosecutions (Queensland) for the respondent

- [1] **BOND JA:** I agree with the reasons for judgment of Bradley JA and with the orders proposed by his Honour.
- [2] **BRADLEY JA:** On 26 August 2022, Mr Hearn was sentenced to imprisonment for two years for the unlawful assault of an ambulance officer while the officer was performing a function of his office,¹ aggravated by Mr Hearn spitting on the ambulance officer. He was ordered to serve three lesser concurrent sentences. Two were sentences of 12 months each for assaults of police officers while acting in the execution of their duties;² one aggravated by Mr Hearn causing bodily harm to the police officer; and the other aggravated by Mr Hearn spitting on the other police officer. The third concurrent sentence was six months' imprisonment for the unlawful assault of an emergency ambulance driver while she was performing a function of her office.³
- [3] The convictions followed a jury's findings of guilt on 19 August 2022, at the end of a trial over five days before the learned primary judge in the District Court at Brisbane.
- [4] Mr Hearn was found to have committed these four offences during the operational period of a suspended sentence. The primary judge ordered that Mr Hearn serve 14 days of the suspended imprisonment, commencing on 19 August 2022. Mr Hearn was also convicted of one count of contempt of court for conduct during the trial. For the contempt, he was sentenced to imprisonment for two months, to be served cumulatively with the other sentences.
- [5] The primary judge declared that 812 days Mr Hearn spent in pre-sentence custody⁴ was time Mr Hearn had already served in respect of the sentences for the serious assault offences. His Honour declared that seven days Mr Hearn spent in pre-sentence

¹ *Criminal Code* (Qld) (**Code**), s 340(2AA)(a).

² s 340(1)(b).

³ s 340(2AA)(a).

⁴ 5 June 2020 to 25 August 2022.

custody⁵ was time Mr Hearn had already served in respect of the sentence for contempt.⁶

- [6] His Honour ordered that Mr Hearn be released on parole on 2 September 2022 to serve the remaining 46 days of the contempt sentence in the community.

Grounds of appeal

- [7] On 7 September 2022, Mr Hearn commenced an appeal against his conviction and applied for leave to appeal his sentence. The sole ground of appeal was: “No Legal Representation/ Unfairly Dealt/.../ Bias/ Prejudice”.
- [8] At the hearing of the appeal, Mr Hearn’s original ground of appeal was not pursued. The Court gave Mr Hearn leave to rely on two further grounds of appeal against his convictions:

“Ground 2

A miscarriage of justice resulted because the learned trial judge did not direct the jury on:

- whether Mr Hearn’s detention under an emergency examination order was lawful;
- the quality of the evidence that Mr Hearn was told in terms of section 157C of the *Public Health Act 2005* that he was being detained and transported to a treatment and care place;
- whether it was lawful for a paramedic to inject, or attempt to inject, Mr Hearn with chemical sedation without his consent;
- the defence of self-defence;
- the defence of honest and reasonable mistake in relation to self-defence; and
- the defence of provocation.

Ground 3

A miscarriage of justice resulted because Mr Hearn was unrepresented and was not capable of conducting his own defence in such a way that he could receive a fair trial.”

- [9] The Court also permitted Mr Hearn to apply for leave to appeal against the sentences imposed on the ground that the sentences were manifestly excessive.

The events in question

- [10] On 4 June 2020, close to 10.00 pm, an acting sergeant at the Cunnamulla Police Station (the **sergeant**) received a telephone call from Mr Hearn. Mr Hearn said he was at his home. It is in Wyandra, a very small town on the Warrego River, halfway between Cunnamulla and Charleville. He told the sergeant he was very depressed

⁵ 19 to 25 August 2022.

⁶ This left Mr Hearn to serve the remaining one month and 23 days of the two-month sentence for contempt.

and would rather just die. The sergeant tried to convince Mr Hearn “not to go that way”. She told him she was coming to see him to get him some help. He replied “Don’t do that, darling. I don’t want you to come. I want you to just let me die.”

- [11] A constable (the **constable**) was also working at the police station that night. She knew Mr Hearn. The station had received a similar call from him about a month earlier. On that occasion, the constable and another officer had driven to Mr Hearn’s home. There, some of Mr Hearn’s friends persuaded him to go with them to the Cunnamulla Hospital, where Mr Hearn had received some medical treatment.
- [12] After Mr Hearn’s call, the constable informed police communications of an “attempt suicide”. Once this was done, police communications contacted the regional health service. As a result, an ambulance officer (the **paramedic**) and an emergency ambulance driver (the **driver**) were dispatched from the Cunnamulla hospital in an ambulance. The sergeant and the constable set out from the police station in a police car. Both vehicles were bound for Mr Hearn’s home, at the end of a street on the edge of Wyandra, about 100 km north of Cunnamulla along the Mitchell Highway.
- [13] The police officers arrived at Mr Hearn’s home at about 11.00 pm. Mr Hearn was not there. The officers and the driver searched the surrounding area. The ambulance officer and driver arrived about 11.15 pm. They joined the search. The constable heard a sneeze. She followed the sound and located Mr Hearn about 30 metres from his home, on the other side of a levee bank that protected the town from flooding.
- [14] Mr Hearn was lying on the ground under a canvas swag shell.⁷ He was wearing only shorts and a t-shirt. He had no shoes. The constable described the temperature as “freezing cold”. It was expected to drop to about three degrees overnight. When the sergeant reached Mr Hearn, he was asleep, “shivering and cold.”
- [15] Mr Hearn was conscious, but not very coherent. He was intoxicated, slurring his words, and not making much sense. In cross-examination, Mr Hearn put to the sergeant that he was “pretty well heavily drunk”. He had to be helped to stand, and when he stood, he was stumbling.
- [16] The police body-worn camera recordings of the interactions between Mr Hearn and the police, paramedic and driver were played for the jury. The police officers attempted to persuade Mr Hearn to go in the ambulance to the hospital for medical assistance. They were unsuccessful. The sergeant then told Mr Hearn they needed to take him to the hospital. She said to him:

“I’m tryin’ to just be honest with you. We’re gonna go to the hospital tonight. Okay? Because we want you to get some help. ... [We] can’t leave you here, okay?”
- [17] Mr Hearn replied that he wanted to stay where he was and “go away peacefully”. He said, “Please leave me alone.”
- [18] The sergeant responded, “Oh, well that’s very polite, but we can’t.” The ambulance officer added:

“We can’t ... because of our jobs. So, we got called here because ... you said you were going to hurt yourself and you want to die. ... So,

⁷ The sergeant described it as “the shell part that protects you from probably rain, but not really from much else.”

you can either come with us nicely and walk through the, over the levee bank and through the mud and come to the ambulance and sit in a nice warm ambulance, and I'll take you to [hospital], you can have a nice warm bed, and we'll make sure that you get the help that you need.

Otherwise, we're gonna have to wrestle you over there, and we, none of [us] wanna do that."

- [19] Mr Hearn insisted he did not want to go to the hospital. He said he needed to urinate and walked some distance away. The constable gave evidence:

"So he'd gone to – go to the bathroom [...] to urinate and he – on finishing that task he's proceeded to run away from us. And he ran through a barb wire fence we – so I followed him so he didn't get lost out in – this is all bush out there. So it was a freezing cold night. If he'd gotten lost, we would have no doubt had to start a search and rescue for him because he would have been in serious danger for his welfare if he'd been out in the cold the whole night."

- [20] The two police officers walked Mr Hearn in the direction of the ambulance. After passing back through the barbed wire fence, they came to a back track that ran around the outside of the levee bank. There, Mr Hearn stopped. He asked the officers not to hold him. He bent over. The constable expressed concern that he was not breathing properly and might fall. She suggested he sit down for a moment and take some deep breaths. Mr Hearn refused. He asked the police officers, once again, "Can you just leave me?" The sergeant replied, "No, we can't just leave you, my friend." Mr Hearn responded, "Just leave me, please."

- [21] Mr Hearn sat down, but then tried to stand, asking "Can I get up?" The sergeant replied:

"No, mate. ... You, you're best to just sit down for a bit. ... Take a breath, yeah. ... I think you're a little bit unstable on your feet, so we'll just keep ya down. ... But we're gonna get you something warm 'cause it's, it's a bit cold. ... Trev, just stay down, buddy. Just stay down. ... Just for a few minutes, just sit down."

- [22] Mr Hearn began to stand up. The sergeant then spoke to him:

"Trevor, no mate. We need you to stay sitting, okay. ... Yeah. ... Because you're detained ... Okay, so you can't go anywhere just yet."

- [23] The sergeant said she made the decision to detain Mr Hearn. This was about 30 minutes after the police had arrived. The sergeant told the jury:

"The reason I hadn't used the word 'detained' earlier on is it sometimes sets people off. They don't necessarily understand the difference between being detained and being arrested. So, often, we try and just keep it simple and tell people that, you know, they have to come with us. 'We need to get you some help. You don't have an option this time. We are going to take you to the hospital,' rather than using formal language that they either don't understand or may misunderstand."

[24] Under cross-examination, the sergeant said to Mr Hearn:

“I did tell you that you were detained, and in the lead up to using that actual word ‘detained’, we told you in using other language, easily accessible language, that you would have to come with us.”

[25] The driver drove the ambulance from Mr Hearn’s home around the back track towards where Mr Hearn and the other officers were located. The driver said she could not drive it over the levee bank as it was “too high”. The ambulance arrived nearby about five minutes later. The paramedic retrieved a blanket from the ambulance and put it over Mr Hearn’s shoulders.

[26] The paramedic told the jury:

“By the time [the driver] had got around with the ambulance ... I was going to sedate [Mr Hearn] because he was - it was my impression at that stage [that he] was suffering acute behavioural disturbance, what we call an ABD, and with a patient who’s suffering an ABD, they exhibit that they’re either a threat to themselves or a threat to others. At this stage [Mr Hearn] wasn’t so much a threat to us but he was definitely a threat to himself. He was intoxicated. It was June in the middle of south-west Queensland where the temperatures were quite cold. And if we were to leave him in an environment like that - I’d been to patients before where we have dealt with hypothermic arrests because people have slept rough like that”.

[27] The paramedic described a hypothermic arrest in this way:

“They get so cold, particularly because of the alcohol, the alcohol on board, it’s a vasodilator and when it vasodilates your body has less ability to keep warm so they’ll lose body temperature, they’ll lose core temperature very, very quickly.”

[28] The paramedic said he told the sergeant, he was going to draw up the sedative triperidol “in case we do need it” if Mr Hearn “does become more violent and it gets to the situation”.

[29] The paramedic identified a guideline document about a “sedation assessment tool” (or SAT). It was tendered. Asked about it, the paramedic said:

“So, if we decided that we were dealing with somebody who’s got an acute behavioural disturbance, prior to administering any pharmacology which is going to sedate them we have to use the sedation assessment tool to determine whether they fit in so they’re indicated for sedation. So, we have this assessment tool which basically identifies their behaviours and responsiveness in their speech. And under our protocols we can only use chemical sedation in a patient who has a SAT score of plus two or plus three. So, if we decided that a patient is suffering acute behavioural disturbance, we’ll do the sedation once - and when we’ve done the de-escalation techniques and none of that works, we decide that, yes, okay, well, our only option is to sedate the patient, the next step is to use the sedation tool to determine whether their SAT score is plus two or plus three.”

- [30] The paramedic said he assessed Mr Hearn and he gave him a SAT score of “plus two, plus three”.
- [31] The paramedic identified continued physical restraint as the only other option to transport Mr Hearn to the hospital for treatment. He said:
- “the only physical restraint would have been handcuffs and in the back of a moving vehicle for 100 kilometres, even in the back of a moving vehicle for 10 kilometres, an aggressive agitated patient, it’s not a safe environment.”
- [32] Mr Hearn cross-examined the paramedic about whether he had “authority to sedate someone when they’re totally intoxicated”. The paramedic said he did. He said there was “no requirement under the EEA” to warn the person that they will be sedated.
- [33] The driver gave evidence that she was in front of Mr Hearn, who was seated on the ground. She said the two police officers were “standing on each side of [Mr Hearn] ... with their hands on his shoulder.”
- [34] The paramedic approached with a syringe, with 10mg of the sedative, and an alcohol swab in his hand. The constable told the jury, “as soon as that alcohol swab touched him on the arm, he’s reacted.” The constable tried to hold Mr Hearn. Mr Hearn “started kicking out with his feet” and was “very agitated.”
- [35] The sergeant gave evidence that:
- “the paramedic indicated that he was going to administer chemical sedation and wanted our assistance with holding the defendant still to ensure that he could do that safely and effectively. So we were attempting to hold his arms and to keep him on the ground while the paramedic administered the injection into his arm. But he saw the needle coming and did not wish to be sedated, and he started throwing his arms and legs, trying to hit and kick.
- He spat at me, and it landed on my torso, like around my belt line. At that point, I was fearing serious injury to all of us. So, I presented my taser, and as per my training and the OPMs, I gave him - I told him that I was presenting a taser and I told him that he needed to stop. And when he didn’t, I deployed the taser in probe mode. That means that I press it and it completes a cycle, and the two probes go, and I believe they broke his belt line, meaning that one was above his belt line and one was below his belt line, and that caused temporary neuromuscular incapacitation, allowing time for [the constable] to gain control of the defendant and put his - ultimately, put his handcuffs on and - and [for the ambulance officer to] do the chemical sedation.”
- [36] The body-worn camera recording captured the sergeant passing her handcuffs to the driver and holding Mr Hearn’s arm. The paramedic then preparing to administer the sedative, asked Mr Hearn to “Keep still. Hold still, hold still for [a second].” There was then a scuffle.
- [37] The recording also captured the sergeant informing Mr Hearn that she was holding a taser and telling him not to move; not to move or he may be tasered again; “hold still” and “relax” while the ambulance officer administered the sedative; and to “keep your arms still” so that the constable could put the handcuffs on him.

[38] The four witnesses were consistent in recalling that, before the sergeant used the taser against him, Mr Hearn spat at the sergeant, lashed out with his open hand towards the driver who jumped backwards, and kicked the constable in the head. This conduct was the basis of the three serious assault offences for which Mr Hearn received the lesser concurrent sentences.

[39] After Mr Hearn was handcuffed, he sat on the ground. In his presence, the sergeant spoke on a mobile telephone, advising police communications:

“Ah yes, we’ve got one in custody, he’s just been Tasered. We’ve detained him for an E-E-A.^[8] We’re just tryin’ to get him into the ambulance now ... He’s not very happy, but we’re getting there. Thanks, hey.”

[40] The paramedic injected Mr Hearn with the sedative.

[41] During this time, Mr Hearn swore at the officers and repeatedly threatened to kill them; saying to the sergeant, “I am gonna kill you tonight.” He identified the driver, saying to her:

“You too, you gone too, I’m gonna ransack your house and, and burn your house down. ... And I’m, I’m gonna burn your house down. ... I’ll burn your house down, cunt.”

[42] The constable advised Mr Hearn that he would be arrested for serious assault.

[43] The sergeant gave evidence that Mr Hearn “spat again.” She was “not entirely sure where it landed.” The constable moved Mr Hearn from a seated position to lie him on his stomach “to try and minimise ... if he was going to spit again, ... the damage that he could do to anybody.” The sergeant’s evidence continued:

“So [Mr Hearn] had been on the ground, and he went to try and stand up, and as [the paramedic] had already manoeuvred the stretcher next to the defendant, we used that opportunity to help to – to get him up onto the stretcher, save us having to lift him later. We let him stand up himself, but then put him on the stretcher. And as he lay down, ... the paramedic, was trying to strap him onto the stretcher, and [Mr Hearn] spat directly and repeatedly into [the paramedic’s] face, which is why we all sort of responded as we did, saying it was very disgusting. ... It was very – very close proximity, because [the paramedic] was leaning over [Mr Hearn] to secure the straps.”

[44] This conduct was the basis of the most serious assault offence, for which Mr Hearn received the sentence of two years’ imprisonment.

[45] Under cross-examination by Mr Hearn, the paramedic said:

“I can recall giving you a second sedation because you required a second sedation and the sedation as per our protocols were for your own health reasons, for your own benefit to protect you. That’s why we were there and that’s why this situation occurred ... [T]he risk involved with the sedation was less than the risk of not taking you into hospital on that day. ...

⁸ An “emergency examination authority”.

We tried de-escalation, we tried talking you into coming to a hospital with us. We made it clear to you that we were unable to leave you behind.”

- [46] The police officers walked Mr Hearn to the ambulance. He stepped in. They adjusted his handcuffs, so that they were secured at his front, allowing him to lie down on his back in the ambulance.
- [47] The driver drove the ambulance to the hospital, the paramedic and the sergeant accompanying Mr Hearn in the ambulance. The constable followed in the police car.
- [48] At the hospital, the sergeant completed an emergency examination authority (or EEA). She gave it to a doctor at the hospital at about 2.18 am on 5 June 2020. The EEA was tendered at the trial. At the hospital, the sergeant took photographs of the injury to the constable’s head. These were also tendered at the trial.

Ground 2

- [49] By ground 2, Mr Hearn contends that the trial judge failed to direct the jury on six matters:
 - (a) whether Mr Hearn’s detention under an emergency examination order was lawful;
 - (b) the quality of the evidence that Mr Hearn was told in terms of section 157C of the *Public Health Act 2005* that he was being detained and transported to a place of treatment and care;
 - (c) whether it was lawful for the paramedic to inject, or attempt to inject, Mr Hearn with chemical sedation, without his consent;
 - (d) the defence of self-defence;
 - (e) the defence of honest and reasonable mistake in relation to self-defence; and
 - (f) the defence of provocation.
- [50] It is convenient to deal with the first two matters together, as they both concern the detention of Mr Hearn, then with the third, which concerns the sedation, before the balance.

The detention of Mr Hearn

- [51] The sergeant told the jury she made the decision to detain Mr Hearn under s 157B(3) of the *Public Health Act 2005* (Qld).
- [52] Within part 2 of chapter 4A of that Act, s 157B(1) and (3) relevantly provide:

“157B Ambulance officer or police officer may detain and transport person

- (1) This section applies if an ambulance officer or police officer believes—
 - (a) a person’s behaviour, including, for example, the way in which the person is communicating, indicates the person is at immediate risk of serious harm; and

Example—

a person is threatening to commit suicide

- (b) the risk appears to be the result of a major disturbance in the person's mental capacity, whether caused by illness, disability, injury, intoxication or another reason; and
- (c) the person appears to require urgent examination, or treatment and care, for the disturbance.

...

- (3) The ambulance officer or police officer may detain the person and transport the person to a treatment or care place."

[53] In summing up, the trial judge identified for the jury that Mr Hearn contested that the sergeant was "acting under the *Public Health Act*, section 157B, in circumstances where [Mr Hearn] was at immediate risk of serious harm resulting from a major disturbance in his mental capacity". His Honour noted these were matters for the jury to resolve, because "the Crown witnesses seem to say they very much were in those exact circumstances." His Honour reminded the jury that Mr Hearn had argued he did not "appear to require urgent examination, treatment or care" at the time. His Honour reminded the jury that Mr Hearn had said: that the police and ambulance arrived more than two hours after his first call to the police; he had not died or killed himself in that time; and he could survive in the bush.

[54] The trial judge gave the jury copies of the part of s 157B extracted above as well as s 157C and s 157D of the *Public Health Act*.

[55] His Honour then explained to the jury:

"So, 157B provides for the ambulance or police detaining and transporting people where there is a belief that someone's behaviour, including the way they are communicating, indicates they are at immediate risk of serious harm - an example is someone threatening to commit suicide - and the risk appears to be as a result of a major disturbance in their mental capacity, whether caused by illness, disability, injury, intoxication or another reason and the Crown would emphasise, I think, intoxication in that calculus; and, thirdly - and these are cumulative so they all have to be established - the person appears to require urgent examination or treatment and care for the disturbance.

That is, in effect, what the Crown witnesses are saying they were doing at that time, I think. That is the Crown case, contested by Mr Hearn."

[56] His Honour then took the jury through s 157C. It provides:

"157C What ambulance officer or police officer must tell person

- (1) The ambulance officer or police officer must—
 - (a) tell the person that the officer is detaining the person and transporting the person to a treatment or care place; and

- (b) explain to the person how taking action under paragraph (a) may affect the person.
- (2) The ambulance officer or police officer must take reasonable steps to ensure the person understands the information given under subsection (1), including by telling the person or explaining the thing to the person—
 - (a) in an appropriate way having regard to the person's age, culture, mental impairment or illness, communication ability and any disability; and
 - (b) in a way, including, for example, in a language, the person is most likely to understand.”

[57] His Honour directed the jury:

“157C provides what they have to be told, that the officer is detaining the person and transporting the person to a treatment or care place, in this case it is said to be a hospital.

The evidence in this case presents a continuing commentary about wanting them to take him to hospital and a continual commentary, it is all in the recordings and the transcript, about them having to do that, and then it is not until page 29 of the transcript that [the sergeant] actually uses the word “detain” but it is a matter for you, you might think that the message being conveyed - and this is what the Crown witnesses say, and Mr Hearn, I think, contests this - they were conveying to him that he was going to be detained and transported to the hospital. They kept saying they could not leave him there, in effect.

157C(1)(b) - it is not quite clear to me precisely what work that has to do in this case, but there is a requirement that someone explain how taking action under paragraph (a) may affect the person.

Well, he was being taken to hospital, so they kept conveying, for assessment and/or treatment and that seems to be the only real affect and that, it is a matter for you, seems to be the message that the Crown witnesses say they were trying to convey.

Secondly, there must be reasonable steps taken to ensure the person understands, including by telling or explaining the thing to the people in an appropriate way and in a way and in a language they are likely to understand and you will recall both [the sergeant] and [the paramedic], in particular, and I think probably [the constable] as well, were at pains to say they kept trying to explain it in a way that was understandable to Mr Hearn.”

[58] The trial judge then turned to s 157D, which relevantly provides:

“157D Giving emergency examination authority

- (1) If the ambulance officer or police officer takes the person to a treatment or care place that is a public sector health service facility, the officer must immediately make an authority (*an emergency examination authority*) for the person.

- (2) The authority must–
 - (a) be in the approved form; and
 - (b) state the time when it is given.
- (3) The person may be detained in the treatment or care place while the authority is being made.
- (4) Immediately after making the authority, the ambulance officer or police officer must give the authority to a health service employee at the treatment or care place.”

[59] His Honour told the jury:

“157D is about doing the EEA. If they take them to the hospital, they must make the EEA and the evidence is that it was done and the copy of the EEA is before you – I think that is exhibit 8. A person can be detained while that is happening, and they must give that to the people at the hospital.”

[60] Concluding the directions on the content of the *Public Health Act* provisions, his Honour told the jury:

“So they are the relevant bits of that Act that the people say they were acting under.”

[61] The trial judge reminded the jury that Mr Hearn had argued that he was not in an immediate risk of serious harm resulting from a major disturbance in his mental capacity, nor did he appear to require urgent examination, treatment or care.

[62] His Honour directed the jury:

“So it is a matter for you, but it seems to me, to lapse into the colloquial for a minute, that that element is the big-ticket item in this case, right. There is some dispute about the assaults, but the big dispute is about were they doing this and was it necessary in an emergency setting or was it not?

You heard challenges from Mr Hearn, ‘No, I’m an Aboriginal person. I survive in the bush’ and so forth. And ... he also says, ‘Look, it was two hours since I’d rung, so what was the emergency?’”

[63] A little later in the summing up, the trial judge summarised Mr Hearn’s submissions, including the following:

“He submitted you should listen to the audio, and you would find that it was a pre-planned attack. And this was his theme, I think, that he styles it in that way and by styling it in that way he says it was not within the *Public Health Act* ...

He submitted that the audio technically proves that he was attacked (as he says). He says he was intoxicated sitting on the ground, they were laughing. ... he argues that the police and ambulance people provoked all of this.

He says that there was nothing really in the case about the authority of [the paramedic] to do what he did, but I have been through with you what the Crown witnesses seem to say was the basis for all of that.”

- [64] In the appeal, counsel for Mr Hearn did not challenge the accuracy of his Honour’s directions about these statutory provisions. Counsel’s submissions seemed to assume that the trial judge should have determined, as a matter of fact, what each of the sergeant and the paramedic did and then whether their actions were lawful under the *Public Health Act*. Had the trial judge done so, his Honour would have usurped the decision-making function of the jury.
- [65] The trial judge identified for the jury the things that the relevant provisions of the *Public Health Act* require for an ambulance officer or police officer to lawfully detain a person under s 157B and the legal requirements of the other associated provisions. His Honour summarised the evidence of what the sergeant and the paramedic (and the other persons present) said they did on the night in question. His Honour told the jury it was “a matter for you” to decide what each person did and whether what they did was lawful, according to the directions his Honour had made about the provisions in the *Public Health Act*. His Honour described it as “the big ticket item in this case.”
- [66] I would reject Mr Hearn’s contention that the trial judge failed to direct the jury on whether Mr Hearn’s detention under an emergency examination order was lawful.

The lawfulness of the sedation

- [67] Mr Hearn’s counsel raised a separate contention that the lawfulness of the paramedic’s actions in sedating Mr Hearn depended on the application of s 282(1) of the *Criminal Code*. That subsection relevantly provides:

“282 Surgical operations and medical treatment

- (1) A person is not criminally responsible for performing or providing, in good faith and with reasonable care and skill, a surgical operation on or medical treatment of a person or unborn child if performing the operation or providing the treatment is reasonable, having regard to all the circumstances of the case.”

- [68] For Mr Hearn, it was submitted that the trial judge ought to have directed the jury “as to the circumstances in which, under section 282, a person can lawfully administer chemical sedation to another person.”
- [69] The relevant subject matter of s 282 is criminal responsibility for performing a surgical operation or providing medical treatment. The jury at Mr Hearn’s trial was not charged with deciding whether the paramedic was criminally responsible for sedating Mr Hearn or for attempting to do so. The evidence at the trial was not that in sedating Mr Hearn the paramedic was performing a surgical operation or providing a medical treatment. The sedation was in aid of detaining Mr Hearn and transporting him to the hospital for treatment.
- [70] The jury’s determination of whether Mr Hearn was criminally responsible for the assaults required the jury to consider whether the actions of the paramedic and the others present were lawful, amongst other things. The sergeant told the jury she had

detained Mr Hearn under s 157B of the *Public Health Act*. If the jury was satisfied the sergeant had acted lawfully, then the lawfulness of the use of force by the paramedic (and the others involved) fell to be determined by s 157L of the *Public Health Act*, which provides:

“157L Use of force to detain and transport

An ambulance officer or police officer may exercise the power to detain and transport a person under this chapter with the help, and using the force, that is necessary and reasonable in the circumstances.”

- [71] With respect, the trial judge acted correctly in not directing the jury about the requirements of s 282 of the *Code*.

The quality of the evidence about Mr Hearn being told he was being detained to be transported to a place for treatment and care

- [72] Counsel for Mr Hearn contended the trial judge erred in not reminding the jury of the evidence of Mr Hearn being specifically told he was being detained under the *Public Health Act*. This evidence is set out at paragraph [22] above.
- [73] In submissions, it became apparent that Mr Hearn’s counsel was referring to the quality of that evidence, specifically, the quality of the recording on the police officers’ respective body-worn cameras.
- [74] During the hearing of the appeal counsel for Mr Hearn played part of the recording from the constable’s body-worn camera. It seemed consistent with the transcript of the recording marked for identification at the trial. It is set out below, with the four speakers identified by the titles used in these reasons:

“[Sergeant]: Trevor, no mate. We need you to stay sitting, okay?

[Constable]: Come on.

[Mr Hearn]: No.

[Sergeant]: Yeah.

[Paramedic]: Yeah.

[Constable]: Trev.

[Sergeant]: Because you’re detained-

[Constable]: Trevor.

[Sergeant]: Okay, so you can’t go anywhere just yet.

[Paramedic]: [INDISTINCT].

[Sergeant]: Just wait and we’ll—

[Mr Hearn]: Just, just let me up.

[Sergeant]: No, we need you to sit down for the moment, ‘cause every time you get up, you run away from us.

[Mr Hearn]: No, I don’t.

[Sergeant]: Yeah, you do.

[Constable]: Why you, why you doin' that?

[Mr Hearn]: I dunno.

[Sergeant]: You don't know?

[Mr Hearn]: I just need to get up. I need to get up."

- [75] Counsel accepted that, as the above extract shows, the words "you're detained" were clear on the recording from the constable's body-worn camera. Although it was not played for the Court, counsel for Mr Hearn submitted that the word "detained" was *obscured* on the recording from the sergeant's body-worn camera. The Court was invited to listen to the recording from the sergeant's body-worn camera and identify the asserted difference in quality between the two recordings. Having listened to the recording from the sergeant's device, the words "you're detained ... Okay, so you can't go anywhere just yet" are as clear and audible as they are on the recording from the constable's device.
- [76] The constable's device would have been further from the source of the sergeant's voice than the sergeant's device. The words "you're detained" are clearly audible on the constable's recording, even though the recording captures the constable saying "Trevor" at the same time the sergeant says the words "you're detained - Okay, so you can't go anywhere just yet." Each recording captures the spoken exchanges between the sergeant and Mr Hearn immediately before and after the sergeant says the words "you're detained". These exchanges indicate that Mr Hearn was able to hear the sergeant speaking and respond to what she said.
- [77] The recording from the sergeant's body-worn camera was played in full at the trial during the evidence in chief of the sergeant. Parts of it, including the part where the sergeant says, "you're detained", were played again, during Mr Hearn's cross-examination of the sergeant, at his request. At the point in the cross-examination when the part of the sergeant's recording was played with the words, "you're detained", Mr Hearn noted for the jury "She's saying I was detained." Mr Hearn questioned the sergeant about the appropriateness of her telling him he was detained when she was not facing him. The camera angle indicates the sergeant was standing over Mr Hearn when she spoke these words.
- [78] The recording from the constable's body-worn camera was played in full at the trial during the evidence in chief of the constable. Parts of it were played again during the evidence in chief and the cross-examination of the paramedic.
- [79] At the trial, Mr Hearn did not challenge the sergeant about whether she said the words or about whether they were audible to him at the time. Mr Hearn did not give evidence. It was a matter for the jury to determine whether the prosecution had proved beyond reasonable doubt that the sergeant had lawfully detained Mr Hearn. The evidence before the jury comprised the two recordings and the oral evidence of the sergeant and the constable.
- [80] I would reject Mr Hearn's contention that a miscarriage of justice resulted because the learned trial judge did not direct the jury on the quality of the evidence that Mr Hearn was told he was being detained to be transported to a place for treatment and care. Such a direction was not necessary. The absence of such a direction could not have affected the jury's reasoning on the question of whether the prosecution had proved beyond reasonable doubt that Mr Hearn was guilty of any of the assaults.

Failure to direct the jury on provocation and self-defence

- [81] The trial judge instructed the jury that they were to acquit Mr Hearn on all four counts if they were not satisfied beyond reasonable doubt that the sergeant and the paramedic had acted lawfully in detaining and sedating Mr Hearn. If the jury was so satisfied, then the lawful act of the police officers or the paramedic could not be provocation for any of the assaults,⁹ and self-defence would be excluded because it is available only against an *unlawful* assault.¹⁰
- [82] The trial judge's directions to the jury involved a considerable simplification of the relevant defences. For example, his Honour did not direct the jury that the prosecution could also exclude provocation by proving beyond reasonable doubt that the force Mr Hearn used was disproportionate to the conduct of the paramedic and the police officers, or that Mr Hearn was not deprived of the power of self-control by the acts of the paramedic and the police officers. Nor did his Honour explain to the jury that the prosecution could also exclude self-defence by proving beyond reasonable doubt that Mr Hearn used more force than was reasonably necessary to make an effectual defence against an unlawful assault by the paramedic or the police officers. His Honour gave Mr Hearn the benefit of the chance of an acquittal, as if the defences of provocation and self-defence had been the subject of directions, without exposing him to the risk that the jury might be satisfied beyond reasonable doubt that the prosecution had excluded these defences in another way.
- [83] In these respects, his Honour's abbreviated directions were to Mr Hearn's advantage, and could not have prejudiced him.
- [84] As Mr Hearn's counsel accepted, the jury's guilty verdicts mean the jury was satisfied beyond reasonable doubt that the sergeant and the paramedic had acted lawfully. Counsel also accepted that, if Mr Hearn fails in his challenge to the trial judge's directions with respect to the lawfulness of the detention or the sedation, then the jury could not have acquitted Mr Hearn on the basis he acted in self-defence or was provoked.
- [85] I would reject Mr Hearn's contention that a miscarriage of justice resulted because the learned trial judge did not direct the jury in more detail on self-defence or provocation. The absence of such directions could not have affected the jury's reasoning on whether the prosecution had proved beyond reasonable doubt that Mr Hearn was guilty of any of the assaults.

Failure to direct the jury on mistake in relation to self-defence

- [86] For Mr Hearn, it was submitted that the trial judge erred in not directing the jury on whether the Crown had excluded beyond reasonable doubt the possibility that Mr Hearn assaulted the officers under an honest and reasonable, but mistaken, belief that he would not be criminally responsible for the assaults. This was based on the contention that the evidence at the trial:

“raised for consideration by the jury whether Mr Hearn had a defence under section 24 of Criminal Code on the basis that when he saw the syringe coming at him, he was defending himself against what he honestly and reasonably believed was an unlawful assault.”

⁹ Code, s 268(3).

¹⁰ Code, s 271(1).

- [87] At the hearing, Mr Hearn’s counsel contended that, on the evidence, it was open to the jury to conclude that, at the time he assaulted the four officers, Mr Hearn may have formed a belief that what was being done to him by the officers was unlawful.
- [88] It is possible that a person might be mistaken about a fact, with the consequence that they believe another person to be acting unlawfully. That is not the mistake asserted for Mr Hearn. If Mr Hearn was mistaken, it was not about whether the sergeant was a police officer or whether the paramedic was an ambulance officer, but rather about their respective powers under the *Public Health Act*. This would be a mistake of law.¹¹ A mistake of law, including ignorance of it, does not excuse a person of criminal responsibility for their acts.¹²

Conclusion on Ground 2

- [89] It follows that Mr Hearn would fail on ground 2 of his appeal.

Ground 3

- [90] Mr Hearn’s final ground of appeal against his conviction was that there was a miscarriage of justice because Mr Hearn was not legally represented and was not capable of conducting his own defence in such a way that he could have a fair trial.
- [91] Mr Hearn had the benefit of legal representation earlier in the criminal proceeding. He withdrew his instructions in the course of a trial, following which the jury was discharged and the matter re-listed. At a subsequent pre-trial hearing, he again withdrew his instructions from his lawyers, leading to an adjournment of that hearing. He then had the opportunity to be legally represented through Legal Aid. He declined to comply with the conditions for the provision of aid. As a consequence, he appeared on his own behalf at the trial.
- [92] Mr Hearn’s counsel submitted that Mr Hearn was “able to cross-examine to a point” and able to put his defence to each of the four complainant witnesses that “in effect, ... he was ambushed. That they had a plan to detain him and inject him, and they didn’t tell him”. Counsel submitted that Mr Hearn “was completely unable to really raise a credible, or proper, legal argument.”
- [93] Mr Hearn’s counsel submitted that Mr Hearn should have been “forced to be legally represented” or there should have been no trial. No authority was identified for this contention.
- [94] It is difficult to contemplate how Mr Hearn could be forced to accept legal representation, or how a lawyer could appear for him without instructions from Mr Hearn (or from someone authorised to give instructions on his behalf). It is not obvious that Mr Hearn’s trial ought to have been adjourned or stayed because he had dismissed his lawyers twice and refused to engage new ones.
- [95] Counsel for Mr Hearn relied on the general statement of Mason CJ and McHugh J in *Dietrich v The Queen* that:

¹¹ *Towse v Bradley* (1985) 60 ACTR 1; 14 A Crim R 408, 411 (Blackburn CJ).

¹² *Horne v Coyle; Ex parte Coyle* [1965] Qd R 528, 532-533 (Lucas J; Sheehy ACJ and Douglas J agreeing).

“Australian law acknowledges that an accused has the right to a fair trial and that, depending on all the circumstances of the particular case, lack of representation may mean that an accused is unable to receive, or did not receive, a fair trial. Such a finding is, however, inextricably linked to the facts of the case and the background of the accused.”¹³

[96] As Deane J explained in *Dietrich*:

“In determining the practical content of the requirement that a criminal trial be fair, regard must be had ‘to the interests of the Crown acting on behalf of the community as well as to the interests of the accused’. There are circumstances in which a criminal trial will be relevantly fair notwithstanding that the accused is unrepresented. The most obvious category of case in which that is so is where an accused desires to be unrepresented or persistently neglects or refuses to take advantage of legal representation which is available.”¹⁴

[97] Deane J referred to *R v Greer*,¹⁵ where an accused person was granted Legal Aid, but dismissed two sets of legal representatives during his trial. In those circumstances, Kirby P observed it was “not a case of a failure of a fair legal system to provide the accused facing a serious charge with counsel”.¹⁶

[98] In *Dietrich*, Gaudron J put the matter more directly:

“If an accused person declines to be legally represented, then he may be taken to accept that, in the circumstances, fairness does not depend on legal representation.”¹⁷

[99] Mr Hearn was in that situation.

[100] Neither Mr Hearn nor the Crown applied to adjourn his trial. Mr Hearn did not apply to stay the prosecution. The judge was not called on to decide whether the trial should proceed.

[101] It was not part of Mr Hearn’s ground of appeal that the trial judge failed to give Mr Hearn information or advice about his rights necessary to ensure he had a fair trial.¹⁸ The duty of a trial judge “does not require, indeed it is inconsistent with, advising an accused how to conduct his case”.¹⁹

[102] In the circumstances, Mr Hearn’s third ground of appeal would also fail.

Application for leave to appeal against sentence

[103] Mr Hearn seeks leave to appeal against his sentence on the ground that it is manifestly excessive.

¹³ (1992) 177 CLR 292, 331.

¹⁴ (1992) 177 CLR 292, 335-336.

¹⁵ (1992) 62 A Crim R 442.

¹⁶ (1992) 62 A Crim R 442, 450.

¹⁷ (1992) 177 CLR 292, 365.

¹⁸ cf *MacPherson v The Queen* (1981) 147 CLR 512 at 524 (Gibbs CJ and Wilson J), 534 (Mason J), 547 (Brennan J).

¹⁹ (1981) 147 CLR 512 at 547 (Brennan J).

[104] In *R v Pham*, the High Court confirmed that:

“Appellate intervention on the ground of manifest excessiveness or inadequacy is not warranted unless, having regard to all of the relevant sentencing factors, including the degree to which the impugned sentence differs from sentences that have been imposed in comparable cases, the appellate court is driven to conclude that there must have been some misapplication of principle.”²⁰

[105] The maximum penalty for unlawful assault of a public officer performing a function of the officer’s office, in circumstances where the offender spits on the public officer, is 14 years’ imprisonment. This signifies the potential seriousness of such offending. Mr Hearn’s sentence for the most serious offence encompasses the total criminality of Mr Hearn’s all four serious assaults. The other two aggravated serious assaults attracted the same maximum penalty. The serious assault of the driver, without circumstances of aggravation, carried a maximum penalty of seven years’ imprisonment. The sentence of two years’ imprisonment indicates the trial judge considered Mr Hearn’s conduct to be towards the lower end of such offending.

[106] At the sentencing hearing, the trial judge was taken to two sentences considered by this Court. In *R v Brown* [2013] QCA 185, the Court reduced from 15 months to seven months a sentence for spitting on a police officer, committed by a defendant with no relevant criminal history, who pleaded guilty. In *R v Benson* [2014] QCA 188, a sentence of 18 months’ imprisonment was not shortened. It was imposed, following a guilty plea, for a prolonged serious assault of a police officer, including to the officer’s eye, as well as spitting in the officer’s face and biting his leg. It may be accepted that Mr Hearn’s offending was more serious than that in *Brown* and less serious than that in *Benson*. At the time of these sentences, the maximum penalty for aggravated serious assault of a police officer was imprisonment for seven years.

[107] Unlike those in *Brown* and *Benson*, Mr Hearn’s sentence was imposed after his conviction at a trial. Mr Hearn had a significant criminal history, which included 15 convictions for assaulting or obstructing police officers, and convictions for assaults on others.

[108] His Honour noted that the assaults had very substantial impacts on the victims, affecting the working lives of the officers and leading the driver to give up her role. In this way Mr Hearn’s offending harmed the public served by these officers.

Submissions for Mr Hearn

[109] The prospects of the proposed appeal against sentence are relevant to whether this Court should grant Mr Hearn leave to appeal. Counsel for Mr Hearn made two submissions to demonstrate the sentence was manifestly excessive.

The effect of the significant presentence custody

[110] The first submission was that Mr Hearn’s two-year head sentence was “equivalent to a lot longer” because Mr Hearn had already served the whole of the sentence in presentence custody. The submission was that “it would have been reasonable and not manifestly excessive” to “moderate” the head sentence to “say one year’s imprisonment.”

²⁰ (2015) 256 CLR 550, 559 [28](7) (French CJ, Keane and Nettle JJ).

- [111] The trial judge declared the 812 days Mr Hearn had spent in presentence custody. So, his Honour was aware of this lengthy period in custody. It accounted for the whole of the head sentence for the serious assaults. Whether the head sentence is manifestly excessive is not gauged by constructing an “equivalent” penalty with a lesser head sentence to be served wholly in custody. I would reject the submission by Mr Hearn’s counsel that such an exercise is of assistance in assessing the sentence imposed.

The extenuating circumstances

- [112] The second submission was that Mr Hearn committed the four serious assaults in “very extenuating circumstances”, which called for a much lower sentence. Those circumstances were said to be:

“... he was suicidal. He was saying he wanted to die. He was ... taken by surprise. He reacted. There wasn’t ... premeditation by him.”

- [113] It was submitted that a head sentence of “one year would be reasonable.”
- [114] The trial judge considered Mr Hearn’s complex mental health issues, summarised in an earlier psychiatric opinion as major depression, post-traumatic stress disorder, adjustment disorder and schizophrenia.
- [115] Mr Hearn’s most serious offence was the aggravated assault on the paramedic, which attracted the head sentence. He did not commit this offence as an immediate reaction to the presentation of the syringe. Mr Hearn assaulted the paramedic after he had been immobilised by a taser, injected with a sedative, and warned he would be charged for the three initial serious assaults, including spitting on the sergeant. He was lying on a stretcher. The paramedic was leaning over him to fasten the straps to allow him to be safely carried to the ambulance. He repeatedly spat in the paramedic’s face. This offence involved no surprise or reaction. It was opportunistic.
- [116] The trial judge, with respect accurately, described the offending as appalling behaviour, extremely insulting and extremely aggressive. As his Honour noted, the paramedic and the other officers had driven 100 km through the night in mid-winter to attempt to save Mr Hearn’s life.
- [117] In the circumstances, I am not persuaded that the sentences imposed were manifestly excessive. I would not grant Mr Hearn leave to appeal against the sentence on his proposed ground.

Final disposition

- [118] I would order:
1. Appeal dismissed.
 2. Application for leave to appeal against sentence refused.
- [119] **COOPER J:** I agree with Bradley JA.