

**Case Summary**  
**Office of the Judge Advocate General**

**DEFENDANT:** WO2 McCullough  
**TYPE OF PROCEEDING:** Defence Force Magistrate  
**DATE OF TRIAL:** 08 April 2024  
**VENUE:** Puckapunyal Military Area

**Charges and plea**

	<b>Statement of Offence</b>	<b>Plea</b>
Charge 1	DFDA, s. 34 Assaulting a subordinate	Guilty
Charge 2	DFDA, s. 60(1) Prejudicial conduct	Not Guilty

**Pre-Trial: Closed hearing and non-publication orders**

Application made:	No
Determination:	N/A

**Trial: Facts and legal principles**

On 17 May 23 the defendant was conducting a tank gunnery training serial in a purpose built simulator. Two trainees, one of which was the complainant, were seated in the front of the simulator with a black curtain separating them from the defendant and two other trainees. All four trainees were Troopers. During the serial the defendant became frustrated, grabbed hold of the complainant and 'struck' him (Charge 1). Although the defendant pleaded guilty to Charge 1, there was a factual dispute as to whether the 'striking' involved anything more than an initial punch to the side of the complainant's head. Charge 2 related to a telephone conversation later the same day initiated by the defendant with the complainant. It was alleged that the defendant had told the complainant not to talk about events concerning Charge 1 and also to inform his friends not to talk about it. The defendant did not accept that the conversation was as described by the complainant.

With respect to Charge 2, the primary issues at trial were the credibility and reliability of witnesses and complaint evidence.

The DFM found in relation to Charge 1 that the 'striking' was limited to the initial blow to the side of the complainant's head which caused him to make contact with the primary gun sight. The DFM also found Charge 2 proved beyond reasonable doubt.

**Findings**

	<b>Finding</b>
Charge 1	Guilty
Charge 2	Guilty

**Sentencing: Facts and legal principles**

The DFM took into account the considerable disparity in terms of age, experience and rank between the defendant and complainant. It was also of particular concern for the DFM that the defendant occupied a senior instructor's position that involved power, influence and a responsibility to maintain discipline among trainees. The DFM noted that the defendant had some prior service convictions in 2009 but did not afford that matter any great weight given the effluxion of time,

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carefully considered the evidence of a number of character referees and accepted that the current offending was out of character.

In all of the circumstances, the DFM held that the minimum punishment that could be imposed to satisfy the principles of general deterrence and maintenance of good order and discipline was a reduction to the rank of SGT on both Charges.

### **Punishments and orders**

Charge 1	Reduced to the rank of SGT with seniority in that rank to date from 01 January 2021
Charge 2	Reduced to the rank of SGT with seniority in that rank to date from 01 January 2021

### **Outcome on automatic review**

The Reviewing Authority's decision on automatic review was handed down on 08 May 2024.

	<b>Conviction</b>	<b>Punishments / Orders</b>
Charge 1	Upheld	Upheld
Charge 2	Upheld	Upheld

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