

Mr Brearley has pleaded guilty to a charge of rape. This is a case of digital rape. He committed this crime by repeatedly penetrating the vagina of a young woman in the grounds of Parliament House after getting drunk on a Saturday night in June of last year.

He had attended an engagement party that evening, but had started drinking at his home at about 4pm. People attending the engagement party were invited there for pre-party drinks. After the engagement party he was drinking at the Telegraph Hotel, where he happened to meet the complainant. They had known each other for years. He had been a friend of her brother for a long time. It was common for them to meet by chance and to talk in a friendly manner. They had a number of mutual friends and acquaintances. Mr Brearley was intoxicated. The complainant was far more intoxicated than he was.

At about 12.30am they left the hotel and walked to Parliament House. The complainant was so intoxicated that she fell down twice on the way there. After some time in the grounds of Parliament House, they walked to the rear of the building, to an area adjacent to the building site at 10 Murray Street, where Mr Brearley sexually attacked the complainant. He sexually abused her over a period of nearly 40 minutes. The entire incident was recorded by CCTV cameras.

This was a particularly bad case of digital rape. The CCTV footage depicts eight separate episodes of digital penetration. During several of those episodes Mr Brearley moved his fingers in and out vigorously and rapidly.

The complainant was completely defenceless. She was so drunk that she fell down 13 times after the sexual abuse started. Mr Brearley manhandled her in various ways. At times he held her by the arms against a wall. On about 14 occasions he held or grabbed her throat. He made attempts to kiss her, sometimes successfully. On a couple of occasions he exposed her breasts and squeezed or groped them. He pulled down her trousers, exposing her buttocks. He exposed his penis on at least two occasions. He thrust his groin against various parts of her body. He has not been charged with any unlawful acts other than digital penetration, but it is significant that the digital penetration occurred during an extended period of sexual abuse. On many occasions the complainant resisted, trying to push Mr Brearley away, or trying to move away from him, but her attempts at resistance were substantially unsuccessful. Mr Brearley must have been well aware that, for most of the time, the complainant was not a willing participant.

This offending involved a breach of trust. The complainant trusted Mr Brearley to the extent of being willing to leave the hotel with him, not accompanied by anyone else, late at night. She said in her victim impact statement that she thought he was the type of person who would protect her.

At about 1.27am two young men arrived on the scene. The complainant was lying on the ground inert and almost naked. They helped her to get dressed and stand up. One of them took her to meet one of her friends. She spent the rest of the night at that friend's home.

The complainant does not have any memory of this incident. Neither does Mr Brearley. They were both too intoxicated. However it was reported to the police a month later as a result of a security supervisor at Parliament House viewing the CCTV footage. The police contacted the complainant the next day. She saw enough of the footage to identify herself and Mr Brearley.

This crime has had a serious psychological impact on the complainant, as one might expect. A year later, she is still going to counselling and taking medication to relieve her psychological

symptoms. She has had a lot of days off work, and has used all her sick leave and annual leave. She has problems with panic episodes, poor concentration, fear for her safety, sleeplessness, and loss of confidence, amongst other consequences. Initially it seems that she did not appreciate the enormity of what had been done to her. She exchanged polite text messages with Mr Brearley immediately after speaking to the police. However I accept that she was very soon devastated by the way that she had been treated.

Everything that Mr Brearley did to the complainant was absolutely out of character. Except on this one night, he has led a blameless and industrious life. He is now 31 years old. He has no significant prior convictions. He has received a number of traffic infringement notices over the years, but otherwise has never been in trouble with the law. He had not been to a court until he was charged in relation to this crime. He completed his education at the end of year 12, and has been in steady employment ever since, except that he had to leave the job that he held when he was charged. He soon found another one, and was able to complete an apprenticeship. He was married last November, some five months after the night in question. He and his wife have been together for seven years. They separated briefly as a result of this charge, but were reconciled and went ahead with their wedding plans. He used not to drink to excess, but began doing so after an upsetting incident in October 2018 when he found the body of a friend who had been killed in a jet ski accident, and unsuccessfully tried to resuscitate him.

He was shocked last July when he was told about what he had done. He sent text messages to the complainant saying that he was sorry, and offering to admit what he had done. When police officers showed him the CCTV footage last August he became upset by his own conduct and asked for the footage to be paused. He did not see it in full until it was provided to his counsel in January. He was appalled by his conduct. He readily acknowledged that the complainant was too intoxicated to have consented to anything. He soon gave instructions that he would plead guilty. He was so upset by his conduct that at one stage he contemplated suicide.

His counsel tendered four character references. It is clear that Mr Brearley is highly regarded not only by family members but also by employers, past and present.

The *Criminal Code* was amended in 2017 so that penetration without consent involving objects or body parts other than a penis now constitutes rape. Generally an act of digital penetration is less serious than penile penetration, but that is not necessarily the case. There has to be an assessment on a case by case basis. As I have said, this was a bad case of digital penetration. That was because it involved sustained and repeated sexual abuse, because the victim was very vulnerable, because she had placed some trust in Mr Brearley, and because the crime was committed in a public place. However, because of Mr Brearley's generally excellent character, his absolute remorse, and his plea of guilty, which has spared the complainant the ordeal of giving evidence, I will impose a much shorter sentence than I would otherwise have imposed, and will fix the shortest possible non-parole period. The plea of guilty alone warrants a reduction of about 20 to 25% to the sentence I would otherwise have imposed. There is little risk of Mr Brearley reoffending, but that possibility cannot be ruled out, and I must therefore make an order for his name to be placed on the sexual offenders' register and for him to comply with reporting conditions.

Will Scott Brearley, I convict you and sentence you to two years four months' imprisonment with effect from 29 June 2020. You will not be eligible for parole until you have served 14 months of this sentence. I order that the Registrar appointed under s 42 of the *Community Protection (Offender Reporting) Act* 2005 place your name on the register under that Act, and that you comply with the reporting obligations under that Act for a period of three years after your release from prison.