

Mr Eastley, you have pleaded guilty to two counts of indecent assault.

You committed these crimes over the night of 6 and 7 January 2021. The complainant was then aged 29. You did not know each other but you had both attended the same bar in Salamanca on that night. There is no suggestion that you had interacted with each other in the bar. The complainant consumed a lot of alcohol and became very intoxicated while she was there. Just after 2 am, she fell onto the footpath outside the venue. She remained lying on the ground. You were nearby smoking a cigarette, and after some time, you went to her and helped her stand up. You then supported her while you both walked towards a taxi rank. When you got there, you both got into the same taxi. The complainant asked to be taken to her home and provided the driver with the address. However, you told the driver to take both of you to your residence. The complainant said nothing to this, but I infer that her lack of response was largely due to her intoxication.

Upon arrival at your residence, you announced that you had arrived home. The complainant sat up in response. You both went into your residence and she fell asleep or lost consciousness on your bed, and again I infer that this happened almost immediately. It is not clear why she went into your house, but again it can be inferred that her judgement and understanding about where she was significantly impaired by her intoxication. She remained unconscious on your bed until approximately 8 am the next morning. While she was in this state, you perpetrated the two crimes. The first indecent assault is constituted by you removing the complainant's clothing, including by unfastening her bra and lifting it and her upper clothing to expose her breast, and by lowering and removing her lower half clothing, including her underwear, to expose her anus and vagina. The second crime is constituted by you touching her on the bottom with your hand and spreading her buttocks to expose her anus and vagina. The factual context in which these crimes were committed was your manipulation of her body in association with you taking 60 photographs of her. The photographs were taken over a period of some hours. Some of the photographs were live photographs which include a short video clip in conjunction with a still photograph. They were all taken while she was unconscious, and without her knowledge or consent.

I do not intend to describe the various photographs in detail. I viewed a sample of them during the course of the sentencing proceedings. They can be generally described as personally intrusive and explicit photographs of intimate and exposed areas of the complainant's body. They show her in a variety of positions and some show her face, and, hence, identity. Many depict close up images of her vagina and anus, with some showing a tampon string, and some with that item removed. There are a number of photographs showing you committing the act described in the second count, obviously to facilitate close up photographs of those body parts. There also 5 photographs in which you are holding the complainant's drivers licence in a position to reveal to the camera its details, and again revealing her identity and address. In an accompanying live clip, you can be heard to breathe heavily and say "oh yes".

When the complainant woke the next day, she did not know where she was, but she quickly realised that her skirt, underwear and tampon had been removed. The clothes were strewn around the room. She immediately left the premises without further incident, but was highly distressed.

She underwent a forensic medical examination later that day which revealed the presence of your semen in her high and low vagina. You are not charged with a crime relating to the deposit of the semen or indeed with respect to the penetration of her body, but it is clear that you must have masturbated and ejaculated on or near her at some time during the night. This is a relevant background circumstance. It confirms what would seem to be obvious, that your motive for perpetrating these crimes was sexual gratification. It also contributes to the impact of your crimes on the complainant. I have received an impact statement from her which sets out in some detail the very significant impact which these crimes of had upon her. In particular, there have been serious psychological and emotional impacts. Her ability to retain employment has been adversely affected and this has had serious financial consequences. I have no doubt that this impact will persist in the long term. All of this is the expected consequence of crimes such as this.

I regard your criminal conduct is extremely serious. Short of committing the crime of rape, it is difficult to imagine conduct with greater capacity to violate the personal integrity of the complainant. Your acts were clearly likely to, and did seriously and substantially degrade and humiliate her. This is an aggravating circumstance which the court is required by statute to take into account in relation to a crime such as this. In this case, it is a circumstance of aggravation which deserves considerable weight. It is true that the photographs were only located when the police seized your phone after conducting a search of your premises. However, the complainant clearly understood that she had suffered some form of intimate violation and upon the photographs coming to light, the full extent of this was revealed to her. Further, she held and still holds uncertainty about your intentions with respect to these photographs, in particular whether your intention was to share them with anybody else, for example over the Internet. This is entirely reasonable reaction, particularly given the photographs showing close-up images of her face and those exposing the details of her driver's license. All of this exacerbates the impact of your crimes upon her.

A further aggravating factor in my view is your use of her extreme intoxication to facilitate the commission of this crime. There is no question that you were well aware of how intoxicated she was, you can be seen on CCTV spending some time observing her lying in a drunken condition on the footpath. When you got in the taxi, you overrode her instruction to the driver to take her to her home. I cannot sentence you on the basis that you have deprived her of her liberty and it is true that she did not actually object to what was happening. However, by the time that you commenced to perpetrate the criminal conduct, you did so with complete understanding of her level of intoxication and you were therefore able to violate her personal integrity in a most profound and intimate way with impunity. This is confirmed by your extensive and repeated manipulation of her body, and the fact that you took the photos over a significant period of time. I regard this as a particularly concerning aspect of your conduct.

It is clear that you had been drinking and may have been intoxicated, at least at the start, but your intoxication does not provide mitigation. It also does not explain in my view your deliberate actions perpetrated over a significant period of time.

You are 43 years of age. Your prior convictions consist of some street offences committed when you were much younger which I do not regard as relevant to this case and some traffic offences. You are single and seem to have a good industrial record. It is clear that you have had a lengthy history of alcohol abuse. According the psychologist there is a relationship between this and a history of mild mental health issues including social anxiety and depressive symptoms.

However, the psychologist does not consider there to be a causal link between your offending and the mental health problems. I accept that these conditions may impact on your experience of prison.

The seriousness of this crime requires the imposition of a sentence of actual imprisonment. I have modified the head sentence to take into account any mitigating factors that I have identified and I also make the point that if the crime had involved and I were sentencing you on the basis that there had been actual penetration, you could expect to have received a much higher sentence. My orders are these. You are convicted of both crimes. I impose a global sentence of 2 years and six months imprisonment. Given your prior good record and pleas of guilty, I will impose the minimum non parole period. I order that you not be eligible for parole until you have served one half of the sentence.

I am required to make an order under the Community Protection (Offender Reporting) Act 2005, unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. Having regard to the circumstances of this case, I am not satisfied of that matter and, accordingly, must make an order. The maximum reporting period is for the rest of your life. Given the lack of prior convictions and Mr Minehan's opinion about future risk, I will impose a lesser period. I order that your name be placed on the register pursuant to that Act and that you comply with the reporting obligations under that Act for a period of ten years.