

STATE OF TASMANIA v CAMILLE O'MEARA
COMMENTS ON PASSING SENTENCE

4 APRIL 2023
BRETT J

Ms O'Meara, a jury has found you guilty of three counts of indecent assault. You were acquitted of a fourth count.

Despite the acquittal, you could only have been found guilty of counts 2 and 3 if the jury accepted the honesty and accuracy of the complainant's evidence in respect of them. I think this must also apply to count 1. Consent was an issue in respect of this count and the jury was also required to be satisfied that you did not hold an honest and reasonable but mistaken belief as to consent. However, given the jury's verdict on counts 2 and 3, and the very significant difference between the complainant's version and your version of the events affecting count 1, I think it is obvious that the jury must have accepted the complainant's evidence about this count as well. In any event, I accept that evidence as accurately describing the relevant events applicable to all counts of which you were found guilty, and will proceed to sentence on that basis.

These crimes were committed at the end of a social occasion at your house. You had a group of people for lunch, and this included the complainant. You and she had worked together for the same company since 2016, and for much of that time, she was directly supervised by you, although you had transferred to a different area of the company some time before these events. You had also developed a friendship with the complainant, and often engaged socially with her away from work.

It seems that the complainant had recently been having a hard time at work and had actually tendered her resignation a couple of days before these crimes were committed. Her evidence was that you had been emotionally supportive during this time. You invited her to lunch because you are friends, but also as a supportive gesture.

The social gathering, which started with lunch, extended well into the night. The relevant events occurred at around 10pm, after all of the other guests had left. You had consumed a lot of alcohol during the day and were intoxicated when you committed these crimes. In the immediate lead up to them, there been some light hearted conversation between you, the complainant and your husband, some which was of a sexual nature. Shortly after this, your husband retired to bed. You and complainant remained in the outdoor area where the social gathering had taken place. You were both seated around a table. You pulled your chair towards the complainant, leant towards her and made an attempt to kiss her. She was surprised by this, but attempted to laugh it off. You then committed the first indecent assault. You did so by the pulling down the front of the complainant's dress, thereby exposing her breasts. You then put your mouth on and sucked one of her breasts. You then stood, lifted one leg onto a chair and started to masturbate yourself. You did this by placing your hand under your dress. By this time, the complainant had started to gather her things from the outdoor table where you both had been sitting. Her intention was to leave. While she was doing this, you wiped the hand that you had been using to masturbate, across the complainant's face. Your hand was wet because of the masturbation, and the complainant felt this. She described the sensation as "wet and slimy". The act of wiping your hand across her face constitutes count 2. You then started to pull at the complainant's clothing and, in particular, you were pulling down the shorts she was wearing under her dress. This act of pulling down her shorts constitutes count 3. The complainant then finished gathering her possessions and fled from the house

It is clear from the evidence of a friend whom she contacted almost immediately after leaving the house, that she was very distressed by what had taken place. She has provided an impact statement which confirms the extent of that distress and the fact that the emotional and psychological consequences of her distress have continued and have had a significant impact on her life. I do not intend to go through the details of what she said in her statement, but it is clear that it has affected many aspects of her life including her ability to socialise, her ability to work and her ability to relate to others both within and outside work. She has made the comment that her report about this matter was not about punishing you and that while your crimes have had a devastating impact on areas of her life, her real concern was to ensure that this is not something that occurs to anyone else. She has been also traumatised by the ongoing proceedings and the fact that you went to trial. You are not to be punished for exercising your right to have a trial, but by the same token it's clear that you cannot claim any mitigation that would flow from a plea of guilty and that mitigation often includes the lessening of impact on the complainant. That is not something that can be claimed by you in this case.

You are 47 years of age, and live with your husband and two children. Your only prior convictions are for traffic offences. You have a strong employment history, and at the time of this offending, held a senior management position in a large Tasmanian company. I accept that your actions on this night have had significant consequences for you, apart from the prospect of criminal punishment. Your employment with the company ended because of what happened. You resigned in anticipation of the inevitable termination of your employment. You are now working on a self-employed consultancy basis. You are widely known in the business community, and the publicity associated with this case has caused you and your family significant embarrassment. It has also impacted on your reputation in the business community and this has directly had a significant financial impact on you because the success of your consultancy relies on that reputation and you have found it hard to generate sufficient clientele to ensure a steady income from your consultancy business. I expect that the negative perceptions within the business community, and the consequences of those perceptions will continue for a considerable time into the future.

I should say in view of the submissions that have been made to me about the relevance of this is that you do not receive a discount in punishment because you have suffered negative effects as a result of your conduct, outside the punishment that I impose. However, the significance of the impact on your life of what you did, when taken into consideration along with other aspects such as the fact that you have a unblemished record apart from traffic offending in the past, that you have had good standing within the community and within the business world and my conclusion that what happened was out of character, is relevant to my assessment of the risk of re-offending and, accordingly, the need for personal deterrence within the sentence.

There are some serious aspects to this offending. I accept that this is something you would not have done had you not been intoxicated. However, your intoxication provides you with no mitigation. What was to you probably a drunken and clumsy sexual advance, in fact involved actual assaults on the complainant, which she found shocking and highly distressing. You subjected her to acts which were demeaning and degrading. You are older than her and senior to her in the business hierarchy, and she clearly looked up to you, both as a friend and a mentor. This relationship in both your business and personal lives created an aspect of trust that was abused and repudiated by your conduct. It has obviously destroyed your friendship.

I am satisfied that your conduct was out of character. I am satisfied also having regard the various factors that I have indicated, that there is little risk that you will act in this way again in the future. However, there is nothing else that provides mitigation. You are not entitled to the benefit of a plea of guilty, and in my view you have not demonstrated appropriate remorse or insight. I had considered that the various sentencing considerations in this case could be adequately met by a period of home detention. I was persuaded to obtain a report and I did so. That report indicates in a qualified way that you are suitable for home detention but I do accept that you have significant health issues which casts doubt on whether a period of home detention will be successful. The objective seriousness of this offending means that the only other sentence which is appropriate is a sentence of imprisonment. However, I am satisfied that having regard in particular to your record and the fact that this offending was out of character that it is not necessary to impose a sentence of actual imprisonment on you in order to fulfil the important sentencing objectives, the most important of which in my view is general deterrence. The sentence I intend to impose, albeit wholly suspended, will in my view have that effect. I do not think for the reasons I have already indicated that personal deterrence is a significant factor but in any event personal deterrence is built into a sentence of this nature because this sentence will hang over your head, and if you commit any offence during the period of suspension which is potentially punishable by a sentence of imprisonment, that includes most offences on the statute books, then the Court will be required to activate the sentence unless persuaded that it would be unjust to do so and that would be highly unlikely. The question of personal deterrence is also addressed by the fact that if you were to commit an offence such as this again, then the Court would be in a completely different position to the one that I am in where this conduct would appear to be out of character. It is almost certain that you would receive a sentence of actual imprisonment.

Accordingly, the orders I make are as follows:

1. You are convicted of the crimes of which you have been found guilty.
2. You are sentenced to a period of six months' imprisonment which will be wholly suspended for a period of 18 months from today.
3. The condition of suspension is that you are not to commit an offence punishable by imprisonment during that period.

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. I would point out that given that you have been found guilty of three class 2 offences, the maximum reporting period, if I were to make such an order, is for the rest of your life. However, having regard to the circumstances of this case, including your prior good character and my finding that the offending was out of character and the fact that you have now brought very severe consequences down on yourself both in terms of this sentence and the impact on your life generally, I am satisfied that you do not pose a risk of committing a reportable offence in the future. Accordingly, I decline to make an order under the Act.