

STATE OF TASMANIA v JESSE SAMUAL FENTON
COMMENTS ON PASSING SENTENCE

22 MARCH 2023
WOOD J

Jesse Samuel Fenton has pleaded guilty to two counts of rape.

On 13 December 2019 the defendant had a party outside at his address at Kingston Beach. His father was on the premises, he retired for the evening at approximately 11pm.

The defendant was aged 23 at the time. The complainant's friend, Miss K, was invited to the party. She and the complainant caught a bus to Kingston Beach. The girls arrived at the party at approximately 8:30pm. They were the youngest people at the party. Miss K was 17 and the complainant was only 14.

During the evening there was discussion in the presence of the defendant about the ages of the complainant and her friend. The complainant told the defendant she was 14, and that she should have been in the same grade as his younger sister, who was in grade 8 but she had been moved up a grade.

The complainant consumed alcohol, and drank vodka mixed with apple and blackcurrant juice over the course of about 3 hours. She drank approximately three quarters of a one litre bottle of vodka. She was extremely intoxicated.

Later in the evening, the defendant and a number of others left the party intending to go to a nightclub in the city. Meanwhile, the complainant and her friend stayed at the defendant's house. When the defendant's group arrived in the city, the defendant decided to return home and was dropped back at his house. The complainant remained extremely intoxicated, vomiting twice in the bathroom. The defendant was present when she was unwell and he and Miss K carried her to bed in a spare bedroom. She appeared to pass out, fully clothed. The defendant and the complainant's friend talked in the kitchen of the house for a while. He left saying he was going to the bathroom, but Miss K was suspicious and after not hearing the bathroom door open or close, she followed him.

She found him in the spare bedroom lying next to the complainant. She demanded to know what he was doing and told him that was where she would be sleeping. She told him to get up, but he did not move. Then, she told him not to hurt the complainant and he said he would not. She reminded him that the complainant was only 14 and told him to stay away from her. At that time both the defendant and complainant were fully clothed.

She returned approximately 15 minutes later, and saw that the defendant was lying close behind the complainant. She lifted up the doona and saw that the complainant was completely naked and that the defendant had his pants and underwear around his legs and he had taken his jumper off. His body was pressed against the complainant. Miss K asked the complainant if she was okay and she told her she was. She also asked the complainant if this was consensual and the complainant told her yes. The complainant was still very intoxicated. Miss K left the room.

At approximately 3am, the complainant awoke, she was lying face down, naked and the defendant was laying on top of her. His penis was inside her vagina and he was thrusting in and out. At times he was hitting her with his hands to her back and bottom.

The complainant was shocked and at first, did not say anything or do anything. Then she tried to push him off her. He grabbed her by the arms and pinned her to the bed firmly, causing

bruising to her left arm. She told him to stop but he continued. She felt extremely intoxicated and while intercourse continued she felt she was passing in and out of consciousness. The defendant ejaculated, he was not wearing a condom.

The complainant did not consent to sexual intercourse. She was asleep at first, and then, so affected by alcohol as to be incapable of consenting. When she became aware of what was happening she made it clear to the defendant that she was not consenting.

At around the same time, in the early hours of the morning the defendant committed oral rape while the complainant was still very intoxicated. He turned the complainant around and put her onto her knees. He held her back and behind her head, pushing her face into his groin and forcing her mouth open, pulling on her lower jaw. He put his penis in her mouth and then thrust his penis in and out of her mouth. He did not ejaculate. The complainant was so intoxicated that she was incapable of consenting. She did not do or say anything to indicate she was consenting.

Following these acts of rape, the complainant fell asleep and the defendant stayed in the bedroom with her on the same mattress. At about 4am, Miss K woke the complainant and she got out of bed naked. She put her clothes on and went to the lounge room. The complainant spent some time in the lounge room and later in the caravan in the garden, with a number of people including the defendant whom she tried to avoid being near. The defendant revealed to another male that he had had sex with the complainant.

The complainant and Miss K left and were driven to town. The complainant told her friend what had occurred, and that the defendant had been forceful with her and had caused bruises to her arms, legs, back and her vagina. The area where it was sore and swollen was photographed by Miss K. In the afternoon they both went to the Hobart Police Station and the complainant informed police, she made a statement and her bruises were noted. She was taken to the Royal Hobart Hospital for a forensic medical examination, but did not consent to a physical examination or for forensic swabs to be taken, and became upset at the prospect of an examination. She reported to the doctor that she had pain around her vagina and the doctor viewed the photograph, and in his opinion it showed swelling. The doctor viewed bruising which was consistent with her account of being held down: a large 4cm bruise to her forearm, a small 1 cm bruise to her right forearm and approximately 6 bruises on each shin. On 16 November her mother noted a large bruise to her lower back.

During the evening of 14 December the defendant sent a message to the friend he had told he had had sex with the complainant, telling him not to say anything "about last night".

DNA testing of the complainant's underpants revealed a high grade match to the defendant's DNA profile.

The defendant was charged with rape in January 2020. He pleaded not guilty and was committed to the Hobart Supreme Court in March 2020 and the complainant's evidence was taken at a pre-recording on 2 October 2020. She was cross-examined. The matter was listed for trial four times from 23 November 2020 to 24 October 2022. He pleaded guilty on 24 October 2022.

The defendant has two prior convictions for common assault, family violence matters, committed on a female in 2015.

The complainant's mother has provided a statement providing some details of the adverse impact of the crimes upon her daughter. The complainant is depressed and anxious and suffers from episodes of violent rages, hysteria and expressed desire to self-harm. She is now prescribed medication for her depression but her anxiety remains ongoing. She is now very cautious socially. She obtained a casual job but was not able to manage. Due to her general and social anxiety she missed more shifts than she attended. At every stage of the court process she has been frightened, angry, anxious and depressed. If not for support and empathy of the team involved in her case at the Office of the Director of Public Prosecutions she would not have managed to give evidence.

The information that the Court has received about the adverse impact of these crimes upon the complainant is entirely in line with the knowledge held by sentencing courts. As stated recently by the Court of Criminal Appeal in *Director of Public Prosecutions v Oh Marris* [2023] TASCCA 1 at [39]: "Sentencing courts are acutely aware that the psychological and emotional impact on the victims of serious sexual crimes is profound and often lifelong."

The defendant was raised by his mother who had mental health issues and suffered from alcoholism. He witnessed domestic violence at the hands of her partners, including a particularly serious occasion when his mother was hospitalised. He was subjected to frightening episodes of aggression and violence as a young child. He turned to alcohol and drugs at a young age. By 13 years of age his alcohol consumption was at problematic levels and this has continued into his adult life. He has been diagnosed with schizophrenia, admitted to hospital because of his mental health, and in 2018 was subject to a treatment order for a period until 2019 when he has been managed as a voluntary patient. His history of physical violence towards a female partner was in his teenage years prior to the onset of his psychiatric illness. He has lived with his father since 2018. At the time of the crimes, he was compliant with treatment and medication, and there is no suggestion of deterioration or relapse. His psychiatric condition did not contribute to his offending.

He was very intoxicated at the time of these crimes and had been binge drinking for two or three days. That does not mitigate, or reduce in any way, the seriousness of his culpability and his level of responsibility for his crimes.

His recall of the incident is very limited and fragmentary, affected by his intoxication.

He understands now that his conduct was deeply wrong. He acknowledges that by his plea of guilty. His plea was very late but it has had a utilitarian benefit to the community and has vindicated the complainant.

If the defendant obtains assistance with his alcohol problem then his prospects of rehabilitation would be enhanced. His understanding and insight, although a late development, is a positive factor in terms of his rehabilitation and a sign of developing maturity and sense of responsibility. He is a relatively young man, and so, there is time for him to develop further insight as to his wrongdoing and an opportunity for positive influences to counter the adverse influences he was subjected to as a child.

This is a particularly serious example of rape. The complainant was a very vulnerable girl in the defendant's house: she was extremely intoxicated and she was very young, still a child. The defendant was well aware of her vulnerabilities, her age and her state of intoxication. He commenced raping her while she was asleep and so affected by alcohol that at first she was

unaware of what he was doing. He continued when she made it very clear to him she was not consenting and used force when she resisted him. His actions demonstrated a determination to have sex with her in circumstances where these vulnerabilities were obvious. He entered the room where she was sleeping with the obvious intent of having sex with her, he ignored a request by her friend for him to leave. She reminded him of the girl's age and asked him not to hurt her. He agreed that he would not hurt her, but that is exactly what he did.

A heavy sentence is required for these two counts of rape of a child. The grave harm you have caused the complainant must be reflected in the sentence.

Having noted that your psychiatric condition did not contribute to your offending, I also note there is no suggestion that it will impact on your experience of imprisonment. I assume the medical treatment that you will require on an ongoing basis, will be made available to you while in prison.

I will moderate the overall length of the sentence to a modest extent for your late plea of guilty. Your young age, and prospects of rehabilitation will be reflected in the sentence, both the length of the sentence and the non-parole period. If you are granted parole, it may provide an opportunity for supervision to support your moral development, alcohol treatment in the community and engagement such as vocational programs to enhance your prospects of being a responsible member of the community.

I record convictions and impose a global sentence of five years' imprisonment from 20 February, 2023. I impose the minimum non-parole period of two and a half years imprisonment.

I indicate the separate sentences that I would have imposed on each charge, for the purpose of s 11(3) of the *Sentencing Act*: four years' imprisonment with respect to count 1, three years' imprisonment with respect to count 2, two of those three to be served concurrently with the sentence on count 1.

I also make and order under the *Community Protection (Offender Reporting) Act* and cause your name to be placed on the register and that you are to comply with the reporting obligations under the Act for a period of seven years from today.