

STATE OF TASMANIA v LMA
COMMENTS ON PASSING SENTENCE

3 AUGUST 2023
ESTCOURT J

The defendant, who I shall call LMA, now 58 years old, has pleaded guilty to two counts of persistent sexual abuse of a child contrary to s 125A of the Criminal Code. The two complainants were born on 29 December 2001, and 25 March 2007 respectively.

In 2003, the complainants' mother formed a sexual relationship with the defendant, which continued for about a year, after which they maintained a friendship. In 2004, the complainants' mother commenced a relationship with a new partner and they later married. The defendant, however, continued to visit them regularly and the three were friends.

In around February 2010 the complainants' mother and her new partner and the complainants moved to a rural area and the defendant continued to regularly visit the family there, attending their house every two to three days. The defendant often stayed overnight and usually slept on the couch in the lounge room, although on occasion he slept in his car or campervan.

The defendant babysat the complainants on occasions when their parents went out on date nights. Between 2009 and 2018, the defendant regularly gave the complainants gifts and gave them money. The defendant bought the first complainant gifts including nail polish, jewellery, art supplies, circus tickets, a touchscreen mobile phone and a tablet computer. He bought the second complainant gifts including jewellery, lollies, craft kits, tickets to a concert and a Nintendo DS and games.

Count 1

The defendant touched the first complainant in a sexual manner when she was aged between 8 and 12 years of age. The sexual assaults included touching her vagina and performing oral sex on her. It occurred on a regular basis during the period of the offending. Multiple acts of sexual contact occurred each time the defendant visited the family house.

The sexual contact happened in various locations, including in the house, in one of the defendant's cars that he drove to the residence, at the defendant's house and in public when the defendant gave the complainant piggy back rides.

The defendant told the complainant that what he was doing was okay, that he did it with her mother. He told her that her mother knew about it and it was fine with her, but he also told her not to tell anyone. He told her it was to be a secret and that it was special and was between them.

The complainant struggled with the sexual contact as on the one hand, it was pleasurable, but on the other hand she knew it was not something that should be happening and she felt uncomfortable, scared and anxious.

When the defendant slept overnight on the couch at the house, the complainant would wake up and go out to him in the early hours of the morning. The lounge room was situated between the bedrooms and bathroom. The defendant would invite the complainant into his sleeping bag and they would talk. The defendant touched the complainant's vagina or performed oral sex on her whilst they were on the couch. She would then go to the bathroom and go back to bed.

The complainant's bedroom backed onto a veranda. Sometimes the defendant would knock on her window until she woke up. She would undress herself and face the defendant outside the window. He took photographs of her and told her she was perfect.

On occasion the defendant would ask the complainant to go out to the water tanks on the property. That was where the defendant would go to urinate. The defendant touched the complainant's vagina near the water tanks approximately five times.

The complainant would also go out to the defendant's car at his request. He would give her gifts when they were in the car. He also had a collection of pornographic magazines in there. The defendant showed the complainant pornographic videos on his mobile phone on occasion.

The defendant stopped touching the complainant in a sexual manner when she was in grade 7 and was 12 years old. The complainant disclosed to friends when she was in grade 9 or 10. She disclosed to the school psychologist when she was in grade 11.

Occasion 1 was an indecent assault. The defendant often gave the complainant piggy back rides. This would occur at the regatta, around the property or on public streets. The complainant's family was often there, but they would be walking ahead of them. Whilst the defendant gave the complainant a piggy back ride he would hold her underneath her bottom and rub her clitoris through her clothing. He would touch her sexually around fifty percent of the time he gave her a piggy back ride.

On one occasion, the defendant gave the complainant a piggy back ride. The complainant's mother and sister were with them, but were walking ahead. The defendant had his arms behind him and underneath the complainant's bottom. He rubbed his fingers against the complainant's vagina, over her clothing. The four of them walked to a store and the defendant bought the complainant a necklace made of small, green-blue beads with a silver disc.

Occasion 2 was also an indecent assault. On an occasion when the complainant was around 9 or 10 years old, the defendant was asleep on the couch at the family house. The complainant woke up sometime between 11pm and 2am. Her mother, step-father and sister were asleep. The complainant left her bedroom and laid on the couch with the defendant. The defendant was laying behind the complainant, in a "spooning" position. The defendant had his arm over the complainant and rubbed her vagina with his fingers.

Occasion 3 - Indecent assault

On an occasion the complainant was in the back seat of the defendant's car. The defendant rubbed her vagina with his fingers.

Count 2

The defendant touched the second complainant in a sexual manner when she was aged between 5 and 10 years of age. The sexual assaults included touching her chest, touching her vagina, exposing his penis to her and having vaginal sexual intercourse with her. It occurred on a regular basis during the period of offending.

The defendant rarely wore a condom during the acts of vaginal sexual intercourse. She estimates he wore a condom three or four times and that there were too many acts of sexual intercourse for her to count. The sexual contact happened in various locations, including in the family house, in the defendant's car or campervan and at the defendant's house.

The defendant had vaginal sexual intercourse with the complainant in his campervan and inside the family house. He would enter the complainant's bedroom and have sexual intercourse with her in her bed. He also had sexual intercourse with her on the couch or on the kitchen table whilst her parents were in the shed and her sister was in the shower.

The defendant played pornographic videos to the complainant on occasion. She would cry as it was being played as she did not want to watch it. The defendant would remove his penis from his pants and touch her vagina, on the outside of her clothing, whilst watching the pornography. This occurred at both his house and the family house.

The defendant told the complainant that they were boyfriend and girlfriend and referred to her as "my love". The offending against the complainant ended when the complainants' mother told the defendant he was no longer welcome at their house, as he was behaving strangely and she believed he was using drugs.

Count 1 was an indecent assault. When the complainant was 5 years old, her mother turned 33 years old and threw a birthday party. The complainant stayed at her aunt's house the night before. They bought a cake which they took to the house for the party. The defendant attended the party. During the party the defendant asked the complainant if she wanted to go and pat the horses in a nearby paddock, which she agreed to. They walked away from the party to one of the paddocks, in a location which was not visible to the complainant's parents. Whilst the complainant was patting the horses, the defendant touched her to the chest area, squeezing with one hand.

Occasion 2 was an indecent assault. On an occasion when the complainant was 8 or 9 years old, the defendant took her to his house. He played a pornographic video and moved his hand towards her vagina. The complainant tried to close her legs and push his arms away, but the defendant persisted and rubbed her vagina, on the outside of her clothing, with his fingers.

Occasion 3 was a crime of rape. When the complainant was 9 years old, the defendant attended the family house in his campervan. He parked it approximately 100 metres away from the house. The complainant went into the campervan with the defendant as he let her drink coffee with him. She liked drinking coffee and her mother would not let her drink it. On this occasion, the defendant made himself and the complainant a coffee and they drank it. The defendant then forcefully removed the complainant's clothing. As the complainant was lying face down on the bed inside the campervan, the defendant held her down and inserted his penis into her vagina. The complainant felt a burning sensation. The complainant tried to lean forward so that the defendant's penis would be removed from her vagina, but the defendant grabbed both her shoulders and moved her closer to him. The defendant had sexual intercourse with the complainant until he ejaculated inside her vagina.

The defendant told the complainant to put her clothes on and told her to act like nothing had happened. He also told her not to tell anyone. The complainant had bleeding from her vagina for approximately 5-10 minutes following the sexual intercourse.

Occasion 4 was again the crime of rape. The defendant had sexual intercourse with the complainant on the couch in the lounge room of the family house, whilst the complainant's sister, was in the shower. The complainant was on her knees, bent over the couch and the defendant had vaginal sexual intercourse with her from behind. The defendant ejaculated inside the complainant's vagina. Following the sexual intercourse, he told the complainant to put her clothes on and to act like nothing had happened.

Occasion 5 was again the crime of rape. The defendant had sexual intercourse with the complainant at the kitchen table of the family house, whilst the complainant's sister was in the shower and her parents were in a shed on the property.

The complainant was standing at the kitchen table, with her chest leaning over the table. The defendant inserted his penis into her vagina whilst standing behind her. The defendant ejaculated inside the complainant's vagina. Following the sexual intercourse, the defendant again told the complainant to put her clothes on and act like nothing had happened.

The second complainant told her mother about what the defendant had done to her towards the end of 2020. She asked her mother not to tell her father as he had some serious mental health and physical health issues at the time.

In early April 2021, the topic arose again between her and her mother. The complainant's mother raised the matter with her other daughter, that is the first complainant. She was not ready to speak to her mother or police about the matter.

The matter was reported to Tasmania Police on 15 April 2021, and the second complainant made a video statement on 22 April 2021.

On 5 July 2021, members of Tasmania Police attended the defendant's home and told him they wished to speak to him in relation to the reported sexual abuse of the second complainant. The defendant responded that he had been *"waiting for police to lock him up for five years"* and that he *"would agree with whatever the girls said because they deserve that"*.

The defendant voluntarily accompanied police to the Bellerive Police Station where he participated in an electronically recorded interview. Under caution, he answered "no comment" to most questions, but did state that he had been waiting for a long time for police to come and to put him away where he belongs. Later in the interview he said that those comments were "to do with drugs" though.

The first complainant made two video statements, one on 8 July 2021 and one on 16 December 2021.

On the 13 July 2022, the defendant voluntarily attended the Hobart Police Station. He was put before the Custody Sergeant but before he was able to be cautioned, he stated *"I know what I done was wrong and I deserve to be punished, that's all I know"*. Later in the process, after caution, he stated, *"I done a horrible thing"*.

The defendant was bailed to appear in the Hobart Magistrates Court on 5 of September 2022. On that date, he appeared and entered a plea of not guilty. He was committed to appear in the Hobart Supreme Court on 21 November 2022. On 3 April 2023 he pleaded guilty to both counts on the Indictment and was remanded in custody. However, that was not until

prosecutors had met with both complainants and discussed their evidence prior to the pre-recording of it.

The defendant has no relevant prior convictions. He was raised in the Huon Valley, where his father managed an orchard on which the family lived. He himself began working at the orchard when he was 10 years of age. He attended local schools but struggled academically as he was dyslexic. He remains essentially illiterate.

A formative experience of his childhood was sexual abuse when he was raped by a teenage male when he was only six years old. Two further serious sexual assaults were perpetrated against him when he was aged 10 and 13 respectively. At 11 years of age he attempted to hang himself in a first suicide attempt, having learned how to do so from a friend who had committed suicide in that manner.

Against such a background, the defendant became involved with illicit substances, including intravenously administered drugs, when only aged 11. He outlined to his counsel, Ms Mainwaring, that in the area he grew up, there was ready access to cannabis, opioids and alcohol. Since his 20's, despite being able to hold down various forms of employment, he has experienced regular suicidal ideation that continues to the present time. His heavy use of illicit substances from a young age, stemming from his experience of child sexual abuse, continued well into his adult years, including over the duration of the offending period.

The defendant married in his 20's and had two children. That marriage broke down shortly after he spoke to a psychologist about substance addiction and past childhood sexual abuse. As a result, he has had little contact with his own children.

The defendant understands the serious nature of his conduct and acknowledges the effect of his behaviour upon the complainants. He has difficulty in attempting to explain his offending. He has expressed guilt and regret. This is evident, it is submitted, from his comments to police and from the plea of guilty. That is true, but there was also a plea of not guilty sustained for a considerable period. His remand in custody has demonstrated that he has appeared to correction staff to "low, guilty and remorseful".

Since his remand in custody, he was assessed by medical and psychiatric staff for both physical and mental health issues. He has been subject to regular reviews, particularly for mental health issues and suicidal ideation. He has also been referred to psychological counselling to address his past childhood sexual abuse.

There has been a tentative diagnosis made for the defendant of Borderline Personality Disorder by psychiatric staff within Corrective Services. This is a significant event in his life, I am told, as he has never received any formal diagnoses or treatment in the past.

I have read victim impact statements from both complainants. They were difficult to read. Their lives have been devastated by the defendant's monstrous crimes in most fundamental respects of life, including mental health, relationships and careers. Whilst one would hope not, the defendant may well have ruined their entire lives in these respects.

As one of my fellow judges has said, the crime of persistent sexual abuse of a child, by its nature, applies to a wide range of sexual offences and consequently there is no discernible sentencing range. However, the defendant should suffer the same penalty as would have been

imposed if the individual sexual acts constituting the crimes had been charged as separate crimes, such that the sentence is a just and appropriate measure of the defendant's total criminality. The total aggregate sentence is to be moderated by proportionality and totality.

Child sexual offences have enormous potential to cause physical and psychological harm. Conduct of this nature has profound and deleterious physical and psychological effects on victims for many years, if not for the whole of their lives. The consequences of an offence, including its effect on a victim, are important considerations in the sentencing process, and the severity of the sentence may be increased because of them. These are serious examples of this offence, given the egregious breach of trust involved, the number of sexual assaults and their nature, and the length of the period over which they occurred.

I take into account the statutory aggravating features pursuant to the Sentencing Act 1997. For the purposes of s 11(3) of that Act, I record that had I sentenced the defendant separately on each of the two counts, I would have sentenced him to 6 years imprisonment on count 1 and 12 years imprisonment on count 2. As it is, I convict the defendant on both counts and impose a single sentence of 16 years' imprisonment with a non-parole period of 9 years.

I make an order under the *Community Protection (Offender Reporting) Act* for a period of 15 years from the defendant's release from prison. His name is to be enrolled on the Register under the Act and he is to comply with the requirements of the Act for that period.