

MC, you were found guilty by a jury of indecent assault. You were acquitted of rape. I also agreed to deal with your plea of guilty to common assault, an offence which arose from the same circumstances. Subject to consistency with the verdict it is for me to find the facts for sentence. Facts adverse to you must be proved to my satisfaction beyond reasonable doubt.

On 21 November 2019 you were living at the home of the complainant in a regional town in northern Tasmania. She was then aged 25 and you were 29. You had been together for about 18 months and there was one child of the relationship, a boy then eight months old. On every version of events your relationship with the complainant was difficult. On the day of the crime you arrived home from work during the mid-afternoon. You argued with her and became upset and angry. Together you drove to the home of a friend of hers. She went inside but you did not. The complainant gave you money which you used to buy alcohol and you then walked home. When she arrived back a few hours later you argued again. You repeatedly accused her of cheating on you. She went out again to allow you to cool down. She arrived home at around 10.00 pm with the baby. He was in a capsule which she put on the floor. By this time you were heavily intoxicated and highly agitated. While she was out you had trashed her house by breaking and emptying kitchen drawers and leaving the contents strewn on the floor, breaking a mirror and other furniture and punching holes in the walls. As soon as she walked in you aggressively confronted her, accusing her of having sex with another man. She was wearing elastic topped leggings. The complainant's evidence was that you approached her from the front, put your hand inside her leggings and underpants, put two of your fingers into her vagina and, after having done so, forcefully lifted her off the ground. When interviewed by the police the following day you admitted that you put your hands inside her pants but claimed that it was only when she invited you to do so as a way of checking for signs of sexual activity.

There is little dispute about what then happened. When she tried to run out the front door you prevented her from doing so. By depriving her of her liberty in that way you committed the common assault. She saw that the back door was open and ran for it. You grabbed at her to attempt to prevent her escape. You admit tearing her clothing but I am also satisfied that you forcefully grabbed her arm leaving it red and bruised. She managed to get away and ran to the nearest home she could find with a light on. Fortunately her desperate cries for help were answered by the occupants who called for the police.

It follows from the verdict that the jury was not satisfied that your fingers penetrated the complainant's vagina or genitalia. It is not for me to attempt to explain how the jury may have reached that conclusion. It may have been for a variety of different reasons. It does not follow that the jury rejected the complainant's evidence, only that the jury was not satisfied of that element of it beyond reasonable doubt. It also follows from the finding of guilt to the alternative charge of indecent assault that the jury was satisfied beyond reasonable doubt that your touching of the complainant was indecent, that she did not consent to you touching her inside her underpants and that either that you did not believe she was consenting or that your belief was not on reasonable grounds. I found the complainant to be a credible and reliable witness. Subject to the qualification which necessarily follows from the verdict I am satisfied beyond reasonable doubt of the truth of her evidence. I find that when she arrived home you immediately aggressively and irrationally confronted her about her supposed infidelity, you approached her and forcefully put your hand down her pants inside her underpants and touched her around and

over her vagina. It was an action which was not invited or consented to and was against her resistance. Her conduct and the complaints she immediately made to the neighbour and to the police were, in my view, compelling evidence of the substantial truth of her account. The neighbour's evidence of the complainant's desperate pleas for help and the body worn camera footage taken when the police arrived more than half an hour later were powerful evidence of the nature and extent of her distress. The fact that she felt compelled to leave the baby behind when she escaped provides some indication of the extent of the need she perceived to protect herself. I regard your account as inherently implausible made all the more so by your appalling claim made to the police that you in fact felt signs of sexual activity and that she ran because she had done something wrong. Nothing you said to the police causes me to doubt these conclusions. I find that your account that she invited your action to be inherently implausible, to be completely inconsistent with the evidence, which you agree with, that she immediately ran from you, without the baby to seek help and her extreme distress when she did so.

You are now aged 33. Your relationship with the complainant is over and you have had no contact with your child, who is now aged 4, for some years. You have had some employment in the racing industry but it was sporadic and ended some time ago. You rely on social security benefits. You have recently been offered a room in which to live but before then you had no stable accommodation. Your life has been heavily affected by abuse of alcohol. You were highly intoxicated at the time of this crime but that provides no mitigation. You have sought treatment for your alcoholism but not until the last month or so. There has been some delay in the prosecution of the crime but delay per se is not mitigating.

The absence of penetration reduces your criminal culpability. You are not to be sentenced for rape. However in the circumstances of this case, as I find them to be, it remains a serious crime. Although it was a single instance and fairly short lived, I regard this as a serious example of indecent assault. The circumstances of the indecent assault were violent, degrading, humiliating and frightening. It is also a serious common assault. Both offences were committed in the context of a relationship in what should have been the safety of the complainant's home. You were motivated by suspicion and jealousy and a wish to control. The offences were committed in the presence of your infant son although it can only be hoped that he was too young to have been affected. Your conduct was not spontaneous in that it was a continuation of behaviour which commenced in her absence when you damaged her house and belongings. After committing the indecent assault you tried to prevent the complainant's escape by use of force. Women in domestic circumstances are particularly vulnerable to the abuse at the hands of violent male partners. Responsible members of the community are greatly disturbed by the prevalence of this type of conduct. At the time of the crime you had no prior convictions for violence, or family violence offences, but I would not sentence you on the basis that this was isolated or out of character. There is no indication of immediate remorse. Within a month you had committed more breaches of the order by going back to the complainant's house and abusing her and there were further breaches a year later. The complainant has chosen to not make a victim impact statement. The reasons for that in a family violence context may be complex. I am left in no doubt however that the assault was highly traumatic for her at the time and that she was terrified of you and terrified for her baby. For all of those reasons punishment and general and specific deterrence are powerful sentencing considerations. You have been sentenced separately for damaging the complainant's property. You did not plead guilty to indecent assault but you were acquitted of the more serious charge. You spent 31 days in custody which is to be taken into account by me in sentence. You were remanded in custody following the verdict on 27 September 2023.

MC, you are convicted of indecent assault and, on count 1 on complaint 36125/19, of common assault. In accordance with the *Family Violence Act*, s 13A, I direct that both offences be recorded on your criminal record as a family violence offences. Indecent assault is a reportable offence within the meaning of that term in the *Community Protection (Offender Reporting) Act* 2005. I am not satisfied that you do not pose a risk of committing another such offence in the future. I make an order directing that the Registrar cause your name to be placed on the Register and that you comply with the reporting obligations under the Act for a period four years from your release. I impose one sentence. You are sentenced to a term of imprisonment of one year and eight months from 27 August 2023. I order that you not be eligible for parole until you have served half of that term.