

Benjamin Steven Craig has been found guilty of one count of rape. The jury found him not guilty of two other sexual crimes, counts one and two on the indictment, a count of indecent assault, and another count of rape, alleged to have occurred immediately prior to the crime giving rise to the guilty verdict. I have heard submissions rationalising the verdicts. There was no dispute about the physical acts the subject of the three counts before the jury, the issue on the trial was consent. The most obvious explanation for the verdicts is that the jury was not satisfied beyond reasonable doubt of lack of consent with respect to counts one and two, but was satisfied of lack of consent with respect to count three, the crime of rape of which he was found guilty. That explanation accords with directions that were given to the jury as to the critical nature of the evidence of the complainant, urging the jury to look for objective evidence supporting the complainant's account and a direction that the jury could not find the defendant guilty of a particular count unless the jury was satisfied beyond reasonable doubt of the truthfulness and reliability of the substance of the complainant's account regarding that count. The verdict of guilty relates to a count for which there was supporting evidence of lack of consent. The facts as I find them to be, consistent with the verdicts, are set out below. It will be seen that my findings are based on an acceptance of the complainant's account as a substantially truthful and reliable account, a rejection of the defendant's account and also, the premise that the defendant is, of course, not guilty of counts one and two. It will be seen that, with respect to these counts, I proceed on the basis that there was no sexual activity which persisted, such that it co-existed with lack of consent.

The complainant knew the defendant, they were friends and she trusted him. During the evening of 4 October 2013, she went to the Rebels Motorcycle Clubhouse in New Town with a male friend. She had been there before and found it to be a safe and friendly social environment. The defendant was also at the Clubhouse. At that time, the Clubhouse had an alcohol licence. There was a bar and also a room set up with lounges. On this night there was an orderly social gathering of people.

As the evening progressed, the complainant consumed alcohol and began to feel very unwell. She felt dizzy and could not focus. She vomited a number of times.

She went into the room where there were a number of lounges, as she wanted to be somewhere quiet. The defendant came into the room, as did another male. The defendant helped the complainant and obtained a wet cloth for her forehead. She told them that she felt really sick and she was confused and that she did not know why she felt so bad. The defendant made a comment to the other male present suggesting that her drink must have been spiked. There was

no evidence to support that as having occurred. The evidence of Ms Miriam Connor, forensic scientist, was that the complainant's condition was consistent with consumption of a significant amount of alcohol.* (*Based on a blood sample taken from the complainant at 9am that morning, Ms Connor estimated that, at the time of the offence, the complainant's blood alcohol concentration would have been between 0.131 grams and 0.191 grams of alcohol per 100 millilitres of blood. Assuming an average alcohol metabolism rate, it is estimated that the concentration would have been 0.151 grams of alcohol per 100 millilitres of blood.) The complainant was left alone with the defendant and, by that time, it was the early hours of 5 October and there was no one else present at the Clubhouse. She was still feeling very sick, her awareness of what was happening around her was affected, and so too were her reactions and capacity to respond.

She was seated on a couch. She became aware that the defendant was standing in front of her, and had his trousers pulled down. He placed her hand on his erect penis. She withdrew her hand. He then put his hand on the back of her head and pulled her head toward his penis. He inserted his penis in her mouth. She moved her head away. The complainant told the defendant that she did not want to do that because she felt too sick. Each of those sexual acts, the subject of counts one and two, was very short-lived. The defendant desisted when the complainant made it known to him that she did not want to engage in those acts.

It is in that context that the defendant then committed the crime of rape. He pulled down the complainant's jeans and underpants and had vaginal sexual intercourse with her without her consent. She tried to push him off her and she said to him "don't". He ignored her, continued to have intercourse with her, and ejaculated.

The defendant committed this crime knowing that the complainant was feeling very sick and affected. He was well aware of her lack of interest in and rejection of his sexual conduct immediately beforehand. I am satisfied that the complainant did nothing at all to suggest to the defendant that she was consenting to sexual intercourse, she made it very clear that she was not, and further, I am satisfied that the defendant did not have a belief, reasonable or unreasonable, that she was consenting.

Afterwards, she asked him why he had done that when she felt so sick and was not on the pill. He replied, "it's all good". He offered to call her a taxi, but she said she did not want a taxi. As she left the premises he said to her, "everything's all good isn't it? You haven't done anything wrong." She was too angry at his suggestion that she could feel guilt about what he had done to her to respond. Immediately after leaving she rang police and told them she had

been raped. Police officers attended and found her in the street in a distraught state.

Later in the morning, the defendant sent a text message to the complainant asking if she was okay. Her text message in reply revealed her intense distress, anger, and disbelief at what he had done in having sex with her when she was so sick and when she kept asking him to help her and she was, in her words, "barely awake" and "[he] knew it...".

The complainant was medically examined. As a result of the incident she had suffered bruising to her vagina. The following day bruising to her forearms became apparent.

The complainant has been severely affected by this crime. She suffers from post-traumatic stress disorder and is under the care of a psychiatrist. Her mental health was to an extent vulnerable beforehand, but she was someone who was managing well and did not require any specialist care. Since the rape was committed, the contrast in her condition is stark. The complainant has attempted to end her life and engaged in serious self harm on multiple occasions. She nearly died on one occasion and on other occasions required surgical intervention. Her suicidality has subsisted for a lengthy period of time. In 2014 and 2015 she had 50 admissions to hospital for her self-destructive impulses. There is a risk of lasting psychiatric harm. The complainant's suffering has been and continues to be profound. She has experienced flashbacks and night terrors and anxiety. She feels completely betrayed. In her own words, she trusted the defendant and considered him her friend. She states, she could not have been more wrong. The defendant, in her words, "treated me like I was nothing more than dirty, worthless rubbish".

The defendant is now 33 years of age. He has no relevant prior convictions. He has an industrious work history, having worked in the construction and building industry; he worked for a concrete pipe fabrication company interstate and in Tasmania since 2004 in a mechanical and motorcycle outlet and, more recently, with a civil contracting company. He rose to the position of foreman and was highly regarded. He lost his job once the jury's verdict was delivered and he was remanded in custody.

At the time of the crime, he was in a stable relationship. His partner has two children, whom he treated as his own, and he supported his partner as best he could. He and his partner had purchased a home and lived as a family unit. The defendant faced trial last year and was acquitted of one charge and the jury were unable to reach a verdict on the three charges that went to trial this year. His relationship did not survive the strain of the first trial and his partner terminated

the relationship. He then lived with his grandmother until he was remanded in custody.

He has been involved with the Rebels Motorcycle Club for some nine years. There are no adverse inferences to be drawn about the defendant's character from that involvement. His involvement in the Club arose from an interest in motorcycles. The Club was involved in charitable work and fundraising for the community and the defendant participated in such events.

The defendant has been living under the shadow and uncertainty of court proceedings whilst on remand facing two trials and, overall, for a relatively lengthy period of time. I note that he consented to the imposition of a restraint order in about early November 2013 and that was in place for 12 months. There has been no application to extend that order, presumably it was thought unnecessary.

This crime of rape involves a betrayal of trust committed upon a victim who was physically vulnerable and at a time when she trusted the defendant, her friend, to protect her from harm. Her vulnerability was obvious to the defendant. I accept that this was not a planned rape. It was more opportunistic, arising from her vulnerability and that he was alone with the complainant. The lack of pre-mediation is mitigating, but the complainant's condition and her vulnerability is an aggravating factor.

The crime of rape, by its very nature, is always a serious crime. It involves subjugation of a victim, denial of their wishes, denial of their dignity, and assumption of control of an individual's bodily integrity. It is a crime that does terrible harm. The sentence must reflect the gravity of the crime and the harm that is invariably caused to victims; the sentence must give prominence to the need for general deterrence.

The harm caused to the victim in this case has been and continues to be particularly severe.

The defendant is still a relatively young man. He has never been in custody before. I accept that conduct such as this is most unlikely to be repeated.

He previously dedicated himself to working hard and supporting his partner and her children. He must now live with the destructive consequences of his own criminal behaviour. It has cost him his family and his vocation.

I record a conviction. I impose a period of imprisonment of three and a half years. The sentence is backdated to 25 February 2016. Given the defendant's personal circumstances, I grant the maximum opportunity for parole and order

that the defendant is not to be eligible for release until he has served one half of the sentence. I am not satisfied that he does not pose a risk within the meaning of the *Community Protection (Offender Reporting) Act* and I order his name be placed on the Register and he comply with the obligations under that Act for a period of three years following his release. I impose a victims of crime compensation levy of \$50 to be paid within 28 days from release.