

STATE OF TASMANIA v WYATT ALEXANDER GRIFFIN
COMMENTS ON PASSING SENTENCE

5 FEBRUARY 2024
MARTIN AJ

Mr Griffin, you have been convicted by a jury of the crime of rape. In the early hours of 3 June 2022 you had vaginal sexual intercourse with the complainant, Ms A without her consent.

I must sentence you on the basis I find proved beyond reasonable doubt, namely facts which are consistent with the verdict of the jury.

Ms A moved to Tasmania in March 2022. She obtained a residence in a share house with four other housemates in North Hobart.

Ms A came to Tasmania to undertake a graduate nursing program with the Department of Health. After arriving in Tasmania, she began operating on Tinder with a view to expanding her social range of friendships. She met you on Tinder and in exchanges with you became aware that you were both enrolled in the same graduate program for nursing degrees.

The communications between you moved to Snapchat. As Ms A explained to the jury, Snapchat enabled exchanges, including photos, to automatically disappear after a pre-set period, unless they were saved by the receiver, in which event the sender would see that the particular message had been saved.

Eventually you and Ms A decided to meet up after your first day of training. On 4 April 2022, together you went to premises in North Hobart for the purposes of socialising, including having a drink. During the conversations that followed it became apparent that you knew one of Ms A housemates.

As the night progressed it was decided that both of you would return to her home. There you spoke for some time with the housemate who you knew before moving to the bedroom occupied by Ms A. Ultimately in the bedroom consensual activity occurred, but it did not involve vaginal sexual intercourse. Ms A explained that during consensual oral sex you discussed the absence of a condom and together you decided not to engage in penetrative intercourse because of the risk of pregnancy and STDs. Ms A also explained to the jury that she did not experience the sort of chemistry or spark which would lead her to engage in vaginal sexual intercourse, but she did not mention that matter to you. From your perspective Ms A's reluctance was due to the absence of a condom.

You stayed the night in the same bed with Ms A before leaving early in the morning because you both had training that day for nursing.

Limited contact over Snapchat occurred subsequently in a general way, and the communication included conversation about pursuing a potential relationship. Ms A explained that she did not possess those feelings for you and wanted to remain friends only. You suggested a friends with benefits situation as an alternative, but Ms A refused that suggestion and told you that she wanted to proceed with purely a platonic friendship. Together you spoke about remaining friends and being there for one another in the context of the stressors of the new job. You would be there for each other to help debrief as you were both going through similar situations.

From late April to late May there was a break in the regularity of communications. In late May Ms A sent a Snapchat photo to multiple people of a design she had created while sitting in the

botanical gardens and you responded. This resulted in you striking up a conversation during which it was arranged that you would meet Ms A in front of her house to get coffee and go for a walk. On that occasion you entered the house and sat in the lounge room with two of Ms A's housemates. You remained for a short period before saying you were catching up with friends for drinks and leaving.

Following that meeting, there were further Snapchat exchanges chatting about life and work, just general conversation.

A week to ten days later, on 2 June 2022, Ms A spent the evening with another male person. He left late in the evening, or in the early hours of 3 June after which Ms A intended to go to sleep. However, by coincidence, you sent a Snapchat message to her saying you had experienced a bad shift at work and wondering if she was available to debrief about that bad shift. You also sent a Snapchat photo of a mirror selfie you had taken at a gym. Ms A offered to meet you at your place, but you asked if you could attend at her residence because you felt more comfortable there. You told Ms A that your housemates did not like people coming over late at night and you did not get along with them as well as you got along with her housemates.

The Ms A agreed that you could come to her home. You asked why she was still up and she told you that someone had been at her home and had just left.

About half to one hour later, you arrived at Ms A's home and she met you outside to let you in. Later you told police you had consumed half to a bottle of wine. Although Ms A described you as quite loud, possibly a sign of alcohol consumption, she did not detect any smell or of alcohol or any other indicators suggesting you were affected by alcohol.

You took a condom to Ms A's home. I am satisfied you had in mind pursuing sexual intercourse with her. Contrary to the suggestion by the Crown that perhaps you perceived a change in Ms A's attitude by reason of mixed signals, I am satisfied that Ms A did not do or say anything which could reasonably have led you to think she had changed her mind about the platonic nature of your relationship.

As sound travelled significantly if people were in the lounge room, Ms A decided it would be best if you talked in her bedroom to keep the conversation quieter. She was wearing underwear, tracksuit pants and an Oodie. Seated on the bed side by side she asked what had occurred at work, but you did not give a clear answer. You were vague just saying it was a bad shift and did not go well. After a short period, you tried to kiss Ms A. As to the subsequent events, clearly the jury accepted the evidence of Ms A beyond reasonable doubt and rejected your version. I also accept her evidence as to the events that followed after you tried to kiss.

Ms A's initial response was to move backward away from you. She told you "No, we've had this conversation. I don't want to cross that boundary". Your response was to say "let's see how far we can push it" and you tried to kiss her again. Ms A repeated "No", and again tried to move back. You continued to try and kiss her and then got on top of her. You put your body weight on Ms A's chest and kept trying to kiss her while she was telling you "No" and trying to move you off her. Ms A did not have the strength to get you off her chest and she was pushed up against the bed frame with nowhere to move.

While you were physically controlling Ms A you removed her trackpants and underwear by leaving most of your weight on one side and using the other hand to pull down the clothing.

Initially Ms A was trying to physically resist and was saying "No", but ultimately in shock and distress she eventually submitted. As she described it, she just laid there and did not do anything. As she said to her friend later in the morning, she froze.

At some stage you placed a condom on your penis. Ms A was unable to say when or how this occurred.

After intercourse, you tried to cuddle Ms A but she was trying to push your arm away. She curled up with her knees close to her chest in the foetal position. Eventually you appeared to go to sleep, but Ms A was paralysed emotionally and unable to move. For some hours she lay in this situation feeling unable to move notwithstanding that you were asleep.

During the trial your counsel suggested to the jury that Ms A's behaviour in this regard was inconsistent with her having been raped. It was a proper submission to make, but it is appropriate to say at this point in the sentencing remarks that I have no doubt the jury accepted Ms A's evidence that she felt paralysed and I accept her evidence in that regard. Experience has demonstrated that this type of emotional response, that is, persons in Ms A's position submitting and feeling paralysed or unable to respond at the time or later is not an unusual consequence of this type of crime.

Fairly early in the daylight hours a maintenance person rang the doorbell and you started to wake up. Ms A left the room and saw that the maintenance person had entered the premises. She went to the bedroom of a housemate, a good friend, where she told her friend that you had engaged in sexual intercourse with her without her consent.

When Ms A entered the room her friend, Ms B, smiled at her and Ms B described that Ms A returned a half-smile. It was readily apparent from the evidence of Ms B that the half-smile was not a true smile.

Ms B was aware that a male person had been in the bedroom of Ms A earlier that evening. In a joking fashion she said "Oh, what have you been doing" which caused the demeanour of Ms A to change completely. She went pale and started shaking. In the conversation that followed Ms A was greatly distressed and made it clear to Ms B that you had engaged in sexual intercourse without her consent.

At the suggestion of Ms B, Ms A told you that you had to leave as she was going out for coffee with Ms B. You left, and on the way out you hugged Ms A but she did not reciprocate. After you left, Ms A went back into the bedroom of Ms B, laid on the bed in a foetal position and, in the words of Ms B, "started to bawl her eyes out crying". Ms B was comforting her over the next half to one hour while Ms A told her what had occurred. Asked about Ms A's emotional state when she was giving her description, Ms B responded "Well, she just looked so distressed. You know, she was foetal position, sort of rocking, crying, short of breath as well, quite like sort of hyperventilating and, yeah, crying a lot."

It should also be noted that after you raped Ms A, she did not sleep at all. She was giving her statement to Ms B as to what had happened in what one might reasonably infer was a state of exhaustion and great emotional distress.

In addition, it should not be overlooked that Ms A suffers from endometriosis, a painful condition which flares up from time to time, including after intercourse. At the time you had intercourse with her, she was experiencing a flare up and pain.

Later in the day Ms B suggested to Ms A that she contact the Sexual Assault Support Service. Ms A made contact and subsequently undertook counselling.

On 4 June 2022 Ms A drove to work. As she arrived at the carpark, she received a Snapchat message from you. This message, and Ms A's response, were automatically deleted.

In oral evidence not challenged by your counsel, Ms A described your initial message as stating that you appreciated having a friendship with her and being able to debrief about work, and that you valued your friendship. Bearing in mind the way in which you had treated Ms A, not surprisingly she was angered by your message. She responded via Snapchat that she did not want anything to do with you after what had happened the night before. In her message she said that you had assaulted her, and she used that word, and she wanted nothing to do with you.

Your response and the brief exchange that followed was saved by Ms A. In essence, in response to Ms A saying you had assaulted her, you apologised. It is appropriate to set out the exchange:

You wrote:

I'm sorry Ms A, I don't really have anything to say other than apologise. I was pretty drunk by the time I got to yours but that's no excuse. I'm really sorry. I love the friendship we have where we can vent to each other and id hate to lost that. I really value our friendship above all else, and I feel terrible that I have jeopardised it just like that.

Ms A responded:

I Don't care if you were drunk or sober Wyatt. You assaulted me. I told you no and kept saying let's see how far I can push it or just continued to touch me.

You responded:

I'm sorry Ms A, I don't know what else to say. You are one of my closest friends and to know I have upset you like this shatters me. I'm so sorry.

As to these exchanges, when you were first interviewed on 21 July 2022 you gave two explanations for your responses. First, you said you did not believe what Ms A had said, but you felt like you had to apologise because of the accusation "she threw at me". Later in the interview, when asked why you apologised if you did not think you had done anything wrong, you responded "what else should I say". You suggested that you had made a move for further sexual contact later in the morning, to which she had said no, and you said that you had assumed she was talking about that second occasion.

Mr Griffin, the jury rejected your version that Ms A consented to the act of intercourse. I have no doubt they rejected your explanation for the Snapchat exchanges, as do I. Faced with the accusation that you had assaulted Ms A, you apologised because you knew she was speaking the truth. Faced with a statement by Ms A that she told you no and you kept saying let's see how far I can push it, you again apologised because you knew she was telling the truth.

As to the effects of your crime upon Ms A, it was readily apparent during the Ms A's evidence that she found it difficult to relive the events and it caused her significant distress. In particular, she was distressed when your counsel cross-examined her about details and suggested that she had consented. There was nothing improper in the questioning by counsel, but Ms A was visibly and significantly, distressed by having to relate the details and face the challenging cross-examination.

As counsel for the Crown put it to me today, your crime has had a profound and ongoing impact upon Ms A. I have been provided with a medical report and a victim impact statement. It is clear that Ms A has suffered, and continues to suffer, from a post-traumatic stress disorder brought about by your crime. As Ms A explained in her victim impact statement, after the rape she struggled to be able to trust anyone. She lost the ability to trust people. She thought you were friends and you had betrayed it. She lost a very close friendship with Ms B because she began to associate Ms B with that traumatic time. She had to take time off work. Ultimately she had to leave her nursing career and move into general medicine nursing because she found that she was unable to sit and support patients who had been through traumatic circumstances because their experience set off her own traumatic responses. It has taken a very long time for Ms A to trust her current partner. She has had panic attacks. She experienced those at the early stages of the relationship and it has taken her a long time to be able to relax even with her new partner. So many things trigger her stress disorder. She suffers from flashbacks and panic attacks wake her agitated, breathless and disoriented. She cannot remember the last time she had a full night's sleep. In connection with her post-traumatic stress disorder, she experiences dissociative episodes which means she can seem like she is present to others casually observing her, but she is actually, in her words, "mentally switched off". She tends to dissociate when she feels heightened or triggered. People can talk to her and she has no idea what is going on around her. This is very distressing for her and those with her. She suffers from anxiety and depression. Prior to the rape she used to go to the gym, walk everywhere. She has lost her drive to do these things and lost her drive to take care of herself physically. She put on weight. Her self-esteem was affected.

At the outset of these remarks I referred to Ms A's statement about self-hatred. I quote "after the rape, I had a lot of self-hatred. I felt betrayed by my body and my mind because I felt like at the time I didn't do enough to stop him. I felt so angry at myself that I didn't fight harder, scream louder or get him off me. I felt so dirty and tarnished afterwards, and I still fight that feeling even now. No matter how often I shower I feel like I can never get the unwanted touch of the feeling off my skin."

During cross-examination when Ms A was challenged about being reluctant to contact the sexual assault service group and was asked about not wanting to go to the police. She explained to the jury that she did not want to end up having to sit in Court and tell people what had happened to her because she was ashamed and embarrassed. She spoke about being embarrassed and ashamed because she let you do what you did to her. All of this is a state of affairs which you brought about through your crime.

The criminal courts often hear victims say that they are ashamed and embarrassed by what has happened to them and how they did not stop the attack. The feelings expressed by Ms A in this regard are commonly experienced by victims of sexual assault. They are feelings which are long lasting, with long lasting effects upon the victims.

It must be said loudly and clearly; Ms A, and other victims like her, have nothing to be ashamed or embarrassed about. There is no occasion for self-hatred. What happened to Ms A was not her fault in any way. She was good enough, and kind enough, to respond to what appeared to her to be a genuine need for you to speak with her and debrief, notwithstanding that this was a request in the early hours of the morning. To the extent that she did not expect anything to happen because she had previously made it clear to you that the friendship was purely platonic, some might suggest she was somewhat naïve. However, given your apparent acceptance of that situation of a platonic relationship, it is not surprising that she did not expect you to attack her. She trusted you and you breached that trust in the worst possible way.

Whatever might be said about the possibility of naivety, I repeat that Ms A has nothing to be ashamed or embarrassed about. She was an impressive witness who was obviously telling the truth. She demonstrated significant courage in being willing to formally report the matter to police and in following through by giving her evidence.

Ms A explained in her victim impact statement that before the rape she was living as what she described as her best life. She was in, as she said "a great house in a fantastic location". She was doing all these things by herself, exploring Tasmania and undertaking a new life. She felt confident, strong and independent. The rape caused her to lose all of this. She became afraid to go anywhere on her own and did not, and still to some extent, does not feel safe. She has felt like her life has been on hold and the advent of the trial brought upon her and her partner a great deal of stress and anxiety.

Mr Griffin, in determining the appropriate sentence, not only must I have regard to the circumstances of your crime and the impact on Ms A, I must take into account matters personal to you. You are now 25 nearly 26 and you have reached that age without previously getting into trouble with the criminal law. You were brought up in a loving family with whom you still have a very good relationship and who have remained strongly supportive of you notwithstanding your conviction for this crime. You completed year 12 and started surveying, but ultimately changed direction and switched to a career where you felt you would be able to help people. You graduated from nursing in Victoria and in 2022 found a job at the Royal Hobart Hospital in the intensive care area. You have resigned from that position and have returned to live with your family in the North-West of Tasmania.

It is apparent Mr Griffin that prior to the commission of this crime you were a person of good character who is loved and supported by your family and others who knew you. I have two references here from people who are aware of your conviction and who have spoken very highly of you and of your family. You had a promising career ahead of you and through the commission of this crime you have destroyed that promising career and you will undoubtedly find it difficult to obtain appropriate employment in a like area where you are caring for people. Your conviction for the crime of rape puts a cloud, if you like, over your future prospects. It must be said that when I look to the future, notwithstanding your good character, and your relatively young age, at this time you have not accepted responsibility for your crime and that leads me to have some doubt about your prospects for rehabilitation. Immediately after your crime, you expressed your deep sorrow in your exchanges with Ms A, but the sorrow you were experiencing did not prevail over your self-interest in trying to avoid responsibility for this crime. In these circumstances, personal deterrence, that is deterring you from offending again remains a factor, but notwithstanding my concern about your prospects as they exist at the moment, overall I am satisfied that you have sound prospects of rehabilitation. Bearing in mind that you will have a significant period to undertake reflection upon your conduct and the

consequences for both Ms A and the consequences for you. As I have said, through your conduct you have destroyed for the time being what was a promising career.

Mr Griffin, all crimes of rape are serious crimes. They are serious crimes of violence. It needs to be clearly understood, particularly clearly understood by men throughout our community, that all crimes of rape are serious crimes of violence. You said to the police, more than once, I am not a rapist. I do not know whether you believed that statement at that time. But it would not be unusual for men to believe that type of statement when the crime has not been accompanied by physical violence restraining or overcoming resistance. That type of attitude or belief among men must cease. It cannot cease soon enough. Even if a victim submits and does not physically resist nevertheless the crime of rape is a crime of violence. The violence is inherent through the bodily violation without consent.

As I said, every crime of rape is a serious crime of violence, but as with every crime there is a scale of seriousness. It is not a mitigating factor as such, but it is a relevant factor in assessing where your crime sits on the scale of seriousness that your crime was not attended by physical violence causing injury or physical violence gratuitously applied to overcome physical resistance. But as I have said, it was nevertheless a crime of violence.

In assessing the gravity of your crime, it must be borne in mind that Ms A trusted you as a platonic friend and you took advantage of that trust and you abused your position of trust. In addition I am satisfied that you were not in need of a debrief that night. You had in mind pursuing sexual intercourse and you kept that in mind notwithstanding that you became aware that another male person had been in the company of Ms A earlier that night. You gained entry using the false pretence of needing a debrief, knowing that Ms A trusted you and would be sympathetic to your request. Once in the bedroom, when Ms A made it clear that she did not want to engage in any form of intimacy with you, you quickly decided to push ahead, notwithstanding that you knew Ms A was not consenting. You callously disregarded Ms A's wishes and forced yourself upon her. You violated her and you violated the sanctity and security of her home and bedroom. There are no mitigating circumstances accompanying the objective facts of the crime.

For these reasons in my view, your crime is not at the lower end of the scale of seriousness for crimes of rape. Vindication of the victim, denunciation, punishment and general deterrence are important factors.

You are convicted. I impose a sentence of imprisonment for four years, commencing on 1 February 2024. I direct that you be eligible for parole after you have served two years of that sentence and I make a reporting order under the *Community Protection Offender Reporting Act* that you report for a period of five years in accordance with the Act, that is the period of five years commencing on your release.