

**AMENDED
STATE OF TASMANIA v JAMEE LEE COOMBES
COMMENTS ON PASSING SENTENCE**

**29 JULY 2016
ESTCOURT J**

The defendant, Jamee Lee Coombes, has pleaded guilty to four counts of making a communication with the intention of exposing a person under the age of 17 years to indecent material, and one count of possessing child exploitation material, and a summary charge of possessing a bestiality product.

The defendant came to the attention of Tasmania Police after a referral by the Western Australia Police Online Child Exploitation Squad in December 2014 following sexual conversations he had online with an undercover Western Australian police officer posing as a 13 year old girl "Jessica" on 18 and 19 November 2014.

Upon examination of his computer software, it became apparent that the defendant had engaged in sexual conversations with not only "Jessica" but numerous other girls under the age of 18 on the internet through Skype, both before and after 18 and 19 November 2014.

In addition to the conversations, the defendant had in his possession in the vicinity of 464,454 child exploitation images, 3,739 videos, and a further 10,261 images and 537 videos of bestiality material.

Count 1

Count 1 involves the online messaging, including text exchanges, on a chat site with "Jess" who the defendant understood to be 12 years old. Of course he was in fact chatting with an undercover police officer. The exchanges on 18 November discussed male masturbation by a machine, the sending of photos by "Jess" of a 10-14 year old girl, and the sending of video by the defendant of his penis attached to a masturbation aid.

The exchanges on 19 November again discussed the defendant masturbating and the transmission of a link to "Jess" showing the defendant masturbating and ejaculating into a plastic container.

After investigations were carried out a search of the defendant's residence on 19 January 2015 resulted in computer equipment being seized.

Police found that there were 3 additional chat records in which the defendant maintained online communications with persons under the age of 17.

Count 2

The first of those three additional chat records was with "Em" who was 14 years of age and living in the United Kingdom. On 13–14 November 2014 exchanges related to the defendant's masturbation machine and involve "Em" sending photographs of herself. It extended into discussion of mutual masturbation with "Em" inserting an object into her vagina and anus. The exchange continued as to the defendant asking "Em" to put pegs on her nipples and as to how they could inflict pain on themselves in the process of sexual gratification.

On the hard drive which contained the Skype recorded discussions, that there was an image of a early pubescent female with a hair brush in her vagina. It is not known whether that female was "Em".

The discussion descended into bestiality with the defendant requesting "Em" to fellate her dog and the defendant imagining anal sex with "Em" as he ejaculated.

On 16 November 2014 there were further exchanges with "Em" about forced ejaculation, breast milking and the defendant's desire to perform analingus on "Em". The conversation was interrupted by someone being at the defendant's house.

On 19 November 2014 the conversation continued and involved discussion as to a female masturbation machine.

The defendant suggested that "Em" obtain a camera for their discussions, and the defendant sent "Em" a video file that displayed him masturbating and ejaculating. The conversation ended with the defendant suggesting that he would like to tie "Em" down and perform anal sex on her.

On 21 and 30 November 2014 there were further exchanges about forced male ejaculation and pain associated with it, including electrocuting the defendant's testicles.

On 1 December 2014 the defendant confirmed "Em's" age as 14, but the defendant stated that she looked younger and he would not care if she was.

On 6 December 2014 the conversation between the defendant and "Em" included discussion about the technique for anal sex.

Count 3

The second of the three additional chat records found by police involved a Skype conversation with "Candy" who identified herself as a 13 year old Hispanic female. Within the discussions the defendant requested her to send images of herself for the defendant to look at whilst masturbating, and he also send her a video showing him masturbating and ejaculating.

Other conversations occurred on 25 and 28 November and 6 December 2014. They were of a similar nature to those with "Em" and involved discussion of masturbation, anal sex, oral sex and anal penetration with objects.

The conversations continued between the defendant and "Candy" on 7, 11, 13, 14, 21 and 31 December. They included discussions about "Candy" being at school, sexual preferences, requests for pictures and the contents of the pictures, requests for "Candy" to perform sexual acts, and what each of them would like to do sexually to each other.

Count 4

The last of the three additional chat records found by police involved a further Skype conversation obtained with "Jenny" In this case her user profile refers to her age as 13.

The defendant and "Jenny" engaged in discussion on 7 and 8 December 2014 and 10 January 2015. Conversations again include references to the defendant's masturbation machine, testicular electrocution, fellatio and requests of "Jenny" for a photograph of her anus.

The discussions between the defendant and "Jessica", "Em", "Candy" and "Jenny", exhibited a regular pattern. They were all at times similar, and all of a similar nature. Furthermore, in the event that the defendant could not engage in discussions with one girl, he would attempt to engage with another female.

Count 5 – Possession of Child Exploitation Material

The Child Exploitation Tracking System (CETS) Australian National Victim Image Library (ANVIL) schema, uses the following categories:

Category 1 – Involves depictions of children with no sexual activity, however, sexually suggestive in nature. Images or movies including nudity, sexually suggestive posing, emphasis on genital areas or solo urination by a child. In this category there were 143,125 images and 881 videos depicting sexual activity.

Category 2 – Images or movies depicting solo masturbation by a child or sexual acts between children in which no penetration occurs, although includes penetrative use of sex toys by the victim. In this category there were 672 images and 196 videos.

Category 3 – Images or movies depicting non-penetrative sexual activity between adults and children which may include mutual masturbation. In this category there were 441 images and 109 videos.

Category 4 – Images or movies depicting penetrative sexual activity between children and/or an adult or adults and children. In this category there were 1,033 images and 734 videos.

Category 5 – Images or movies depicting sadism, bestiality, humiliation, torture or child abuse. In this category there were 55 images and 20 videos.

Category 6 – Anime, cartoons, comics, computer-generated graphics, drawings, audio and text depicting/describing children engaged in sexual poses or activity. In this category there were 1,337 images and 705 videos.

Category 7 – Involves non-illegal material which is related to child exploitation material. In this category there were 55,560 images and 10 videos.

A great deal more material has not been assessed, but it can be inferred that a similar proportional spread of material would be involved.

The defendant is 26 years old. He has no prior convictions. He was not entirely truthful with police on his interview. He has pleaded guilty, and has never denied his involvement since. He has a background as a musician with a degree in music. He used a computer extensively and developed considerable skills. He has been chatting on line for about 12 years, and started chatting to girls some years ago as a result of suffering from acute acne, the medication for which caused depression. Sexual activity on line commenced in about 2014. This led him to becoming involved in masochistic solo sex. It became normalised, and thus

more pronounced. I note, however, that he did not pay for any of the material or gratification, he found himself living in a fantasy world. However, I am told that it eased his depression and boredom. I take into account that his father is a disability pensioner. His mother and father separated in early 2014. The defendant ceased his studies to do chores for his father and support him. But it is not suggested he is his father's sole carer. It takes up the defendant's days and he is not employed as a result. His studies have not commenced and so his development has been interrupted in that sense. He has no siblings.

The defendant's computers were taken from him by police in December 2015, and that ended these activities. He now knows that what he did was wrong and bad, but it had become his life, I am told. He initially sought some assistance from a psychologist after he was detected, but ceased due to the cost. He has had, as I have said, his development restricted. He did not see his activity as harming anyone. He did not instigate or share material. He now understands, however, that his conduct is serious, and, as I have said, it has ceased.

The State refers to the Court of Criminal Appeal judgment of Porter J in *Director of Public Prosecutions v Latham* [2009] TASSC 101. The decision, which has been referred to in *Taylor v The Queen* [2015] TASCRA 7, outlines the principles relevant in sentencing child exploitation material cases.

In that case, Porter J outlined the factors which bear upon the objective seriousness of possession and distribution of child pornography, and in respect of those factors, and the facts of the present case, the State has helpfully submitted in relation to each of those categories. The first is:

- ❑ *The nature and content of the images, including the age of the children and the gravity of the activity portrayed – in particular, the degree of obvious physical harm or fear or distress in the victims.* The Crown submits that due to the extensive amount of images detected it was not possible to accurately determine what age groups were more prevalent within each category of child exploitation material. However in respect of the videos which were in their entirety categorised there were children as young as 3 or 4 years of age, up to 15 or 16 years of age involved in penetrative vaginal and anal intercourse as well as oral sex. A majority of the children were under the age of 12 to 13 years.
- ❑ In respect of harm there was no material identified displaying physical harm. However there are clear indications from the tender material I have been provided with, of children being subjected to painful sexual acts being performed on them by adult males.
- ❑ There are only a limited amount of category 5 images and videos in comparison to the other categories. The majority of these are of children tied up in bondage style scenes. The majority of the images and videos in this category depict naked, or partially naked children tied up in a "provocative pose" or "pose of deprivation", and in some instances being subjected to a sexual act. There are a small amount of images depicting children involved in acts of bestiality.
- ❑ *The second category is the number of images or items of material.* In this respect the State submits that located on the defendant's computer were 464,454 images and 3739 videos containing child exploitation material. There were an additional 10,261 bestiality images.

- ❑ *The third category is whether mere possession is for the purpose of further distribution, or whether there will be any profit or benefit from the activity of the offender. Actual profit or benefit will aggravate the offence, whilst absence of such profit or benefit is not mitigatory.* The State submits that there is no evidence contained within the defendant's computer to suggest the distribution of the material located, and I accept the defendant's counsel's submission in that regard.
- ❑ *The level of personal interest in the material, as perhaps evidenced by the way in which any collection is organised on a computer* is the next category discussed by Porter J in *Latham*. The State submits in respect of that category that whilst the collection was large, the material was located in numerous different folders and there appeared to be minimal organisation, none of which had names specifically relating to child exploitation material.
- ❑ *The next consideration was whether the possession or distribution involves a risk of accidental discovery by innocent computer users.* The State submits in respect of that consideration that the defendant was the sole user of the computer. He lived at the home as a carer for his father. There was no risk of accidental discovery. (That is the State's submission, they are not my words.)

I accept those submissions made by the State. They are consistent with what I have viewed of the tender sample.

In *Armstrong*, a sentence on 5 April 2016, where the defendant had pleaded guilty to 10 counts, all involving undercover police officers, which is not the case here, Wood J said:

"It is significant that a young person under 17 years was not the recipient of these communications. It bears on the sentence for obvious reasons. The community would naturally be most relieved to know that a child was not exposed to this indecent material and the risk of harm. However, the fact that an offender was communicating with an undercover police officer does not mean that it is not a serious offence. One of the purposes of s 125D was that it would enable police to assume the identity of a fictitious child and apprehend those who may expose children to such material. It has been described as a preventative offence designed to detect offenders who use the internet for the sexual corruption of children (*The State of Western Australia v Johnson* [2009] WASCA 224 at [34]); *R v Hays* [2006] QCA 20 at [13]). The fact that the recipient here was not a child [in the case of 'Jess', I stress] is a point of distinction with a more serious category of case. There is an absence of an aggravating factor. This does not reduce the defendant's moral culpability, noting that he thought [and I am returning to Wood J's narration] that on each occasion the female that he was communicating with was only 14 years of age: [See the] Comments on passing sentence –*Hemingway* (Porter J, 9 November 2015); *R v Fuller* [2010] NSWCCA 192 at [35]; *The State of Western Australia v Porter* [2008] WASCA 154 at [72], [73]; *The State of Western Australia v Collier* [2007] WASCA 250 at [25]."

As I have said, in the present case, what Wood J said, can only be said in respect of count 1, as far as the defendant is concerned. As to counts 3, 4 and 5, those aggravating factors are present, making this a more serious category of case.

In *Armstrong* her Honour also pointed said that there are strong comments by courts in other jurisdictions dealing with this type of conduct, to the effect that generally such offending will result in a term of immediate imprisonment, even for first offenders or those with good character. She refers to *The State of Western Australia v Rose* [2010] WASCA 31 at [28]; *Johnson* at [92]; *Porter* at [66], [78] and *R v Burdon; ex parte A-G (Qld)* [2005] QCA 147 at 12-13).

Those statements have general application and sound a warning to offenders in Tasmania as well. Behind these statements by the courts is the general principle that protecting children from such conduct is a matter of grave importance (Burdon at 11; Comments on passing sentence – *CGI* (Tennent J, 8 December 2010). General deterrence is a paramount objective of s 125D(3), as well as more serious crimes, such as those contrary to s 125D(1) of the Code, ie, communicating with intent to procure a person under the age of 17 years to engage in an unlawful sexual act. Wood J refers to *The State of Western Australia v Freemantle* [2008] WASCA 98 at [8]; and also Collier and Burdon.

I turn to count 5 on the indictment. The possession of child exploitation material is a very serious crime. As has been noted by other judges of this Court, children suffer appallingly as a result of the production of these images, and the tender bundle shows that very clearly. To be in possession of them, without more, contributes to a demand for them, and the demand perpetuates the abuse of these children. As I have already observed, relevant to sentencing are the number and nature and the content of the images. There were a great many images – many of them in the least serious category, but the nature and number of them and, in particular, the files in Category 4 and 5 are extremely alarming. As to the possession of bestiality products, there was a very large number of images.

It cannot be said in this case that the defendant had no contact with children. He obviously did move beyond his voyeurism and behaved inappropriately towards others, almost moving, by his criminal conduct involving chat rooms, toward becoming a participant in the very sort of abuse depicted in the images he accessed by seeking and sending material to "Em" and "Candy" and "Jennifer" as I have canvassed in respect of counts 2,3 and 4.

The combination of these online exchanges with young girls, and the possession of such a vast amount of child exploitation material, puts this case at the upper end of the range of seriousness for such offences, notwithstanding the defendant's age.

Whilst I take into account the defendant's personal circumstances, and note that it is obvious from the material before me that the defendant has formerly been of good character, in the case of child exploitation, less weight is to be given to good character than is ordinarily the case because of the importance of general deterrence in order to prevent the abuse of children.

I order, under s130F of the *Criminal Code*, forfeiture of item 10 on property seizure record 101638 to the State of Tasmania.

I am not satisfied that in the future the defendant does not pose a risk of committing a reportable offence within the meaning of that expression in the *Community Protection (Offender Reporting) Act* 2005. I make an order directing that the Registrar cause the defendant's name to be placed on the register under the Act, and that the defendant comply

with the reporting obligations under the Act for a period of five years after his release from prison.

The defendant is convicted on each of the counts on the indictment, and on count 4 of complaint 6761/2015. I impose one sentence. The defendant is sentenced to a term of imprisonment of 2 years. I order that he not be eligible for parole until he has served 12 months of that sentence.

I make the usual victims of crime compensation levies to be paid within 28 days of the defendant's release from prison.