

Tyson Chesney Gall-Strauss, you have been found guilty by a jury of three indecent assaults. The charges all related to events that occurred on a night in July 2020 when you were 19. You are now 23. You had befriended a young woman of about the same age through social media and text messaging, and she had come from another town to visit you in Launceston and to stay the night at your home. When she got there she found that there was only one bed. She was content to spend the night in that bed with you but was not expecting any sexual activity to take place. She went to bed with you, wearing a sports bra and a jumper and underwear. You were wearing boxer type underwear.

During the night you reached under her bra and touched one of her breasts, and that is something that you should not have done. That was not something she was consenting to. That was an indecent assault. That was the subject of the first charge.

You were not charged with three indecent assaults. You were charged with one count of indecent assault and two counts of rape. The complainant gave evidence that twice during the night you inserted a finger or fingers into her vagina. If that had happened that would have constituted rape, but in relation to each of those charges the jury found you not guilty of rape but guilty of indecent assault. It is difficult to see how they could have arrived at verdicts of guilty of indecent assault in respect of both of the rape charges. Obviously they were not satisfied beyond reasonable doubt that you inserted a finger or fingers into the complainant's vagina or genitalia at all. They did not accept the complainant's evidence in relation to those alleged acts.

There was evidence suggesting that you placed your hand on her vagina once, not twice, and I therefore directed the jury that it would be open to them, on a rape charge, to find you not guilty of rape but guilty of indecent assault. That evidence was in things that you said in a text message and in a police interview where you suggested that you had put your hand on her vagina, although your counsel argued that essentially that you might not have known what you were talking about as to where your hand went.

There was also evidence that DNA matching yours was found on the front and back of the waistband of the complainant's pants. It seems to me that that can be the only basis for the jury deciding that you committed two more indecent assaults apart from touching the complainant on the breast. I think I should sentence you on the basis that you touched the complainant in the vicinity of her waist, inside her underwear, at the back on one occasion and at the front on another occasion, and that the jury must have concluded that those were indecent assaults.

When you did all this you were 19. You have got a degree of intellectual impairment, I'm not sure to what extent, but you have been receiving a Disability Support Pension and assistance through the National Disability Insurance Scheme. You were diagnosed as having an intellectual disability when you were six. You suffer from Complex Post Traumatic Stress Disorder as a result of abuse between the time of your birth and age five, when you were placed in State care. After that you went into foster care. You suffer from Attention Deficit Hyperactivity Disorder (ADHD), and Foetal Alcohol Spectrum Disorder. You were not an average 19 year old. You were a 19 year old with an intellectual disability and problems that meant that you needed care from your foster family on a daily basis. You still do, even though you are married and living with a wife and child.

I do not think that what you did was serious enough for you to be sent to prison. I did think about ordering a home detention assessment report, but I think that because of your problems, you probably should not be restricted in the way that a home detention order would restrict you. Because of your problems, I cannot see that I should order community service. I think the only appropriate thing for me to do is to give you a wholly suspended sentence. The way that that would work is that if you get into trouble again for something you do in the near future, you could be made to spend time in prison or punished in some other way.

As for the three indecent assaults that the jury decided you committed back in 2020, it has been a long time. You have had rape charges hanging over your head for years. You had no prior convictions when all of this happened. There are other things that I have been told that I should take into account in your favour. When you have been able to find work, you have been a good worker. There are various things that warrant a shorter, wholly suspended sentence than I would otherwise be imposing.

I convict you and sentence you to three months' imprisonment, wholly suspended on condition that you commit no offence punishable by imprisonment within the next 12 months. I have to place you on the sexual offenders' register. I order that the Registrar appointed under s 42 of the *Community Protection (Offending Reporting) Act 2005* place your name on the register under that Act and that you comply with the reporting obligations under that Act for four years.