

Mr Calvert, a jury has found you guilty of one count of rape and two counts of aggravated sexual assault.

On 8 October 2015, you decided, after finishing work for the day, to attend a bar while you were waiting for your partner to finish work. You ran into friends, including a man with whom you continued drinking at various venues after the other friends and your partner had gone home. You eventually ended up at a nightclub, where you and your friend met the complainant and her friend. You and the complainant were previously unknown to each other.

At some point, the decision was made that the four of you would travel to the complainant's friend's house. The complainant was reluctant to do so, but it is clear that she went along with the decision of the remainder of the group without voicing any significant opposition. I accept that, at that point, you were not aware of her reluctance.

When you reached the house, the group spent some time talking in the kitchen. After a short time, probably half an hour, your friend and the complainant's friend went off together to a bedroom. It must have been clear that they were intent on sexual activity. Shortly after they left, you sat on a stool in the kitchen and asked the complainant to sit on your lap. She did so voluntarily. You then stood and kissed her lightly and she agreed in her evidence that she kissed you back. Again, this occurred consensually.

I accept the complainant's evidence as to the events which occurred after that. Her evidence is entirely consistent with the jury's verdict. It is clear that the jury must have rejected your version of these events, as do I. The complainant's evidence was that after the kiss, you took hold of her wrist and pushed her with your other hand in her back, down the hallway to the main bedroom of the house. When you reached the bedroom, she turned with the intention of going to another bedroom by herself. However, you threw her onto the bed in the main bedroom, held her there for a short time and then lifted her off the bed and slammed her against the wardrobe more than once. While you did this, you had one hand around her neck, tightly enough to prevent her from speaking. You then threw her back onto the bed. While you were doing this, you were making comments which indicated your intention to have sex with her.

Shortly after this, you removed her clothing and your clothing. Then, while you were holding her down on the bed by her neck and you were above her on all fours, you lowered your semi-erect penis into her mouth and left it in there for 5 to 10 seconds. This act constitutes the first count on the indictment.

You then inserted your fingers into her vagina. She says that this occurred quite forcefully and that she was sore the next day. She resisted by closing her legs. When she did this, you removed your fingers from her vagina, grabbed her legs and pushed them up over her head. When you let go of her legs, you reinserted your fingers into her vagina. The two acts of penetration of your fingers into the complainant's vagina constitute the second and third counts respectively.

The complainant resisted the second act of penetration by again closing her legs. When she did this, you removed your fingers, lifted her from the bed and slammed her again into the cupboard repeatedly. She was crying by this stage.

Throughout the course of this conduct, you continued to make comments to the complainant consistent with your intention to continue having sex with her. She told you to stop on more than one occasion but you did not respond. The conduct eventually came to an end when you abruptly fell asleep on the bed. When this occurred, the complainant escaped from the room and left the house. She called a friend, who collected her. The friend observed that the complainant was extremely distressed.

I am satisfied beyond reasonable doubt that you were severely intoxicated during the course of these events and have little actual memory of what took place. I agree with the submission made by Ms Mason during the course of the trial that, in your evidence, you reconstructed the events in the bedroom because you cannot remember what happened, but you are horrified by the conduct alleged against you and have difficulty accepting that you could have acted that way. In your drunken state, you may well have assumed, incorrectly, that the complainant was willingly participating in this conduct with you. You were wrong about that but your mistake results from your self-induced intoxication and, therefore, does not relieve you of criminal liability for the conduct. I will deal with the relevance of your intoxication to the question of sentence shortly.

I am satisfied that the complainant did not contribute in any way towards your state of mind, nor any view you may have formed about her willingness to engage in sexual activity with you. Any mistake you made was due to your own heavy intoxication. The brief kiss and agreement to sit on your lap in the kitchen could not, in any way, have communicated consent to the acts which followed. The events in the bedroom were of relatively short duration but they were attended by violence and threatening conduct. It must have been a frightening and traumatic experience for the complainant. The actual crimes which you committed were extremely degrading and involved a very significant violation of her personal and bodily integrity. While she did attempt to communicate her lack of consent to you, and push back against you, the actual and latent violence inherent in your aggressive conduct and treatment of her made any real physical resistance by her pointless. You essentially just took what you wanted without any regard to the rights or welfare of the complainant. It is fortunate that your intoxication caused you to pass out but, of course, by that stage, you had committed serious crimes and caused harm enough.

Apart from temporary soreness and some bruising, the complainant did not suffer any significant physical injury. However, as would be expected, she has suffered significant impact emotionally and psychologically. She suffers ongoing anxiety. She is having trouble sleeping. While she seems to be a resilient person, and I am sure will have considerable support from her family and others, I would expect that the traumatic consequences of these crimes will continue to have impact on her for a long time.

You are 27 years of age. You have a reasonable industrial record, although it seems you were not happy with your work in the motor vehicle industry and you have been unemployed for the last 12 months. You have a supportive family. I am sure that your conduct and the consequences of it, including the punishment that I must impose, has and will cause great anguish and distress to your family. Your conduct on this night which, on either version of the events, involved infidelity, destroyed your relationship with your then partner. You have, by your own conduct, brought your life to a very low ebb.

I accept that these crimes were out of character for you. Your record of offending does not indicate a propensity for criminal behaviour, nor does it contain conduct that involves violence. It certainly does not contain any example of the type of conduct committed by you on the night in question. Your record contains a driving offence committed in 2010, which involved the excessive consumption of alcohol. It has not been put to me, however, that you have any significant issue in respect of the consumption of alcohol, although the fact that excessive drinking has now brought you before the Court for serious offending on more than one occasion itself indicates a problem with the use of that substance.

Rape and aggravated sexual assault are extremely serious crimes. They involve the complete subjugation of one person by another and, as stated before, the absolute violation of the victim's personal and bodily integrity. Crimes of this nature invariably have devastating consequences for the victim. I regard the penetration of the mouth by the penis as seriously as any other form of penetration constituting the crime of rape. Without attempting to downplay the seriousness of any other form of penetration, oral rape is extremely degrading and is an act which emphasises the imbalance of power

that is inherent in the commission of this crime. The crimes of aggravated sexual assault in this case were also particularly serious.

Intoxication is generally not regarded by the courts as a mitigating factor. In this case, your intoxication does explain your conduct in the context of what would otherwise seem to be prior good character. However, in respect of a personal crime of violence, of which rape and aggravated sexual assault are pertinent examples, the fact that the crime is committed by a person who is under the influence of alcohol can aggravate the seriousness of the criminal conduct. A consideration which is relevant to this case is recognition by the courts that violent and aggressive conduct by a person under the influence of alcohol can be more frightening to the victim than would otherwise be the case. In her evidence, the complainant stated that she was reluctant to say too much to you, or resist you with any greater force than she did, because of your unpredictability, given the state of your intoxication. Further, your bizarre conduct and statements to her, clearly fuelled by your intoxication, must have made the whole experience considerably more frightening, particularly in the sense that it would have seemed that you were acting without restraint, and she was not to know where and how things would finish. In this sense, your intoxication aggravates the violent nature and impact of your conduct, and hence, its seriousness.

A sentence of imprisonment must be imposed having regard to the need to deter others from acting as you did, and to denounce conduct of this nature. You are not entitled to the benefit of a plea of guilty. Whilst I accept that you have remorse for the predicament you have placed yourself in and the consequences of it to your own family, I do not detect that there is any genuine remorse for the impact of your actions on the complainant. Having said this, I think that a sentence of imprisonment will be a very severe punishment for you and that any period of imprisonment will act as a significant personal deterrent in the future. For this reason, I intend to allow for your release on parole at the earliest time permitted by law.

You are convicted of the crimes of which you have been found guilty. You are sentenced to 3 years' imprisonment which is backdated to 3 November 2016. Pursuant to s 17(2) of the *Sentencing Act* 1997, I order that you not be eligible for parole until you have served one half of that sentence. You will pay victims of crime compensation levies of \$150 within 28 days of your release from prison.

I am required to make an order under the *Community Protection (Offender Reporting) Act* 2005, unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. Having regard to the circumstances of this case, I am not satisfied of that matter and, accordingly, must make an order. I order that your name be placed on the register pursuant to that Act, and that you comply with the reporting obligations under that Act for a period of three years, commencing on the date of your release from prison.