

STATE OF TASMANIA v BEAU STEWART
COMMENTS ON PASSING SENTENCE

28 FEBRUARY 2025
CUTHBERTSON J

Beau Stewart, you have pleaded guilty to six counts of indecent assault. Each of the charges arise from events that occurred in the early hours of 6 March 2022 when you were at your home with the complainant. You were 22 years old at the time of these offences. The complainant was then aged 24. You had been friends. You had previously been involved in a brief sexual relationship but that had ended at the beginning of 2021. Although the relationship had never been significant, you both remained friends when it ended and occasionally contacted each other. After a break in contact, you reconnected with the complainant at the start of 2022 and were messaging each other more frequently. Some of your messages sent to the complainant had a sexual tone indicating that you still had a sexual interest in her.

On 5 March 2022, you provided some assistance to the complainant to move from Launceston to Hobart. Later, you both went four-wheel driving in your car and spent the rest of the night driving. You eventually made it to your house at about 4.00am on 6 March. It had been arranged for the complainant to stay at your house. The complainant was very tired and got into your bed fully clothed and went to sleep. I am told there was no discussion about where you would sleep nor had there been any discussion about the two of you having sex. The complainant did not indicate to you that she was interested in having sex with you.

The complainant woke up to you spooning her. You were touching her breasts underneath her clothing with your hand. She shrugged her body, pretending to still be asleep and rolled away to get you off her. You moved back to the other side of the bed. This conduct comprises the first count of indecent assault. The complainant was shocked by your conduct, laid in the bed thinking about what she could do but it was very early in the morning and she did not have an easy way of getting back to her home. She fell asleep again.

The complainant woke again and found she was on her back, but her jumper and t-shirt had been pulled up around her shoulders. You had your hand on her left breast and were kissing her right breast. The complainant again pretended to be asleep and rolled on to her side, into a position where you could not touch her breasts. This conduct comprises the second count of indecent assault.

The complainant fell asleep again. When she woke again lying on her left hand side with her back to you, you were rubbing your hand on her vagina on the top of her clothing. She moved away and tucked her legs up to prevent you from touching her. This comprises the third count of indecent assault.

The complainant fell asleep again. When she next woke she was on her stomach with her head facing away from you. You were lying on top of her grinding your penis into her upper left thigh and buttocks area. The complainant again pretended to be asleep and rolled her body so that you got off her. She then went back to sleep. This conduct comprises the fourth count of indecent assault.

When the complainant next woke up, she was lying on her back with her trousers and her underpants pulled down to her knees. You were touching her vagina and this was causing her discomfort. The complainant sighed and rolled away from you and positioned herself so she was in the foetal position. Shortly after this, you got out of bed and left the room. This conduct comprises the fifth count of indecent assault.

After you left the room, the complainant pulled her pants back up, laid back on her stomach and eventually went back to sleep. She woke to you trying to get her pants down again. She woke again and was still on her stomach. You were lying on top of her and pulled her pants down to her knees. You had your hips hard up against her bottom. The complainant could feel you penis between her upper thighs near her vagina. The complainant moved, rolling on to her left-hand side and forced you off her. You rolled away and pretended to be asleep. The complainant put herself into the foetal position. This is the conduct comprising the sixth account of indecent assault.

After that occasion, your brother knocked on the door and asked you to go outside for a cigarette. You left the room and the complainant pulled her underwear up. You came back to the room, got into bed and cuddled up with her. You placed your arm over her hip area and felt that her underwear had been pulled back up. Shortly after you got back out of bed and left the room again. When you returned to the bedroom, the complainant pretended to wake up fully. She checked her phone and noted that it was 11.14am. Shortly afterwards you attempted to touch the her vagina on the outside of her clothing. She said no.

The complainant did not immediately confront you about what had happened and you spent the majority of the rest of the day driving around together. The complainant describes being shocked and disappointed about what had occurred. You dropped her home later that afternoon.

The complainant went to the police station that same day and reported the matter to police. You attended the Glenorchy police station on 24 April 2022 and participated in an interview with police about the matter. You described meeting with the complainant on 5 March and the activities you engaged in during that day. You said that you ended up back at your house very late. You told police that the complainant got into your bed fully clothed wearing a hooded jumper and leggings. You got changed into some shorts and got into the bed as well. You told police that you had always said that if the complainant did not want you to do anything to say no and you would not pressure her in any way. You told police the complainant went to sleep and that you tried to go to sleep. You made some admissions in respect of your conduct. You told police you had tried to cuddle the complainant and you may have "accidentally put" your hands on her breasts over her clothes during this cuddle but she knocked your arm away. When asked if you tried to initiate sex, you said "Oh possibly rubbing on her breasts to try" and also said that is was "maybe" under her clothing. You told police that you may have touched the complainant's breast. You later described that when you got into bed you started to "rub" her on the outside of her clothing on the breast area and thought you went underneath her breasts and rubbed it with your hand. You again told police the complainant knocked your hand away. You said that you tried to do it twice and then you left it. When asked why your prints would be on the complainant's underwear, you said that may have tried or thought of doing that but then backed out knowing that it wasn't the right thing to do. You then told police you went to go down and start rubbing her vagina, but before you started you thought to yourself it wasn't the right thing and so you pulled out. You told police that the complainant's knocking your arm away made you think that. You in effect told police your attempts to engage the complainant in sexual activity did not persist after she knocked your hand away and rolled away from you. You did not remember putting your hands down the complainant's pants or under her clothing at any stage. You told police you do not remember kissing the complainant's breasts. You also told police that the complainant had expressed an interest in having sex with you on Friday. You also claimed that you had talked about having sex on Saturday and that you believed the complainant changed her mind. You said that this had occurred in Snapchat messages that did

not exist at the time of interview. The State does not accept that the complainant was interested in having sex with you. You admitted to police that you wanted to have sexual intercourse with the complainant that night although you told police you did not try to have sexual intercourse with her. You told police you asked her a couple of times if she wanted to have sex and when she said no you did not try to pressure her into it or try to force her into it. You denied trying to remove her underpants and said you did not try to get on top of her at any stage. You also told police the next morning you sent the complainant a Snapchat message "do you want to fuck?" and she said no.

Your conduct constituted crimes because the complainant did not consent to you touching her. It is evident you did not attempt to ascertain whether she consented.

The complainant's clothing including her bra and underpants, were seized by police on 7 March 2022. Those items were forensically examined by Forensic Science Services Tasmania. Your DNA profile was located on the inner and outer surfaces on each cup of the bra and on the inner surface of the complainant's underwear.

The complainant has provided a victim impact statement in respect of these events. She has described her mental health declining. She describes struggling to let people in and also trusting anyone. This is particularly the case with trusting males. She had described finding it difficult to meet new people now and experiencing anxiety about meeting new people. She says she feels a lot more on edge and anxious than she was before the incidents. She has had to take time off work because of her mental health and has struggled to get out of bed some mornings to the point that she could not attend work. She described tending to stay home a lot rather than socialising as when she is on her own she is safe.

The Crown says your offending was serious. They submit your conduct involved a severe breach of trust as you and the complainant were friends and she trusted you, as is evidenced by her having no difficulty in sleeping next to you. The Crown says you breached that trust in a serious manner which is an aggravating factor. The Crown also say your conduct was not an isolated incident as you indecently assaulted the complainant on a number of occasions over a prolonged period of time, that is between approximately 4.00am and 11.00am. The Crown point out that your offending also escalated from touching the complainant on the breasts to removing her underpants and pants and rubbing your penis against her vagina. In those circumstances, the Crown argues that general deterrence, denunciation and vindication of the complainant are all important sentencing factors in your matter.

You are now 24 years old and work full-time as a cabinet maker. Your employers are aware of your matters and have been supportive of you throughout this court process. You are single and have no children and live with your parents. You had a mostly positive childhood. You had not had many romantic relationships prior to this offending and you have only been involved in one sexual relationship prior to the one between you and the complainant. You accept that you find it difficult to communicate at times, being a naturally shy person and find it difficult to express yourself in relation to sensitive matters or matters of a sexual nature. You are fortunate to have a supportive and tightknit family unit. I am told that it took you a long time to tell your parents about these matters due to your feelings of shame. Your counsel tells me that your pleas of guilty are indicative of your genuine remorse and that they have been entered as soon as the matter was able to resolve following some negotiations with the Crown. Your counsel has asked me to take into account that you cooperated with police and made admissions to the substance of the allegations to which you have now pleaded guilty. I note,

however, you did not make admissions to the full extent of the conduct to which you have now pleaded guilty. Your counsel tells me that you now understand the importance of very clear communication around sexual experience and activity. You believe that you have matured in the last three years since the matters occurred and that the process of being charged, instructing legal counsel and having reports prepared for you has provided you with an opportunity for self-reflection. You now feel ashamed of what happened.

You have been assessed by a forensic psychologist Dr Georgina O'Donnell in November 2024. She noted you have no recorded history of major mental illness or personality disorder. You did however experience learning difficulties in primary school and received individual communication therapy to improve your expressive and receptive language skills. There is no suggestion these difficulties contributed to your offending. It is apparent from the information that you provided to Dr O'Donnell that you had feelings for the complainant and had hoped for a committed relationship when you first started seeing each other. You found it difficult when she entered another relationship in December 2020 and moved to another part of the State. You told Dr O'Donnell that when you reconnected with the complainant you thought you would resume your "friends with benefits" relationship. You also told Dr O'Donnell that you know you should not have tried to initiate sex that morning without talking to the complainant about it and it was the wrong thing to do and that you feel sorry for your actions.

Dr O'Donnell undertook a sexual violence risk assessment in relation to you. That assessment was conducted according to the professional guidelines outlined in the Risk for Sexual Violence Protocol Version 2 (RSVP-V2). According to Dr O'Donnell's assessment, each of the risk factors considered by the RSVP-V2 was absent in your case. Dr O'Donnell summarised the results as follows:

"Mr Stewart does not present with any of the RSVP-V2 risk factors associated with risk of engaging in future sexually violent behaviour. When this profile and the circumstances in this case are taken into account, Mr Stewart would be considered to be the lowest risk category for committing future risks of sexual violence. He does not present with psychosexual risk factors that require intervention with a sex offender treatment program."

Following your plea of guilty, the Court requested a presentence report from Community Corrections. It is reported you presented as deeply ashamed of the offending behaviour and that you spoke respectfully about the complainant, acknowledging the impacts of your behaviour on her and expressing remorse. You reported you did not realise your behaviour was unwanted at the time because the complainant did not say anything and when you were charged you felt confused at first but when you thought about it more you could see her perspective. You told Community Corrections that being charged with these offences has taught you the need for clear communication and enthusiastic consent.

Community Corrections also conducted their own risk assessment of you utilising the Static - 99R Assessment Tool. According to that tool, you received a total score of three which places you in Risk Level III or "Average risk" of being charged with or convicted of another sexual offence. In routine samples with the same score, the five-year sexual recidivism rate is between 6% and 7%. This means that out of 100 individuals with the same score between 6 and 7 would be charged or convicted of a new sexual offence after five years in the community. Conversely between 93 and 94 would not be convicted or charged of a new sexual offence during that time period. It is acknowledge by Community Corrections that a Static-99R does not measure all

relevant risk factors and that your recidivism may be higher or lower than that indicated based on factors not included in this risk tool.

Community Corrections have assessed you as suitable to perform community service. Their level of service case management inventory indicates that you are a very low level of risk and need and as a result a community-based supervision order is not recommended for you at this time due to that very low level of need of case management and interventions.

You have spent no time in custody in respect of these matters. I note you entered a plea of guilty on 26 September 2024. This was the day after the indictment upon which you are now being sentenced was filed by the Crown. You were originally charged with additional crimes. I accept that you have ultimately pleaded guilty at the earliest possible opportunity once the negotiations with the State were resolved.

Your counsel has urged me to consider imposing a sentence falling short of an actual period of imprisonment. She submitted that such a sentence can adequately address the sentencing considerations relevant to this matter including the need for general and specific deterrence. In particular, your counsel has noted your age at the time of the offending. You have no relevant prior convictions. You are assessed by Dr O'Donnell as being at the lowest risk of reoffending and have developed considerable insight into your conduct and remorse.

I also note that the offences to which you have pleaded guilty are ones that could have been dealt with in the Magistrates Court. There are relatively few cases in this court dealing with charges of indecent assault alone. Your counsel referred me to two sentences imposed by judges of this Court on offenders charged with multiple accounts of indecent assault. In the matter of *Hayden Christopher Turnbull*, on 5 July 2022, Justice Pearce imposed a Community Corrections Order for a period of two years with a special condition that the offender satisfactorily perform 105 hours of community service and attend educational and other programs as directed by a probation officer. That case involved two counts of indecent assault involving similar conduct committed by a 19-year-old in respect of an 18-year-old complainant. The matter was reported to police four years after the offences were committed. It involved fewer charges and conduct engaged in over a shorter period of time. The other sentencing matter I was referred to was that of *Tyson Chesney Gall-Strauss*. In that matter, Chief Justice Blow imposed a three-month period of imprisonment wholly suspended for a period of 12 months on 20 March 2024. This followed a finding of guilt by a jury of three counts of indecent assault, again involving similar offending, when the offender was 19-years-old.

In my view, your offending was serious. It involved a breach of the complainant's trust. She was your friend and comfortable sleeping in your bed. She was fully clothed and there is no suggestion that she was interested in engaging in any sort of sexual activity with you that evening. On each occasion you commenced touching the complainant indecently while she was asleep. It is not possible for a person to consent to sexual activity when they are asleep. I accept on each occasion you did not persist with the conduct once the complainant moved her body to avoid it from continuing. Balanced against this, however, is the fact that you repeated this conduct on six occasions. I accept you are remorseful for your conduct and have had cause to reflect on what is required to communicate consent to sexual activity. I also note that you were a relatively young person and had limited sexual experience prior to these offences. It is nearly three years since the offending occurred. Your pleas of guilty have saved the complainant the trauma of giving evidence at a trial. You have no relevant prior convictions.

It is important that this Court communicate to you and the community the significance of ensuring consent before commencing sexual touching or any other sexual activity. Our Criminal Code provides that consent in this context means “free agreement”. It also relevantly provides that a person does not freely agree to an act if they are asleep. These consent provisions in our Criminal Code have been in place for a considerable period of time. It ought to be clear to you and others in the community that sexual activity without free agreement is unlawful. It is well known that these sorts of offences can lead to victims experiencing serious and long-term psychological impacts. In this case, the complainant has experienced such adverse effects from your conduct as I have already described. All of this should have been at the forefront of your mind before attempting to engage the complainant in sexual activity in the manner in which you did.

Balancing all of these factors, I have, however, concluded that an actual period of imprisonment is not required in this case. I accept that these proceedings have had a salutary effect upon you, including that you now have a clear understanding of the wrongfulness of your conduct and feel remorse and shame for your actions. I am satisfied you are not at risk of reoffending in this manner in the future. A suspended period of imprisonment together with the performance of community service will serve as a punishment and a further incentive not to engage in such conduct again. Community Service will have a restrictive effect on you, particularly in light of your full-time employment.

I am also required to consider whether an order is to be made under the *Community Protection (Offender) Reporting Act 2005*. I am required to make a reporting order unless I am satisfied that you do not pose a risk of committing a reportable offence in the future. I note the risk assessments conducted both by Dr O'Donnell and Community Corrections and that there is some difference in the level of risk that resulted from the respective assessments. Community Corrections acknowledged the assessment tool they implemented did not measure all relevant risk factors and that your recidivism risk may be higher or lower than that indicated by the risk tool. I note that Dr O'Donnell's risk assessment did not rely entirely on the RSVP-V2 protocol but that consideration was also given to clinical judgment and the wider risk assessment and risk management literature. Dr O'Donnell is a very experienced forensic psychologist. In light of that, I accept Dr O'Donnell's assessment of your risk of future sexually violent behaviour in preference to the outcome of the Community Corrections assessment. Dr O'Donnell's assessment, together with the circumstances of the offence, your personal circumstances and response to the offending justify a conclusion that you do not pose a risk of committing a reportable offence in the future. I will not make a reporting order.

Beau Stewart, you are convicted on all six counts. You are sentenced to three months' imprisonment, wholly suspended on condition that you commit no offence punishable by imprisonment within the next 12 months. It is also a further condition of the suspension of your sentence that you perform 75 hours community service within 12 months of the date of this order. There are a number of additional conditions I am required to impose. You must report, on or before 4.00pm on Monday 3 March 2025, to a probation officer at the offices of Community Corrections in Glenorchy. You must, during the operational period of the order, report to a probation officer as required by the probation officer. You must, during the operational period of the order, comply with the reasonable and lawful directions of a probation officer or a supervisor. You must not, during the operational period of the order, leave, or remain outside, Tasmania without the permission of a probation officer. You must, during the operational period of the order, give notice to a probation officer of any change of address or

employment before, or within two working days after, the change. If you breach any of these conditions you may be brought back to the Court and resented.