

STATE OF TASMANIA v AARON JOHN BROWN
COMMENTS ON PASSING SENTENCE

4 JULY 2025
JAGO J

Mr Brown, a jury has found you guilty of two counts of rape, both counts being acts of penile/vaginal rape. The complainant in respect to both crimes is your previous de facto partner, and the mother of your child. The jury found you not guilty of an allegation of digital rape, which had been alleged to have occurred immediately prior to the second count of vaginal rape.

It is for me to make findings of fact consistent with the verdicts of the jury. I may only make findings adverse to you if satisfied beyond reasonable doubt they have been proved, and I may only make findings of fact in your favour if they are proved on the balance of probabilities. It is a necessary implication that flows from the jury's verdicts, however, that the jury was satisfied beyond reasonable doubt that each instance of sexual intercourse was without consent and occurred in circumstances where you did not hold a reasonable belief that the complainant was consenting. It also follows from the verdicts, that in all essential respects, the jury accepted the accuracy and honesty of the complainant's account, in respect to count 1 and count 3 on the indictment. The verdict of not guilty in respect to count 2 is readily explicable on the basis that the jury, having received a principal Crown witness direction, was not satisfied beyond reasonable doubt that the act occurred on the occasion described by the complainant, as there was confusion in her evidence as to whether the digital penetration occurred on the first or second occasion, or both. That does not in my view, detract from the credibility of her account generally. Having observed the complainant give her evidence and be extensively cross-examined, I accept her account.

The first occasion of rape occurred in December 2018. At that time, you and the complainant were in a de facto relationship. You had been together for approximately 12 months. The complainant was 30 weeks pregnant with your child. The complainant had been experiencing difficulty throughout the pregnancy. In particular, she had been suffering with lower back pain. You were aware that she had been experiencing those difficulties. On this occasion, she was in the bedroom. She was lying on the bed, performing stretches trying to alleviate her back pain. She was in a position that she referred to as the "downward dog", which involved her facing the bed with her head down and her bottom and hips facing upwards in an elevated manner.

Initially, she was alone in the room. You entered the room and observed her performing the stretch. You started touching her on the bottom. She immediately inferred that you wanted sexual intercourse. She told you no. She also said "the curtains are open". You went and closed the curtains. She said, "[name suppressed] is only in the lounge room". [name suppressed] was her child to a previous relationship. You responded by saying, "[name suppressed] will be fine". You resumed rubbing her bottom. At that point, I am satisfied she said to you, "No. I can't believe you are trying to do this whilst I'm in pain".

You either did not hear, which given your proximity to her I consider unlikely, or ignored her comment and persevered with touching her. You pulled her underwear to the side, and you inserted your penis into her vagina. She threw her body forward to try and get away from you. You persisted. She said, "ouch". You held onto her hips and continued to thrust your penis into her vagina. She was crying into a pillow. You realised she was crying and said to her words to the effect of, "what do you want me to do". Wanting to get it over and done with, she responded, "Do what you need to do". You continued to thrust your penis into her vagina until

you ejaculated. You then pulled your pants up and left the room. The complainant subsequently told you to leave the house. You left and went to a friend's place for a couple of nights, before spending some further time camped out in the shed at the premises.

Whilst the jury's verdict is obviously reflective of them accepting the act of sexual intercourse was without consent and rejecting the proposition that you held a reasonable belief that she was consenting, your counsel nevertheless submits I should sentence you on the basis that you held an honest belief that she was consenting. It is submitted that when assessed in the context of the relationship, the following factors should lead me to conclude it is reasonably open that you held a belief that she was consenting to the intercourse: the complainant was aware from the outset that you were interested in sexual intercourse and stayed on the bed; then remained there, even when you went to shut the curtains and during the conversation about **[name suppressed]**. Such an analysis ignores the very clear evidence that the complainant told you "No" and said, "I can't believe you are trying to do this whilst I'm in pain". I accept the complainant said those things to you, and as I have noted it is difficult to envisage you did not hear it. I am satisfied that you knew that the complainant was not consenting to sexual intercourse. If I am wrong as to that, at the very least, you were grossly reckless as to whether or not she was consenting. For the purpose of sentencing, in the circumstances of this case, very little turns on the distinction.

Indeed, when police spoke to you about this incident, you explained it to them as follows:

"She was on the bed...she didn't have any clothes on at that time...and I just thought 'Oh yeah', I wasn't thinking straight, I'd had a few drinks...and basically jumped into bed with her and tried to have sex with her...I tried to insert my penis into her vagina but then I instantly regretted it and left".

Whilst I do not accept that you only ever tried to have sex with her, and I accept the complainant's evidence that you thrust your penis into her vagina until you ejaculated, the way in which you described the incident to police, is clearly indicative of a gross recklessness and lack of care as to whether she was consenting or not.

In my view, your moral culpability for this crime is high. You knew she was experiencing pregnancy pain. You were well aware that she would endeavour to alleviate it through stretching. She told you she did not want to have sexual intercourse, but you persevered and took what you wanted from her without any regard for her wishes, her welfare or her level of pain. It was terribly selfish behaviour and involved a gross breach of trust.

After a period of some weeks, the relationship resumed. When you initially returned to the home following the rape, you apologised to the complainant and told her that "as soon as I finished, I knew I'd done the wrong thing". The child was born in February 2019. You continued to live together in a de facto relationship, until you separated shortly after the child's first birthday. Thereafter, you and the complainant maintained a co-parenting relationship and you would continue to attend at the complainant's home to assist with chores. On three or four occasions, following the separation, you and the complainant engaged in consensual, sexual intercourse.

The second rape occurred in July 2020. On 26 July, the child had been with you for the weekend. Arrangements were made for the child to be returned to the complainant's home. In making those arrangements you became aware that the complainant was feeling tired and somewhat overwhelmed and you offered to go to the residence to assist with some chores that

needed to be completed. One of those chores was to cart wood upstairs to the living area from the basement area.

Whilst you were doing that, the complainant was doing some laundry. The laundry was in a room immediately adjacent to the basement area where the wood was stored. Whilst the complainant was in the laundry, standing at the washing machine, you entered and approached her and gave her a funny grin which she described as "the sort of face I'd get from him whenever we would have sex". You began to undo your belt and trouser fly. The complainant said "No. [name suppressed] is upstairs by herself. Think about what happened last time". The complainant repeated "no" to you on several occasions. You nevertheless continued your advances. You sucked her on the neck. She described it as a "really hard suck" that caused her pain. She slapped you away and again said "no". You responded by grabbing her by her wrist and twisting her arm behind her, causing her to turn so she was facing away from you. You placed your naked penis into her hand. She yanked her hand away and repeated "No, remember what happened last time". You then proceeded to pull her trousers and underwear down to the ground and thrust your penis inside her vagina and continued until you ejaculated. She described it as hurting a lot. Whilst you were penetrating her, you said, "You know you've missed this". At another point you called her a "Good girl".

After the rape, the complainant attended to the child. You continued to load wood until you received a call from a friend, at which point you left. The complainant was terribly distressed by the incident. She felt physically sick. She described taking a shower to remove the smell of you. She said she was crying heavily in the shower and vomited. Later, when a friend arrived, she was described as being in a state of uncontrollable sobbing and dry heaving.

I am satisfied the incident in the laundry occurred exactly how the complainant described it. In those circumstances, there is no room for any belief that she was consenting. She told you "No" repeatedly. When you sucked her on the neck, she slapped you away and again told you "No". Ultimately, you used force by grabbing her by the wrist and twisted her around in order to achieve your purpose. In my view, you callously disregarded her wishes and her obvious refusal to have sexual intercourse and forced yourself upon her for your own selfish sexual gratification. Your treatment of her was degrading and belittling. Your behaviour on both occasions constituted a significant breach of trust. The objective seriousness of your conduct and your moral culpability is high.

The complainant has been badly affected by these crimes. I heard her victim impact statement, and she eloquently expressed the effect these crimes have had upon her. I note there were aspects of her impact statement that were challenged. I do not consider it necessary to resolve that dispute one way or the other. Sentencing courts are acutely aware that the psychological and emotional impact on victims of serious sexual crimes is profound, and often lifelong. Here, that impact is enhanced by the significant breach of trust involved and the feelings of guilt the complainant experienced in explaining to her daughter why her father was absent. Most saliently in my view, the complainant expressed feelings of guilt for reporting the matter to police and the affect it would have on people in your life, like your children and your family. It should be very clearly understood that the complainant bears no responsibility for any impact that has, or will, flow to others. The responsibility for the consequences of these crimes lies entirely with you, Mr Brown.

There are a number of aggravating features of these crimes. In respect to both instances, you knew children were present in the home. Whilst there is no suggestion on either occasion the

children became aware of what was occurring, the relevance is that you were prepared to take that risk. You also knew, in respect to the first crime, that the complainant was heavily pregnant and was experiencing difficulties with that pregnancy. You were prepared to potentially risk the unborn child's well-being for your own sexual gratification. On both occasions, the distress and trauma associated with the rapes was intensified by the complainant's concern that children were present in the house, and she could not attend to them.

You are now 28. You were 21 and 23 when these crimes were committed. Your age at the time of the crimes remains a relevant consideration, but the weight to be attached to it, given the seriousness of the crimes, must be moderated. I also note that one of the reasons lenience is often extended to youthful offenders is because it is understood that at times such an offender may lack the insight, judgement and self-control possessed by an adult. Given the circumstances involved here, particularly in respect to the second rape, when you were 23, a father and aware of the occurrence of the first rape, I do not see that such considerations have much work to do. You have no relevant prior convictions. You have a solid employment history. Prior to your incarceration, you were working as a stevedore and were the primary income earner for your family unit. Given your inevitable conviction for these matters, it is unlikely you will be able to return to that employment as you will be ineligible for a Maritime Security card.

You are in a stable and supportive relationship. You and your partner were engaged in February 2023 but have delayed the marriage awaiting the outcome of this trial. There are four children living within your family unit, three of them from your partner's previous relationship, and one child that is your and your partner's. Your partner is also expecting another child in November of this year.

You are purchasing your own home. Without your income, that may be at risk. You come from a stable and supportive family environment. You have been a very successful athlete during your adolescence, extending to representing Australia in an indigenous rugby side. You have also contributed to your community, being a volunteer firefighter for many years. Your position with that organisation was suspended when you were charged with these crimes. That volunteering work will now be lost to you following your conviction for these matters.

I take into account that there has been considerable delay associated with this matter. You were charged in July 2020. Preliminary proceedings were completed by June 2022 and the matter was committed to this Court. Essentially, you have been awaiting a trial date since. None of the delay can be attributed to you.

Rape is an inherently serious crime. It involves the invasion of bodily integrity and is thus objectively serious irrespective of the circumstances. It is in no way mitigating that there had been prior or subsequent consensual sexual activity, or that it occurred within a relationship. Indeed, rape within a relationship involves a serious breach of trust and is a form of family violence. As has frequently been said by sentencing courts, family violence is a matter of great concern not only the courts, but to the community at large. It is not uncommon that acts of family violence are committed by offenders who are otherwise of good character and without a criminal history. That is part of its insidious nature. Your lack of criminal history, therefore, whilst relevant, provides little by way of mitigation. You have demonstrated no remorse or insight and have consistently rejected any real responsibility for what occurred. Whilst you apologised to the complainant after the first incident, in my assessment, that apology was not

reflective of an acceptance of responsibility, but rather was directed at resolving the conflict within the relationship.

Given the need for the sentence to reflect the sentencing aims of punishment, denunciation, vindication and deterrence, there is no appropriate sentence other than a substantial period of imprisonment.

I make the following orders. You are convicted of both crimes and sentenced to five years' imprisonment, commencing 26 June 2025. I will grant you the maximum parole eligibility and I order that you not be eligible for parole until you have served one half of that sentence. I make a family violence order pursuant to s 36 of the *Family Violence Act* in the following terms:

- You will not directly or indirectly threaten, abuse or assault **[name suppressed]**;
- You will not damage any personal or other property owned or possess by **[name suppressed]**;

The usual firearm conditions will apply. This order will remain in effect for a period of five years from today.

I record these offences as family violence offences pursuant to s 13A of the *Family Violence Act*. Having carefully considered the issue under the *Community Protection (Offender Reporting) Act*, and noting in particular your current circumstances, I do not consider that you will pose any real risk of future offending such as to warrant registration and I decline to make an order under that Act.