

STATE OF TASMANIA v JOSHUA LEIGHTON DOWLING
COMMENTS ON PASSING SENTENCE

1 JULY 2026
JAGO J

Joshua Leighton Dowling, you have been found guilty by a jury of one count of rape. You were found not guilty of two other counts of rape. The occasion in respect to which you were found guilty occurred on 20 November 2020 and was count 2 on the indictment. It involved you penetrating the complainant's anus with your finger without her consent. At the time, you were 22 days away from being 26 years of age. The complainant was 28 years of age. You and the complainant had been in a relationship for approximately three years. You had a child together, born in 2019. The complainant also had two older children born to a previous relationship. The relationship between you and the complainant had experienced difficulties. At times, you had been domineering towards her, telling her she could not purchase items as part of a grocery shop, and putting your hand over her mouth to silence her when you did not appreciate what she was saying; but I am also satisfied that at times the complainant had treated you in a belittling and demeaning manner, particularly in respect to your role in the family home. Such difficulties culminated in you and the complainant separating in the weeks leading up to 20 November 2020, but you continued to reside in the home so as to share parenting responsibilities in respect to your child.

It is for me to consider the evidence before the jury and determine the facts of the crime for the purpose of sentencing. Facts adverse to you must be established beyond reasonable doubt. Given the jury verdicts, I do not consider it necessary to make any findings relevant to count 1 on the indictment, which alleged an incident that was said to have occurred sometime prior to the time when counts 2 and 3 on the indictment are said to have occurred. It is relevant to sentencing however, that you were charged with two counts of rape in respect to the incident that occurred on 20 November. The one for which you were found guilty involved you penetrating the complainant's anus with your finger without her consent. The act for which you were found not guilty involved an allegation that you penetrated the complainant's vagina with your penis, during the same sexual encounter; that is, the act for which the verdict of not guilty was returned, was said to be an act which immediately followed the occasion of anal penetration. On the trial, there was no contest that both acts of sexual penetration occurred, the issue was as to consent. Obviously, the jury did not accept the complainant's evidence beyond reasonable doubt as to the act of vaginal/penile penetration being without consent, or could not be satisfied beyond reasonable doubt as to an absence of honest and reasonable mistake as to consent.

The complainant's evidence about the incident on 20 November 2020 was that she was in the master bedroom trying on lingerie. You were in the house. By that point in the relationship, you were sleeping on the couch in the loungeroom. You entered her bedroom uninvited. She tried to cover herself with some clothes. Her back was to you. She heard the sliding door of the wardrobe open, and you then placed a belt around her neck whilst she was facing away from you. She alleged that you tightened the belt to the point that she could not think clearly and could not breathe properly. Her vision started to go blurry. She said she felt your fingers go into her anus and that it was "incredibly painful". She said she then felt your penis penetrate her vagina from behind. Her evidence was that at the time of both the anal penetration and the vaginal penetration, the belt was pulled so tightly around her neck that she could not speak and therefore could not have said anything suggestive of consent, even if she wanted to.

You gave evidence on the trial. Your version of events as to what occurred on 20 November was markedly different to that of the complainant. You said you were at work, when you

received a message from the complainant inviting you to the house. You still had a key to the residence, so you went there and let yourself in. You found the complainant in the master bedroom sitting on the end of the bed. You said the two of you started kissing and touching each other. You then asked her whether you could use the belt. You gave evidence that the belt had been used in a previous sexual encounter between you and the complainant which was not the subject of a charge. The complainant denied this. You said the complainant agreed to use the belt. You retrieved it and placed it around the complainant's neck. You said that she was "on all fours" on the bed at that point. You did not tighten the belt initially. You said the sexual encounter continued, and you placed your thumb into her anus, before proceeding to place your penis into her vagina. You said towards the end of the sexual intercourse, as you went to climax, you tightened the belt. In essence, your evidence was that all the sexual contact was consensual, although you said two things that I suspect were important to the jury's consideration. Firstly, you agreed that you were aware that the complainant had previously had a bad experience with anal penetration and did not enjoy that type of sexual act. You also agreed that you did not ask her whether you could place your thumb or finger into her anus before you did it.

As noted, for the jury to return a verdict of not guilty in respect to count 3 on the indictment (that is, the act of penile/vaginal penetration which occurred immediately after the act of anal penetration), the jury was either not satisfied of lack of consent beyond reasonable doubt, or it was not satisfied of an absence of honest and reasonable mistake beyond reasonable doubt. It is difficult to rationalise how the jury might be in that position in respect to count 3, but be satisfied beyond reasonable doubt of the absence of consent and the absence of honest and reasonable mistake in respect to count 2, if they accepted the complainant's version that the belt was pulled so tightly around her neck as to prevent her from providing consent to any act of sexual intercourse. It is likely the jury placed some emphasis on the evidence you gave that you did not seek her consent to penetrate her anus with your finger or thumb, even though you were well aware of her previous sexual trauma and her dislike of anal penetration.

There is no requirement that a trial judge is required to sentence a defendant based on a version of facts most favourable to him. Instead, it is incumbent upon a sentencing judge to consider the evidence and make their own findings of fact for sentencing, provided those findings are consistent with the jury's verdict, and bearing in mind that any facts adverse to the defendant must be proved beyond reasonable doubt.

To be frank, I found aspects of both the complainant's evidence and your evidence to be unpersuasive. I was left with the impression that both of you tended to recall events in a manner that was more palatable for each of you. I am satisfied the following accords with the evidence, the jury's verdict, and the relevant criminal onus.

I find that on 20 November 2020 you and the complainant were together at the residence. The complainant was in the bedroom trying on lingerie. You entered the bedroom and a sexual interaction between you and the complainant, that you believed to be consensual, commenced. You introduced the belt. Initially, the use of the belt was without objection, but you tightened the belt beyond what was expected. Whilst the complainant was vulnerable with the belt tight around her neck, you inserted your finger or thumb into her anus knowing full well that she objected to any form of anal penetration. I find that you did this because you found it to be sexually gratifying. I do not consider it necessary to make any further findings about what happened after this act of penetration given the jury verdict of not guilty in respect to count 3.

My findings are consistent with the evidence of a conversation that occurred the next day. That conversation was recorded on the complainant's phone, and it was tendered on the trial. The complainant challenged you about what had happened, and you told the complainant that you did not realise how hard you were pulling the belt. You agreed with the complainant that you had raped her. At one point, the complainant said to you "you made the choice to put a belt around my neck to the point where I couldn't think, I couldn't breathe, and I was terrified, and it was so tight, and you slipped your finger into my arse, and you just went for it. Like how could I consent to that". You replied, "you couldn't". I am satisfied that conversation reflects what occurred. What you said during this conversation is also consistent with comments you later made to medical professionals, although in your evidence you resiled from the import of those comments. I am satisfied that you placed the belt around the complainant's throat in a manner that was far tighter than she was expecting, and once vulnerable, you penetrated her anus with your thumb or finger, showing no regard to the question of her consent and knowing that she did not enjoy anal penetration. As to that last finding, I reject your evidence that you and the complainant had engaged in sexual acts involving anal penetration previously.

I have a victim impact statement from the complainant. She faces difficulties in her day-to-day life and experiences ongoing emotional trauma. She feels betrayed. You were someone she should have been able to trust as her ex-partner and father of her child. She experiences ongoing flashbacks and emotional exhaustion. She has panic attacks and disturbed sleep. She struggles to trust people and has experienced considerable erosion of her self-worth and self-dignity. The impact of your crime has permeated all aspects of her life. She is trying very hard to re-claim what has been lost to her.

You are now aged 31. You have no prior convictions of any nature. There has been no offending in the 5½ years since the crime occurred. You are in a new relationship with your fiancé. You have the support of your parents. You hold good employment. You are a mechanical electrician. You have ongoing unsupervised parenting contact with the child of your relationship to the complainant. Arrangements are made for the handover of the child through a parenting centre. There is no need for you and the complainant to have any contact. There is no evidence of any level of inappropriate behaviour between you and the complainant since this incident, despite acrimonious family law proceedings.

The crime of rape is inherently very serious. Whilst it may have been brief in its nature, the complainant has experienced significant harm and trauma because of it. The complainant had a belt pulled tightly around her neck at the time of the incident and thus was in a vulnerable and defenceless position. You placed your desire for sexual gratification above the right of the complainant to be treated with integrity, care and respect. Even though the relationship may have come to an end, she was the mother of your child and your conduct towards her was morally reprehensible. The crime involved a serious breach of trust. She was entitled to feel safe in her home and in your presence.

The law of rape in Tasmania was amended in 2017 so that it included penetration involving body parts other than the penis. The purpose was to place all forms of non-consensual penetrative sexual activity into the same category of seriousness. Irrespective of the manner of penetration, rape is a form of violence that involves an invasion of bodily and emotional integrity. The penalty imposed must vindicate the complainant and reflect the very strong need for general deterrence. It is essential that potential offenders see that courts will respond harshly when sentencing offenders for non-consensual sexual conduct between intimate partners, or past intimate partners. I take into account your lack of criminal history, your good

prospects and the supportive family environment that is awaiting you, but the gravity of the conduct is such that the imposition of a period of imprisonment is necessary.

I impose the following sentence. Joshua Leighton Dowling, you are convicted of the crime of rape. You are sentenced to imprisonment for a period of three years, commencing 9 June 2026. I have determined that it is appropriate, given the factors I have identified, to suspend the last 12 months of that period of imprisonment. That portion will be suspended on condition that for a period of two years, you commit no offence punishable by imprisonment. I order that you be eligible for parole after you have served one half of the operative period of imprisonment. The net effect of the sentence is that you will be eligible for parole after you have served 12 months' imprisonment. I am not satisfied that you do not pose a risk of committing any reportable offence in the future. Because I cannot be so satisfied, I must impose an order pursuant to the *Community Protection (Offender Reporting) Act*. I order that your name be placed on the register and that you comply with the reporting obligations under that Act for a period of three years following your release from custody. I order that the crime of rape be recorded on your criminal record as a family violence offence. Given the passage of time since the commission of the crime, and the fact the last Family Violence Order expired in January 2022, and the complainant has not sought the protection of any further order since, I decline to make a Family Violence Order.