

R v Dobbie - [2019] VSC 275

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IN THE SUPREME COURT OF VICTORIA Not
Restricted

AT MELBOURNE
CRIMINAL DIVISION

S CR 2018 0281

THE QUEEN

v

JAMES PATRICK
DOBBIE

JUDGE: CHAMPION J

WHERE HELD: Melbourne

DATE OF HEARING: 4 March 2019

1. James Patrick Dobbie, on 4 March 2019 you pleaded guilty to one charge of murder under s 3A of the *Crimes Act 1958*, three charges of rape with aggravating circumstances, one charge of rape, one charge of indecent assault upon a female, and three charges of false imprisonment.
2. These charges arise from three incidents that occurred between 1980 and 1983, predominantly in an area known as 'the Police Paddocks', in Dandenong North. I will use pseudonyms to protect the identities of your six immediate victims.

Circumstances of the offending

Incident 1

3. Shortly after 11.00pm on 22 March 1980, AB, who was 19 years old, and his girlfriend CD, then 21 years old, drove from a drive-in cinema to the Police Paddocks. They parked the car and engaged in intimate activity. Approximately 30 minutes after their arrival, you walked up to their car and opened the front passenger door. AB and CD were undressed and covered with a blanket. You pointed a double barrelled sawn off shotgun at them and said, 'Get out, I want your car'. You were wearing overalls and your face was covered with a stocking.
4. They both got out of the car and got dressed. You told them to hurry up and said that all you wanted was the car. You forced CD to tie AB's hands behind his back using hay bailing twine that you gave her. You instructed her to make it 'tighter, tighter', and then you tightened the bonds further. You then tied CD's hands together and walked them both towards a nearby tree. You tied AB to the tree. This act amounts to the first offence of false imprisonment, charge 1 on the indictment.
5. You then pushed CD to the ground. You undid your pants and forced your penis into her mouth, while she was on her knees and you pointed the shotgun at her head. These acts amount to the offence of indecent assault upon a female, charge 2 on the indictment.
6. You then pushed CD onto the ground and forced her to kneel on all fours. You knelt behind her and put your penis into her vagina. This act constitutes the offence of rape, charge 3 on the indictment. You then stood up and told her to 'suck you off', but this time to 'do it properly'. You put your penis into her mouth again, before knocking her to the ground, and again forcibly putting your penis into her vagina, while pointing the shotgun at her. You ejaculated inside her and were not wearing protection. These acts further constitute charges 2 and 3.
7. You then took CD's car and drove away. She managed to untie AB and they sought help from a nearby vehicle and reported the events at the local police station.

Incident 2

8. On the night of 12 April 1983, EF, who was 20 years old, picked up his girlfriend, GH, then 18 years old, from her home and drove to the Police Paddocks in his panel van. After arriving, they turned the car lights off and engaged in intimate activity. They had known each other for about six weeks. GH had had no previous sexual experience.

9. After about 20 minutes, you opened the driver's door and pointed a sawn off double barrelled shotgun at them. You were wearing a mask or balaclava and told them to get out. You told EF to lie down and put his face on the ground, and stated that you would not hurt them. You pointed the shotgun at EF's face, so close that he could smell the gunpowder. You took some rope from your bag and tied his feet, then used sticky bandage to tie his wrists. This activity represents the second charge of false imprisonment, charge 4 on the indictment.
10. You told GH to get out of the car and tied her hands tightly with a bandage. You told them to get into the back of the van, while using a knife to cut pieces of sticky bandage. You used some strips of bandage to gag each of these victims,
 - ii. You then grabbed GH's shirt, and ripped it downwards. You removed her bra, exposing her breasts, and told her to lie down before taking off your shoes and socks. You told her to sit up and began touching her breasts. You pulled the gag off her mouth and demanded that she suck on your penis. She did so for a couple of seconds before she started dry retching. This represents the first offence of rape with aggravating circumstances, charge 5 of the indictment, as you were in possession of a shotgun.
12. You verbally abused GH with obscene language and told her to 'suck it again. You're not doing it right and if you don't do it right we'll be here all night'. GH sucked your penis again for a short time before you pulled away and told her to lie on her back. You pulled off her jeans and underwear, and told her to roll over onto her stomach and lift up her knees. You then put your penis into her anus, causing her excruciating pain. This activity amounts to the second charge of rape with aggravating circumstances, charge 6 on the indictment.
13. After you had raped GH in this way, you again used obscene language and told her to do an act that made it plain you intended to rape her. You first placed a finger inside her vagina, and then put your penis into her vagina and moved it in and out, making moaning noises. She was in a lot of pain and described this as feeling like your penis was going to push out through her mouth. You continued raping her for about five minutes, before your penis fell out. You then reached around and punched her in the stomach. This sexual activity amounts to the final charge of rape with aggravating circumstances, charge 7 on the indictment, as you were still in possession of a shotgun.
14. You then made GH roll over onto her back and again penetrated her vagina with your penis. You then stopped and dressed before getting out of the van.
15. GH assisted EF to remove his gag, however, to their horror, you returned after a few minutes and noticed EF's gag had been removed. You used a knife to cut some of the bonds before re-tying EF's hands. You demanded his wallet and took a few dollars, before saying 'bye bye,' and leaving. Your two victims waited approximately five minutes before managing to cut their ties and running for help. They reported your offending soon after.

Incident 3

16. On 23 May 1983, IJ, then 37 years old, and his girlfriend, KL, 26 years old, drove to the Police Paddocks in separate cars. Upon arrival, KL joined IJ in his vehicle and they engaged in intimate activity. As KL was redressing, she saw movement behind the motor vehicle. You had approached the motor vehicle and were armed.
17. You placed a double barrelled sawn off shotgun in through the driver's seat window and said, 'Don't move or I'll shoot, get out'. You were wearing dark clothing and a balaclava. IJ was still undressed, but got out of the vehicle and lunged at you. You struggled with each other, as IJ attempted to get the gun off you. During the struggle, the gun fired twice. KL heard the two shots. IJ received the full blast of one shot just beneath his left armpit, and sustained minor pellet wounds to his right eye and right ear from the second. He died almost instantly. This activity constitutes the offence of murder contrary to s 3A of the *Crimes Act 1958*, and is charge 8 on the indictment.
18. Following discharge of the shotgun, KL asked whether you had killed IJ. You replied that you had just hit him on the head, and that he would be all right. You got into the motor vehicle, and told her to shut up because she was screaming. You took some rope from your pocket, and started to tie her wrists. She tried to escape out the passenger door, but you grabbed her. You told her that if she tried anything like that again, you would shoot her. As you had discharged the shotgun twice, KL knew that the gun had been loaded. She told you that she did not want you to hurt her and that she would 'be good'. This activity amounts to the third charge of false imprisonment, charge 9 on the indictment.
19. You then drove off quickly in IJ's car, with KL tied up. You told her that she could have the car back and that you would let her go. However, as you continued to drive, KL decided to escape. She jumped from the moving vehicle, tumbling onto the ground. Photographs indicate KL sustained significant injuries, including multiple abrasions, in her escape. She was picked up by a car she had seen approaching from behind and was driven to Dandenong Hospital for treatment. She reported the events to police.
20. You continued driving before abandoning IJ's vehicle at Caulfield Railway Station. You caught a train to your home in Boronia, took some money and jewellery, and immediately fled to Queensland.

Arrest and interview

21. These crimes were all reported to police within a short time of you committing them. However, they remained unsolved for approximately 35 years. You were not arrested until 22 June 2018, following a cold case investigation by Victoria Police and an anonymous report made to Crime Stoppers.
22. Police contacted several of your family members regarding your suspected involvement the death of IJ. On 22 June 2018, you attended Cobram Police Station in New South Wales, where you were arrested and interviewed. You were cooperative and answered questions in a detailed way, although you stated your memory was not intact. You told police that you came to the station because, 'I just had enough' and that 'I want to get it all out now'. You said you had confessed to

the murder of IJ to your daughter, and asked her to bring you to the police station. Ultimately, you admitted the matters that constitute the nine charges before me, however, you did deny some of the sexual activity that you have now pleaded guilty to.

23. You told police that you 'never intended to shoot anyone', and that if events had not eventuated as they did, 'it would have been another rape', and 'I would have raped her'. You told them you disposed of the shotgun by throwing it into a river or a canal on your journey to Queensland after the offending.
24. When questioned regarding this reference to 'another rape', you made various admissions as to your further offending. Regarding the first incident, you stated, 'I raped a woman...and stole a car', and provided significant details of these events. You then answered numerous questions regarding the second incident, stating, 'I raped her...I tore her shirt'.
25. You told police you 'just went stupid on mushrooms and marijuana'. You said you were in 'a very bad place' and 'didn't consider meself [sic] to be part of the human race'. You told police your sexual offending was motivated by 'domination and humiliation'. You further qualified these remarks, stating, 'but there's no excuse. I'm not even gunna [sic] try and make one'.
26. On 30 October 2018, these matters proceeded before the Melbourne Magistrates' Court by way of a straight hand up brief and you offered pleas of guilty to all charges.

Medical findings

Autopsy of IJ

27. On 24 May 1983, an autopsy was conducted on the body of the deceased, IJ. The pathologist observed an entry gunshot wound, near to IJ's left armpit, which was found to be the cause of death. The examination also revealed a through and through pellet wound to his right ear, and a pellet wound through the posterior aspect of his aorta. The pathologist also found as various pellet wounds to IJ's lungs, stomach and spleen.

Victim Impact Statements

28. I received eight Victim Impact Statements, all of which I have carefully read and considered.

CD

29. CD stated your actions resulted in an ongoing nightmare for nearly 40 years. She explained the horror in having the man that would later become her husband witness your offending. CD described how her trauma was compounded upon learning about your two subsequent attacks, and your willingness to use a firearm.
30. CD felt vulnerable not knowing where you were, and extremely fearful of being home alone. She described the hurt of reliving the events when explaining them to her children, and the harm your offending has caused her relationship with them and her husband. CD described having struggled with trust and intimacy throughout her life, having trouble sleeping, and being terrified of the night. She expressed hope that she may regain her sense of safety and freedom after these proceedings.

GH

31. GH described how your offending changed her life forever. She speaks of being a naïve 18 year old with little experience, and how her evening turned into absolute terror. She described thinking she would die, and feeling helpless at not being able to help her then boyfriend. GH described the events as violent and humiliating. She described the intense physical pain you caused, and says she was determined to simply survive.
32. GH described the days and years following these events as long and lonely, and how she still lives with daily reminders of your offending. While she still faces many challenges, she described her happiness at being alive and her gratitude at the opportunity to make her statement and take some power back.

EF

33. EF described the terror of you holding a shotgun to his face, and thinking he was going to die. He described the guilt he has carried for the past 35 years for not being able to protect his then girlfriend. EF described how your actions have scarred him for life, leaving him anxious and feeling the need to always watch his back. He described how you took away his basic human rights and that this has made him a very frustrated, angry and short tempered person still today.

KL

34. KL described how the horror she experienced has ruined her life. She was unable to continue full time employment after your offending, and began to abuse prescription medication and alcohol. She describes feeling claustrophobic and panicked on public transport, resulting in financial strain as she had to start driving to work.
35. KL describes times when she has felt disconnected from everyday life and would sit frozen at home, reliving the events. The most painful feelings are those she describes as survivor guilt. She repeatedly has the same thoughts about how she could have helped IJ, and has experienced frustration and anger with herself, to the point she has self-harmed. KL states she will be on medication for the rest of her life.

IJ's wife

36. The wife of IJ described the immense shock when police arrived at her house and told her that her husband had been killed. She described how her world turned upside down, as her young children were suddenly left without a father, and the heart wrenching task of informing her husband's parents. She felt she could not explain the real circumstances to her children, and told them their father had died in a car accident. This was the hardest thing she has ever had to do.
37. She described the immense financial difficulties after her husband's death, as she was forced to find employment. She describes her sadness that her children have been without their father for most of their lives, but commends how they have handled their heartache. IJ's wife states that she remains haunted by the memories of that fatal night.

IJ's daughter

38. The daughter of IJ was 10 years old when her father was killed. She watched her mother become a shadow of her former self, changing from a fun mum to a person she describes as frail, distant and broken. She described the pain of hearing evolving rumours and speculation about her family, and how she felt overwhelmed and paranoid. She described her shock upon learning the true circumstances of her father's death as a 13 or 14 year old.
39. She states that there is not a day when she is not affected by her father's death. She now has her own children and they, in turn, have been devastated and disturbed by the events that occurred. After all of these years, she described how she still cries at night for the girl who had her father ripped away.

IJ's son

40. The son of IJ was 13 years old when his father was killed. He described being in denial for weeks, waiting at the bottom of the driveway for his father to arrive home. He described his anger and loneliness as he eventually realised that his father had died. He states that his teenage years were severely affected, and he would privately break down, feeling sad, furious, frustrated and anxious. He described how he struggled through school with a lack of motivation and focus, resulting in poor results. His dreams of joining the Royal Australian Air Force as a pilot were destroyed.
41. At the age of 17, he was told the truth about his father's death. This took him a long time to come to terms with, especially as the murder remained unsolved for many years. He described how the events that occurred still have a big impact on him, especially during the ordeal of these proceedings.

IJ's brother

42. IJ's only brother gave a victim impact statement, which stated he grew to love and respect his brother for his wit, charm and loyalty to his friends. He describes his brother as a keen lover of sports, a champion tennis player, and a football umpire in a local suburban football league.
43. He described how so many people's lives changed the night his brother was killed. He stated he has found it difficult to trust other men, has not been able to form long-lasting male friendships, and developed a gambling problem. He said he often wonders whether the person responsible was still enjoying life in the community, while his family were left to grieve the senseless loss of his brother.
44. It is clear that the impact of your offending is profoundly felt by all of your victims and their close friends and families. These statements describe tremendous pain, suffering and trauma, the effects of which have been felt for almost 40 years, and will likely continue for many more.

Personal circumstances

Background

45. You were born on 7 May 1953 and are now 65 years old. Your childhood and teenage years were dominated by dysfunction. Your relationship with your parents was characterised by abuse and

rejection. They are both now deceased. You are the second eldest of seven siblings. You report you 'never really knew them'.

46. By the age of seven, you were placed outside the family home to live in a shed on the property. You did not feel part of your family and kept to yourself. Both your parents consumed excessive amounts of alcohol, and your father was an aggressive man. Your childhood relationship with him was dominated by frequent psychological abuse and sometimes physical abuse.
47. Your father was controlling of your mother and did not allow her to have friends or talk to neighbours. Children's Court Clinic documents reflect hostility between you and your mother, and she informed a social worker that she rarely spoke to you, except when you argued.
48. In your early teenage years, various social workers and a parole officer assessed your family as violent and dysfunctional. It was reported that you were told that you were unloved, unwanted, locked out of the home and denied food. These professionals supported your removal from your family situation.
49. When you were 12 years old, you suffered sexual abuse from a trusted, older person. You withdrew further from others, and found it difficult to trust anyone.
50. At the age of 14, you were referred to the Children's Court Clinic in relation to minor offending, with your parents declaring you 'uncontrollable' and electing to place you in state care. You were reported as feeling sad, angry and alone, with no-one to talk to. You became a ward of the state in 1968 and placed on a farm as a labourer.
51. You reportedly struggled academically, partly due to being deaf in one ear, and received no formal education after being placed on the farm at aged 15. After being released from wardship at 17 years old, you became itinerant, working in a variety of jobs, including fruit picking, landscape gardening, digging drains and factory work. You worked for three years as a slaughterman, and two years as a front-end loader driver. It appears you have had fairly consistent employment over your life, until you suffered a heart attack in 2015 and stopped working.
52. You have had three long-term relationships that you regard as significant. When you were 35 years old, you commenced a five year relationship and had a daughter. You then had a 10 year relationship that you describe as tumultuous. At the age of 50, you commenced a relationship with your current wife, and have been married for over 15 years. It appears you enjoy a loving and supportive marriage, and have eight grandchildren. You maintain positive relationships with your daughter and stepdaughter and they visit you in prison when they are able.

Mental health and substance abuse

53. You have a history of poly substance abuse, and began abusing alcohol from the age of 12, regularly drinking to intoxication. You started using cannabis occasionally at the age of 18, and hallucinogenic mushrooms soon after. You associate your offending with the consumption of hallucinogenic mushrooms, reporting they caused you to lose track of reality. You report that you ceased using hallucinogenic mushrooms after your offending because they altered your mind in a fundamental and negative way. You report that after your offending in 1983, you ceased all drug use except for the occasional use of marijuana.

Psychiatric Report of Dr Nina Zimmerman

54. For the purposes of your plea hearing, forensic psychiatrist, Dr Nina Zimmerman, assessed you and provided a detailed report dated 9 February 2019. Dr Zimmerman reported that you met the criteria for past poly drug abuse and alcohol dependence, both being in long-term remission. According to Dr Zimmerman, your abuse of hallucinogenic mushrooms, cannabis and alcohol was occurring at the time of your offending between 1980 and 1983.
55. Dr Zimmerman expressed the opinion that you were psychologically damaged by your childhood experiences, so that you have a sense of lacking power or agency. She reported that your resort to violence resonates with the manner in which violence was used against you as a child. Dr Zimmerman stated you suffered from persistent nightmares following the shooting of IJ and you attempted to take your own life at one point. Dr Zimmerman stated that you have a history of major depression, which is currently in remission as you are treated with an antidepressant. She opined that you remain at risk of relapsing and becoming suicidal, as you continue to grapple with your offending and the consequences. I note that Dr Zimmerman reports she did not have information available to be able to diagnose you with depression at the time of your offending.

Psychological report of Simon Candlish

56. The Court was also provided with a report of consultant psychologist, Simon Candlish, dated 4 February 2019. Mr Candlish stated that it is likely you previously met the criteria for Anti-Social Personality Disorder, and also had a conduct disorder as a child. Mr Candlish is of the opinion that the severity of these personality traits has waned, most likely due to your older age, and you do not currently appear to meet the clinical threshold for this personality disorder. It is reported that you continue to demonstrate problematic personality traits, including emotional detachment, problems with empathic regard, egocentricity, aggressiveness and impulsivity.
57. Mr Candlish further stated it appears likely that you experienced depression in the past, in the context of your anti-social traits and social alienation. He is of the opinion that it is likely you were experiencing some depressive symptoms at the time of your offending, which contributed to your drug use.
58. Mr Candlish also reported that you appear to have previously met the criteria for paraphilic disorder, associated with the recurrent intense sexual arousal to rape of a female over a period of at least six months. He considers this to be in full remission, based on the apparent absence of further similar sexual offending and your involvement in a reportedly healthy, stable, sexual relationship for the last 15 years. Overall, he found you fall into the low risk category for sexual recidivism and for violence of the same nature as your past offending.

Criminal history

59. You have admitted a criminal record that primarily consists of property and dishonesty related offending predating the offending before this Court. Your counsel noted that you have only one relevant prior conviction for violent offending, and none for sexual offending. I acknowledge that, prior to this offending, your criminal history is relatively limited.

Sentencing factors

Maximum penalties for these offences

60. Pursuant to s 5(2)(a) of the *Sentencing Act 1991* ('the Act'), I must take into account the maximum penalties for the offences you committed. At the time of your offending, these were as follows:

- (a) false imprisonment at common law – penalty at large;
- (b) indecent assault upon a female – five years' imprisonment;
- (c) rape – 20 years' imprisonment;
- (d) rape with aggravating circumstances – 20 years' imprisonment; and
- (e) murder – life imprisonment.

61. I have also taken into account the current maximum penalties for these offences. For false imprisonment, the maximum penalty is now 10 years' imprisonment. ^[1] For rape and rape with aggravating circumstances, which would now also be charged as rape, the maximum penalty is now 25 years' imprisonment.

[1] *Crimes Act 1958 (Vic)* s 320.

Nature and gravity of your offending

62. Pursuant to s 5(2)(c) of the Act, I must also consider the nature and gravity of your offending. I note that this analysis concerns how your offending fits within the range of these kinds of offences, which are all of a very serious nature. In discussing this, I do not seek to diminish the tragedy of IJ's death, nor the immense impact of your sexual offending and related acts. No sentence I pass can undo the severe pain and suffering you have caused multiple people.

Rape, rape with aggravating circumstances, and indecent assault upon a female

63. The prosecution submitted that your sexual offending is grave and towards the higher end of seriousness. This was properly conceded by your counsel, who acknowledged that this offending involved sustained attacks with elements of premeditation.
64. Each instance of your sexual offending is a very serious examples of those offences. You committed multiple sexual offences against two women, involving a high degree of violence, intimidation and humiliation. The shotgun you used to terrify these victims was an obviously present and major threat throughout your offending. During the first incident, you pointed the shotgun towards the female victim as you raped and assaulted her.
65. You committed planned and violent sexual activity to satisfy your own needs. You did this in front of the women's partners, who had been tied up at gunpoint. These events have had devastating and lifelong impacts. In both incidents, you did not use protection, exposing the women to the possibility of pregnancy and disease. There is no question that all of your sexual offending was towards the highest level of gravity.

False imprisonment

66. You have pleaded guilty to three counts of false imprisonment. During the first two incidents, you ensured AB and EF were restrained in very close proximity to your subsequent attacks on their female partners. This would have been a terrifying and immensely distressing ordeal for both men.
67. In the third incident, you shot IJ at close range before leaving him lying on the ground. Instead of assisting him, you tied KL's wrists and warned her you would shoot her if she tried to escape, before driving off with her trapped in the car.
68. Your counsel properly conceded that these three charges of false imprisonment were sustained acts. The first two instances involved premeditation and planning. The third followed your killing of IJ.
69. The acts constituting the false imprisonments were accompanied by the presence and threat of a weapon. These offences cannot be viewed in isolation from their surrounding circumstances. The severity of your offending is aggravated by the deprivation of your victims' liberty in contexts of significant violence and terror directed towards them and their intimate partners. I consider all three counts of false imprisonment as falling towards the higher end of gravity.

Murder

70. You approached IJ's vehicle with a loaded shotgun and demanded that he and KL get out of the vehicle. You then shot IJ. This shooting was an act of violence done in the course of, or furtherance of, committing the crime of rape with aggravating circumstances. This represents the charge of murder pursuant to s 3A of the *Crimes Act 1958* ('statutory murder').
71. In *DPP v Perry; Perry v The Queen ('Perry')*, [2] the Court of Appeal concluded that the offence of statutory murder is not inherently less serious than the offence of murder carried out with the intention to kill or cause really serious injury. [3] The Court held that the objective gravity of an instance of statutory murder will depend on the circumstances of the killing:

The Court's assessment of the gravity of the particular offence under s 3A, and of the offender's culpability will depend – as for any other offending – on the objective and subjective circumstances of the case. The seriousness of any particular statutory murder is to be assessed according to the nature of the act(s) of the offender which caused the death of the victim. A particular instance of statutory murder may therefore be more serious than some instances of common law murder. [4]

[2] (2016) 50 VR 686.

[3] *Ibid* 690 [8].

[4] *Ibid* 709 [82].

72. While intent does not need to be established, the Court in *Perry* held that this ‘does not render the offender’s intent irrelevant’. [5] It stated that:

Whether the act which causes death is accompanied by any particular malicious intent will inform the assessment of objective gravity and culpability. [6]

[5] *Ibid* 690 [8].

[6] *Ibid* 691 [8]; 699 [47].

73. The Court further observed that:

the offence of statutory murder covers the full range of conduct, from the case where the death is an accidental result of the act of violence to the case where the death is the intended result of the act. On ordinary principles, it will be relevant to the sentencing court’s assessment of the gravity of the offence, and of the offender’s culpability, to consider where within that range the conduct is proved to fall. [7]

[7] *Ibid*.

74. In this case, the prosecution submitted that you committed the voluntary acts of placing your finger on the trigger of the shotgun and shooting twice, during a struggle with IJ. The prosecution submitted that it was unable to argue that the murder was premeditated. Your counsel submitted that there is no evidence that you intended to commit the offence of murder.

75. In my opinion, the evidence does not establish that you murdered IJ with the intention to kill or cause really serious injury. I accept that you shot him in the course of what appears to have been a dynamic and relatively brief struggle.

76. Nonetheless, there are a number of significant aggravating circumstances:

- (a) you approached IJ’s vehicle with a loaded sawn-off shotgun;
- (b) you placed the shotgun through the open window and threatened to shoot, using the weapon to evoke terror and gain control of your victims;
- (c) in approaching the vehicle, your plan was to rape the female victim while in possession of the loaded shotgun, and as with your previous victims, you intended to use violence; and

(d) you did not assist IJ after you killed him, instead committing the further offence of false imprisonment and driving away from the scene.

77. Given these aggravating factors, and despite the absence of intent, I conclude this is a very serious example of statutory murder. You killed IJ during the furtherance of a foundational offence of the premeditated aggravated rape of his female partner. In the circumstances of your offending, an unloaded shotgun would have carried sufficient intimidating power, so your use of a loaded weapon strongly suggests that you were prepared to use it if needed.

Admissions and pleas of guilty

78. Pursuant to s 5(2)(e) of the Act, I am also required to have regard to your pleas of guilty and the stage they occurred. It was submitted on your behalf that the admissions made during your record of interview and your pleas of guilty should be regarded as significant factors in mitigation.
79. Your counsel acknowledged that you did not confess to your offending for some 35 years, but submitted that you pleaded guilty at the earliest opportunity in these proceedings. You have spared the victims and their families the ordeal of a contested committal and trial.
80. Further, it was submitted on your behalf that there is a high utilitarian benefit to your pleas of guilty. The prosecution conceded that, but for your admissions, their case regarding the murder and sexual offending could not have progressed. I note that your police interview initially only concerned the alleged murder of IJ, but expanded in scope when you voluntarily confessed to the offences of rape and false imprisonment. It was put on your behalf that, without your voluntary and unprompted confessions, the allegations of rape and false imprisonment may have never resolved. Accordingly, it is submitted that you played a significant role in facilitating the course of justice. In these circumstances, your counsel submitted that you should receive a discount of the type afforded in *R v Doran* ('Doran'), [8].

[8] [2005] VSCA 271.

81. In response, the prosecution submitted that your circumstances are different to those of *Doran*. In that case, the fact that certain crimes had been committed was unknown, and the offender voluntarily contacted police and made full admissions of additional offending. In your case, the commission of your crimes was known, but your identity was not. Moreover, immediately after your last offending, you fled interstate and started a new life.
82. Your counsel further pointed to *JBM v The Queen* ('JBM'), in which the Court of Appeal commented that that case would never have been prosecuted but for the fact the offender had made full and complete admissions to the police. [9]. The Court observed that the appellant 'provided the prosecution with all the necessary evidence', without which 'there was not the slightest chance that these offences could have been proved'. [10].

[9] [2013] VSCA 69 [47].

[10] *Ibid*.

83. In *JBM* and *Doran*, the discounts given for a plea of guilty were greater than ordinary, but there were only short delays before admissions in both cases. [11] These factual circumstances differ to those of your case. I accept the fundamental principle that, but for your cooperation, these charges could not have proceeded and so you should receive a significant discount for your pleas. However, this must be moderated by the very substantial delay between your offending and your admissions, which was entirely of your causing.

[11] *Ibid* [5]–[8]; *R v Doran* [2005] VSCA 271 [4]–[5].

Remorse

84. Your counsel also submitted that you have demonstrated genuine remorse, for which you should receive the full benefit, through your admissions to police, pleas of guilty, and comments made to medical experts. The prosecution did not appear to contest this and noted your admissions in the police interview were ‘full and frank’.

85. The level of cooperation of an offender who facilitates an otherwise un-prosecutable case can be of high relevance in assessing remorse. [12] Furthermore, it was submitted on your behalf that you made admissions in circumstances where you would have had little realistic expectation of ever being released from a sentence of imprisonment. In my opinion, you have accepted responsibility for your actions and are now remorseful for your offending, although this has taken decades to evolve to the point of confession. Taking these matters into account, I am prepared to accept and evaluate your remorse as a mitigating factor, whilst giving recognition to the context of delay.

[12] *JBM v The Queen* [2013] VSCA 69 [47]; *R v Doran* [2005] VSCA 271 [14].

Culpability and your history of personal trauma

86. Pursuant to s 5(2)(d) of the *Act*, I must also consider your culpability for the offending for which you now fall to be sentenced.

87. As to the charge of murder, the Court in *Perry* observed that there is no inherent difference in the moral culpability of an individual convicted of statutory murder, as opposed to common law murder. [13]

88. Your counsel submitted that your culpability for this charge should be assessed towards the lower end. Relying upon the reports of Dr Zimmerman and Mr Candlish, it was submitted that your background of profound trauma is of significant weight. Your counsel referred to *Bugmy v The Queen* (*Bugmy*), which discussed how an offender's culpability is likely to be reduced if their formative years have involved alcohol abuse and violence, possibly mitigating their sentence. [14]. The High Court also recognised that the effects of 'profound childhood deprivation do not diminish with the passage of time', and this should inform a sentencing decision. [15]. It was submitted that the principles discussed in that case applied with force to the exercise of sentencing you. This prosecution did not contest this submission.

[14] (2013) 249 CLR 571, 594 [40].

[15] *Ibid* 595 [44].

89. I accept that you endured a dysfunctional, violent and traumatic childhood. You suffered psychological and physical abuse at the hands of your parents, and sexual abuse perpetrated by a trusted adult. Further, I note that your offending occurred many years ago, when you were a much younger man, aged between 26 – 29 years old, and your actions must be considered in that context. I accept that the principles of *Bugmy* apply in your case, and the substantial trauma you experienced is a factor reducing your overall moral culpability. Nevertheless, your culpability still remains high. Your offending was deliberate, calculated and you knew what you were doing amounted to grave offending.

Rehabilitation

90. Your counsel noted that you have led a law abiding life since the conclusion of your offending in 1983. You have reportedly maintained a stable and loving relationship as a husband, father and grandfather. You maintained steady employment until you suffered a heart attack in 2015, and it was submitted that you have substantially rehabilitated. Your counsel further submitted that due to the age of your prior convictions, they are not relevant to this assessment.
91. In response, the prosecution acknowledged that you have not committed further offences, but submitted that there is no evidence that you have completed any programs or therapy to target the antisocial views that led to your offending. The prosecution submitted the report of Mr Candlish demonstrates that you still harbour some antisocial views against women.
92. You appear to have largely rehabilitated. I accept your counsel's submissions that you have lived a law abiding life following your offending, and you have demonstrated remorse by your pleas of guilty and admissions. However, I have some concern regarding your reported misogynistic opinions.

Delay

93. As has been described already, more than 35 years have passed since you committed the last of the offending before this Court. Your counsel acknowledged that in your case this delay is not mitigating of itself, in circumstances where you sought to avoid being brought to justice. [\[16\]](#).
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[\[16\]](#) See *R v Whyte* (2004) 7 VR 397.

94. The prosecution submitted that the impact of delay should be assessed in the context of all relevant circumstances, namely your decision to flee after the third incident, and remain at large for 35 years. The delay was not something brought about by the actions of prosecution agencies, or the delayed reporting of your crimes. While I have taken into account that you have demonstrated rehabilitation in the long period after your offending, this has occurred in circumstances where you acted to conceal the truth from investigating authorities, which extended the pain experienced by your victims. In my opinion, as above, delay does not act as a mitigating factor in sentencing you. Furthermore, the mitigatory weight to be given to your rehabilitation should be accorded a lesser degree of prominence than it otherwise might have been, due to the delay that you alone brought about.

Age

95. It was accepted on your behalf that given your age and the fact you are to be sentenced for crimes of a grave nature, there is an increased likelihood you may die in custody. It is submitted that you pleaded guilty in the expectation you will spend the remainder of your life in custody.
96. The possibility that you may not live to be released is a weighty matter, properly to be taken into account in the assessment of the appropriate sentence to be imposed. [\[17\]](#) I must be mindful that the imposition of an inappropriately heavy sentence may risk being regarded as crushing, destroying any reasonable expectation of useful life upon release. However, these factors must be weighed against the accepted approach that advanced age and the prospect of a heavy sentence should not justify the imposition of an inappropriately low sentence. [\[18\]](#) I must be mindful of the need to impose sentences that reflect the gravity of your offending.
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[\[17\]](#) See *R v Hunter* (1984) 36 SASR 101.

[\[18\]](#) See *Crowley & Garner* (1991) 55 A Crim R 201 (CCA Vic), 206; *R v Bazley* (1993) 65 A Crim R 154 (CCA Vic), 158; *R v Whyte* (2004) 7 VR 397, 405 [\[29\]](#); *R v Cumberbatch* (2004) 8 VR 9, 13 [\[12\]](#) – 14 [\[13\]](#).

97. In your case, the objective seriousness of all your offending significantly reduces the mitigating impact of your present age and advancing years. [\[19\]](#).
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[\[19\]](#) See, eg, *RSJ v The Queen* [2012] VSCA 148.

Ill-health

98. It was observed that you suffer from a number of health conditions, and your counsel submitted that you will find imprisonment more difficult than the average prisoner as a result. You suffer from diabetes, a heart condition with regular angina, and major depression which is currently in remission. You take regular medication for these conditions. The prosecution did not contest this submission.
99. I have taken into account that your physical health may make your time in the prison setting more difficult, particularly as you get older. I also note that in her psychiatric report as above, Dr Zimmerman opined that the loss of liberty and diminished hope regarding family connections will act as ‘powerful triggers for relapse into depression that carries the risk of suicidal thoughts’.
100. However, it was not submitted that you rely upon any of the principles articulated in *R v Verdins*, [20] in order to reduce your moral culpability on the basis of compromised mental capacity or health, or that your compromised health will so significantly affect your time in custody.

[20] (2007) 16 VR 269.

Sentencing purposes

General deterrence, denunciation and just punishment

101. In this case, the sentencing purposes of general deterrence, denunciation and just punishment are of particular significance, and this was conceded by your counsel. Your offending targeted relatively young couples, who were completely unaware of the events that would unfold, and entitled to feel safe in their vehicles. During the first two incidents, you committed horrifying and violent sexual offences against two young women, while their partners were restrained in close proximity. I have no doubt that you would have committed sexual offences of the same nature in the third incident, and that you would have similarly immobilised her partner, had you not been stopped. Tragically, IJ paid the ultimate price for his bravery in confronting you.
102. In formulating the appropriate sentence that must be passed I must remain mindful that ‘just punishment, proportionality and general and specific deterrence remain primary sentencing considerations notwithstanding an offender’s age and ill health’, [21].

[21] *R v RLP* [2009] VSCA 271 [39] citing *R v Cumberbatch* [2002] VSC 382.

103. Your offending has resulted in lifelong pain and trauma and suffering for many people. The Court must pass a sentence that strongly denounces such abhorrent behaviour and reinforces the

sanctity of human life. Your behaviour must be strongly condemned as despicable, having no place in a civilised community. It was completely indefensible.

Sentencing practices

104. Section 5(2) of the Act requires me to have regard to current sentencing practices for your offences at the time of passing sentence. [22]. However, sentencing practices at the time of your offending, approximately 35 years ago, are not irrelevant.

[22] *Stalio v The Queen* (2012) 46 VR 426, 432 [9], 445 [78].

105. In *Stalio v The Queen* ('*Stalio*') the Court of Appeal found 'regard can be had to sentencing practice at the date of offending for the purpose of ascertaining just punishment in accordance with the principal of equal justice', [23]. The Court stated:

The concept of equal justice requires regard to be had to sentencing practices at the date of the offence if those practices can be demonstrated to have required the imposition of a materially lesser sanction for like offences than current sentences practices would impose for the offence. [24].

[23] *Ibid* 445 [78].

[24] *Ibid* 432 [9].

106. The Court remarked that 'it would be wrong for a prisoner to be sentenced to a substantially higher sentence than an offender who committed like offences at or about the time of the offences in issue, simply because of the lapse of time', [25]. However, in that case, the Court found there was no satisfactory evidence of a difference in sentencing practice over the relevant time period, other than that consequent upon a lower maximum sentence. [26].

[25] *Ibid* 441 [54].

[26] *Ibid* 443 [66].

107. Likewise, in this matter, I do not find that any significant difference in sentencing practices at the time of your offending, as against current sentencing practices, have been demonstrated such that a materially lesser sanction ought be imposed for your offences. That is, except for the lower

maximum penalties and legislative changes I have already noted. To remove any doubt, I will sentence you having regard to the maximum penalties that applied to your offending at the time you carried it out.

108. As such, it is appropriate to acknowledge that the maximum penalty for rape that applied at the time of your offending was less than it is now; the charge of indecent assault particularised in the indictment would today would be capable of being charged as an offence of rape, carrying the significantly higher maximum penalty of 25 years' imprisonment; and the offence of false imprisonment now carries a maximum penalty of 10 years' imprisonment. The maximum penalty for murder remains life imprisonment, though I note that had you been sentenced prior to 1986, a court would have been obliged to pass that maximum, as it was a mandatory sentence.
109. Further, the weight to be given to sentencing practices at the time of the offending, and the principle of equal justice, may also depend on broader circumstances, beyond the mere lapse of time. For instance, in *Bradley v The Queen*, in which the offender was sentenced in 2015 for a murder committed in 1984, the Court held:

It was the appellant's own conduct, in leaving Victoria and concealing his responsibility for this murder for over thirty years, which made it impossible for him to be sentenced contemporaneously with the offending. For that reason, it may be said, he is not entitled - following his much-delayed conviction for murder - to seek to be treated as if his criminal responsibility had been established in 1984 or thereabouts. [27].

[27] [2017] VSCA 768 [124].

110. In your case, it must be acknowledged that you caused the delay by absconding from Victoria. It cannot now be argued that you should receive less severe sentences for the offences for which there were a previously more lenient legislative approach, by virtue of a delay of your own causing.

Specific deterrence and protection of the community

111. I accept your counsel's submissions as to your rehabilitation and advanced age following what will inevitably be a long period of imprisonment. If you live to be released, you will be an old man, and unlikely to pose a threat to the community. Therefore, in deciding the appropriate sentence, I do not consider specific deterrence or protection of the community from you to be of much relevance.

Serious offender provisions

112. Part 2A of the Act sets out provisions for sentencing serious offenders. Section 6A(a) provides that this part applies in sentencing a serious sexual offender for a sexual or violent offence. The offences of murder, aggravated rape, rape and indecent assault with which you are charged, are relevant sexual and violent offences for the purposes of Part 2A of the Act. [28].

[28] *Sentencing Act 1991 (Vic)* sch 1 cls 1(d)(xv), 1(e)(i), 1(c)(vi), 2(a), 3(1).

113. Pursuant to s 6B(2)(a) of the Act, a 'serious sexual offender' includes an offender who has been convicted of two or more sexual offences, for each of which they have been sentenced to a term of imprisonment. As I will sentence you to terms of imprisonment for charges two and three, being the charges of indecent assault upon a female and rape – sexual offences pursuant to Schedule 1 of the Act – you are to be considered a 'serious sexual offender' in being sentenced for charges five to eight. [29].
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[29] *Ibid* s 6B(2)(a).

114. I must therefore regard the protection of the community as the principal sentencing purpose in determining your sentence for each of those four charges. [30].
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[30] *Ibid* s 6D(a).

115. However, it was submitted on your behalf, that the protection of the community should not be a significant sentencing consideration, due to your age, the length of sentence you will inevitably serve, your various health conditions and your rehabilitation.
116. I accept this submission and therefore find, the protection of the community does not require me to impose a disproportionately long sentence for any of these offences.
117. In respect to cumulation in sentencing serious offenders for multiple offences, s 6E of the Act state s:

Every term of imprisonment imposed...on a serious offender for a relevant offence must, unless otherwise directed by the court, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that offender, whether before or at the same time as that term. [31].

[31] *Ibid* s 6E.

118. Your counsel argued against this presumption, submitting that the principle of totality should be applied. The prosecution acknowledged that totality must be considered, but argued that there must be some cumulation to recognise the several instances of offending and multiple victims.
119. In *DPP v Hopson (a pseudonym) ('Hopson')*, the Court of Appeal observed a lack of clarity as to how the tension between s 6E of the Act and the principle of totality is to be resolved. [32]. The Court referred to *R H McL v The Queen*, in which the High Court considered the predecessor of s 6E, which was in the same terms. The Court noted that while sentencing judges have discretion to direct otherwise:

The object of the section would be compromised and probably defeated in most cases if the ordinary application of the totality principle was a sufficient ground to liven the discretion ... sentencing judges need be astute not to undermine the legislative policy inherent in s 16(3A) by applying the totality principle to the sentences as if that section (or s 6E which replaced it) was not on the statute book. [33].

[32] [2016] VSCA 303 [48].

[33] *Ibid* [49], citing *R H McL v The Queen* (2000) 203 CLR 452, 477 [76].

120. In *Hopson*, the Court of Appeal found the objective gravity of offending will generally increase the degree of cumulation ordered, [34] and 'the risk of the offender re-offending and the likely seriousness of any reoffending must also be relevant considerations'. [35].

[34] [2016] VSCA 303 [51], citing *Gordon (a pseudonym) v The Queen* [2013] VSCA 343 [74] (Redlich JA).

[35] *Ibid* [52].

121. In this case, it must be highlighted that there were three separate occasions of serious offending involving six victims. The seriousness of each subsequent occasion of offending should be acknowledged by an appropriate degree of cumulation of each sentence imposed. However, I also conclude that weight must be afforded to the principle of totality, particularly in circumstances where you are of advanced age, such that too substantial cumulation would be of no practical effect or utility.

Conclusions

122. Each of these nine charges are examples of objectively serious offending in their own right. The charges of sexual offending and false imprisonment are each in the higher range of gravity and you are highly culpable for these acts. Whilst the murder of your male victim occurred without an intention to kill or seriously injure, the circumstances in which this offence occurred elevate

the objective seriousness of this offence to a high level. Your moral culpability for this offence, should also be assessed as very substantial.

123. All of your six victims were innocent and unsuspecting, and you preyed on them to satisfy your own lust and need for violent domination. You had the opportunity to reflect on your behaviour between each instance of offending, but instead you actively determined to continue. Thus, your culpability increased with each subsequent set of offending. Apart from the charge of murder, your offending was planned and sustained. You deliberately targeted victims who would be vulnerable, and you demonstrated a complete lack of remorse across this period of offending.
124. You are now an older man who appears not to have offended since the night of IJ's death. I acknowledge that the revelations of this offending will have a significant impact on your family who until recently, were likely unaware you harboured a shocking secret. They have doubtlessly faced the realisation that you are not the man they thought they knew, and loved.
125. You have pleaded guilty and facilitated justice, and I am satisfied that you are now remorseful. You will receive a discernible discount as result. However, the mitigatory impact of these factors must be tempered by the 35 year delay. While you went about your own life, you left behind a trail of devastation, with your appalling offending unsurprisingly leaving each victim with lifelong trauma.

Cumulation

126. I have discussed above the reasoning for my approach to cumulation in respect to sentencing for your sexual and violent offences under Part 2A of the Act. I further note that the charges of false imprisonment should be viewed as increasingly serious as you repeated the offending. Moreover, the false imprisonment of KL, being charge 9 on the indictment, was of a notably different nature than false imprisonment of AB and EF. Your sentence will therefore include a degree of cumulation, for both the charges for which you are sentenced as a serious offender, and for the remaining charges. In reaching this conclusion, I have considered the relevant serious offender provisions, the principle of totality and the circumstances of your case. I remain very conscious of your age, however, the sentence to be imposed must give appropriate recognition to the severe gravity of your offending. [\[36\]](#)

[\[36\]](#) *R v RLP* [2009] VSCA 271 [\[39\]](#); *RSJ v The Queen* [2012] VSCA 148 [\[3\]](#), [\[44\]](#).

Sentence

127. Taking into account all relevant factors, I sentence you as follows:
 - (a) For charge 8 (murder), I sentence you to imprisonment for 20 years. I will treat that as the base sentence.
 - (b) For charge 1 (false imprisonment), I sentence you to imprisonment for 5 years. I order that 6 months of that sentence be served cumulatively on the base sentence.

(c) For charge 2 (indecent assault upon a female), I sentence you to imprisonment for 4 years. I order that 1 year of that sentence be served cumulatively on the base sentence.

(d) For charge 3 (rape), I sentence you to imprisonment for 12 years. I order that 2 years of that sentence be served cumulatively on the base sentence.

(e) For charge 4 (false imprisonment), I sentence you to imprisonment for 7 years and 6 months. I order that 9 months of that sentence be served cumulatively on the base sentence.

(f) For charge 5 (rape with aggravating circumstances), I sentence you to imprisonment for 10 years. I order that 1 year of that sentence be served cumulatively on the base sentence.

(g) For charge 6 (rape with aggravating circumstances), I sentence you to imprisonment for 13 years. I order that 2 years and 3 months of that sentence be served cumulatively on the base sentence.

(h) For charge 7 (rape with aggravating circumstances), I sentence you to imprisonment for 15 years. I order that 2 years and 6 months of that sentence be served cumulatively on the base sentence.

(i) For charge 9 (false imprisonment), I sentence you to imprisonment for 8 years. I order that 1 year of that sentence be served cumulatively on the base sentence.

128. This makes a total effective sentence of 31 years' imprisonment.

129. I fix a period of 25 years as the period you must serve before you become eligible for parole.

130. A table summarising the particulars of this sentence is attached as Annexure I.

131. Pursuant to s 6F of the Act, I order that it be entered into the records of the Court that I have sentenced you as a serious offender for charges five to eight of the indictment.

Section 6AAA declaration

132. I have imposed upon you a less severe sentence than I otherwise would have imposed, because you have pleaded guilty to these offences. I declare that but for your pleas of guilty, I would have sentenced you to 36 years' imprisonment with a non-parole period of 31 years.

PSD declaration

133. I declare you have served 311 days of pre-sentence detention, not including this day.

Sex Offenders Registration Act

134. You will not be ordered to report details or be entered into the Register of Sex Offenders. The prosecution made no application for such an order, and I will not exercise my discretion to do so. [37].

[37] *Sex Offenders Registration Act 2004 (Vic) s 11.*

Annexure 1

Charge	Offence	Maximum (at the time of offending)	Sentence	Cumulation
1	False imprisonment (common law)	At large	5 years	6 months
2	Indecent assault upon female (<i>Crimes Act 1958 s 55(1)</i>)	5 years	4 years	1 year
3	Rape (common law)	20 years	12 years	2 years
4	False imprisonment (common law)	At large	7 years and 6 months	9 months
5	Rape with aggravating circumstances (<i>Crimes Act 1958 s 45(3)</i> as amended by the <i>Crimes (Sexual Offences) Act 1980</i>)	20 years	10 years	1 year
6	Rape with aggravating circumstances (<i>Crimes Act 1958 s 45(3)</i> as amended by the <i>Crimes (Sexual Offences) Act 1980</i>)	20 years	13 years	2 years and 3 months
7	Rape with aggravating circumstances (common law)	20 years	15 years	2 years and 6 months
8		Life	20 years	Base

