

COMMENTS ON PASSING SENTENCE

PEARCE J

David Holmyard pleads guilty to manslaughter. At 8.40 pm on 7 November 2014 a Ford XR6 sedan he was driving on Evandale Road at Western Junction collided with a utility being driven by Maureen Flanagan. Mrs Flanagan suffered massive injuries and died almost immediately. By his plea, the defendant accepts that Mrs Flanagan's death was caused by his culpable negligence, that is, negligence on his part which goes beyond a mere matter of compensation between citizens and shows such a disregard for the life and safety of others as to amount to a crime against the State and conduct deserving of punishment.

From about two hours prior to the collision the defendant was at a hotel in Evandale, drinking alcohol and socialising. He left the hotel at 8.37 pm. Analysis of his blood taken about an hour later revealed the presence of alcohol at the level of 0.086 grams per 100 millilitres of blood, 10 micrograms of THC, the active ingredient of cannabis, and 0.02 milligrams of methylamphetamine per litre of blood. At the time of driving his blood alcohol concentration would have been slightly higher, probably about 0.1%. After leaving the hotel the defendant went straight to his car and drove north out of Evandale towards Launceston on the Evandale Main Road. It is the main arterial road from Evandale to the Launceston airport and beyond. As well as traffic to and from Evandale, the road regularly carries traffic between the Midland Highway and the airport, and to the industrial and residential properties nearby. Between the Evandale town boundary and the airport the road is dual carriageway and the speed limit is 80 kph. As he left Evandale the defendant drove past police officers who happened to be driving in the opposite direction. They measured his speed with a mobile radar speed measuring device at 109 kph and noted that only one of the headlights on his car was operating. They turned to follow as the defendant continued north. Mr Holmyard, having seen the police and believing they may follow, accelerated further in an effort to avoid them.

About 2.5 kilometres north of Evandale the defendant passed a sign warning of the junction of Evandale Road with Perth Mill Road in 200 metres. Perth Mill Road meets Evandale Road at a T-junction from the left for north bound traffic. After the sign, and just before the T-junction, Evandale Road is intersected by two rail lines. It was close to 8.40 pm and getting dark. The road is not lit by street lighting. The dual carriageway is separated by continuous double white lines. Mrs Flanagan drove her white Nissan Navara dual cab utility from Perth Mill Road. At the T-junction she turned left on to Evandale Road, thus travelling in the same direction as the defendant. Her family home is only about 50 metres north of the junction on the eastern side of Evandale Road. As she neared her home she slowed and indicated and commenced to turn right, across the southbound lane, into her driveway. At the same time the defendant was approaching from behind her at high speed. After passing the junction warning sign he had an unobstructed view north along Evandale Road. Either at or just after passing the sign the defendant drove his vehicle onto the incorrect side of the road. He travelled about 175 metres. Then he passed over the most north of the railway crossings on the incorrect side of the roadway. Because the level of the railway crossing is elevated, the road leading up to it acted as a ramp and the defendant's car became airborne. He was travelling at 174 kph. He remained airborne for 21 metres and touched down, still in the south bound lane. It was, for him, the incorrect side of the roadway. By then his car was only 64 metres short of where Mrs Flanagan was

turning into her driveway. He did not have proper control of his car and struck Mrs Flanagan's car. Because she was turning, her car was struck on the driver's side. Taking account of his speed and position on the road there was insufficient time for the defendant to brake or take any action to avoid the impact. The impact fixed the speedometer on his vehicle at 170 kph.

The force of the impact was catastrophic. The sedan penetrated almost a metre into the driver's side of the utility. The containers bolted to the rear were sheared off. The momentum flipped the utility onto its roof and propelled it almost 50 metres down the road, rolling as it went. The defendant's vehicle also spun off down the road, coming to rest near the utility. The defendant suffered only minor injury.

The defendant's criminal responsibility lies in the particulars in the indictment, primarily in my view, his speed and position on the roadway. He drove when his ability to do so was impaired by drugs and alcohol. The effect of the presence of alcohol and drugs is likely to have contributed to his decision to drive in such a manner. It may, along with the absence of one headlight, have caused him not to see Mrs Flanagan's car on the road. However his speed and manner of driving was such that, once his car left the road surface, even a driver unaffected by drugs or alcohol could have done nothing to avoid the impact.

The defendant is 26. He has a record for traffic offences, including speeding and hooning. None of these offences is remotely as serious as this crime. They were only of sufficient seriousness to attract fines and imposition of demerit points. However they indicate a persistent disregard for the road rules and a lack of insight into danger posed by driving at speed. They must have led to suspension of his licence because he was disqualified from driving while his licence was suspended twice, once in 2009 and again in 2014.

The defendant is single with no children. He had stable long term employment in a bakery. He lost that job as a result of this crime, leaving him with no income and debts. He was a heavy user of alcohol and a recreational user of methylamphetamine. He says he smoked cannabis to help him sleep. At the request of his counsel I obtained a report from the Chief Forensic Psychiatrist. It discloses no mental illness. The author reports the defendant has personality traits which suggest a lack of insight into the consequences of his actions, particularly with driving vehicles. Nothing in the report provides mitigation for this crime or requires an individualised approach to sentence.

This is a serious crime. The degree of speed involved is extreme. The defendant's driving was erratic, having decided to drive on the incorrect side of the road. He drove such that his car became airborne. His ability to drive was impaired by alcohol and illicit drugs. Although the duration of the driving was not lengthy, and did not involve multiple instances of danger, that, at least in part, was because the collision occurred soon after his journey began. His speed and manner of driving was such that the risk he posed to the life and safety of any other road user was grave. He ignored the warnings given by the road signs. Accelerating to avoid the police is a factor which makes the crime more serious. His actions have had tragic consequences for Mrs Flanagan's husband, children and grandchildren, her other friends and family and the community.

No sentence can remedy the loss of Mrs Flanagan. I must have regard to sentences which have previously been imposed by this Court for similar crimes. In my view

mitigation arises from the defendant's plea of guilty, even though at a very late stage, and that his sentence should be reduced as a result of it. I cannot see that there was any prospect of acquittal of any crime, but conviction of a lesser crime was possible. The plea indicates an acceptance of responsibility. Most importantly, Mrs Flanagan's family was spared the ordeal of a trial.

David Johnathan Holmyard, you are convicted. You will pay the victims of crime compensation levy of \$50 within 28 days. You are sentenced to imprisonment for six years from 26 November 2015. Because of the seriousness of your crime, the need for adequate punishment and deterrence, and by reference to non-parole periods imposed in past cases, I order that you not be eligible for parole until you have served four years of that term. That is the minimum period that, in the interests of justice, I consider you should serve. You are disqualified from driving for five years from your release from prison and any driver licence you have is cancelled.