

STATE OF TASMANIA v HAYDEN DALE SMITH
COMMENTS ON PASSING SENTENCE

14 FEBRUARY 2025
WOOD J

Hayden Dale Smith is to be sentenced for the crime of manslaughter. He was charged with murder and the State accepted his plea of guilty to manslaughter as resolving the charge.

The defendant and the deceased, Tye Paul Silver, had known each other for a number of years. At the time of death, Mr Silver was 32 years of age, and the defendant was 23. Mr Silver had previously been in a relationship with the defendant's sister, Hayley Smith. They had a child together. There was a history of family violence recorded with Tasmania Police and an interim family violence order in place at the time sought to protect Ms Smith from Mr Silver by prohibiting any contact.

The defendant and his sister were close, and he was aware of the conflict and ongoing difficulties between her and Mr Silver. He was aware there were constant arguments, and that she was subject to threats and harassment from Mr Silver.

The tension had escalated because Mr Silver formed a belief that Ms Smith had formed a new relationship with one of the defendant's close friends. This was not in fact correct but his belief was a feature of his conversations with Ms Smith and an aspect of allegations and threats he was making.

On Monday 17 January 2022, after work, the defendant met his brother, Dale Evans, and friends, Corey Smith, Billy Miller, and Liam Gittus at the Derwent Tavern. Then he went to his brother's house in Lamprill Circle, Herdsmans Cove, where his sister also lived.

At 8:41 pm, Mr Silver sent a message to the defendant challenging him to fight. The message was: "Your just as fucked as her you goose get the fuck over here then stand up be a big boy come fight me bye ya self ya girl x".

At approximately 11:30 pm, the defendant went to his home nearby where he lived with his partner and their young daughters, retrieved a loaded shotgun, and went on foot to Mr Silver's house in Douglas Drive, Bridgwater.

He had decided he would go to Mr Silver's house and speak to him to stop the threats and to explain that his sister was not in a relationship. It was common knowledge that Mr Silver had a firearm at his house, and because the defendant was concerned about that, he took the shotgun, hidden in his trousers. He hoped that by having the firearm, he would be able to stop Mr Silver from acting violently.

Meanwhile, Mr Silver had been picked up from his house and taken to a friend's house in Bridgwater.

When the defendant arrived at Mr Silver's house, he knocked on the front door and let himself in. He called out for Mr Silver but there was no answer. The other people who lived at the house were home, namely Amanda Watts and her daughter, and Corey Anning. The defendant asked Ms Watts where Mr Silver was and told her who he was and that he was Hayley's brother. Mr Anning told the defendant Mr Silver was down the road and attempted to contact Mr Silver through Facebook Messenger.

The defendant spoke to Mr Silver on the phone. He rang him three times in approximately three minutes and Mr Silver called back a few minutes later.

Ms Watts overheard the defendant saying to Mr Silver words to the effect of, "I want to talk to you in person about it. Whatever's going on with you and Gittus has nothing to do with me." At one stage, Mr Silver told the defendant he had a gun under his pillow.

The defendant had a conversation with Mr Anning and asked whether Mr Silver had a gun under his pillow and, if he did, whether Mr Anning could get rid of it. Mr Anning found a firearm under Mr Silver's pillow and took it and hid it in his own bedroom. The defendant asked Ms Watts for a drink, and she gave him a beer and a cigarette.

Mr Silver sent the defendant's sister a message at 11:59 pm saying, "Hayden's at home I'm walking back there now I'm telling you Hayley I'll punch holes in these goose if he's brang a gun to my house."

He was driven to his home and arrived a few minutes after midnight. He went into his bedroom and the defendant followed. They argued. Mr Anning heard what he thought was the two men having a physical altercation as it sounded like punching, slapping, and banging on the walls.

Mr Anning went to the bathroom and while he was in the shower, he heard the two men yelling loudly at each other. Mr Silver yelled something to the effect of, "How dare you come and disrespect me in my house," and told the defendant to leave. The defendant asked if he could get his beer.

All that is known about what then happened is that the defendant shot Mr Silver to the chest with a 12-gauge shotgun and that at that the time he discharged the shotgun, he was approximately 1-3 metres away from Mr Silver. It would seem Mr Silver was standing near the doorway to the lounge room, and the defendant was towards the front door.

The State cannot assert what occurred between the defendant and the deceased at the time the deceased was shot, or in the moments beforehand.

The T-shirt worn by the deceased was swabbed and the defendant's DNA was in samples taken from below the neckline on the front, the chest, the front and back of both sleeves, and on the lower portion of the front of the shirt. The presence of the defendant's DNA in these locations is consistent with a physical struggle as heard by Mr Anning.

It is not disputed by the State, and it is accepted by me for the purpose of sentencing, that the defendant and the deceased were engaged in a physical altercation in the moments before the shooting.

Further details of those moments were provided in the plea in mitigation and are not disputed. In the bedroom, Mr Silver was violent towards Mr Smith and he struck and fought with Mr Smith. During this struggle and physical altercation, the defendant still had the firearm hidden in his trousers.

Mr Silver went to retrieve his own firearm and on discovering it was not where he had hidden it, he called out for his firearm. The fight continued and the men moved out of the bedroom into the hallway area where the defendant was able to move away.

There, Mr Silver approached the defendant. The defendant had removed the shotgun from his clothing. At a point when Mr Silver was approaching him and one to three metres away from him, the defendant discharged the firearm in his direction. He did not realise he had shot Mr Silver and did not stay to see what had happened. He panicked and fled the house.

The defendant reacted to defend himself when he was in a stressed and heightened state, having broken away from a physical altercation, when he was fearful of Mr Silver who was coming towards him.

Mr Anning came out of the bathroom and Mr Silver came towards him saying, "I've been shot, I'm gonna die", before collapsing on the laundry floor.

Ms Watts was hiding in a bedroom with her daughter and at 12:32 am, she called an ambulance.

Tasmania Police and Ambulance Services attended shortly after and confirmed that Mr Silver was deceased. Police officers commenced a search for the defendant. During the evening of 18 January, the defendant's father arranged for his son to present himself to police and he was arrested at his mother's address. By then, the defendant was aware that Mr Silver had died and that he was responsible.

He participated in a video recorded interview but declined to answer any questions until he had spoken to his lawyer. The following day, he participated in an interview, but he did not make any admissions. The shotgun was not found by police as it had been destroyed by the defendant.

Dr Don Ritchey conducted an autopsy on 19 January. The cause of death was a shotgun wound to the upper central chest that extended onto the anterior base of the neck. He stated the mechanism of death was hypovolemic shock due to acute blood loss. The deceased had methylamphetamine and THC in his blood.

It is not disputed by the State that in the context of a physical altercation, the defendant was fearful and his act of discharging the firearm was an act done to defend himself and not for some other reason such as out of anger. However, the force used in the circumstances was excessive and not reasonable in the circumstances as perceived by the defendant and was thus without *any* lawful justification.

The defendant is guilty of manslaughter on the basis that he discharged the shotgun and caused the death of Mr Silver and the defendant either intended to cause bodily harm to Mr Silver, and/or his act was commonly known to be likely to cause death.

There is and can be no suggestion that the defendant appreciated the act was likely to cause death or that *he* ought to have known his act was likely to cause death. If that was the case, he would be guilty of murder.

I have been provided with victim impact statements from Mr Silver's mother and from his sister, which I have read. They were very close to Mr Silver and are devastated by his sudden and violent death. His mother describes her memories of the night her son died as pure horror. She has lost a loving, warm, and thoughtful son and she misses him dreadfully. She describes herself and her family as being lost without him.

He is a father to three sons to whom he was devoted, and they will grow up without their caring father and his support.

His sister describes her own great sense of loss, and the significant ongoing grief suffered by the family. Her brother was generous, protective, and family-oriented, and special family events are now painful. She describes a "never-ending grief" and personal struggle, and the details of what she describes are understandable consequences of this crime. She explains that the death of her brother has affected everything in her world.

The defendant has insight and understanding about the terrible harm he has inflicted in taking the life of Mr Silver and permanently affecting the lives of Mr Silver's family. He is deeply remorseful for his conduct.

The defendant has also caused distress to his sister and affected the life of his own family. Mr Silver was part of the Smith family for a number of years. Because of what the defendant did, his sister has been deprived of Mr Silver's support. Their son, Mr Silver's nephew, has been deprived of his father at a very young age.

His own family have suffered at the hands of others who have carried out acts of retribution. His mother's car was set on fire, and his grandmother's car was also damaged by being shot at. People driving past the homes of his mother, grandmother, and sister have yelled abuse. He feels guilt that his conduct is having repercussions for his family when they are completely innocent of any wrongdoing. His partner and children have had to relocate due to fears about their safety arising from threats that have been made.

He has pleaded guilty, and saved witnesses the stress of giving evidence. However, I take into account that the mitigatory weight to be given to his plea is muted because of the advantage he derived of not proceeding to trial which eliminated the prospect of being found guilty of murder.

The defendant is now aged 26. He was 23 at the time. He has three prior convictions for violence, two offences of assault a police officer committed as an 18-year-old, and a crime of wounding committed a year later. That crime involved smashing a glass into a man's face in a bar, intending to wound him. He was sentenced to a home detention order for ten months and a community correction order.

He has been in a stable relationship for eight years and has two young daughters. He has a sound employment history.

He was remanded in custody on the day of his arrest. He has been housed at the Hobart Reception Prison for the majority of that time because of concerns for his safety within the general prison environment. Education courses have not been available to him there and once he is sentenced, he will have limited, if any, opportunities for rehabilitation courses if he remains housed at the remand centre. In this respect, the sentence will operate in a punitive way. I also bear in mind, however, that he does not have particular issues that need to be addressed in terms of his rehabilitation. He is not someone who has developed a drug problem, notwithstanding that when he was growing up, he was exposed to the taking of illicit substances and drug-taking was prevalent amongst his peers.

I have a report dated 12 November 2024 from Senior Clinician, Ms Erin Hunn, at the Tasmania Prison Service which is very positive. It notes that the defendant has been employed in a trusted position and his behaviour and attitude are described as exemplary. He has demonstrated a strong commitment to supporting his partner and children as best he can while he is in custody.

Evidently, this is characteristic of the defendant. His mother has provided a letter to the Court, and she also speaks of this commitment and of his dedication to his family.

He has strong prospects of employment on his release and this, and the continued support of his partner and his family, are positive factors in terms of his reintegration into society. He is determined that when he is released, he will be there and provide for his family and be a contributing member of society.

It is clear the defendant did not go to the deceased's house intending to use the firearm. He went to the house to confront Mr Silver and bring a decisive end to the threats and false accusations being levelled at his sister. His reason for taking a loaded firearm with him was to prevent or deter the deceased from acting violently during the confrontation, or because he anticipated that Mr Silver may resort to the use of a firearm and he hoped to deter him from doing that.

However, his taking of a loaded firearm to a person's home, a person with whom there was ongoing conflict and hostility, involved the defendant assuming a clear risk that the firearm would be used, and serious or lethal harm would result. This aggravating factor must be reflected in the sentence. It was entirely obvious that if it was such a volatile situation that the defendant felt he needed a loaded firearm in order to protect himself, he should not have gone there at all, let alone with the firearm.

He intentionally discharged the shotgun, and bodily harm was either intended or that act was commonly known to be likely to cause death. Inherent in his plea is that he did not intend to inflict lethal force, and I reiterate, it is not a case where the defendant ought to have appreciated in the circumstances that there was a real chance of causing death.

I take into account his act of discharging the shotgun was to defend himself in the midst of a physical altercation when the defendant felt under physical threat and was fearful. I accept that a significant feature of this case is that it was a crime committed in fear and not anger or vengeance.

However, his response was entirely unjustified; there was no suggestion that at that moment Mr Silver was armed or had a weapon. His act was extreme and grossly disproportionate to the threat that Mr Silver represented.

His act of firing a shotgun in someone's direction at close quarters is a grave aspect of this criminal conduct which must be condemned.

There is a need for the sentence to be effective as a general deterrent to deter others from resorting to firearms in situations of conflict, and the sentence must also, of course, reflect the sanctity of human life.

The defendant has been in custody since 18 January 2022 and the sentence I am about to impose will commence on that day. In light of the defendant's personal circumstances, such as his relative young age at the time of his crime, that this is his first experience of imprisonment, and his sound prospects of rehabilitation, I will allow an early opportunity for parole.

Hayden Smith, I record a conviction for the crime of manslaughter. I impose a term of imprisonment of seven and a half years backdated to 18 January 2022. You are not to be eligible for parole until you have served half of that term.