

STATE OF TASMANIA v MICHAEL LACHLAN ANTHONY BERRY

13 JUNE 2025

COMMENTS ON PASSING SENTENCE

SHANAHAN CJ

Michael Lachlan Anthony Berry, you have been convicted of two counts of assault contrary to s 184 of the *Criminal Code*, two counts of strangulation contrary to s 170B of the *Criminal Code*, and two counts of rape contrary to s 185(1) of the *Criminal Code*. All six offences were committed on or about 18 June 2023 and the complainant in each instance was **[the complainant]**. The offences were committed at your home at Sidmouth and occurred in the context of the breakdown of your relationship with **[the complainant]**, who was your partner at that time.

You denied any wrong doing at trial. Your evidence of what occurred on 18 June 2023 was that following an unwanted visit from **[the complainant]** to your home at Sidmouth and after you had asked her to leave multiple times, you crawled from the shed, where you had gone to sleep after drinking half a bottle of Jameson's, into your home where a physical altercation occurred in which **[the complainant]** initiated the violence. Ultimately, following those events, your evidence was that you had consensual sex with **[the complainant]**, including oral and then vaginal sex during which **[the complainant]** asked you to choke her. You described the request to choke her as "common with us during sex".

Mr Berry I must sentence you on the facts consistent with the verdict of the jury. The necessary implication of that verdict is that the jury accepted the evidence of the complainant beyond reasonable doubt. You are to be sentenced on the facts as found by the jury. Those facts are inconsistent with your evidence at trial, and must reflect the evidence of the complainant.

You were born on 11 August 1983 and are currently aged 41. At the time of the offending you were 39 years of age and **[the complainant]**, who was born on 12 February 1996, was significantly younger than you, then aged 27. **[The complainant]** had left an unhappy marriage with the father of her two children to make a life with you at your home in Sidmouth. You also have two children from a previous relationship. At the time of the offending your children were aged 9 and 7 years respectively, and **[the complainant's]** children were aged 7 and 4. When you and **[the complainant]** were living together at Sidmouth all the children lived with you from time to time. Your relationship with **[the complainant]** was not a long one but the evidence suggests it was a relationship to which you were deeply emotionally committed.

The nature of your relationship with **[the complainant]** was, as was reflected in the evidence, typified by jealousy and control. **[The complainant]** gave evidence that if she went somewhere without you, you would become aggressive. On 14 June 2023 you became aware that another man had "love reacted" to **[the complainant's]** photograph on Facebook. In the period between 14 to 18 June 2023 you had numerous communications with **[the complainant]** about that matter. You suspected **[the complainant]** of seeing another man.

Your offending occurred in the period immediately following **[the complainant's]** admission to you on or about 18 June 2023 that she had slept with another man. It was this admission that appears to have triggered the events that lead to your assault, strangulation and rape of **[the complainant]** on that day. The nature of your relationship with **[the complainant]** at this time was reflected in the text messages that were tended in evidence, and I recall that there were lengthy lists of text messages that were in the exhibits that were provided to the jury. On that day you sent a text message to **[the complainant]** to the effect, "*Without a doubt, I'm going to ask you some difficult questions tonight. I'm not going to accept I don't know as an answer*". It was later that night that the offending in question occurred.

You asked the complainant to meet you at your house that night.

[The complainant] had been in Hobart purchasing a car when she returned to Launceston at about 9 pm. She put her children to bed and drove to your house at Sidmouth, in a semi-rural and isolated location.

You were drunk and when [the complainant] arrived she found you in the shed next to the house passed out and covered in vomit.

You spoke with [the complainant] in the shed for about 30 minutes, you were intoxicated and were asking [the complainant] why she had slept with the other man. You were dissatisfied with [the complainant's] answers to your questions. You crawled into the house. Your account of that was that you were cramping up, [the complainant] gave evidence that you were drunk.

[The complainant] gave evidence that once in the house you were asking her about her sexual activity with the man she had slept with, and that is consistent with your previously expressed intention to seek to confront [the complainant] over her conduct in that regard that night.

The first strangling and assault counts, being counts 1 and 2 on the indictment, related to you getting angry with [the complainant] grabbing her by the throat and pushing her to the ground and then starting to strangle her, asking her "why the fuck did you do this to me". [The complainant] got to the stage where she could not breathe. She got all tingly in the face and to use her words "thought she was going to pee myself".

After the initial strangulation and assault you continued to ask questions about what she did with the other man.

The second strangulation and assault counts, being counts 3 and 4 on the indictment, occurred when you were dissatisfied by [the complainant's] attempts to answer your questions and you pushed her to the ground and sat on top of her and strangled her for another ten or so seconds. You then forcefully smashed her head into the ground and at that time [the complainant] was screaming at the top of her lungs for you to stop and that you were hurting her and were going to kill her, she asked you to stop but you continued to hurt her. After you rammed her head into the ground multiple times you then elbowed her to the side of the face and in the right ear. [The complainant] was screaming, she was asking you to let her get up and have a glass of water. It ended with you stroking her face and telling her to stop crying. You said, "it's going to be OK" and were calling her "sweetheart" and "babe" and "Let's promise not to hurt each other anymore".

You then continued to ask questions about what [the complainant] did with the other man when she slept with him. You then said to [the complainant] "are you going to fuck me now" and when [the complainant] said she did not want to have sex you said, "well if you can fuck another man, you can fuck me".

You locked the doors of your house and went into the bedroom. [The complainant] sent messages to her mother, sister and brother-in-law telling them she was in danger.

When [the complainant] walked into your bedroom you asked her again "are you going to come fuck me then?". [The complainant] said, "No it's not going to fix anything" and you just kept stating "come on" and she said "No". You tried to take off her clothes. After you tried again [the complainant] gave evidence that she could see that you were getting angry again,

and being fearful said she would take off her own clothes and then went into the ensuite bathroom and removed her clothes.

Ultimately **[the complainant]** had oral and vaginal sex with you without her consent because she feared for her life. The jury accepted her evidence, and in convicting you rejected the proposition that you could have had a reasonable belief that **[the complainant]** consented to sex.

It was the fear that your violent assaults created that allowed you to take what you wanted from her, without any regard to her wishes or welfare. Your actions were inward looking, arrogant and cruel, and completely selfish. You did not treat her as a person, but simply used her to alleviate your jealousy and gratify your own sexual desires. The offending occurred sequentially and represents a sustained course of conduct, it is a series of assaults and strangulations that measure your initial rage culminating in the two rapes after you had cowed **[the complainant]** into submission. It is a serious example of family violence. It is to be noted that strangulation can easily lead to unforeseen consequences, it is an expression of power and can be very dangerous.

The entire episode was one of serious sexual violence that had at its heart the intention of forcing **[the complainant]** to submit to you, to engage your questioning and ultimately to her sexual compliance. You had a number of opportunities during this period to relent or withdraw but you did not, and when I identify that period, I am indicating the period after you went into the house. **[The complainant's]** physical injuries were still obvious four days later when she was photographed, the mental impact of your offending continues as described in **[the complainant's]** Victim Impact Statement to the Court.

[The complainant] has described the impact of your offending in her Victim Impact Statement made on 19 May 2025. She refers to struggling with "unhealthy levels of anxiety and depression", struggling to sleep, flashbacks and nightmares. **[The complainant]** says she "is constantly on edge" and experiences panic attacks. She has been diagnosed with post traumatic stress disorder and has made multiple suicide attempts. Her parenting has been affected by the "weight of the trauma" often leaving her "exhausted distant or emotionally numb". She also describes the impact of your offending and how it has negatively affected her sense of physical and emotional safety. She also struggles to work through emotional and mental exhaustion.

There were photographs of the injuries suffered by **[the complainant]** taken by First Class Constable Williams on 22 June 2023. The evidence of Rebecca Cameron, the specialist forensic medical examiner, was that bruising would show within about 16 hours and thus some care has to be taken with those photographs because they were taken four days after the complainant's injuries were incurred. The photographs still captured the distribution of bruising suffered by the complainant. Ms Cameron reported petechial bruising which she said was associated with strangulation, and **[the complainant]** complained of a frequent urge to urinate, a symptom also associated with strangulation.

[The complainant's] Victim Impact Statement is entirely consistent with the Courts experience of the real impact suffered by victims of sexual crime such as this. It is also consistent with the more informed contemporary understanding as to such impact that the effects of your crimes on the complainant are likely to be long-term, if not permanent.

There was evidence at trial about potential ways in which **[the complainant]** could have left your house but none made allowance for the fact that she was at a semi-rural property late on a Sunday evening with someone who had assaulted and strangled her twice. Your account of

[the complainant] asking that you strangle her during sex was not accepted by the jury, suggesting that explanation was a creation to cover your assaults and strangulation of the complainant.

You used force to overpower the complainant, you assaulted and strangled her on not one but two occasions, you were determined to exert control over [the complainant] and to use your own words to "make her mine again". Your initial offending against [the complainant] was violent and sustained it created fear and [the complainant] felt she could not escape.

Perhaps the most salient observation that can be made about these offences is that they constitute a major breach of trust, and that is compounded by [the complainant's] history, that you were well aware of, that she had previously been in a difficult marital relationship. It is not a mitigating factor that [the complainant] had been unfaithful to you, or that you were motivated by jealousy.

Domestic or family violence is now wide spread in this community, some would say it has become a scourge, and it is often committed by offenders who are otherwise of good character and without a criminal history. It is clear that general and specific deterrence are very important matters to be considered in offending of this type. In this instance you demonstrated no remorse or insight during your trial and have consistently rejected any responsibility for what occurred.

I have taken the matters put in mitigation into account and I have carefully read the character references that were provided. Whilst I acknowledge that you have no relevant prior offending, you have shown no remorse or insight at any stage during these proceedings and the objective seriousness of your criminal conduct and your moral culpability for it is high and requires a period of imprisonment to be served immediately.

Michael Lachlan Anthony Berry you are convicted on the indictment on each of the six counts. I will apply a single sentence in respect of all counts. You are hereby sentenced to a term of imprisonment of four years to be served immediately, backdated to the date you were taken into custody. You will be eligible for parole after serving a period of three years. I direct that the offences be recorded on your criminal record as a family violence offence pursuant to s 13A(1) of the *Family Violence Act 2004*.