

Mr Austin, you have pleaded guilty to one count of manslaughter.

You committed this crime on 13 March 2023. The victim is Jacqueline Bergman. You and Ms Bergman had been in a significant relationship since mid-2019. The relationship was described to me as off and on. You accept the prosecution allegation that you perpetrated family violence against Ms Bergman during the course of the relationship and that you were controlling of and violent towards her. At the time of commission of the crime, you were bound by a family violence order which had been put in place for Miss Bergman's protection. The order did not prevent you spending time together but it did include a condition that you were not to abuse or assault her. One aspect of the relationship, and the family violence which occurred during it, was that on occasions Ms Bergman, presumably after an argument, would try to leave your home. The house is on a rural property which has a long driveway, approximately 500 m in length, which leads to the nearest public road. On these occasions, Ms Bergman would walk down the driveway to meet someone, often her mother, who she had called to collect her. You would chase her in a car by speeding down the driveway and driving at her at speed. This required her to jump out of the way so as not to be hit. She would be left with marks on her body and prickles on her clothing from the bushes at the side of the driveway, where she had fallen in her effort to avoid being hit by the vehicle driven by you. She has shown her mother skid marks arising from such incidents. You had also on occasion threatened to kill her.

Miss Bergman was staying with you at your house on the night of and 13 March 2023. You had spent the evening together but difficulties developed in the early hours of the morning. You told police that the problem related to a man calling her phone, after which you got "a bit funny". It is clear that Ms Bergman decided that she wanted to leave, and called a taxi. She went down the driveway to the gate at the road to wait for it, but it did not arrive. She then came back to the house, presumably when she realised that the taxi was not coming. She then attempted to ring the police, but was unsuccessful in making contact, probably because of poor telephone reception. Telephone records reveal that her attempts to contact police were between 2:47 am and 3:01 am. At some point after this, Ms Bergman again left the house and started to walk to the road along the driveway. A Facebook message sent at 3:11 am suggests that she had arranged for someone else to pick her up.

As had happened on previous occasions when she tried to leave after an argument, as I have already described, you followed her in a car down the driveway. At an unknown point on the driveway, your vehicle, which was being driven at a speed of between 20 and 30 km/h, collided with Ms Bergman. Subsequent examination reveals that the point of contact on your car was around the front numberplate, and it collided with Ms Bergman's left knee. The car continued past the point of collision, and Ms Bergman was dragged under the vehicle. The vehicle travelled over her for its entire length. She suffered a number of injuries, including significant injuries to her chest and abdomen, which caused her death. Other injuries included significant lacerations and broken bones including fractures to her pelvis on both sides, a broken leg and a severely broken, almost amputated, foot. There was also a piece of metal lodged in her throat. It is impossible to say precisely when she died, but the forensic pathologist was of the opinion that the cardiac injuries would have caused death rapidly.

After the collision, your vehicle eventually came to rest with the driver's side door hard against some bushes on the side of the driveway. It was necessary for you to smash the front passenger window and open the front passenger door using the external door handle in order to get out of the vehicle. It is not clear whether you did anything to assist Ms Bergman, but you certainly did not administer CPR. You subsequently told police and an ambulance dispatcher that you had checked on Miss Bergman and her breathing was shallow, and I must accept that you, at least, did this. However, you then walked back to the house, leaving her lying under the vehicle in the driveway. If her breathing was indeed existent but shallow when you checked her, then she was alive at this point, and clearly you left her to die as she lay on the driveway under or near the car. When you got to the house you did not seek assistance, either from your father who was there, or by calling police. In fact, when police called the landline at the house a short time later looking for Ms Bergman, presumably in response to her failed attempts to contact them a short time before, you told them that she was not there and had got a ride home to Risdon vale. You told them that you reckoned she would be fine. It is clear that you were trying to divert police away from the property. However, about five minutes later, you did call an ambulance, although you pretended that someone else had been driving and had collided with an unidentified person. This was the conversation in which you told the ambulance dispatcher that you had checked on the person and her breathing was shallow. The prosecution asserts that you called the ambulance because you knew the police were looking for Ms Bergman and you were trying to set up some form of exculpatory scenario. None of this has been disputed by your counsel. You followed up the call to the ambulance by calling police and telling them that you had found Ms Bergman, that she had been hit by a car but that the car was being driven by somebody else.

After this, you used a bicycle to travel back to where Ms Bergman was and put her in the rear of your vehicle. You then drove the vehicle back to the house and asked your infirmed father to drive it down to the end of the driveway to meet the ambulance. You told him that you could not do it because you did not have a licence. You then cleaned yourself, changed your clothes and went to bed.

Police came to the house to meet the ambulance. When ambulance officers removed Ms Bergman from the back of your car, she did not appear to be breathing. They performed CPR but this was stopped when it was clear that she had passed away. Police then found you in bed. You maintained your version that Ms Bergman had received a call from a male, and had wanted to leave, and you did not stop her. You told police nothing about having struck her with your vehicle. Police arrested you after they located blood-stained clothing in the house.

In subsequent interviews, you admitted colliding with the complainant, but asserted it was an accident which occurred when you were looking for her after she had left the house. You said that you had told the ambulance someone else had hit her because you were panicking.

When police found the vehicle, the headlights were on. Despite telling police that you did not see her before the collision, you now accept that you did. However, you did not brake before hitting her, and this is consistent with the lack of tyre marks on the road surface. Again, this is not disputed by you.

Ms Bergman's death has had a devastating impact on her family and I am sure others who knew and loved her. I have heard impact statements from her mother, sisters and children. The grief, shock and devastation each continues to experience is described in eloquent detail on those statements, and it is obvious that their grief has not abated to any significant extent with time.

Nor I suspect will these proceedings and your resultant punishment bring them any real solace. Ms Bergman's four children have been deprived of the love and support of their parent, and others in the family of a daughter, a sister and an aunt. More than one family member has made the valid point that this was a completely needless and pointless death and should never have happened. This is a completely valid observation, but it is undoubtedly the case that that knowledge has made it all the more difficult to accept the reality of this loss.

You are 40 years of age. You had a normal childhood in a close family. You left school at the end of grade 8 and commenced working in the racing industry, eventually becoming a harness driver. However, at some point, you developed a problem with illicit drugs, in particular methylamphetamine. This led eventually to disqualification from harness racing in 2018. I note that both you and the deceased had used methylamphetamine on the night that this crime was committed, although it is not alleged that your consumption of the drug played any part in the negligence which led to the Ms Bergman's death. You have four children and at the time of committing this crime, had custody of two of them. Those children are now being cared for by family members. Your criminal history includes two offences of breaching a police family violence order which although relating to a different complainant, do have relevance to your conduct in this case. Otherwise, your record consists of driving offences but of course given the circumstances of this case, they also have some relevance. Having said that, there is nothing in your record to indicate a propensity for violence to the extent inherent in your conduct on this occasion.

The basis of your criminal liability for manslaughter is culpable negligence, in particular failing to exercise reasonable care in your operation of the motor vehicle so as to avoid danger to Ms Bergman's life. The prosecution alleges, without dispute from you, that you saw Ms Bergman on the driveway and drove at her at a speed of 20 to 30 km/h with the intention of scaring her. It is not alleged that you intended to kill her or even to come into contact with her. Any such intention would, in any event, be inconsistent with your criminal liability for the crime of manslaughter based on culpable negligence. In other words, if you intended to kill her or to run her down and you achieved that aim then you would have been guilty of murder. Your expectation was that she would be so frightened by you driving at her that she would jump out of the way to avoid being hit. This is exactly what had happened when you had done this on previous occasions. On this occasion, however, she did not or could not do so and your vehicle collided with her. As I have already said, you did not brake despite seeing her in front of you. The only possible inference is that you simply kept driving into and over her, despite seeing her in front of you, and thereby caused her death. The prosecution asserts the theory that she may not have jumped out of the way because she may have assumed that you would stop or take evasive action to avoid her. She would have been entitled to assume that you would do so, and in any event, the reason why she did not get out of the way is not significant. She may not have moved out of the way because she trusted you not to hit her, but other possibilities are also open, for example that she misjudged the situation or was otherwise unable, because of the terrain, to avoid the vehicle. Any attempt by her to do so would have been dangerous in any event because of the possibility that you may have swerved at the last minute, simultaneously with her moving into your altered path of travel. Although I must sentence you on the basis that you did not intend to cause Ms Bergman's death nor did you intend to collide with her, the inescapable conclusion is that she died because your culpable negligence had created an extremely dangerous situation, and, on this occasion, that danger manifested when your vehicle collided with her.

In *Shield v Tasmania* [2017] TASCCA 6, I made the point that the assumption that cases of manslaughter based on death by culpable negligence are necessarily less serious than other forms of manslaughter is not justified and should not be accepted. I stated that in cases of death arising from culpable negligence, "the focus of the assessment of the offender's culpability must be on the degree of negligence and the foreseeable potential for harm". In this case, I take the view that the foreseeable potential for harm from the manner of driving deliberately adopted by you was extremely high, and so also is your personal culpability for this crime. You drove directly at the deceased for the purpose of scaring her and it was clearly foreseeable that if she did not move out of the way, there was a grave risk to the point of certainty that you would run her over, and that is what in fact happened. Further, the act itself constituted a serious example of family violence and a serious breach of the family violence order. Your actions were obviously intended to intimidate, threaten and frighten her and assert your dominance over her and your capacity to control her. The fact that the extreme danger to which you subjected her manifested in her death was clearly foreseeable by you. Your negligence showed a complete disregard for Ms Bergman's life and safety, and it arose because of your deliberate decision to drive at her in the way that you did. Finally, while it is impossible to conclude that anything you might have done in the immediate aftermath of the collision would have prevented her death, the appalling way in which you left her to die on the road without trying to help her, while you attempted to extricate yourself from suspicion and responsibility by telling a series of lies, which had the effect of at least delaying the provision of assistance to her, clearly negates any suggestion of immediate remorse, and repudiated the respect, care and dignity which should have been shown to Ms Bergman at that time. Your actions were cold blooded, callous and selfish, to an extent which is difficult to describe in words. Of course, such conduct compounds the impact of Ms Bergman's death on her loved ones.

I reiterate that I regard this crime as a very serious example of manslaughter. In fact, it is difficult to imagine a more serious example of manslaughter by culpable negligence. The sentencing aims of general deterrence and denunciation as well as punishment and retribution are important. There is little which mitigates your culpability. Your claim to be remorseful is not consistent with your conduct in the immediate aftermath of the collision. However, I accept that you should receive credit for the utilitarian value of your plea of guilty. Your plea has, at least, avoided the need for a trial and has allowed these proceedings to come to an end earlier than what otherwise would have been the case. The plea has also established that you did in fact see Ms Bergman before you struck her, hence establishing this aspect of your culpability, and avoided the need for this to be proved at trial. I will discount the sentence I would have otherwise imposed to reflect this utilitarian benefit.

In my view, the only appropriate sentence is a significant term of imprisonment. In view of your limited criminal history and your plea of guilty, I will provide for the opportunity to apply for parole before the end of the sentence, but the period of the non-parole period will be longer than the minimum, to reflect the objective seriousness of the crime, and your moral culpability for it. Further, having regard to the use of the motor vehicle in the commission of the crime, it is appropriate to make an order for disqualification.

The orders I make are as follows:

- a You are convicted of the crime to which you have pleaded guilty;

- b You are sentenced to imprisonment for a term of 13 years, which will be backdated to 3 April 2023. You are not eligible for parole until you have served eight years of the sentence. Were it not for your plea of guilty, I would have imposed a sentence of 16 years, with a non-parole period in a similar proportion.
- c Pursuant to s 13A of the *Family Violence Act*, I direct that this crime be recorded on your criminal record as a family violence offence.
- d You are disqualified from driving for a period of ten years. That period will commence on the date of your actual release from prison.
- e I am satisfied that the motor vehicle driven by you is tainted property within the meaning of the *Crime (Confiscation of Profits) Act* 1993. Pursuant to s 16 of that Act, I order that the vehicle be forfeited to the State of Tasmania. I specify that the value of the property is \$200.