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CANADA / JUDGMENT

## R. v. B.K.J.L.

2018 BCSC 379

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COURT

Supreme Court of British Columbia

DECIDED

7 March 2018

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2018 BCSC 379 R. v. B.K.J.L.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. B.K.J.L.,

2018 BCSC 379

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Registry: New Westminster

Regina

v.

B.K.J.L.

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Before: The Honourable Mr. Justice Verhoeven

Oral Reasons for Sentence

Counsel for the Crown:

T. Iandiorio and

J.C MacRae

Counsel for the Offender:

N.J. Preovolos and

J.A. Michaels

Place and Date of Trial/Hearing:

New Westminster, B.C.

March 2, 2018

Place and Date of Judgment:

New Westminster, B.C.

March 7, 2018

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I. Overview

- [1] The offender Mr. B.K.J.L. is before me for sentencing.
- [2] On February 8 of this year Mr. L entered guilty pleas to manslaughter, contrary to s. 236 of the Criminal Code (count one on the indictment); and arson causing bodily harm, contrary to s. 433(b) of the Criminal Code (count three on the indictment).
- [3] The Crown and defence have jointly submitted that an appropriate global sentence for these crimes is 18 years imprisonment.
- [4] On the afternoon of Sunday, July 10, 2016, in the midst of a domestic dispute with his wife, N.B.I.V., Mr. L set fire to the couple's home while he, Ms. V, and five of their six children were present in the home.
- [5] In order to protect their privacy, in these reasons I will refer to the six children by letter, from "A" through "F". At the time, the eldest, A was 18 years of age, and the youngest, F, was 4.

- [6] Ms. V suffered horrific burn injuries. She died in hospital a few hours later. Mr. L received second and third degree burns to his right leg and calf. The eldest child, a son aged 18, was away from the home when the fire began. The second eldest child, who I will refer to in these reasons as "B", a son aged 16, suffered second-degree burns to both of his feet. Count three alleged bodily harm to him. The third eldest child, a 13-year-old son, "C", was slightly injured in escaping the home. Three younger children escaped without physical injury.
- [7] Mr. L was charged (count one) with second-degree murder of Ms. V. Had the matter gone to trial, the issue would have been whether in causing Ms. V's death, Mr. L had the requisite intent for murder. With respect to count one, he pleaded guilty to the lesser, included offence of manslaughter.
- [8] As noted, the Crown and defence jointly submit that an appropriate global sentence in all the circumstances of the case is 18 years imprisonment. The Crown and defence also jointly submit that pre-sentence time served should be counted at the rate of 1.5, thus Mr. L should be credited with 29 and 23 days of time served, resulting in a net global sentence of 15 years and 6 months and 7 days. More specifically, the Crown and defence submit that the manslaughter offence should result in a prison sentence of 18 years, and the arson offence should result in a prison term of 10 years, prior to credit for time served, and that the sentences should be served concurrently.
- [9] The law of Canada as established in the recent Supreme Court of Canada decision in *R. v. Anthony-Cook*, 2016 SCC 43 is that a sentencing judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise contrary to the public interest.
- [10] A just and appropriate sentence is one which reflects the gravity of the offence and the moral blameworthiness of the offender: *R. v. C.A.M.* (1996), 105 C.C.C. (3rd) 327 at para. 82, and s. 718.1 of the Criminal Code. The gravity of these offences is very great. The moral blameworthiness of the offender is also very great. However I must bear in mind that I am sentencing Mr. L for manslaughter and for arson causing bodily harm, not for murder. In the context of sentences for manslaughter, the proposed sentence is a very heavy one.
- [11] For the reasons that follow, I accept the joint submission of the parties as to the appropriate sentence.

## II. Factual Overview

- [12] The Crown and defence have entered into an extensive Agreed Statement of Facts, from which the following summary is largely drawn.
- [13] Mr. L, Ms. V and their six children lived together in a two-level home located in a Lower Mainland suburban city.

- [14] At about 1:00 p.m. A, the 18-year-old, left the home to go shopping. Mr. L, Ms. V and the other five children remained at home. The main living area for the family was on the second story of the home. The basement or first story contained a suite occupied by two tenants, who were absent at the time. The first floor also contained the bedroom of one of the children, and a playroom and a garage.
- [15] Mr. L and Ms. V were cooking in the kitchen on the second floor of the home at the material time. They began arguing. Mr. L threw some dishes that were on the kitchen counter onto the floor and smashed them. Mr. L swiped the pressure cooker off the kitchen counter, striking Ms. V in the back, and spilling the contents onto the floor. Mr. L then threw the pressure cooker and a rice cooker off the deck of the house into the backyard.
- [16] B, aged 16, was alone in his room in the basement when he heard noise from upstairs and ran up to see what was going on. B called Mr. L "crazy". Mr. L attacked B. Ms. V tried to physically intervene. C, the next eldest child, took D, E, and F, aged ten, eight and four, into the master bedroom, and called 9-1-1 for help. B ran into the bathroom where he also called 9-1-1. Police were dispatched at about 1:28 p.m., and arrived on scene at 1:34 p.m.
- [17] Before the police could arrive, Mr. L ran downstairs into the garage, where he retrieved a 20 litre gasoline can, which he brought upstairs. He poured gasoline up the stairs, through the living room, and into the main upstairs living areas of the home: the living room, the family room, and the kitchen. Ms. V and B. tried to stop him. Neither Ms. V nor B were able to take the gasoline can away from Mr. L or to stop him. Mr. L obtained a lighter, lit it, and dropped it onto the floor in the living room, setting the home on fire. Ms. V, Mr. L and B were all within a few feet of each other when Mr. L set the fire. Gasoline was all around them. B's feet were burned and Mr. L's shorts and right leg were burned. Gasoline was on Ms. V's clothing and body. Her clothing and her body caught fire.
- [18] Mr. L went into the master bedroom where he put out the fire on himself and changed his clothing. C and the younger children were in the master bedroom. Mr. L and C opened the window and told the children to go out the window. C, D, and E escaped by jumping from the second storey window onto a trampoline in the back yard. The youngest child, F, four years of age, did not jump but was rescued by B, who took F outside through a different upstairs window, onto a first floor roof area, where they were assisted to the ground by members of the public.
- [19] The 13-year-old son, C, was slightly injured in escaping the home from the upper window. The three youngest children as I said were not physically harmed.
- [20] The home was on fire when Police officers arrived on the scene. Before firefighters arrived two officers went into the home through the front door on the ground floor. There was a large amount of smoke throughout the home. The officers went up the stairs to the second floor. They saw Mr. L who appeared to be using a blanket or towel in an attempt to put out the fire. One of the officers found Ms. V on fire. He extinguished the flames on Ms. V using a blanket and brought her out of the home. Her entire body was burned. She was in extreme

pain, but was conscious and able to speak.

- [21] Ms. V was taken to a hospital, where she died about four-and-a-half hours after the events. 95% to 98% of the surface area of her body was burned.
- [22] The oldest child, A, returned home from shopping to find the home on fire, and Ms. V lying on the ground outside.
- [23] Mr. L and Ms. V each operated a business. He operated a local computer and cell phone business, and Ms. V had recently opened a café in downtown Vancouver.
- [24] In sentencing submissions, Mr. L states that at the time of the offences he had been working very long hours at his business. He was anxious about work deadlines. He felt overwhelmed by his work. He had been trying to sell the business for several months, unsuccessfully.
- [25] He states that an argument occurred between the couple. There had been tensions between them during the preceding days, having to do with their two businesses.
- [26] He states that he was in a fit of anger and frustration and wanted to make a point by destroying some material things. He states that he wanted to set and extinguish a small fire. He had done so on two occasions in the past, although he had not previously used gasoline, and I infer the fires were small and did not cause much damage. He states that he had a premonition about the family home being destroyed by fire one day. He states that the catastrophe that occurred was beyond his comprehension.
- [27] Wisely, the defence does not argue that Mr. L's intention to set only a small fire and to extinguish it are mitigating facts. Mitigating facts by the defence would have to be established on a balance of probabilities. I do not accept that Mr. L intended only to set and extinguish a small fire. That intention would be inconsistent with the facts. Mr. L deliberately obtained and used what must have been a significant amount of gasoline, which he distributed over a broad area of the home, overcoming the resistance of B and Ms. V. He then deliberately set the home on fire, using the lighter. He could not have expected a small fire which could be extinguished. The fact that he was later seen attempting to put out the fire does not change this.
- [28] Efforts to understand Mr. L's behavior are ultimately pointless.

### III. Impact on the Victims and Community

- [29] The crimes for which Mr. L has pleaded guilty are shocking, senseless and horrific. Time can never completely erase or completely heal their tragic consequences.
- [30] Ms. V suffered an agonizing, gruesome death. The children lost their mother in horrifying circumstances that they all witnessed and experienced. They and the other members of her family have suffered a devastating loss.

- [31] It is difficult to imagine that the children will ever fully recover. Their lives were shattered. The psychological and emotional harm must be profound. In addition to losing their mother, they lost their home and possessions. They also lost their father, in practical terms.
- [32] They must all be at risk for severe long-term emotional and psychological consequences.
- [33] I received victim impact statements from three of the children, D, E, and F, who were respectively ten, eight and four at the time of the offences. The statements impressed me. Each statement is a combination of artwork and words, in which the children have touchingly tried to convey a sense of their loss. The talent, intelligence and emotion they convey give me some hope that somehow these children might have some success in overcoming their loss.
- [34] Ms. V's older sister remains a resident of Vietnam. She provided a statement on behalf of herself, as well as Ms. V's parents, and their entire family in Vietnam. The statement was translated from Vietnamese into English for the benefit of the court. She describes Ms. V as a loving, affectionate and caring mother whose death is an enormous loss for the family, and that nothing can make up for the loss. She notes that her parents were required to come to Canada to spend a year looking after the grandchildren, at personal expense and sacrifice. She worries that the children will not receive the care and assistance that they need and deserve.
- [35] One of Mr. L's older brothers, T, has been required to assume guardianship of the six children, together with his wife. He explains that this has had life changing consequences for him and his wife. He explains that it has been difficult for the children to adjust. They rely on the support of a professional clinical counsellor who provides trauma counselling for them.
- [36] The children have had a series of caregivers. A married couple now looks after them. They reside with the couple and their children.
- [37] Police officers risked their health and their lives in order to attempt to rescue Ms. V. Other persons, members of the public, and neighbouring properties were put at risk.

#### IV. Circumstances of the offender

- [38] Mr. L was born in Hanoi, Vietnam, in 1970. His family immigrated to Canada from Vietnam. He was 12 years old when he immigrated to Canada. He received his high school education in Canada. He has four older brothers and one surviving older sister. Another older sister is deceased.
- [39] Mr. L met Ms. V in Vietnam in 1995. They married in 1996, and returned to the Lower Mainland, where their six children were born. As of 2010 Mr. L was operating an electronics, computer and cell phone store. Ms. V opened a café in downtown Vancouver in March 2016.

- [40] Mr. L and Ms. V both worked hard to support their six children. Mr. L has no criminal record.
- [41] Several of the children reported that Mr. L had physically pushed Ms. V around in the past, and that he angers quickly, smashes things around the house, acts out, and later apologizes for his behaviour. Several years ago, he tried to burn a Christmas tree down inside the house and he lit curtains on fire in the home. In submissions on his behalf defence counsel links this behaviour with the offences and his "premonition" about the family home being destroyed by fire one day.
- [42] I accept that Mr. L is genuinely and deeply remorseful. In court he read out a statement expressing his sorrow and remorse. He apologized to his wife, children, his wife's family, his own family and friends, as well as to the first responders, the justice system, and the public. He expresses a desire to make amends in whatever way he can.
- [43] He has completed 15 self improvement courses while in custody.
- [44] He continues to have family support. Two of his brothers, including T who is his children's legal guardian, have provided letters of support. They describe him as fundamentally a good person who made a terrible mistake. J attended the sentencing hearing.
- [45] A close friend describes his conduct as being dramatically out of character. He describes Mr. L as a kind, caring and supportive person who loved his wife and children immensely. He describes Mr. L's intense remorse and regret.
- [46] Mr. L's remorse and acknowledgement of responsibility is also evidenced by his guilty pleas and other post-offence conduct. He promptly settled wrongful death litigation commenced against him on behalf of the children by the Public Guardian and Trustee. Nearly all of his assets have been placed in trust for the benefit of the children.
- [47] Although I do not have the benefit of a pre-sentence report, Mr. L's lack of criminal record, general character, and remorse suggest that he could be a good candidate for rehabilitation.

#### V. Legal Parameters and Case Law

- [48] Both offences have a maximum sentence of life imprisonment, and neither offence has a mandatory minimum sentence.
- [49] The Crown and defence both submit that the sentences proposed are within the range for such offences. It is a truism that, in sentencing, no two cases are alike. Yet the Code (s. 718.2(b)) requires a sentence to be similar to sentences imposed on similar offenders for similar offences in similar circumstances. Only a few cases were referred to in submissions. These are: *R. v. Mason*, 2012 MBCA 71, *R. v. Ellahib*, 2008 ABCA 281 and *R. v. Sheets*, 2005 ABPC 164. While each of these cases involves charges of manslaughter occasioned by acts of arson, they are all different than the case at bar. Nonetheless, I accept that the 18 year sentence proposed, while it is very generally a heavy sentence for manslaughter, is in keeping with the gravity of the offences and the responsibility and moral blameworthiness

of the offender, having regard to all factors.

[50] I accept the defence submission that circumstances underlying the offence of manslaughter can vary greatly. Death can result from an act that is close to inadvertence or an act that is close to murder and therefore sentences can range widely.

[51] I accept the Crown's submission that the principles of denunciation and deterrence are paramount in the case at bar.

## VI. ANALYSIS

[52] The defence accepts nearly all of the aggravating factors contended for by the Crown. I accept these as well. They are as follows:

1. Spousal homicide, a deemed aggravating factor under s. 718.2(a)(ii). Mr. L killed his wife. It was a senseless killing of an innocent woman;
2. The agonizing and horrific nature of Ms. V's death;
3. Mr. L's 16-year-old son was seriously injured. This is an aggravating factor under s. 718.2(a)(ii.1);
4. Mr. L's violent behaviour prior to these offences, in smashing dishes, damaging other property, assaulting his son and Ms. V, and ultimately setting fire to the home;
5. Mr. L's deliberate conduct in setting the home on fire. As previously noted, Mr. L took a series of deliberate steps to set the home on fire. He went to the basement to retrieve the gasoline can, intending to use it to cause a fire in the home, knowing that his wife and five children were present. He refused to stop. He obtained a lighter, lit it, and used it to ignite the gasoline and the home;
6. He endangered the lives of his five children. It was extremely fortunate that only one of them, B, his 16-year-old son, was seriously injured;
7. He caused a serious risk of harm to the community, including the neighbours and first responders;
8. He destroyed the home and the belongings of his children;
9. He abused a position of trust or authority, as a parent, which is a deemed aggravating factor under s. 718.2(a)(iii);
10. The significant impact on the victims, considering their age and other personal circumstances, including their health and financial situation, which is a deemed aggravating factor under s. 718.2(a)(iii.1).

- [53] The Crown also submits as an aggravating factor that Mr. L made no attempt to assist his wife, after setting the fire. The Crown contends that after he set fire to the home, Mr. L went into the master bedroom and changed his own clothes that were on fire but made no effort to help his wife, who was also on fire.
- [54] The defence accepts that he did not attempt to rescue Ms. V or help her while she was in distress, but denies that he knowingly, callously disregarded her.
- [55] There was a large amount of smoke throughout the home when the police officers entered. The officers saw Mr. L who appeared to be trying to put out the fire with a blanket or towel. He was escorted out of the house by the police. A police officer heard screams coming from within the black smoke inside the home. Using his flashlight the officer found Ms. V. The officer covered her with a blanket and brought her outside in a manner not specified in the agreed facts. I infer he must have carried her downstairs and outside.
- [56] Mr. L contends that the evidence shows that he was focused on trying to put out the fire. There is evidence to support this point. Mr. L contends that he did not know that Ms. V was on fire and desperately in need of assistance, and that he did not hear her screaming for help. Mr. L contends that he would have helped her.
- [57] As the Crown must prove aggravating factors beyond a reasonable doubt, I am unable to find, on the evidence, that Mr. L callously disregarded Ms. V's distress. However, it is clear that Ms. L abandoned her and made no effort to determine whether she needed help. In the circumstances, the point is not a large one.
- [58] I accept the mitigating factors contended for by the defence: lack of criminal record, guilty pleas, commitment to rehabilitation while in custody, genuine remorse, and prompt settlement of the wrongful death litigation.
- [59] The substantial aggravating factors amply justify a heavy sentence, and as I have said 18 years is a heavy sentence for manslaughter. The need for denunciation is especially strong. The crimes are shocking and the consequences devastating. I am satisfied, however, that the sentences proposed are fit and proper in all of the circumstances and that there is no basis for me to refuse to accept the joint submission, within the applicable principles of law.

## VII. Ancillary Orders

- [60] The Crown seeks a number of ancillary orders. These are not opposed by the defence. I make these orders, which are:
1. Pursuant to s. 109(1) and 109(2)(a), an order prohibiting Mr. L from possessing any firearm, crossbow, restricted weapon, ammunition and explosive substance during the period that ends not earlier than ten years after his release from imprisonment;

2. Pursuant to s. 109(1) and 109(2)(b), an order prohibiting Mr. L from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition, for life;
  3. A DNA order pursuant to s. 487.051(1);
  4. A DNA order pursuant to s. 487.051(3)(b);
  5. Victim fine surcharge of \$400 under s. 737;
- [61] The Crown also seeks an order under s. 743.21, prohibiting Mr. L from communicating with the children while they remain under the age of majority, 19 years.
- [62] Mr. L argues that the order should be limited and should apply only to children while they are under the age of 12. He hopes to establish a relationship with them.
- [63] In their victim impact statements D and E have said they want no contact with their father. D will very shortly be 12 years of age, E is 10. F is six.
- [64] I think it best for the protection and welfare of the children that they not experience any unexpected or unwelcome contact from their father. Their guardian, Mr. L's brother T is best positioned to decide whether the children wish to have contact with their father and whether they are prepared for and could benefit from such contact.
- [65] Therefore I will make an order under s. 743.21. The precise terms of the order have been the topic of discussions between counsel. Counsel have prepared a draft of the proposed terms which I have reviewed and which I accept. As I said, the order will apply until the child in question reaches the age of majority which is 19 years. So for the record I will read the text as agreed to by counsel and which I accept. The order terms are as follows:
1. You are prohibited from communicating, directly or indirectly, during the custodial period of your sentence with [B,C,D,E,F] (collectively, the "Children") and individually, any "Child", such "Child" or the "Child") until the Child reaches the age of 19 subject to the following exceptions:
    - a) You may register the Children as visitors with Corrections Canada and any institution to which you are assigned as approved persons for receiving telephone calls from you.
    - b) You may accept visits from any Child while you are in custody without the consent of the Child's guardian.
    - c) You may communicate by any means with any Child, including by telephone, subject to the Consent of the Child's guardian, which consent shall be effective until revoked.
    - d) You may communicate with any Child in any manner required or permitted by any restorative justice or similar program approved or offered by Corrections Canada and in which the Child wishes to participate.

[SUBMISSIONS BY COUNSEL]

VIII. Conclusion

- [66] Mr. L would you please stand. The orders I impose are those I referred to earlier.
- [67] On count one, manslaughter of Ms. V, you are sentenced to 18 years imprisonment. You are credited with time served at the ratio of 1.5, equalling 29 months and 23 days. The net sentence imposed is 15 years plus 6 months and 7 days of additional imprisonment.
- [68] On count three, the charge of intentionally or recklessly causing damage by fire to property and causing bodily harm to [B], you are sentenced to 10 years imprisonment, less time served of 29 months and 23 days, for a net additional sentence of 7 years, 6 months and 7 days.
- [69] These sentences are concurrent.
- [70] I also make the ancillary orders I referred to previously.

"Verhoeven J."

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