

CANADA / JUDGMENT

R. v. Carlson

2019 BCSC 2083

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 2083 R. v. Carlson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Carlson, 2019 BCSC 2083 Date: 20191114 Docket: 27423-2 Registry: Vancouver Regina v. Robert Alan Carlson Before: The Honourable Madam Justice Murray Oral Reasons for Sentence Counsel for the Crown: K. L. Ford Appearing on his own behalf: R. A. Carlson Place and Date of Trial/Hearing: Vancouver, B.C. November 8, 2019 Place and Date of Judgment: Vancouver, B.C. November 14, 2019

- [1] THE COURT: On September 18, 2019, a jury found Mr. Carlson guilty of aggravated assault and assault with a weapon. The charges arose out of a single incident that occurred June 29, 2017. The victim of both charges was Mr. Carlson's father, Arne Carlson. As such, the Kienapple principle applies, and, on September 19, 2019, I directed a conditional stay on Count 2, the assault with a weapon charge. Initially, Mr. Carlson was additionally charged with assaulting a police officer, Constable Do, and obstructing him in the execution of his duties. Those charges were stayed by the Crown in the course of the trial.
- [2] Throughout these reasons for sentence, for clarity and not out of disrespect, I will refer to Robert Carlson as "Mr. Carlson" and his father as "Arne".
- [3] As Mr. Carlson was found guilty by a jury, I must find facts upon which to sentence him. Section 724 of the Criminal Code sets out the procedure for fact finding in the case of a jury trial. It states: Where the court is composed of a judge and jury, the court
- (a) shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty; and
 - (b) may find any other relevant fact that was disclosed by evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact.
- [4] In coming to their verdict, the jury clearly accepted the evidence of Arne and rejected the defences of accident and self-defence advanced by Mr. Carlson in his closing submissions. Accordingly, I find the facts as follows.

- [5] In the weeks leading up to the end of June 2017, tensions were running high in the Carlson household. Mr. Carlson had undertaken to fix a light in the house. The repair job led him to the attic. Mr. Carlson had to remove insulation to check the wiring. The job grew. First Mr. Carlson wanted to rewire the entire house, then he said it was necessary to rebuild the beams. What Arne believed was going to be a relatively straightforward job became seemingly never-ending. Finally, Arne suggested that the job was too involved and that they needed to hire a qualified repair person. Mr. Carlson disagreed.
- [6] When the repair person showed up at the house, Mr. Carlson refused to let him into the attic. Mr. Carlson felt slighted that his father had called in the repair person. In an attempt to show his father the value of the work he had done, he drafted an invoice for his work. Arne was upset when Mr. Carlson gave him the bill. He had been supporting Mr. Carlson for many years and felt that billing him for working on the house "lacked class". He told Mr. Carlson that they would discuss it later.
- [7] The next day was the day of the incident. Arne was in the living room watching a baseball game on TV. Mr. Carlson came into the room and asked Arne what he was going to do about the invoice. Arne told him again that they would discuss it later. Mr. Carlson then left the room. A few minutes later, Arne got up from his chair to open the front door to allow some fresh air in. As he walked towards the front door, he encountered Mr. Carlson standing in the vestibule. Mr. Carlson was holding a hammer cocked over his head.
- [8] Mr. Carlson pushed Arne with one hand, causing him to stumble backwards across the living room and into his chair. As Arne fell back, he hit the table beside his chair with his elbow. Mr. Carlson then hit him twice with the hammer. The first blow hit Arne in the back of the head as he was getting up from his chair. Arne then put his hands up to protect himself. The second blow glanced off his arm and hit his left shoulder. Arne then grabbed the claw end of the hammer. Mr. Carlson had the handle. They were wrestling back and forth over the hammer. Mr. Carlson let go and Arne was able to get the hammer and push it under his chair. He asked his son, "Why are you doing this? What did I do to you?" Robert Carlson answered, "I hate you. I hate you. You ruined my life."
- [9] Arne called to his wife to call the police. Mr. Carlson then started pummeling Arne in the face with his fists. Arne was trying to grab for Mr. Carlson's Adam's apple in an attempt to defend himself but was unable to reach it. Mr. Carlson pushed Arne down to the ground and put his hands around his neck, choking him. Mr. Carlson was still choking his father when the police arrived. Arne testified that by that point he was desperate.
- [10] When the first police officer arrived on scene, he found Arne on his back on the living room floor with Mr. Carlson on top of him. Arne was taken to hospital via ambulance. He suffered a wound to the back of his head that required stitches, a fractured nose, a split lip that also required stitches, and two black eyes.

- [11] While he did not testify at trial, Mr. Carlson argued in his closing submissions that he was acting in self-defence and that the injuries his father suffered were caused by accident.
- [12] Mr. Carlson was arrested. He spent 93 days in custody before he was released. He spent another 65 days in custody because he refused to sign the bail documents as he did not agree with the wording of them. Giving him credit for time and a half for the days prior to the bail being ordered and one-for-one time for the time he chose to stay in, I credit Mr. Carlson a total of 205 days as time served.
- [13] Several aggravating factors arise from the circumstances. I find that this was a very violent prolonged assault. Mr. Carlson pushed, punched, choked, and hit his then 76-year-old father in the head with a hammer. He only stopped his attack when police arrived and pulled him off. Fortunately, Arne has no lasting physical effects, but he suffered a serious wound to the back of his head. In my opinion, there is no doubt that the injury to Arne's head was caused by the blow from the hammer. Arne also suffered, as I said a moment ago, a fractured nose, black eyes, and a split lip. He spent a few hours in the hospital and received stitches. The attack has impacted the senior Carlsons greatly. Still today they fear what Mr. Carlson might do to his father.
- [14] The mitigating factor is that Mr. Carlson does not have a prior criminal history.
- [15] Turning to the circumstances of Mr. Carlson.
- [16] He is 52. At the time of this incident he was living with his parents and had been since 2005. He graduated from UBC with an engineering degree and worked as an engineer for some time but did not enjoy it. He then went back to university to study sociology. He obtained his Masters degree and was working toward a Ph.D. but did not complete his thesis. According to his father, up until about 2014, Mr. Carlson was doing reasonably well. He and his parents had a good relationship. Mr. Carlson travelled with his parents. He golfed with his father.
- [17] In 2014, Mr. Carlson started becoming paranoid. He felt that he was being spied on. He became increasingly distant. He seemed to resent his father and stopped being cooperative with him. He would no longer golf with him. He would say things like, "You are not my father. You are just an actor." He began to believe that his father was poisoning his food so he stopped eating with his parents. He then stopped drinking tap water as he thought the water system was poisoned. He started to boil water and had flasks all over the kitchen. He built devices to put over his laptop so he could not be spied on. As part of the repair project in the attic Mr. Carlson wanted to fortify the roof to shield the house from spying. Mr. Carlson still suffers from paranoia. He refuses to sign legal documents, such as the bail document referenced a moment ago, because he reads things into the standard wording.

- [18] Since his release, Mr. Carlson has not had stable housing. I understand that he lives in a residential facility of some kind in which he has a room. He receives his mail through the John Howard Society. He has some basic belongings, but most of his possessions are still at his parents' house. Mr. Carlson is estranged from his parents and has been since the incident. He does correspond via letter with his mother but has had no direct contact with either of his parents.
- [19] It became clear through this sentencing hearing that Mr. Carlson's parents wish to reconcile with their son, as much as that is possible, given what has happened. Mr. Carlson would welcome that. All three understand that the process of reconciliation has to be careful and slow. The senior Carlsons are understandably somewhat fearful of how Mr. Carlson will act.
- [20] Mr. Carlson has one sister, Patricia, who lives in Kamloops with her husband and children. Mr. Carlson has not had much, if any, contact with Patricia since the incident. He wishes to visit Patricia and her family. I understand that Patricia is open to that but only with her prior express invitation and on the condition that Mr. Carlson leaves, without argument, when requested to do so. The senior Carlsons seek similar conditions.
- [21] Mr. Carlson is extremely intelligent. He does, however, have a tendency to become fixated on issues and, once fixated, is immovable. I have found in my dealings with him that he cannot see the forest for the trees. According to Arne, Mr. Carlson is a very talented artist and interpretive dancer. He believes that his son's character is fundamentally good. Arne and his wife had been trying to get help for Mr. Carlson for some time leading up to the incident.
- [22] The question this court must answer is what is a fit sentence? The duty of a sentencing judge is to fashion a just and appropriate punishment that addresses the principles of sentencing and is proportionate to the culpability of the offender. Generally, the primary considerations on sentencings of violent crimes are denunciation, deterrence, and rehabilitation. In the unusual circumstances of this particular case, in my view, rehabilitation is paramount.
- [23] The Crown seeks a sentence geared towards Mr. Carlson's rehabilitation. Taking into account the time Mr. Carlson has served, the Crown submits that the appropriate sentence is one day, plus two years' probation, with conditions that serve to protect Mr. Carlson's family while providing Mr. Carlson with counselling.
- [24] Sorry, three years?
- [25] MS. FORD: Three years.
- [26] THE COURT: Sorry. Three years. Three years' probation.
- [27] This is a difficult sentencing. While the offence is extremely serious, it is clear that Mr. Carlson's mental issues are at the root of his behaviour. The difficulty is that Mr. Carlson has little insight into his issues. On September 19 of this year, the day after he was convicted by the jury, when we were setting the date for sentencing, I advised Mr. Carlson that, given the

period of time he had spent in jail, I would like to be able to consider a sentence aimed at getting him the help he needed. He told me that the only help he needed was how to deal with his parents. Last week, during sentencing submissions, however, Mr. Carlson advised that he would be willing to go for counselling, including forensic counselling. The aim in this ruling is to craft a sentence that assists Mr. Carlson with his mental health issues and allows him to let his strengths and talents shine through. Hopefully it will allow relations with his family to be rebuilt as well.

- [28] Balancing the principles of sentencing with the unique circumstances of this case, I will now pronounce sentence.
- [29] Mr. Carlson, can you stand up, please.
- [30] THE ACCUSED: What --
- [31] THE COURT: I sentence you to one day in jail --
- [32] THE ACCUSED: There's an error --
- [33] THE COURT: -- plus three years' probation.
- [34] THE ACCUSED: There's an error on your number of days. You indicated two oh -- 205.
- [35] THE COURT: Right.
- [36] THE ACCUSED: There was 187. At one and a half, that's 270. 270 days.
- [37] THE COURT: Okay. Mr. Carlson, I sentence you to one day in jail, plus three years' probation. You can sit down because I am going to read out the terms of the probation.
- [38] The terms of the probation are as follows. You will keep the peace and be of good behaviour.
- [39] You will report to a probation officer at 275 East Cordova Street, Vancouver, by 4 p.m. today and, thereafter, as and when directed by your probation officer.
- [40] You will provide your current residential address and phone number and means of communication upon first reporting and, thereafter, will keep your probation officer advised of any change within two days of any changes.
- [41] You will take counselling as directed by your probation officer.
- [42] At the direction of your probation officer and/or the staff at the Forensic Outpatient Clinic, you are to report to the Forensic Outpatient Clinic, Suite 300, 307 West Broadway, or another mental health facility, for assessment, treatment, and counselling.
- [43] At the direction of your probation officer and/or the community work service supervisor, you are to perform 50 hours of community work service within the first 12 months.

- [44] You are to have no contact, directly or indirectly, with your mother and father, unless your parents initiate contact, and then, only in the manner and at the place of their choosing. There are two exceptions to this. First, you may continue to write letters to your mother, to be sent via Canada Post; and, second, you may communicate with your father on one occasion, via email or letter, to set up attendance to their residence to pick up your belongings, as set out in a further condition.
- [45] Next, you must not be found within the following area of Burnaby, British Columbia: Boundary Road to the west, Patterson Avenue to the east, Imperial Street to the north, and Rumble Street to the south, unless Arne or Sherrill Carlson invites you to their residence. If you are so invited, you must leave without argument when requested to do so.
- [46] You may attend your parents' home on one occasion, in the presence of a police officer, to pick up your personal belongings. You must give your father at least 24-hours notice of your attendance, in writing, and must provide him with a list of belongings that you wish to retrieve.
- [47] You are not to attend your sister Patricia House's residence unless you are expressly invited to do so by her; and then you must leave immediately when asked, without argument.
- [48] You must not possess or carry any weapons as defined in the Criminal Code.
- [49] You may only possess or use knives for eating or preparing food.
- [50] In addition, I make the following ancillary orders.
- [51] I make an order that a DNA sample will be taken from you, and that is pursuant to s. 487.051(1).
- [52] I also make a s. 109 order prohibiting you from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, as defined in the Criminal Code, or imitation thereof, and that is pursuant to s. 109. That is for a period of 10 years.
- [53] Is there anything that I am missing?
- [54] MS. FORD: It is just a matter of wording. In terms of the reporting, you added "as directed by the probation officer". We have found that it causes difficulties for enforcement. If for some reason he is in custody -- which I do not expect, but -- and then a corrections officer directs him, and then he does not report, we cannot enforce that. So if it is just "as directed", period.
- [55] THE COURT: Okay.
- [56] MS. FORD: It is more --
- [57] THE COURT: Okay. I will make that change.
- [58] MS. FORD: It is easier. Thank you. Otherwise, there is nothing further.

- [59] THE COURT: Okay. Thank you.
- [60] Mr. Carlson, can you stand, please. Do you understand all that?
- [61] THE ACCUSED: Yeah. I'd just like to mention the error of the calculation of days.
- [62] THE COURT: Yes.
- [63] THE ACCUSED: And 487.05, is it one or --
- [64] THE COURT: Yes.
- [65] THE ACCUSED: That's -- it makes reference to s. 730, but I believe this is section -- s. 731 that you're applying. For -- for probation and sentence.
- [66] MS. FORD: I did not bring my Criminal Code. Actually, I came --
- [67] THE COURT: Yes.
- [68] MS. FORD: -- sort of detoured past the office, so ...
- [69] THE COURT: Here is mine.
- [70] THE ACCUSED: And then there's also a no treatment -- a no treatment statute.
- [71] THE COURT: Okay. Sorry, what is the issue that you have with the DNA order?
- [72] THE ACCUSED: It makes reference to s. 730. Convicted or discharged under s. 730.
- [73] THE COURT: Okay. Well, s. 730 just refers to if somebody is discharged. You fall under the convicted part. You are convicted.
- [74] THE ACCUSED: Right. I believe I'm -- you're making a probation order under 731. 731 is the -- is the next statute after 730.
- [75] THE COURT: Yes.
- [76] THE ACCUSED: I think that's --
- [77] THE COURT: Those are two different things though.
- [78] THE ACCUSED: That's -- that's right, but I think -- I think -- are you -- I think you're applying 731 in the present.
- [79] THE COURT: I am --
- [80] THE ACCUSED: [Indiscernible/voice low] after sentencing.
- [81] THE COURT: I am actually -- okay. You have been of the criminal offences.
- [82] THE ACCUSED: Right.
- [83] THE COURT: So this is -- you are a person who is convicted. The rest of it is ...

- [84] THE ACCUSED: Convicted -- it says convicted or discharge -- convicted --
- [85] THE COURT: Or discharged.
- [86] THE ACCUSED: -- of or discharged under s. 730.
- [87] THE COURT: Yes.
- [88] THE ACCUSED: And 730 does not apply.
- [89] THE COURT: You were not discharged. You were convicted, so this applies to you.
- [90] THE ACCUSED: That's [indiscernible/overlapping speakers] --
- [91] THE COURT: Okay. That is it. I am not debating it any longer with you. Let me just say once again, I think you have a lot of talents. You are very, very intelligent. I hope that you can get the help you need, and I hope you accept it and take it in, and I also hope that you can reconcile with your family.
- [92] THE ACCUSED: All right. I would like -- and I do have a conviction appeal.
- [93] THE COURT: Yes, I know.
- [94] THE ACCUSED: And I do have an application for the -- for either -- like to stay the probation order or a recognizance --
- [95] THE COURT: Okay.
- [96] THE ACCUSED: -- order and --
- [97] THE COURT: Yes.
- [98] THE ACCUSED: -- need time to pursue that until the appeal is --
- [99] THE COURT: Right.
- [100] THE ACCUSED: -- determined --
- [101] THE COURT: Okay.
- [102] THE ACCUSED: -- in its course.
- [103] THE COURT: Well, you can deal with the Court of Appeal, then, with that.
- [104] THE ACCUSED: Well, I believe -- I believe -- I believe it's the Supreme Court's responsibility to kind of --
- [105] THE COURT: No, I do not --
- [106] THE ACCUSED: -- acknowledge -- acknowledge the --
- [107] THE COURT: I do not believe that --
- [108] MS. FORD: It is the Court of Appeal.

[109] THE ACCUSED: The right to -- the right to appeal, though, is statutory.

[110] MS. FORD: It is --

[111] THE COURT: Yes.

[112] MS. FORD: The Court of Appeal Act applies.

[113] THE COURT: So I am now finished. This court is done. So you can deal with the Court of Appeal with your appeal and your stay of this sentence. Okay. Okay.

[114] MS. FORD: My Lady, I should ask if you want him taken into custody for the one day or is --

[115] THE COURT: Yes, I do.

[116] MS. FORD: Okay.

[117] THE COURT: Yes.

[118] THE ACCUSED: And you were mentioning just serving that in court?

[119] THE COURT: Well, the one day, you will be taken downstairs, the DNA sample will be taken, and you will be released.

[120] THE ACCUSED: So is today --

[121] THE COURT: Today is the day.

[122] THE ACCUSED: Today is the day.

[123] THE COURT: Yes.

[124] THE ACCUSED: As within -- is that clear to the -- to the sheriffs?

[125] THE COURT: Mr. Sheriff, that is what is --

[126] THE ACCUSED: That -- that --

[127] THE COURT: -- can you outline what is going to happen, then?

[128] THE SHERIFF: Yes, I will, My Lady.

[129] THE COURT: You are going to take Mr. Carlson into custody, he will --

[130] THE SHERIFF: And the DNA will be just [indiscernible/not near microphone.] down in the jail.

[131] THE COURT: Okay.

[132] THE ACCUSED: And then released at the end of the day?

[133] THE COURT: You will be released today, correct?

[134] THE SHERIFF: Yes.

[135] THE COURT: Yes.

[136] MS. FORD: Likely before lunch. Although, you know, possibly -- certainly be -- well before the end of the day.

[137] THE COURT: I anticipate that it will be before the end of the day. Okay. Thank you. "C. A. Murray, J." The Honourable Madam Justice Murray

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