

CANADA / JUDGMENT

R. v. Carr

2015 BCCA 293

COURT

British Columbia Court of Appeal

DECIDED

22 June 2015

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2015 BCCA 293 R. v. Carr

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Carr,

2015 BCCA 293

Date: 20150622

Docket: CA42096

Between:

Regina

Respondent

And

Robert Ryan Carr

Appellant

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Before:

The Honourable Mr. Justice Donald

The Honourable Madam Justice Newbury

The Honourable Mr. Justice Savage

On appeal from: Orders of the Supreme Court of British Columbia,

dated May 29, 2013 (R. v. Crawford, 2013 BCSC 932, Vancouver Registry Docket 25945) and dated November 22, 2013 (R. v. Crawford, 2013 BCSC 2121, Vancouver Registry Docket 25945)

Oral Reasons for Judgment

Counsel for the Appellant:

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N. Gregoire

S.L. Dworkin

Place and Date of Hearing:

Vancouver, British Columbia

June 22, 2015

Place and Date of Judgment:

Vancouver, British Columbia

June 22, 2015

Summary:

Appeal from a 9 year sentencing for kidnapping and extortion. The appellant was the "muscle" and a co-accused, who received 10 years, was the "main man". The judge found their moral culpability different but not substantially different. The appellant argued there should have been a greater disparity. Held: appeal dismissed. No reversible error.

- [1] DONALD J.A.: Robert Ryan Carr seeks leave to appeal and appeals from a nine-year sentence for kidnapping and a five-year sentence for extortion, concurrent to the kidnapping penalty. He was one of seven persons tried on an indictment charging them with various counts associated with the kidnapping of Sulaiman Safi between the 19th and 22nd of October 2011, in Vancouver and Richmond.
- [2] The appellant invited this Court to compare his sentence to that given to Thomas Roy Crawford, the leader of the kidnapping group, who received a sentence of ten years plus a one and one-half year consecutive sentence for firearms offences, and to another participant, Dimple Manjit Brar, who was sentenced to a term of three and one-half years, increased to five years by this Court on appeal by the Crown. And by this comparison, the appellant asks us to conclude the disparity in the sentences fails to reflect the difference in the culpability of the offenders - in other words, an error in applying the parity principle expressed in s. 718.2(b) of the Criminal Code, R.S.C. 1985, c. C-46: "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar

circumstances".

- [3] The appellant argues that assuming Mr. Crawford's ten-year sentence is fit and can be used as a benchmark, and given his lesser role in the crime, he says that his sentence is contrary to the proportionality principle expressed in s. 718.1:

"A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

- [4] The appellant was in custody for 22 months prior to his trial and had a poor record of compliance with prison rules, resulting in a number of disciplinary sanctions, including segregation. The appellant argues that the judge over-emphasized his custodial conduct and failed to place that conduct in the context of his mental health problems.
- [5] I would not give effect to either ground of appeal. The parity rule was observed in marking a difference between the sentences of the participants according to their role and their actions. The spread is a matter of discretion to which deference must be given and interfered with only if unreasonable, which, as will be seen, this was not. While Mr. Crawford was, in the victim's words, the "main guy", the appellant was a key player as the "muscle" in the piece. The appellant terrified the victim with gruesome threats of torture to him and harm to his family and was a major interrogator during the confinement.
- [6] I can find no merit in the point taken concerning the appellant's institutional conduct and his mental state. The judge properly took into account the appellant's bad behaviour in jail as a circumstance of the offender relevant to his rehabilitation and risk of reoffending. The reasons show that the judge was aware of his problems, and saw that they were part of who he is - the person who is to be individually considered for an appropriate sentence.

Background

- [7] The kidnapping occurred over a 24-hour period. Mr. Safi lost control of a large sum of money he was given to launder. His client wanted the money back and arranged for a meeting at a pub in Vancouver where Mr. Safi was taken away to an apartment in Richmond, bound and masked, and menaced by Mr. Crawford and the appellant to come up with a plan to cover the loss. He was released the next day.
- [8] The judge's review of the circumstances of the offences in her sentencing reasons, 2013 BCSC 2121, provides a useful narrative of the events:
- [7] In early October 2011, Mr. Safi agreed to launder money derived from illegal activities into the United States at the behest of a woman named "Monica" who acted on behalf of clients unknown to Mr. Safi. Monica arranged for Ms. Mirhadi to act as her agent in Vancouver to oversee the completion of the transaction when it became apparent there was going to be a delay in the transfer of the monies to the United States. Ultimately, Mr. Safi decided to abort the transfer due to these delays; however, when he attempted to retrieve the money from his associates, the police intervened and seized approximately \$284,000. The balance of the

monies, over \$100,000, remained with Mr. Safi's associates.

- [8] Over the following two weeks, Mr. Safi took steps to recover the money from the police and his associates, but he was unsuccessful. Ms. Mirhadi remained in close contact with Mr. Safi; she communicated to him the dissatisfaction of her clients with regard to the state of affairs regarding the missing funds. Ms. Mirhadi advised Mr. Safi that her clients did not believe the police had seized the money and were holding him personally responsible for its loss. Ms. Mirhadi arranged a meeting with Mr. Safi at 4:30 p.m. on October 20, 2011 at the Denman Tap House restaurant ostensibly to discuss his plans for recovering the missing monies. Mr. Safi and Mr. Vallee, his associate, attended the restaurant for the meeting. Ms. Mirhadi attended with her associate, Jay. A few minutes after they sat at their table, Mr. Brar and Mr. Carr joined them. Mr. Brar took charge of the meeting. After Mr. Safi explained to him what had happened to the money, and reiterated his efforts to recover it from the police, Mr. Brar advised Mr. Safi that he needed to speak with him privately in his office.
- [9] Mr. Safi believed that Mr. Brar was connected with the Denman Tap House and thus had an office at the restaurant. He agreed to meet with Mr. Brar and followed him down a hall that had several doors and ended with a door leading to the loading dock. Mr. Carr followed behind Mr. Safi. When they reached the door to the loading dock, Mr. Safi was directed to wait with Mr. Carr and another male in the loading dock area. Mr. Brar said that his car would be arriving soon and they would talk there. Mr. Carr threatened Mr. Safi to ensure his compliance and he remained with these men against his will. Mr. Brar left the loading dock and returned to the restaurant. A third male came into the loading dock from the restaurant entrance shortly after Mr. Safi was taken there and all three men stood close to Mr. Safi until a black SUV drove into the loading dock.
- [10] Mr. Crawford drove the black SUV. Mr. Safi was directed to sit in the rear seat. Mr. Carr sat in the front passenger seat and the two other men sat on either side of Mr. Safi in the rear seat. Mr. Safi was told to put on a black ski mask by Mr. Crawford who threatened Mr. Safi with a taser. Mr. Carr searched Mr. Safi and handcuffed his hands behind his back. Lastly, Mr. Safi was directed to put his head on one of the male's laps (in the rear seat) as Mr. Crawford drove out of the loading dock.
- [11] Mr. Crawford drove Mr. Safi to 2288 No. 5 Road in Richmond and he was taken upstairs to an apartment where he remained blindfolded, handcuffed and zap strapped by the legs to a chair. During his confinement, Mr. Safi was threatened with bodily harm by Mr. Carr and Mr. Crawford who demanded that Mr. Safi come up with a plan to recover the lost monies. Mr. Crawford intimidated Mr. Safi by referring to his family and their surveillance of his home. He threatened to have Mr. Carr cut off Mr. Safi's fingers with clippers. Mr. Crawford put a Glock pistol to Mr. Safi's head and threatened him with death if he did not come up with an acceptable plan to recover the lost monies in a short period of time. Later that night, Mr. Safi came up with a plan that was acceptable to Mr. Crawford; he would provide them with some cash and ten kilos of cocaine.

- [12] Mr. Crawford would not release Mr. Safi to carry out this plan until his clients had recovered the monies still held by Mr. Safi's associates. As a consequence, Mr. Safi remained confined against his will in the Richmond apartment overnight. The next day, between noon and 1:00 p.m., Mr. Crawford advised Mr. Safi that they were going to release him even without the balance of the monies in hand because Mr. Safi's spouse had called the police. Mr. Safi remained blindfolded the entire time he was held captive and at this time he was given a white hoodie to wear and was led down the stairs of the apartment by Mr. Crawford.
- [13] Mr. Crawford cautioned Mr. Safi to comply with his promise to obtain the balance of the monies held by his associates and the cocaine, as otherwise harm would come to him. Mr. Crawford told Mr. Safi that he would be driven to a bus stop where he could get a bus and then a taxi home.
- [14] Mr. Tarrant performed the role of the lookout during the transport of Mr. Safi from the holding location to the waiting vehicles outside of the Richmond building. Mr. Gammel and Mr. Crawford stood with Mr. Safi inside the entrance to the building that led to the apartment as Mr. Tarrant watched for anyone who may witness their actions. Mr. Tarrant also hovered over Mr. Safi as a deterrent to any attempt by Mr. Safi to escape.
- [15] Mr. Gammel led the blindfolded Mr. Safi to a waiting Mazda sedan. He placed Mr. Safi in the rear seat of the Mazda beside Mr. Carr who had entered the vehicle ahead of Mr. Safi. Mr. Gammel drove the Mazda away from 2288 No. 5 Road, Richmond and onto Highway 91. He pulled over on the highway and Mr. Safi was let out of the vehicle. Mr. Gammel drove off and was later arrested by the police who had witnessed these events. Mr. Carr was also arrested at that time.
- [16] Mr. Crawford and Mr. Tarrant left 2288 No. 5 Road, Richmond at the same time as the Mazda in a black Durango. They were also arrested by the police a short time later. All of the weapons and the ammunition that were the subject of the charges against Mr. Crawford were located in a black suitcase that was found in the rear storage area of the Durango. Mr. Crawford drove the Durango and was an authorized operator of this rental vehicle.
- [9] The judge sums up her assessment of the appellant's role in the crime and compares it to Mr. Crawford's in this passage:
- [50] Mr. Carr was involved in all aspects of the kidnapping and extortion of Mr. Safi apart from the use of a firearm. He participated in the surveillance of Mr. Safi's home; he was engaged at the outset of the kidnapping from the Denman Tap House as the "muscle" threatening Mr. Safi with bodily harm if he did not cooperate; he handcuffed Mr. Safi in the vehicle and was present when the taser was used to frighten him into submission. Further, Mr. Carr was intimately involved in the confinement, threatening and extortion of Mr. Safi while he was kept at the Richmond apartment. He also acted as the "muscle" by sitting in the rear seat of the Mazda when Mr. Safi was released on the highway. Thus his role in the kidnapping and extortion is less serious than Mr. Crawford's but not substantially.

[Emphasis added.]

[10] The judge goes on to discuss the appellant's pre-trial custody behavior and health problems:

[51] In addition, there are few mitigating circumstances that would reduce the sentence imposed. Mr. Carr has a prior record, including a conviction for violent offences (robbery and assault). He also has a weapons conviction involving a restricted firearm. He committed the index offences while he was on bail for robbery and his past criminal record includes a conviction for breach of probation. Mr. Carr has also been a difficult prisoner while in pre-trial custody and has shown by his conduct that he is not ready to change his attitude towards authority or his aggressive, criminal lifestyle. While Mr. Carr has mental health problems, and impulsive behaviour that is likely due, in part, to a troubled childhood and the traumatic brain injury he suffered due to an accident, his association with criminals and his use of illegal drugs are precipitating factors that are clearly within his control. On the plus side, Mr. Carr continues to have support in the community from his mother and his girlfriend. His children also offer Mr. Carr a motive to change his lifestyle. He is willing to participate in rehabilitation programs while in custody to address the factors that led him to criminal behaviour and he is a relatively young man whose criminal attitude is not so fully entrenched that he is beyond reform. He is remorseful for his misconduct and regrets his actions; however, he has little insight into the reasons behind his criminal behaviour and tends to blame outside influences rather than accept responsibility himself.

[Emphasis added.]

[11] In sentencing Mr. Crawford (2014 BCSC 852), the judge confirmed that he was more culpable than the appellant, but she was able to identify some mitigating factors absent in the appellant's case:

[61] Mr. Crawford was involved in all aspects of the kidnapping and extortion of Mr. Safi, apart from luring him to the Denman Tap House restaurant, which was the site of his kidnapping. He drove the Durango with Mr. Safi captive in the rear seat and he directed Mr. Safi to blindfold himself and threatened him with the taser. The hiding place for the kidnapping was previously associated with Mr. Crawford, and the items found in his vehicle indicated that he not only carried with him the tools of the trade for kidnapping, but he played a lead role in organizing it. As the "main guy", he appeared to give direction to the other participants in the kidnapping. Most significantly, Mr. Crawford attempted to extort money from Mr. Safi by the use of an unloaded firearm.

[62] Because of these factors, I find that his role in the kidnapping is more serious than Mr. Carr's. As a consequence, his sentence must reflect all the aggravating factors applicable to Mr. Carr. In addition, Mr. Crawford's use of the firearm to extort Mr. Safi, as well as his role as the "main guy" are further aggravating factors.

- [63] In addition to taking a primary role in the kidnapping, Mr. Crawford has a prior record for weapons offences and violence, which must also be regarded as an aggravating circumstance.
- [64] There are also mitigating factors. I accept that Mr. Crawford is remorseful for his misconduct and is sincerely motivated to change his lifestyle for the better. He does not blame others for his misconduct, has many good personality traits, and a strong family support network that will help him achieve lasting rehabilitation. He is a relatively young man, who does not have a lengthy criminal record.

[Emphasis added.]

Discussion

- [12] The appellant's main argument comes down to this: that the judge failed to give sufficient effect to the differences in his role and that of Mr. Crawford.
- [13] Measuring the respective culpability of the participants in a crime and manifesting the difference in the sentences are discretionary matters subject to a deferential standard of review. The special advantages of the judge who has heard and seen the witnesses through a trial are discussed in *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500 at paras. 89-91, and are often cited. Deference arises from the very task itself, according to Lamer C.J. in *M.(C.A.)*:
- [91] ... The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community. The discretion of a sentencing judge should thus not be interfered with lightly.
- [14] This Court only interferes in cases like this when the spread between the sentences is substantially wrong; "fine distinctions are inappropriate": *R. v. Helm*, 2006 BCCA 240 at para. 4.
- [15] The judge found a difference in the culpability of Mr. Crawford and the appellant, but not a substantial difference, and that there was more to be said for Mr. Crawford in mitigation. These were reasonable findings grounded in the evidence. On that basis, the difference in one year in the sentences between the two offenders for kidnapping and extortion was rationally based.
- [16] Turning to the second ground, the question of pre-custody conduct, I am unable to find anything in the sentencing reasons suggesting an over-emphasis on this factor or that the judge failed to consider it in the context of the appellant's health and personality problems or that she was insensitive to those problems. It has often been said that sentencing is an individualized process. That means that the whole person must be considered, including mental, emotional and physical problems that bear on rehabilitation, reoffending and protection of the public. The sentencing judge performed that task in the present case.

[17] Having rejected the appellant's arguments, I would grant leave but dismiss the appeal.

[18] NEWBURY J.A.: I agree.

[19] SAVAGE J.A.: I agree.

[20] DONALD J.A.: Leave is granted but the appeal is dismissed.

"The Honourable Mr. Justice Donald"

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