

CANADA / JUDGMENT

R. v. Cooper

2006 BCCA 471

COURT

British Columbia Court of Appeal

DECIDED

20 October 2006

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2006 BCCA 471 R. v. Cooper COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Cooper, 2006 BCCA 471 Date: 20061020 Docket: CA034020 Between: Regina Respondent And Cheryl Lynn Cooper Appellant Before: The Honourable Madam Justice Rowles The Honourable Madam Justice Ryan The Honourable Mr. Justice Low P.C. Rankin Counsel for the Appellant K. Ker Counsel for the Respondent Place and Date of Hearing: Vancouver, British Columbia July 20, 2006 Place and Date of Judgment: Vancouver, British Columbia October 20, 2006 Written Reasons by: The Honourable Madam Justice Ryan Concurring in by: The Honourable Madam Justice Rowles The Honourable Mr. Justice Low Reasons for Judgment of the Honourable Madam Justice Ryan:

- [1] This is an appeal from a sentence of 18 months imprisonment imposed on the appellant on February 28, 2006 after the appellant, using the name Cheryl Cooper, pleaded guilty to one count of possession of a stolen vehicle and three counts of dangerous driving causing bodily harm. On the same day the appellant pleaded guilty to five other offences which she had committed in the same time period as the dangerous driving offence and one other count which she had committed six months earlier. In sum her global sentence was 20 months and seven days.
- [2] The appellant sought leave to appeal only in relation to the sentence of 18 months imposed on her for possession of a stolen vehicle and the three counts of dangerous driving causing bodily harm.
- [3] The first offence for which the appellant pleaded guilty was for one count of communicating for the purpose of engaging in prostitution. The offence occurred on August 31, 2005. For that offence she was sentenced to seven days imprisonment. That sentence is not under appeal.
- [4] The next offence occurred while the appellant was awaiting trial on the first offence. On December 3, 2005 the appellant was one of three people who stole a bait car at 10:50 at night. The activities of Ms. Cooper and the other people in the car were video-taped. It was alleged by the Crown that the appellant was holding a crack-pipe while in the vehicle. The tape revealed the driver telling Ms. Cooper that he was going to produce some fake ownership papers and sell the car. The driver and Ms. Cooper were arrested after the vehicle was disabled. Ms. Cooper was released on some form of promise to appear. For this offence the

sentencing judge imposed a sentence of two months consecutive to the seven days.

- [5] While awaiting a court date on the theft charge in relation to the "bait car", Ms. Cooper became involved in the dangerous driving offences which form part of this appeal. On January 3, 2006 after being alerted by a member of the public, the police attempted to stop a person driving a stolen Dodge truck on Sutherland Street in Kelowna. The appellant was the person driving the stolen truck. A police officer activated his emergency equipment as he followed the vehicle shortly after 8:15 p.m. At some point thereafter a police vehicle was placed in front of the truck, the driver rammed the police vehicle and carried on. The truck, damaged by the impact, ran a red light at Ethel Street, then ran a second red light at Gordon Street. At the second light the truck swerved to avoid, but then rammed into, a Chevrolet Impala carrying three elderly people. The truck continued across a median and came to a stop. The appellant climbed over the seat and left the vehicle by way of the passenger window just before the truck burst into flames. The appellant ran away on foot. She was eventually caught and subdued by a police officer. Because she had suffered some facial lacerations in the accident the officer transported the appellant to a hospital. Once at the hospital the appellant slipped free from her handcuffs and ran through the hospital parking lot. When caught by the police she asked, "Why don't you just shoot me?" The appellant was arrested and eventually detained pending her trial.
- [6] The three occupants of the Chevrolet Impala were injured and treated at the hospital as well. The driver sustained injuries to his shoulder and left jaw. The passenger in the front seat suffered injury to the front of her head and whiplash. The back seat passenger was said to have suffered injury to her right side.
- [7] At the sentencing proceedings counsel for the appellant advised the sentencing judge that the appellant was 38 years of age and had lived most of her life in Ontario. Counsel, who is not counsel on this appeal, advised the sentencing judge that the appellant was married at sixteen years of age and had three teenage children who lived with their grandmother. He said that the appellant worked for many years in Ontario as a registered practical nurse and that two things had happened in the past few years which had adversely affected her life. First, counsel said that the appellant's husband died in 2003. Second, the appellant was involved in a car accident and broke her collarbone, an injury for which she was prescribed painkillers. She became addicted to opiates and tranquilizers. A year and a half before the offences with which we are concerned, the appellant began to use crack cocaine and heroin.
- [8] At the time of the plea the appellant had been in custody for 56 days. The Crown did not allege a criminal record.
- [9] Counsel for the appellant suggested that a conditional sentence was appropriate in the circumstances. During the course of his submissions he said this: Your Honour, it's unfortunate. Obviously, the incident is aggravated, but on the other hand, she does have no criminal record .

- [10] The trial judge considered denunciation to be the most important principle in sentencing the appellant for these offences. He sentenced the appellant to 18 months concurrent for possession of the stolen truck. He sentenced the appellant to 18 months concurrent for the three counts of dangerous driving causing bodily harm, but consecutive to the counts for which she had been sentenced on the other informations. For resisting a police officer the appellant was sentenced to ten days concurrent, and for escaping lawful custody, 30 days concurrent.
- [11] During the hearing of this appeal, counsel for the Crown learned that the appellant was incarcerated in Ontario. As of June 7, 2006 the appellant had been found guilty in that province of nine offences. All of the offences were committed between May 31, 2004 and October 1, 2004. They include two counts of obstructing a police officer, failing to stop at the scene of an accident, operating a motor vehicle while disqualified, two counts of failing to comply with probation, one count of failing to comply with a recognizance and one count of failing to attend court. All of these offences were proceeded with summarily in Ontario. The appellant received a global sentence of nine months consecutive to the sentence she was then serving.
- [12] More importantly, after further inquiries by the Crown, it was revealed that the appellant had been using her sister's identification when she was arrested for the offences with which we are dealing. The appellant, whose name this court is now told, is Jayne Cooper, had a criminal record at the time she pleaded guilty to these offences in Kelowna. We were informed that she had been convicted of three prior driving offences in Ontario - in 1994, 1996 and 2003.
- [13] We adjourned the hearing so that counsel might consider this new information.
- [14] In further written submissions counsel for the appellant suggested that the appellant would likely be charged with offences arising from the use of her sister's identity. He submitted that the sentence imposed in this case was nonetheless unfit and that the appeal should be allowed. Alternatively, if this court were to dismiss the appeal, he suggested that we do so without reasons, so that the trial judgment not stand as a precedent for future offenders.
- [15] The Crown took the position that the appeal should be dismissed.
- [16] It seems to me that the fitness of this sentence should no longer be of concern to this court.
- [17] In my view there has been shown to us a *prima facie* case of fraud on the court. The appellant allowed herself to be convicted and sentenced on false identification and on the basis that she had no criminal record. She appealed her sentence to this court on the basis of a false identity and on the ground that she had no criminal record.
- [18] This court has the inherent power to preserve the integrity of its processes in the presence of fraud. (See: *R. v. Stolz* (1993) 84 C.C.C. (3d) 422 (B.C.C.A.)). In such circumstances we should refuse to hear the application for leave to appeal.

[19] I would refuse leave to appeal. It will now be up to the Crown to proceed with whatever charges they see fit, to seek to amend the relevant documents to reflect the appellant's correct name and to take steps to ensure that the appellant's sister is not burdened with a record that is not hers. "The Honourable Madam Justice Ryan" I Agree: "The Honourable Madam Justice Rowles" I Agree: "The Honourable Mr. Justice Low"

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