
CANADA / JUDGMENT

R. v. Labbee

2021 BCSC 1895

COURT

Supreme Court of British Columbia

DECIDED

18 August 2021

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2021 BCSC 1895 R. v. Labbee

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Labbee,

2021 BCSC 1895

Date: 20210818

Docket: 67013

Registry: Chilliwack

Regina

v.

Linnea Louise Labbee

Before: The Honourable Madam Justice B.J. Brown

Oral Reasons for Sentence

Counsel for the Crown:

J.J. Saulnier

Appearing on her own behalf:

L. Labbee

Place and Date of Hearing:

Chilliwack, B.C.

August 10, 2021

Place and Date of Judgment:

Chilliwack, B.C.

August 18, 2021

- [1] THE COURT: On April 12, 2021, I convicted Ms. Labbee of one count of having control of a vehicle that was involved in an accident with another person and with the intent to escape civil or criminal liability, failing to stop a vehicle, give her name and address, and offer assistance, knowing that bodily harm was caused to the person and was reckless as to whether death ensued, and death ensued, contrary to s. 252(1.3)(b) of the Criminal Code, RSC 1985 c C-46 as it then was.
- [2] My reasons for judgment set out the details of the offence. In brief, on December 1, 2016, at midday, Ms. Labbee struck the pedestrian, Fourghozaman Firoozian, in the crosswalk in the intersection of Patten Avenue and Mary Street in Chilliwack.
- [3] Ms. Labbee was driving her pickup truck. She was travelling slowly. She did not stop before the collision. After the collision, she pulled to the side of the road, rolled down her driver's window, and looked back to where Ms. Firoozian was lying on the road. Ms. Labbee then left the scene of the accident and went to a nearby strip mall. She spent the next several hours at the mall, having lunch and appearing in various stores at the mall. She can be seen in video at the mall.
- [4] A number of witnesses observed the collision. They were able to identify Ms. Labbee's truck and describe the driver of that vehicle.
- [5] The collision was an accident. Ms. Labbee was not charged with respect to her driving.

Positions of the Parties

- [6] The Crown seeks a two-year sentence and ancillary orders. The Crown says that although a conditional sentence order is available, it is not appropriate in the circumstances. The Crown argues that the aggravating circumstances and a high degree of moral culpability call for a sentence at the top end of the range of comparable cases.
- [7] Ms. Labbee says she does not know what an appropriate sentence would be. She asks that sentencing be postponed until she has addressed her various health issues.

Circumstances of the Offender

- [8] I have been provided with a presentence report. As the author indicates, she was not able to verify any of the information provided in the report beyond some information with respect to Ms. Labbee's court history. In particular, the author was not able to verify any information with respect to Ms. Labbee's health.

- [9] The Crown concedes that certain background information is likely true. Ms. Labbee is 73 years old, she lives alone in Chilliwack, she is relatively isolated and does not have family. Ms. Labbee was married for a period of time until her husband died in a car accident in approximately 2010. Her husband had a trucking business. The Crown accepts that Ms. Labbee worked with her husband in the business, but does not accept that Ms. Labbee continues to operate this business.
- [10] Ms. Labbee was born in British Columbia and spent some time in Alberta. She has some health problems.
- [11] I advised Ms. Labbee repeatedly that I would need a letter from her doctor setting out her health conditions in detail if it was going to be her position that a jail sentence would be more difficult for her or impossible for her to serve. Most recently, I advised Ms. Labbee that she would require a letter from her doctor setting out her health conditions if she wanted an adjournment of the sentencing hearing. Despite this, and the many months she had to obtain a letter from her doctor, I have received nothing.
- [12] I am advised by the Crown that he spoke with Ms. Labbee's general physician, Dr. Boshoff, on August 5, 2021, as Ms. Labbee had signed a release allowing Dr. Boshoff to speak with Crown. I am advised by the Crown that on that day, Ms. Labbee attended Dr. Boshoff's office. He told her that if she was able to attend his office, she was able to attend court.
- [13] Dr. Boshoff says that she is mobile but slow. Her health issues include that she is frail, cachectic (under nourished), she has pain and arthritic issues. She has chronic kidney disease. She has lung issues. The Crown advised me that he asked Dr. Boshoff specifically if her health problems prevent her from going to jail. The doctor said that her medical conditions do affect things; although she would not do well in jail, she would get care there. She has morbidities similar to other people of her age. She has no specific condition that prevents her from going to jail.
- [14] Ms. Labbee has a related criminal record. She has convictions for 12 crimes of dishonesty, failing to disclose information in bankruptcy, three convictions of false pretenses, three convictions of forgery, theft, possession of stolen property, two convictions for fraud, a conviction for public mischief, i.e., making a false statement to police and, according to the presentence report, a conviction for contempt of court for which she received five days in jail. She has received other jail sentences.
- [15] Ms. Labbee was cross-examined with respect to her criminal record at trial and admitted her convictions. She received a nine-month sentence for three prior convictions for forgery in 1985, but said she only served four months.
- [16] Her record is dated. Her first offence was in 1977 and her last, based on the presentence report, was 2001.

- [17] Ms. Labbee's driver's licence was cancelled in 2012, although she maintained at trial in cross-examination that she was licensed because she had a federal border pass that was also a driver's licence. I am satisfied, based on the records introduced and put to Ms. Labbee at trial, that she was driving without a driver's licence at the time of the accident in December 2016 and had been doing so regularly.
- [18] Ms. Labbee has been under bail supervision since her arrest in December 2016. She has reported regularly and has been cooperative with community supervision. The Superintendent prohibited her from driving indefinitely under s. 251(4) of the Motor Vehicle Act following this offence. There is no indication that she has breached the driving prohibition.
- [19] I have received victim impact statements from Ms. Firoozian's two sons and her daughter-in-law. Ms. Firoozian was an extraordinary woman with a real zest for life. She made friends with all she met. Despite her limited finances, she bought food and prepared meals for those in need.

Relevant Criminal Code Provisions

- [20] There is no minimum sentence for this offence. The maximum sentence is life in prison. A conditional sentence is available, and I am referring here to *R. v. Chen*, 2021 BCSC 697. The purpose and principles of sentencing are set out in ss. 718 through 718.2 of the Criminal Code. The fundamental purpose of sentencing is to protect society and to contribute to respect for the law and the maintenance of a just, peaceful, and safe society by imposing conditions that have one or more of the following objectives:
1. to denounce unlawful conduct and the harm done to victims or to the community;
 2. to deter the offender and other persons from committing offences;
 3. to separate offenders from society where necessary;
 4. to assist in rehabilitating offenders;
 5. to provide reparations for harm done to victims and to the community;
 6. to promote a sense of responsibility in offenders and acknowledgment of the harm done to the victims or to the community.
- [21] A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [22] A court imposing a sentence shall also consider that a sentence must be increased or reduced to account for any relevant aggravating or mitigating circumstances, and should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

- [23] An offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. All available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders with particular attention to the circumstances of Aboriginal offenders. Ms. Labbee does not suggest that she is an Aboriginal offender.

Discussion

- [24] I am satisfied that the appropriate range of sentence is as suggested by the Crown. I will impose a sentence of two years less a day and a period of two years' probation, as discussed below.
- [25] This was a very serious offence. Although there is no suggestion that Ms. Labbee was driving inappropriately before the accident, she left the scene of the accident knowing that personal injury had been caused and did so intending to escape liability. She was reckless as to whether the death of Ms. Firoozian resulted from the bodily harm. Ms. Firoozian did die.
- [26] There are many aggravating circumstances in this case. Most importantly, Ms. Labbee concocted an elaborate alibi which she embroidered over time. Immediately after the accident, she went to a restaurant and then to various stores at the mall where she appeared on video. I am satisfied that her intention in going to the mall and appearing in stores and talking to the employees was to set up an alibi, so that she could tell police, as she did, that she had been elsewhere throughout the period of time surrounding the accident.
- [27] This is not a case of simply disbelieving what Ms. Labbee said at trial. That is not an aggravating circumstance. Rather, it is that Ms. Labbee set up an elaborate alibi which she pursued and extended over the next years.
- [28] After attending at the various stores in the mall, Ms. Labbee asked one of the mall employees to drive her home. I am satisfied that this, too, was an effort to deflect attention from herself in the event she and the mall employee, Mr. Terlaak, were stopped on their route from the mall to Ms. Labbee's residence. Ms. Labbee was then arrested because of the description provided by the various witnesses at the scene. Mr. Terlaak was released.
- [29] Ms. Labbee was interviewed by police on the day of her arrest and then again two weeks later. Throughout she maintained her elaborate alibi and threw blame on another person. She gave a description of that suspect. As the Crown submits, the false alibi was not only dishonest, it was prolonged and complicated the investigation.
- [30] Although the Crown argues that Ms. Labbee intentionally delayed the trial of this matter from December 2016 through to March 2021, I am not satisfied of this beyond a reasonable doubt. It may well be the case, given Ms. Labbee's conduct at trial.

- [31] However, there are additional aggravating circumstances. Ms. Labbee sent letters, purportedly from other individuals, setting out detailed narratives in support of her alibi. These letters were put to Ms. Labbee on cross-examination. I am satisfied that they were not written by a third party but were written by Ms. Labbee. They contain similar misspellings and mistakes with respect to the names that Ms. Labbee repeatedly makes.
- [32] Some of the letters were sent from her home fax and say "Labbee" at the top. Again, the letters make serious allegations against the police, against Crown counsel, and against the woman that Ms. Labbee asserts stole her truck and was responsible for the accident.
- [33] Finally, I am satisfied that Ms. Labbee forged a letter purportedly sent from a CIBC employee. That employee was called to give evidence, as were other CIBC employees. The CIBC employee who purportedly authored the letter denied that it was his letter. Ms. Labbee's suggestion that the letter was provided to her by someone else at the bank was refuted. I am satisfied, beyond a reasonable doubt, that Ms. Labbee forged the letter.
- [34] All of this was a smokescreen by Ms. Labbee in an effort to avoid responsibility.
- [35] An additional aggravating factor is that Ms. Labbee was driving without a driver's licence at the time of the accident.
- [36] I agree with the Crown that there are no mitigating circumstances in this case. Although she has been compliant while on bail, she was also sending false and forged letters during this period.
- [37] I can take Ms. Labbee's age, health, and other personal circumstances into account in fixing an appropriate sentence. The most significant of these are her health problems, but as I have said, I have no reliable third party evidence as to what these are.
- [38] Ms. Labbee did not respond to my various requests for a letter from her doctor. Her own statements with respect to her health are a shifting sand. They are unreliable. The Crown does not accept her statements with respect to her health.
- [39] However, I am satisfied that she does have some chronic complaints and other potential issues that are being investigated. The authorities at the prisons are able to deal with these matters. Ms. Labbee will be medically assessed. The physicians at the institutions will be able to contact her various doctors and obtain specific detail with respect to her complaints and her proposed treatment. The authorities will be able to transport her to appointments and to hospital if necessary. She will be provided with meals, which may address her nutrition issues. She will not need to cope with stairs.
- [40] I do not doubt that Ms. Labbee will not find jail to be a pleasant experience; no one does. However, although prisons may be more difficult for Ms. Labbee at her age and with her health conditions, in my view these can be accommodated and I have considered them in fixing the appropriate sentence in this case.

- [41] The Crown has provided me with a number of authorities which will be listed in Schedule A to these reasons. None of these cases involves the extreme prolonged attempts to avoid liability which were present in this case. There are less aggravating circumstances in those decisions. Although a conditional sentence order is available, I am satisfied that it would not be appropriate because it is not consistent with the fundamental purpose and principles of sentencing in this case.
- [42] Even if Ms. Labbee's departure from the scene was a momentary misjudgment, and I am satisfied it was not, her continued behaviour over the next five years demonstrates her fixed intention to avoid liability. As such, it would not be appropriate for her to serve her sentence in the community.
- [43] In addition, a conditional sentence would not be appropriate because I have concerns with respect to the safety of the community. Ms. Labbee apparently drove for years without a licence. She has a conviction for contempt of court. She has many convictions for dishonest behaviour. I am not persuaded that she would abide by conditions imposed by the court, even if a conditional sentence were otherwise appropriate.
- [44] Ms. Labbee was a seasoned driver whose decision to leave the scene to avoid liability is more serious than a new driver who may have panicked and left the scene on the spur of the moment.
- [45] In *R. v. Lisi*, 2001 BCCA 559, the British Columbia Court of Appeal described the seriousness of this offence:
- There are no limits in the Criminal Code and there is no minimum sentence for this offence, but this, in my view, is an extremely serious offence. Leaving the scene of an accident with intent to avoid liability can deprive law enforcement authorities of knowing what the accused was like at the time and what condition [she] was in at the time the offence occurred, quite apart from the dangers to the victim, who may be alive and in need of assistance.
- [46] The paramount sentencing objectives are deterrence, especially general deterrence, and denunciation.
- [47] The court in *R. v. Didechko*, 2016 ABQB 552, notes that sentences for cases like these must be sufficiently high to deter Ms. Labbee and other likeminded people from fleeing the scene of the collision. As with Ms. Labbee, Mr. Didechko was a seasoned driver who had his wits about him at the time of the accident. He made a deliberate decision to leave the scene of the accident where he knew or had to have known that the victim was impacted hard enough that death was likely. He later led police on a false investigation. In *Didechko*, the court concluded that a federal penitentiary jail sentence was appropriate, balancing all of the sentencing factors. In that case, Mr. Didechko had also been charged with obstructing justice. He received a sentence of two years in a federal penitentiary for the charge of hit and run causing death, and six months consecutive for obstructing justice.

- [48] Although Ms. Labbee has not been charged with obstructing justice, her attempts to throw blame on someone else and dislodge the police investigation are appropriately considered as aggravating factors on sentence on the charges before me.
- [49] Madam Justice MacNaughton indicated in *R. v. Gourlay*, 2018 BCSC 884, that sentences at the higher end of the range appear to be reserved for offenders who are clearly aware of their involvement in a collision in which someone is injured and consciously decide to leave the scene. Such sentences also appear to be reserved for offenders who engage in obstructionist behaviour after the accident or who have a history of motor vehicle offences. That is the circumstance before me.
- [50] The cases most like this are *Didechko* and *R. v. Meads*, 2010 ABPC 109, of the Alberta courts. In those cases, the accused received a two-year sentence for leaving the scene of the accident. Ms. Labbee's efforts to avoid liability were much more extensive than those in *Didechko* or *Meads*, and it would be appropriate to sentence her to a longer period of incarceration. However, considering her age and health, I have concluded that two years less a day plus two years' probation is appropriate. This will permit her to serve her sentence at the Alouette Correctional Centre for Women. That institution is located in Maple Ridge and may permit her to attend her normal treating physicians.

Ancillary Orders

- [51] Turning to the ancillary orders sought by the Crown, those are, first, a custodial no-contact order under s. 743.21 with the following witnesses: Adina Elias, Bill Kelly, John Court, Ingrid McCabe, Jesse James, Tyler Perry, and Robert Mott, and I will make that order.
- [52] As the Crown indicated in submissions, those witnesses believe or have indicated that they have been bullied by Ms. Labbee who attempted to influence them because of their involvement in the case, so it is appropriate there is a no-contact order with respect to those individuals.
- [53] The Crown also seeks a DNA order pursuant to s. 487.04 and 487.051. Given the circumstances of this case and the minimally intrusive nature of a DNA order, I am making that order.
- [54] Crown also seeks a four-year driving prohibition pursuant to s. 259(2) and I will make that order.
- [55] In imposing a term of probation, I have considered the age and character of the offender, which I have described in detail in my reasons. I have also considered the nature of the offence and the circumstances surrounding its commission. It is my view that a term of probation is appropriate.
- [56] The terms of probation will be the standard mandated terms. Those are:
- to keep the peace and be of good behaviour;

- to appear before the court when required to do so by the court, and to notify the court in advance of any change of name or address and promptly notify the court of any change of employment or occupation;
- the last term will be for the period of probation, to abstain from communicating, directly or indirectly, with the individuals that I have already named.

[57] Is there anything that I have not addressed?

[58] CNSL J. SAULNIER: Perhaps a no-go to the mall, My Lady, just given that some of the witnesses are there. I don't have the address in front of me now.

[59] THE COURT: I think that might be an unnecessary limitation. There is already a no-contact order. There are other reasons to go to the mall and I do not think I will impose that condition. Anything further? All right, thank you.

"B.J. Brown J."

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Prepared on 27 October 2026 · Esheria