
CANADA / JUDGMENT

R. v. Li

2020 BCSC 113

COURT

Supreme Court of British Columbia

DECIDED

17 January 2020

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2020 BCSC 113 R. v. Li

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Li,

2020 BCSC 113

Date: 20200117

Docket: 172348-1

Registry: Victoria

Regina

v.

Wei Li

Before: The Honourable Mr. Justice Baird

(Appearing via videoconference)

Oral Reasons for Sentence

Counsel for the Crown:

J. Patterson

Counsel for the Accused:

R. Horne

Place and Date of Hearing:

Victoria, B.C.

January 10, 2020

Place and Date of Judgment:

Victoria, B.C.

January 17, 2020

- [1] THE COURT: On October 18, 2019, the accused, Wei George Li, was convicted by a jury of a single count of causing damage by fire contrary to s. 434.1 of the Criminal Code, R.S.C. 1985, c. C-46. The maximum term of imprisonment for this offence is 14 years, but the Crown submitted, and I agree, that in the circumstances of the present case, including the age and antecedents of the accused, a fit sentence would be in the range of two to three years in prison.
- [2] In accordance with s. 724(2)(a) of the Criminal Code, I find the following facts to have been essential to the jury's guilty verdict.
- [3] On October 3, 2017, at 10:02 a.m., a fire broke out in a duplex dwelling house owned by the accused, Mr. Li, at 318 Uganda Avenue in Esquimalt, a municipality within Greater Victoria. The accused did not reside at the property but rented it to tenants. The basement suite was vacant as the previous tenant, Tara Koshman, had moved out a day or two earlier. The upper floor was rented and occupied by a person called Billy Montgomery. The adjoining half of the duplex was owned and occupied by Ms. Irene Brett who had sold the other half of the residence to the accused a year or so before.
- [4] For quite some number of months before the fire, the accused had been involved in a pitched and heated dispute with Mr. Montgomery. He had served Mr. Montgomery with an eviction notice and relations between them had become extremely volatile. On the day of the fire, the accused arrived at the property and entered the basement suite. Mr. Montgomery was present in the upper part of the house with his overnight guests, Amanda Watson and Shane Daley. Mr. Montgomery was angry that the accused had showed up unannounced and he yelled at the accused through the floor and basement door including, the jury was told, racial epithets. Eventually, Mr. Montgomery, Mr. Daley, and Ms. Watson all departed leaving the accused alone on the property.
- [5] The jury must necessarily have found that the accused entered the garage and intentionally set fire to Mr. Montgomery's belongings therein. I am satisfied on all of the evidence that he did this to intimidate Mr. Montgomery or to force him off the property or both. The fire seriously damaged or destroyed Mr. Montgomery's personal property within the garage consisting of a variety of items of unknown value that he had collected with the intention of selling. The garage and the duplex were also damaged. Quite clearly, the jury rejected the accused's defence that the fire must have been ignited by an electrical spark when the accused attempted to turn on the garage light. The jury decided instead that the accused intentionally set the fire.

- [6] I am persuaded beyond a reasonable doubt, furthermore, that on all of the evidence, his doing this was a premeditated act and that he used gasoline as an accelerant. In this latter connection, I note, in particular, the online inquiries from the preceding day about the safe transportation of gasoline in plastic containers; his text message to his neighbour Irene Brett, that someone had threatened to burn the house down; the unexplained presence of a jerrycan containing gasoline in the basement suite; and the fact that the firefighter primarily responsible for extinguishing the fire reeked of gasoline afterwards.
- [7] There is no doubt, moreover, that immediately after setting the fire, the accused fled the scene and drove directly to the Victoria Airport to board a flight to Eastern Canada. He arrived at the airport just after 10:30 a.m., half an hour or so after the fire was ignited. The accused proceeded through airport security and asked for assistance because he was in pain from burns to his hands, neck, and face. He confirmed to airport staff that there had been an explosion at his house and that he had left the property without reporting the resulting conflagration to the authorities. Medical assistance was summoned and, finding the situation to be highly suspicious, airport staff contacted the police who attended and arrested the accused.
- [8] The duplex in question is located within a densely populated residential area in Greater Victoria. While I am prepared to accept that the accused waited to start the fire until he knew that Mr. Montgomery and his friends had left the building, the fact is that Ms. Brett was at home next door in the other part of the duplex, and other residential structures nearby might very well have been damaged or destroyed without the timely arrival of the Esquimalt Fire Department.
- [9] The fire, of course, destroyed Mr. Montgomery's property within the garage. It also damaged the garage itself and the duplex structure next to it. Additionally, it created a serious risk of other property damage and loss of life on and near the property. The firefighters who attended the scene were intentionally exposed to peril.
- [10] There is no doubt at all that the accused has committed a very serious criminal offence. In this connection, I would respectfully adopt the language of the New Brunswick Court of Appeal in *R. v. K.H.* (1994), 146 N.B.R. (2d) 372, at para. 6 to the effect that fire, no matter how well planned, is often erratic and unpredictable and gives rise to unforeseen consequences.
- [11] What the accused did here was extremely dangerous and is worthy of this court's strong rebuke. Parliament's condemnation of this particular form of criminal mischief is clear from the 14-year maximum sentence provided for it. On the other hand, as Mr. Horne in his able submissions has correctly pointed out, sentencing is an individualised process and close attention must be paid not only to the gravity of the offence, but also to the circumstances of the offender.

- [12] The accused is a soon to be 50-year-old electronic engineer who emigrated to Canada from China in 2003. He now lives in Châteauguay, Quebec. He is estranged from his wife, but they live in the same home. Together, they are raising two young children, one of whom is autistic. The accused has a long history of useful and gainful employment. I received two letters from work colleagues attesting to his general good character, his skills as an engineer, and his value as a co-worker. He has no criminal record at all.
- [13] 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 just sanctions that have one or more of the following objectives:
- a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by such unlawful conduct;
 - b) to deter the offender and other persons from committing offences;
 - c) to separate offenders from society, where necessary;
 - d) to assist in rehabilitating offenders;
 - e) to provide reparations for harm done to victims or to the community; and
 - f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.
- [14] A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and it should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.
- [15] If a jail sentence must be imposed, as in my view it must in this case, it should be as short as possible without underemphasising rivaling sentencing principles, such as denunciation and deterrence. This emphasis on restraint, I think, is particularly relevant in sentencing first-time offenders.
- [16] Precedent cases are, of course, useful as guides in delineating a fit range of sentence for similar offences in similar circumstances, and in this connection I have been referred to R. v. Clifford, [2015] B.C.J. No. 1059; R. v. Fehr, [2012] M.J. No. 362; R. v. Greeley, [1980] B.C.J. No. 2211; R. v. Mirzakhali, [2009] O.J. No. 5464, on the basis of which, as I have said, I am persuaded that the Crown's sentencing position on this hearing is sound in law.
- [17] In summary, this was a serious offence. The accused's degree of responsibility for committing it is high, especially, as I have said, considering the planning and deliberation that went into it. The cases are unanimous that denunciation and deterrence are the key sentencing principles to be served in this matter. Measured against this, however, the accused is a 50-year-old man of previously good character without any history of criminal

misconduct. For this reason, principally, I intend to emphasise the lower end of the range of applicable sentences.

- [18] Balancing as best I can the competing sentencing principles and exercising the maximum restraint that I consider to be admissible in the circumstances, given the primacy of denunciation and deterrence and taking into account the accused's age, his family responsibilities, his otherwise blameless life, his work history, and so on, I consider that a fit sentence in the present case is two years in a federal penitentiary.
- [19] I decline to make a restitution order in favour of the insurance company claiming to have paid for repairs to the garage and duplex. I am not satisfied that all of the loss claimed is causally connected to the offence or that the amount claimed is justified or sustainable. Such matters of detailed accounting are better left to a civil court.
- [20] I hereby order in accordance with s. 487.051(3) of the Criminal Code that the accused must forthwith provide a sample of his DNA by the least intrusive means available.
- [21] In accordance with s. 743.2 of the Criminal Code, I will forward these reasons to the Correctional Services of Canada.

"Baird J."

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