
CANADA / JUDGMENT

R. v. Lund

2006 BCSC 917

COURT

Supreme Court of British Columbia

DECIDED

5 May 2006

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2006 BCSC 917 R. v. Lund

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Lund,

2006 BCSC 917

Date: 20060505

Docket: 31399-5

Registry: Campbell River

Regina

v.

Robert Leroy Lund

Before: The Honourable Mr. Justice Shabbits

Oral Reasons for Sentence

May 5, 2006

Counsel for Crown:

D. Fitzsimmons

Counsel for Defence, appearing by videoconference:

T. Russell

Place of Trial/Hearing:

Campbell River, B.C.

- [1] THE COURT: Mr. Lund was convicted by a jury of having committed three offences. He was convicted that on May 18, 2005, at Campbell River, he broke and entered a dwelling house and committed therein the indictable offence of sexual assault. He was also convicted that, at the same time and place, he uttered a threat to the female complainant to cause bodily harm, and that he had, without lawful authority, confined the female complainant. Mr. Lund entered a plea of guilty to having uttered threats to a male neighbour to cause him death.
- [2] The Crown seeks a mandatory prohibition order under s. 109 of the Criminal Code that Mr. Lund be prohibited from possessing any firearm, crossbow, restricted weapon, ammunition and explosive substance for life. Counsel for Mr. Lund agrees that the order that the Crown seeks must be made.
- [3] I order that Mr. Lund be prohibited from possessing any firearm, crossbow, restricted weapon, ammunition and explosive substance for life.
- [4] Mr. Lund has been convicted of a primary designated offence within the meaning of s. 487.05 of the Criminal Code. Counsel for Mr. Lund agrees that s. 487.051(1) requires that an order be made for the taking of samples of bodily substances from Mr. Lund for the purposes of forensic DNA analysis.
- [5] Pursuant to paragraph (a) of that provision, I make an order in Form 5.03 authorizing the taking from Mr. Lund for the purpose of forensic DNA analysis of any number of bodily substances that are reasonably required for that purpose by means of the investigative procedures described in subsection 487.061.
- [6] The Crown seeks an order, under s. 490.012 and s. 490.013 of the Criminal Code, that Mr. Lund comply with the Sex Offender Information Registration Act for life. Counsel for Mr. Lund agrees that that order is mandatory.
- [7] I order that Mr. Lund comply with the Sex Offender Information Registration Act for life.
- [8] The circumstances surrounding the commission of the offences that Mr. Lund committed on May 18, 2005, are these. At about 5 o'clock a.m. on May 18, 2005, the complainant was asleep in a duplex. She was alone. She had been living with Miss Amanda Miller, who had been her roommate. Miss Miller was not there at that time. Miss Miller was in the process of moving elsewhere.
- [9] Mr. Lund was addicted to cocaine. He went to the duplex to look for Miss Miller and for a male companion of Miss Miller, who was called Too Tall. Mr. Lund's primary purpose in going to the duplex was to locate Miss Miller. Mr. Lund had reason to think that she might have cocaine that he could obtain from her or that she might repay him money that he considered she owed him. After breaking into the duplex, Mr. Lund searched it, looking for a knapsack that Miss Miller owned. He thought it might contain cocaine or money.

- [10] Mr. Lund knew that the complainant was resident in the duplex. He had seen her there before, but from a distance. He knew that it was reasonable to expect that the complainant would be in the duplex when he arrived. After knocking on the front door of the duplex and after speaking through the door with a female person, Mr. Lund suddenly forced the door open with sufficient force to cause the door frame to splinter and to cause the door to hit the complainant, injuring her. Mr. Lund then entered. He was armed with a knife. The complainant did not know him. Mr. Lund could see that she was terrified.
- [11] Although Mr. Lund did not find Miss Miller in the duplex, he thought that the complainant knew where Miss Miller was. Mr. Lund jabbed the knife in a half wall separating the kitchen from the living area of the duplex, damaging the wall and causing the knife to bend. He then got two household knives from the kitchen area of the duplex. He used them as weapons. Mr. Lund was angry. He behaved irrationally. Mr. Lund demanded that the complainant go to the bedroom to change so that she could accompany him to show him where Miss Miller was.
- [12] After the complainant went into the bedroom, Mr. Lund followed her there and demanded that she undress. Mr. Lund threatened the complainant with bodily harm. Mr. Lund ignored the complainant's protestations and pleas that she did not want to undress. After she undressed, Mr. Lund lowered his own clothing below his waist and grabbed the complainant by her head and forced her to perform oral sex on him. This was of short duration. Mr. Lund then grabbed the complainant by the arm with sufficient force to bruise it and forced her to have vaginal/penile sexual intercourse with him. This was also not of long duration.
- [13] The complainant used a ruse to escape. She fled to the neighbouring half of the duplex. Mr. Lund armed himself with the two knives and chased after her. He pounded on the neighbour's door, which had been locked. Mr. Lund was angry. He threatened both the complainant and the neighbour.
- [14] When the RCMP arrived, they were responding to a 911 call that had been made by the neighbour after the break-in, but before the complainant escaped from Mr. Lund. Mr. Lund broke the neighbour's window while the police were there. He was arrested outside the neighbour's door.
- [15] Mr. Lund testified at this trial. He denied committing the offences for which he was on trial, but he testified that he had become angry at the complainant after she refused to show him where Miss Miller was. He said that he had told the complainant she was a "cocaine whore" and that she was "just like the rest of them." He testified that when he said that, he believed what he had said. Mr. Lund had no reason to think badly of the complainant or that she was anything other than what she would have appeared to be, that being a frightened woman who had been asleep alone in her residence when she was woken up by an intruder who had broken into her residence by force and threatened her.

- [16] Mr. Lund's attack on the complainant demeaned and humiliated her. I am satisfied that Mr. Lund intended to demean and humiliate. He acted callously and without regard to the privacy and dignity and personal integrity of the complainant. Mr. Lund committed these offences in anger. He did not break off his attack on the complainant by choice. She escaped from him. Even then, Mr. Lund's anger was such that he broke the neighbour's window while in the presence of the police.
- [17] These offences have had a serious adverse effect on the complainant. She continues with counselling. She says that she lives in fear and that she suffers from post traumatic stress disorder. The complainant was cross-examined at length about Mr. Lund's account of what had occurred. The verdicts of the jury are consistent only with the jury having believed the complainant and not having believed Mr. Lund.
- [18] Mr. Lund appeared to enjoy the complainant's discomfort during her cross-examination. It seemed to me that he was smiling, if not smirking, during much of it. In Mr. Lund's own testimony, he demonstrated continuing hostility and anger, both to the complainant and to the neighbour. I have not seen any indication of remorse from Mr. Lund. Mr. Lund is not to be sentenced more severely because of a lack of remorse. However, the remorse of an offender can be a mitigating circumstance in respect of sentence. Remorse is not a factor in this case. That Mr. Lund harbours unresolved anger is of concern.
- [19] Mr. Lund was convicted of manslaughter in 1985 and sentenced to imprisonment for two years less one day. He was also placed on probation for two years. That conviction related to a 1983 offence. This is the second occasion on which Mr. Lund has been convicted of a serious criminal offence. Mr. Lund is without any other criminal record.
- [20] Mr. Lund is 40 years of age. He has been in a common law relationship for 14 years. He has two children. Mr. Lund does not have a good work record. He had been bingeing on cocaine for several weeks before he committed these offences.
- [21] In my opinion, there are three factors that act in mitigation of sentence. The first is that Mr. Lund has been in custody for just under one year awaiting trial. The second is that it has been over 21 years since Mr. Lund was last convicted of a criminal offence. The third circumstance is that he continues to receive support from his family, including his marital partner. They have expressed unequivocal support of Mr. Lund. Mr. Lund, in turn, has obvious deep-seated feelings of affection for his family. There is every reason to think that Mr. Lund's family would support him in the system in any efforts he might make in rehabilitation.
- [22] There are aggravating circumstances. Section 348.1 of the Criminal Code is entitled, "Aggravating Circumstance - Home Invasion". Section 348.1 requires a court imposing sentence for the offence of break and enter a dwelling house and committing sexual assault therein, to consider as an aggravating circumstance the fact that the dwelling house was occupied at the time of the commission of the offence and that the person, in committing the offence, knew that or was reckless as to whether the dwelling house was occupied; and

used violence or threats of violence to a person or property." That aggravating circumstance is of direct application.

- [23] Mr. Lund knew that the dwelling house was occupied before he broke into it. He had been speaking with its occupant. Mr. Lund used violence and threats of violence to the complainant. Mr. Lund entered the residence with a knife. Mr. Lund did not choose to break into this duplex randomly. He broke into it to obtain cocaine or money. There was, therefore, an element of planning involved. Mr. Lund did not break off his attack against the complainant. He chased her to a neighbour's residence while armed with two knives. He threatened the neighbour with death. His attempt to break into the neighbouring residence was interrupted by the arrival of the RCMP. Mr. Lund is 6 feet in height. He weighed about 215 pounds in May of 2005. He is a large and strong male person. The police evidence is that he was loud and aggressive when they arrived.
- [24] The complainant suffered some physical injury. She suffered bruising to her head, a lump to her head and bruising to an arm. The complainant has suffered significant psychological injury. She is still undergoing counselling. She continues to restrict her activities out of fear.
- [25] Mr. Lund had been using cocaine some hours before he committed these offences. He denied that his cocaine use was of any particular significance to the events of that day. Although I am of the view that Mr. Lund's violent and irrational behaviour was related to his abuse of cocaine, I saw no indication that his use of cocaine had impaired his reasoning process. Mr. Lund did not claim that it had.
- [26] The Crown seeks a global term of imprisonment of 15 years. It relies on *R. v. Dahlnas*, 2004 BCCA 405; *R. v. Whicher*, 2002 BCCA 336; and *R. v. Jones*, 2000 BCCA 379.
- [27] The submissions on behalf of the accused are that the appropriate range of imprisonment is between five and seven years. Counsel for Mr. Lund referred me to a number of decisions from other jurisdictions and to *R. v. Perreault*, 2005 BCCA 226.
- [28] I have considered all those authorities, and I have considered the provisions of the Criminal Code relating to the purpose and principles of sentencing. I paid particular regard to a number of objectives of sentencing, those being the denunciation of criminal activity and general deterrence, as well as deterrence of Mr. Lund and his rehabilitation.
- [29] As noted by Mr. Justice Hall in *Whicher*:
- Courts must also impose sentences that adequately mark society's disapproval of the offender's breach of societal norms.
- [30] I have considered the complainant's victim impact statement. I have considered the letters from Mr. Lund's marital partner and from her mother, both of those letters attesting to Mr. Lund's good character.

- [31] I have concluded that the appropriate sentence is that of a global term of imprisonment of 10 years, less credit for time served before trial.
- [32] Mr. Lund, I sentence you to a term of imprisonment of eight years in respect of your conviction for having broken and entered a dwelling house and having committed the indictable offence of sexual assault therein, and two concurrent terms of two years in respect of each of counts 2, 3, and 4 of the indictment.
- [33] Is there anything further, Mr. Fitzsimmons?
- [34] MR. FITZSIMMONS: No, My Lord.
- [35] THE COURT: Mr. Russell, is there anything further?
- [36] MR. RUSSELL: No, My Lord. There is, I can tell you, a victim fine surcharge with respect to these matters, and Mr. Lund will not be in a position to pay those. I would ask if that could be waived.
- [37] THE COURT: I will order that it be waived.
- [38] MR. RUSSELL: Thank you.

"S.J. Shabbits, J."

The Honourable Mr. Justice S.J. Shabbits

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