
CANADA / JUDGMENT

R. v. Tanner

2018 BCSC 583

COURT

Supreme Court of British Columbia

DECIDED

20 February 2018

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Tanner,

2018 BCSC 583

Date: 20180220

Docket: 32130

Registry: Cranbrook

Regina

v.

Kody William Tanner

Before: The Honourable Mr. Justice Skolrood

Oral Reasons for Sentence

Counsel for the Crown:

J. Vivian

Counsel for the Accused:

M. La Flamme

Place and Date of Hearing:

Cranbrook, B.C.

February 20, 2018

Place and Date of Judgment:

Cranbrook, B.C.

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Introduction

- [1] THE COURT: On August 21, 2017, Kody William Tanner pled guilty to one count of operating a vehicle while his ability to do so was impaired by alcohol or a drug, and in doing so caused the death of Cory Landry, contrary to s. 255(3) of the Criminal Code.
- [2] Mr. Tanner is now before the court for sentencing.

Circumstances of the Offence

- [3] This is a tragic case in which an outing amongst a group of friends led to the death of a young man. The following facts are taken from an agreed statement of facts submitted by the parties.
- [4] On the evening of April 20, 2015, Mr. Tanner travelled with several carloads of friends of a similar age across the BC-Alberta border to some pubs in the Crowsnest Pass region of Alberta. One vehicle, a Jeep Wrangler (the "Jeep"), was driven by Mr. Tanner. Another vehicle, a Dodge Ram truck (the "Truck"), was driven by his twin brother, Kyle Tanner. The group, including Mr. Tanner, consumed alcoholic beverages at the pubs. Many of the members of the group were 18 years old. The legal drinking age in BC is 19, whereas the age limit in Alberta is 18.
- [5] Various people described Mr. Tanner as having numerous drinks that evening. One member of the group described Mr. Tanner as "sloppy drunk" by the time the bars closed, and his brother described Mr. Tanner as being too drunk to drive.
- [6] After the pubs closed at around 2:00 a.m. on April 21, 2015, the group departed back to the Sparwood area. Mr. Tanner was driving the Jeep. Mr. Landry was a passenger in the backseat. A young woman was driving the Truck in place of Kyle Tanner.
- [7] The vehicles did not travel together back from the Crowsnest area; however, they met up by coincidence in Sparwood. Mr. Tanner was dropping off one of his passengers and the Truck was also stopping to allow a passenger to pick up some belongings. The vehicles then travelled together towards Elkford. This took them onto Highway 43, which is a two-lane highway that runs between Elkford and Sparwood. The vehicles began to increase their speed well above the posted limit of 70 kilometres per hour and passed each other several times. The occupants were cat calling and egging each other on.

- [8] Mr. Tanner attempted to make a pass as he approached a blind corner. He was unsuccessful and instead he collided with the driver's side of the Truck, causing both vehicles to go off the road into a ditch. The Jeep rotated counter-clockwise, tipped, and rolled several times. The Truck remained upright and travelled along a ditch until it hit a tree. The crash occurred at about 2:53 a.m.
- [9] The forensic reconstruction expert estimated the speed of the Jeep at the time of the crash at 130 to 140 kilometres per hour and the Truck at 126 to 137 kilometres per hour.
- [10] A witness called 9-1-1 and the police arrived at around 3:29 a.m. Fire and ambulance crews also attended.
- [11] Mr. Tanner was injured in the crash. He suffered a broken left clavicle, bruised lungs, a small pneumothorax, and undetermined head injuries. He was transported by an air ambulance to Foothills Hospital in Alberta.
- [12] There was initially some confusion about how many people were in the vehicles and it was believed by some passengers that Mr. Landry had been dropped off in Sparwood. However, at some point between 4:00 and 5:00 a.m., an officer was searching along a fence line adjacent to the highway and he discovered Mr. Landry. Mr. Landry had not been wearing a seat belt and he had been ejected from the Jeep. He was found about 10 metres away from the Jeep in some barbed wire fencing. He suffered numerous injuries and was confirmed dead at the scene. Mr. Landry was 21 years old at the time of his death.

Circumstances of the Offender

- [13] Mr. Tanner was 18 years old at the time of the offence. He is currently 21 years old. There is a presentence report that describes his background. He was raised in Sparwood by his mother and his stepfather. In addition to his twin brother, he has two sisters. Mr. Tanner completed Grade 12 and obtained various industrial tickets with a view to working in the oil and gas sector. He has had a variety of jobs and most recently, as of January 13, 2018, he is employed full-time in Fort St. John, BC, by a company called Troyer.
- [14] The pre-sentence report notes the use of alcohol by Mr. Tanner dating back to the age of 13. He continued to drink after the date of the accident, which led him to lose a job at a mine when he failed a breathalyzer test. He was also issued a 24-hour driving prohibition on December 11, 2015, pursuant to s. 215(3) of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 [MVA], for driving while impaired by a drug.
- [15] More recently, he has taken steps to curb his alcohol and drug use, in part because he needs to pass testing in order to obtain employment in the oil and gas sector. I am told by counsel that he passed a test in order to obtain his current employment.

- [16] Letters of support were filed by members of Mr. Tanner's family, including his mother, stepfather, and two sisters. Another letter from his grandfather was read into the record. All of the letters note the effect the offences had on Mr. Tanner and all express unwavering support for him. It is a credit to Mr. Tanner's family that none of them sought to diminish the significance of Mr. Tanner's offence, but all expressed the hope and view that he will emerge from this experience a better person.
- [17] Mr. Tanner also addressed the court. Also to his credit, he took full responsibility for his actions and the tragic consequences and he expressed genuine remorse.

Impacts on the Victims/Community

- [18] A victim impact statement was filed by Mr. Landry's mother, Ms. Marsolais. She lives in the Maritimes and was not able to attend the hearing. It is clear that the loss of her son has had a devastating impact on her and her family, including Mr. Landry's young sister. His mother expressed great sadness about the many life milestones that she will be unable to share with her son, such as seeing him marry and have his own children. It is also clear that Mr. Landry's sister misses him very much.
- [19] Mr. Landry was raised in the Maritimes but moved to the Sparwood area when he was 20 to reconnect with his biological father. Mr. Landry had a good job in the area and he spent time with his father and friends. His life was just beginning to take shape when it was tragically cut short.

Legal Parameters

- [20] The maximum sentence for impaired driving causing death is life imprisonment, which reflects the seriousness of the offence.
- [21] The Supreme Court of Canada in *R. v. Lacasse*, 2015 SCC 64, established a broad range of sentence between 18 months and eight years' imprisonment.

Mitigating and Aggravating Factors

- [22] The mitigating factors in this case include:

- Mr. Tanner pled guilty to the charge, thus saving the time, expense, and emotional hardship of a trial;
- Mr. Tanner was young at the time of the offence, only 18 years old; and
- Mr. Tanner has no criminal record.

- [23] Aggravating factors include:

- The accident resulting in Mr. Landry's death was the result of deliberate and reckless behaviour that not only endangered the occupants of the vehicles, but also other people who may have been on the road that evening;

- Mr. Tanner was in breach of the conditions of his Class 7 licence, being an "N" driver, he was prohibited from driving with any alcohol in his system and from having more than one passenger, unless there was a person over 25 in the vehicle;
- Mr. Tanner subsequently, on December 11, 2015, was issued a 24-hour driving prohibition under s. 215(3) of the MVA for driving while affected by a drug; and
- The offence has had a significant impact on the family of Mr. Landry, as reflected in his mother's victim impact statement.

Principles of Sentencing

- [24] The principles governing sentencing are well established. Section 718 of the Criminal Code provides that "[t]he 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 ". It also lists a number of specific objectives that a sentencing judge must consider, which are:
- (a) to denounce 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.
- [25] Section 718.1 states the most basic principle of sentencing, namely, that the sentence imposed should be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2 sets out a number of additional principles including that:
- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances ;
 - (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
 - (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
 - (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

- (e) 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.
- [26] No single sentence objective takes precedence, and it falls to the sentencing judge to determine which objective or objectives merit the greatest weight, given the particulars of the case.
- [27] Section 718.2(b), which I have referred to, stipulates that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. This requires the sentencing judge to consider the sentencing range for the offences in issue, where such a range has been established. As I have indicated, the range for impaired driving causing death has been set by the Supreme Court of Canada at 18 months to eight years.
- [28] However, the Court of Appeal has also made it clear that sentence ranges are guidelines and are not conclusive when determining a fit sentence. See, for example, *R. v. Bernier*, 2003 BCCA 134, at paras. 42 and 75; and *R. v. Smith*, 2017 BCCA 112, at para. 12.

Positions of the Parties

- [29] The Crown seeks a sentence in the range of two years less a day to three years' imprisonment, plus a five- to seven-year driving prohibition. The Crown submits that the principles of denunciation and general and specific deterrence are particularly important, given the seriousness of the offence.
- [30] The Crown cites the following cases in support of its position:
 - a) *Lacasse*, which I have already referred to. There the Supreme Court restored the trial judge's sentence of 6.5 years for two counts of impaired driving causing death, which the Court of Appeal had reduced to four years;
 - b) *R. v. Smith*, 2013 BCCA 173, where our Court of Appeal confirmed the range of 18 months to eight years. The court allowed an appeal from a sentence of one day in jail plus three years' probation, and substituted a sentence of two years less a day, taking account of the one day spent in jail, plus three years' probation. The court stated that the sentencing judge had underemphasized the principle of deterrence;
 - c) *R. v. Fenton*, 2017 BCPC 216, where the court imposed a sentence of four years plus a ten-year driving prohibition for an offence in which, while driving impaired, the offender collided with an on-duty police officer resulting in her death;

- d) R. v. Vance, 2017 BCPC 50, where the offender was sentenced to three years for impaired driving causing death, plus an additional year concurrent for impaired driving causing bodily harm, and a six-year driving prohibition. The offender there, while impaired, was speeding, ran a red light, and struck another car killing one occupant and seriously injuring the other; and
- e) R. v. Dan, 2017 BCSC 2438, where a 19-year-old Aboriginal offender received a sentence of two years less a day plus probation and a three-year driving prohibition for impaired driving causing death.

[31] The Crown notes in particular the observations of Madam Justice Ryan in R. v. Johnson, [1996] B.C.J. No. 2508 (C.A.), cited in Fenton, where she said at para. 30:

30 Drinking driving causing death or bodily harm offences are senseless crimes because they are so easily avoided and at the same time they are so easily committed by ordinary citizens. They are unlike any other crimes in the sense that nothing much can be offered to justify driving drunk. Crimes of theft may be motivated by poverty, crimes of assault may be motivated by fear, but what excuse can be offered for driving drunk, except that alcohol allowed the offender to lose all sense of judgment? It is for this reason that communities rightfully express outrage when victims are killed or injured as a result of such conduct. It is for this reason that both deterrence and denunciation are legitimate objectives to pursue for this type of offence.

[32] Counsel for Mr. Tanner agrees that the general range of sentence is 18 months to eight years, as set out in Lacasse. He submits that in the circumstances of this case, a fit sentence would be two years less a day, plus a period of probation which would include a period of house arrest.

[33] He cites Smith, also cited by the Crown, as well as R. v. O'Leary, 2015 ONSC 6347, and R. v. Moore, 2010 BCSC 930.

[34] In O'Leary, the court framed the issue before it as follows:

1 What sentence should be imposed on a young man with no prior criminal record, impeccable character references and good prospects for the future but who committed serious offences when he drove dangerously by racing with another car, driving which led to the death of one young man and serious bodily harm to another man?

[35] There, the court sentenced the 23-year-old offender to a term of 18 months imprisonment plus a five-year driving prohibition.

[36] In Moore, the offender stole a vehicle and drove it in a dangerous manner that resulted in the death of one of his passengers and serious injury to the driver of another vehicle. The court imposed a sentence of two years imprisonment plus a period of probation of 12 months.

- [37] The Crown notes that both O'Leary and Moore involved the offence of dangerous driving for which the sentence range is less than for the offence in issue here.

Reasons

- [38] Impaired driving wreaks havoc on our communities and on the lives of those people and their families caught in accidents caused by impaired drivers.
- [39] This case is particularly tragic because the death of Mr. Landry was caused by the reckless actions of his friend Mr. Tanner. I doubt that there is any sentence that this court can impose that will outweigh the guilt that Mr. Tanner himself feels for Mr. Landry's death. Similarly, there is no sentence that this court can impose that will take away the sense of loss and devastation felt by Mr. Landry's family.
- [40] The principles of denunciation and general deterrence are important in this case. The courts, and society in general, need to send a message that impaired driving is a scourge and cannot be tolerated. The sentence I impose must reflect that condemnation.
- [41] Specific deterrence is less of a factor here, as I am satisfied that Mr. Tanner has learned his lesson and, despite some indication of continued drug and alcohol use after the offence, I am satisfied that he is committed to turning his life around and becoming a productive member of society. Rehabilitation is also an important factor. Mr. Tanner is a young man with good prospects and the sentence imposed should not interfere unduly with those prospects.
- [42] Having considered the principles of sentencing, the case authorities submitted by the parties, and the specific circumstances of the offence and of Mr. Tanner, I find a fit sentence to be as follows, and Mr. Tanner, I am going to ask you to stand.
- [43] On the count of operating a motor vehicle while impaired and causing the death of Cory Landry, I sentence you to a term of imprisonment of two years less a day. This will be followed by a term of probation of 12 months, the terms of which will be as follows:
- a) You will keep the peace and be of good behaviour;
 - b) You will appear before the court when required to do so by the court;
 - c) You will notify the court or the probation officer in advance of any change of name or address and promptly notify the court or probation officer of any change of occupation or employment;
 - d) You will report to a probation officer within two working days of your custodial sentence and thereafter will report as directed;
 - e) You must not possess or consume alcohol or drugs or any other intoxicating substance, except in accordance with a medical prescription;

- f) For the first six months of the probation period, you must not be outside of your residence except for the following purposes:
- i) going directly to or attending at or returning directly from your place of employment;
 - ii) attending at your probation officer's office;
 - iii) proceeding to or from or attending court or meeting with your legal counsel;
 - iv) attending for a medical, dental, or emergency treatment;
 - v) attending religious services or while travelling to or from such services;
 - vi) any other purpose for which you have the prior written approval of your probation officer; and
 - vii) on one of either Saturday or Sunday of each week between the hours of 10:00 a.m. and 1:00 p.m., you may be away from your residence for the purpose of performing errands or exercise.
- [44] In addition to the terms of your probation, you will be prohibited from driving a motor vehicle for a period of five years. This is in addition to the six-month period that you have been prohibited from driving up until now, plus the period in which you are incarcerated.
- [45] You can have a seat, Mr. Tanner.
- [46] Now, counsel, are there other terms required? For example, does this require a DNA order? I looked and I was not certain that it did.
- [47] MR. LA FLAMME: I don't think so.
- [48] THE COURT: It is not a primary offence, so --
- [49] MR. LA FLAMME: It's not a primary offence, that I know, but I don't think so. My friend --
- [50] THE COURT: It is -- I did not see it listed in 487 --
- [51] MR. LA FLAMME: No.
- [52] THE COURT: -- point 051.
- [53] MS. VIVIAN: Sorry, Your Lordship, I should have looked into that earlier. I am just wondering if it -- I believe it may fall under a secondary DNA offence, under sub (a) of the listing of secondary designated offences, because it is an offence prosecuted by indictment for which the maximum punishment is five years or more.
- [54] THE COURT: Some of the cases in both books included it and some did not.
- [55] MS. VIVIAN: I think that that would probably encompass it as a secondary offence and I would leave it in the court's hands as to whether that --
- [56] THE COURT: Can you give me that, just where is that in the section, Ms. Vivian?
- [57] MS. VIVIAN: Does Your Honour have the 2018 Code with you?

- [58] THE COURT: 2017.
- [59] MS. VIVIAN: Okay. I was just going to refer to a page number. Under s. 487.04.
- [60] THE COURT: Yes.
- [61] MS. VIVIAN: And then it sets out first the primary designated offences and then if Your Lordship goes past that to the list of secondary designated offences.
- [62] THE COURT: Yes.
- [63] MS. VIVIAN: So the first one under that, sub (a), would appear to include this offence because it is an offence punishable by more than five years.
- [64] THE COURT: So for example, in the Vance case it was ordered. It is not clear that it was in the Dan case, but I think --
- [65] MR. LA FLAMME: It's a discretionary --
- [66] THE COURT: I think it is -- Ms. Vivian is correct.
- [67] MR. LA FLAMME: Discretion -- yeah.
- [68] THE COURT: So I am going to make a DNA order in accordance with section -- I think it is 487.051.
- [69] And the victim surcharge, \$200.
- [70] MR. LA FLAMME: Due to the circumstances, he is going in custody for two years. Within this jurisdiction, Your Honour, it could be deemed served to be -- like you -- the court -- the courts here, what they do is they -- payable forthwith and then deemed -- one day deemed served. That's how this jurisdiction, I don't know in Vancouver how it's done. Otherwise the end will have to wait until he get in --
- [71] THE COURT: Ms. Vivian?
- [72] MS. VIVIAN: My Lord, I take no position on that. I have no issue if Your Lordship's practice is to declare it payable forthwith, with one day concurrent in default. In the circumstances, I have no difficulty with that.
- [73] THE COURT: That is what I am going to do. So there will be \$200 payable forthwith, but it would be served by one day imprisonment in default concurrent.
- [74] Then last, do we know which probation office --
- [75] MR. LA FLAMME: He will -- usually --
- [76] THE COURT: Normally they -- I think Madam Clerk would like to include that in the terms of probation, if we know the --

- [77] MR. LA FLAMME: Because he will be released out of Oliver, but if it is Oliver, the easiest thing would be for him to do, to report by telephone to the Cranbrook office and they will direct him to the correct probation office, depending on where he is sent in the system. So that would cover the situation to --
- [78] THE CLERK: We can put in the phone number of the 1-800 number and the local address of the probation office here in Cranbrook, and then they can direct him -- they are allowed to --
- [79] THE COURT: Okay.
- [80] THE CLERK: -- report by telephone.
- [81] THE COURT: That would make sense, Ms. Vivian.
- [82] MS. VIVIAN: Yes.
- [83] THE COURT: All right, so we will include, it will be to report by telephone to the Cranbrook probation office within two days, and then you will be referred to the appropriate probation officer. All right.
- [84] THE CLERK: Within two days, should it be the next business day?
- [85] THE COURT: The next business day will be fine, yes, all right. Anything else?
- [86] MS. VIVIAN: No, thank you, My Lord.
- [87] THE COURT: All right.
- [88] THE CLERK: Stays of proceedings on Count 1 and 3?
- [89] MS. VIVIAN: Oh, yes, there is. Yes. Crown directs a stay of proceedings on Count 1 and Count 3.
- [90] THE COURT: All right, thank you. Mr. Tanner, good luck.
- [91] THE ACCUSED: Thank you.

"Skolrood J."

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