

CANADA / JUDGMENT

R. v. Vandervalk

2006 BCCA 431

COURT

British Columbia Court of Appeal

DECIDED

27 September 2006

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2006 BCCA 431 R. v. Vandervalk COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Vandervalk, 2006 BCCA 431 Date: 20060927 Docket: CA033850 Between: Regina Respondent And Trevor Ryan Vandervalk Appellant Before: The Honourable Madam Justice Prowse The Honourable Madam Justice Newbury The Honourable Mr. Justice Mackenzie Oral Reasons for Judgment M.F. Allen Counsel for the Appellant M.J. DeWitt-Van Oosten Counsel for the (Crown) Respondent Place and Date: Victoria, British Columbia September 27, 2006

- [1] MACKENZIE, J.A.: This is an appeal from concurrent sentences totalling four years imprisonment following pleas to nine counts arising out of a sequence of events between 24 July and 5 August 2005. The offences are two counts of theft over \$5,000, two counts of wilful obstruction of a police officer, possession of stolen property under \$5,000, failing to stop at the scene of an accident, driving while disqualified, dangerous driving causing bodily harm and dangerous operation of a motor vehicle. The appellant received concurrent sentences of four years imprisonment, in addition to a credit of ten months for five months of pre-sentence custody, plus a ten-year driving prohibition for each of the dangerous driving offences. He was given lesser concurrent sentences on the other seven counts.
- [2] The events began with the theft of a pickup truck in Nanaimo. On July 24, the police were alerted to an apparently abandoned vehicle in the Royston area. An attending officer determined that it was the stolen pickup. He left the scene after calling a tow truck. The tow truck driver was in the process of preparing the vehicle for towing when the appellant emerged from some bush. After a brief conversation, during which he was advised by the tow truck driver that the vehicle was stolen, the appellant started the vehicle and drove off.
- [3] On August 4, the appellant "loaned" the vehicle to one Turner, who used it in an early morning armed robbery of a service station. Later, at about 7:00 am, a hit and run accident was reported at the Home Hardware store in Cumberland. Then, at 8:36, R.C.M.P. Cst. Brown observed the vehicle in the parking lot of an apartment complex in Courtenay. After checking the interior, he called a tow truck. He was then approached by the appellant who identified himself to the officer as Kevin Vashon. He appeared nervous and Cst. Brown asked him to step away from the vehicle. When the officer's back was turned, the appellant jumped into the vehicle and drove off. He drove erratically through the children's playground of the

apartments, over the lawn and through planters. The vehicle turned onto a side road, striking a parked van with force and knocking it into another vehicle. One of the two occupants of the van suffered soft tissue injuries. The appellant's vehicle backed up, hit the van a second time and drove off.

- [4] It was next reportedly observed by members of the public at several locations in the vicinity travelling at high speed and running at least one red light. Police officers continued to search for it and it was spotted by Cst. Gargus who followed it along Lake Trail Road. The vehicle increased speed, reaching 130 kph in a 50 kph zone. Cst. Gargus broke off pursuit for safety reasons.
- [5] At about 12:30, the owners of a vehicle left unattended at Stolten Falls found the appellant attempting to steal it when they returned to their vehicle. The appellant fled with the wallet of one of the occupants and some CDs. At 1:30, the stolen pickup was reported in a gravel pit on the Duncan Main Road. A helicopter was called in to assist and began to follow the pickup when it left the gravel pit. It emerged from a side road onto the Island Highway, immediately in front of a vehicle driven by Ken Uzzell, running a red light in the process. Mr. Uzzell braked, but could not avoid rear-ending the pickup. It failed to stop and Mr. Uzzell tried to follow it. It reached speeds of about 150 kph. Mr. Uzzell saw it brake suddenly, do a 180 degree turn, and come toward him southbound in the northbound lane. He pulled over to the side; the pickup swerved toward him, and continued southbound. At this point, the police picked up the pursuit. The helicopter reported that the pickup had done another 180 degree turn and was proceeding back towards the police vehicles of Constables Biollo and Gargus. Before the officers could lay down a spike belt, the appellant passed between the two vehicles at about 100 kph. Cst. Gargus followed. The appellant's vehicle ran over a spike belt laid down by Cst. Brown, resulting in two flat tires.
- [6] Cst. Bigg managed to pass the appellant's vehicle, endeavouring to warn oncoming traffic. His vehicle was then rammed by the appellant, who passed him, driving erratically. He rammed and disabled two more police vehicles who were attempting to box him in.
- [7] The appellant continued on until his vehicle was rammed by a large SUV driven by Cst. Rutherford, and then by two other police vehicles, eventually bringing it to a halt. The appellant attempted to escape on foot but he was finally apprehended by officers with the assistance of a police dog.
- [8] In all, five police vehicles and five civilian vehicles were damaged and the occupant of one vehicle suffered soft tissue injuries.
- [9] The offences must be viewed against the background of the 26 year old appellant's record, including several convictions for breaking and entering, theft and assault. He had been released from jail about a month before these events after serving 60 days for possession of stolen property under \$5,000 and obstructing a police officer. Most significantly, the appellant was convicted on two counts of dangerous driving causing death and one count of dangerous driving causing bodily harm arising out of an accident at Boston Bar in 1999. The

appellant was driving a Cadillac owned by a passenger at a speed of over 100 kph in a 60 kph speed zone. He pulled out to pass a large truck over a solid double line and struck head-on a pickup truck coming in the opposite direction. The driver of the pickup and the appellant's owner-passenger were both killed in the collision. Another passenger in his vehicle, a young woman, suffered a brain injury that has left her with a permanent disability. The appellant did not have a driver's licence and was under a driver's prohibition at the time of these events. Indeed, he has never had a valid driver's licence or been qualified to drive a motor vehicle at any time.

- [10] It is hard to think of a more egregious set of circumstances than those involved in these offences. No one was killed or seriously injured, but that was purely fortuitous in the light of the appellant's complete disregard for the consequences of his reckless behaviour. At the sentencing hearing, his counsel attributed his conduct to the influence of crack cocaine. I cannot regard that as a mitigating factor. The courts treat driving impaired by alcohol at least as seriously as dangerous driving otherwise. There is no reason to treat impairment by illicit drugs any less seriously, and while impairment is not an element of the offences as charged, in my view, it does not reduce their seriousness for sentencing purposes.
- [11] The sentencing judge accepted the sincerity of the appellant's apology and referred to the supporting letters from the appellant's father and others in the community to the effect that he is a responsible individual when he is straight and sober. He apparently completed certain programs in jail between his arrest and sentencing. However, there is no assurance that he is in control of his addiction and under the influence of that addiction he clearly presents a public menace.
- [12] The sentencing judge considered the protection of the public to be the primary sentencing factor in this case. In my respectful view, he could not have done otherwise. The local community was shocked and frightened by the appellant's rampage through it in broad daylight, with attendant publicity. It is apparent that driving requirements are completely ineffective in preventing the appellant from getting behind the wheel of motor vehicles; and incarceration, unfortunately, is the only effective way of keeping him off the road.
- [13] Before the sentencing judge, defence counsel submitted that an appropriate sentence was about three years, before credit for time served, and that he was instructed to ask for a sentence in the federal range. Crown counsel submitted that an appropriate sentence was four to five years before credit for time served.
- [14] Before us, Mr. Allen essentially adopted the same position as counsel at trial. He relies on *R. v. Sebelley*, 2000 BCCA 271 and *R. v. Plante*, 2005 BCSC 1148. *Sebelley* involved two high speed chases in a stolen vehicle after the driver had escaped from custody. There were a number of collisions and property damage was extensive. There was a lengthy prior record. This Court upheld consecutive sentences totalling four years, six months for those offences. *Plante* involved a high speed collision with a stolen truck resulting in serious personal injuries. The accused there left the scene and was turned in by his family. The accused was 19,

significantly younger than the appellant in this case. There were mitigating circumstances in Mr. Plante's background and prospects for rehabilitation. Joyce J. imposed a sentence that was effectively one of three years imprisonment before taking pre-trial custody into account.

[15] In my view, the sentence imposed here cannot be said to be unfit, in light of the sentences imposed in Sebelly and Plante. The sentencing judge did not err in law or principle and his emphasis on the protection of the public was amply justified in the circumstances of this case.

[16] In the result, I would grant leave to appeal and I would dismiss the appeal.

[17] PROWSE, J.A.: I agree.

[18] NEWBURY, J.A.: I agree.

[19] PROWSE, J.A.: Leave to appeal is granted and the appeal is dismissed. "The Honourable Mr. Justice Mackenzie"

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