

CANADA / JUDGMENT

R. v. Bonson

2024 BCSC 1435

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2024 BCSC 1435 R. v. Bonson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bonson,

2024 BCSC 1435

Date: 20240719

Docket: 89202-2

Registry: Nanaimo

Rex

v.

Michael Wayne Bonson

Before: The Honourable Madam Justice Watchuk

Voir Dire Oral Ruling - Application re Section 24(2) of the Charter

Counsel for the Crown:

C. Gibson

Counsel for the Accused:

K. Bradshaw

Place and Dates of Trial:

Nanaimo, B.C.

July 17-18, 2024

Place and Date of Judgment:

Nanaimo, B.C.

July 19, 2024

- [1] These are the reasons on the application of the accused, Michael Wayne Bonson, to exclude evidence seized from his vehicle by the RCMP on June 11, 2020, pursuant to s. 24(2) of the Charter. This application follows from findings that Mr. Bonson's Charter rights were breached. The circumstances and the breaches are set out in my reasons on the voir dire ruling dated June 21, 2024 and indexed as 2024 BCSC 1092 (the "Reasons").
- [2] As background for this application, I will set out the overview of the facts from the Reasons:
- [8] In the early morning of June 11, 2020, Cst. Viger was patrolling the area of 1702 Bowen Road, Nanaimo, BC, which is the location of a gas station and a convenience store. While driving in the parking lot, Cst. Viger observed a pick-up truck that was spray painted black which Cst. Viger found suspicious.
- [9] Constable Viger stopped and queried the licence plate on the pick-up truck and learned that the vehicle had active insurance and was registered as grey in colour. The query also identified a "Pointer Vehicle" associated to Michael Bonson, who had an outstanding warrant for offences of fraud over \$5000 and using a forged document.
- [10] Constable Viger parked behind the pick-up truck. He exited his vehicle and walked up to the male who was standing near the pick-up truck. He asked the male if he was Michael Bonson, and the male said, "Yes".
- [11] Constable Viger recorded in his notes that he then arrested Mr. Bonson for the outstanding warrant for fraud at 5:20 a.m. He commanded Mr. Bonson to place his hands behind his back and, when he complied, Constable Viger secured him in handcuffs. As the video shows actions consistent with an arrest and handcuffing at 5:18 a.m., I will return to the question of time of arrest.
- [12] Constable Viger conducted a search for officer safety and then escorted Mr. Bonson to his police vehicle. He placed Mr. Bonson in the back of the police vehicle, but Mr. Bonson got very nervous and passively would not put his feet in the vehicle. Mr. Bonson asked why he was arrested. Constable Viger called for back up. Other members arrived, and Mr. Bonson then complied with the commands of the officers to put his feet in the vehicle.
- [13] At 5:26 a.m. or 5:29 a.m., Cst. Viger informed Mr. Bonson of his right to counsel. At trial, Cst. Viger testified that Mr. Bonson told him that he did not want to call a lawyer "at this time".

- [14] Constable Viger secured the pick-up truck by closing the windows and locking the doors. He testified that as he was closing the driver's side window, he observed a scale on the front seat, but it was too dark to see if anything was on the scale. He did not recall if he had earlier gone into the front seat of the pick-up truck to retrieve Mr. Bonson's wallet or what he saw then.
- [15] At 5:38 a.m., Cst. Viger transported Mr. Bonson to the Nanaimo RCMP detachment to obtain fingerprints and a photograph as was required by the terms of the warrant.
- [16] At 6:20 a.m., after he completed the taking of fingerprints and photographs, Cst. Viger was in the process of writing a ticket for having the wrong colour on the pick-up truck. At that time, he noticed that the licence plate that was on the pick-up truck related to a Ford Explorer SUV registered to Mr. Bonson. Constable Viger remembered that the older pick-up truck was not similar to an Explorer. He testified that he told Mr. Bonson he was being detained for possession of property obtained by crime, and drove back to the gas station with Mr. Bonson still in his police vehicle.
- [17] At 6:29 a.m., Cst. Viger arrived back at the gas station with Mr. Bonson in the back of the police vehicle. Constable Viger exited the police vehicle and went to the pick-up truck to locate the vehicle identification number ("VIN") on the driver's side windshield. Constable Viger testified that the VIN was missing, and he took a photograph.
- [18] Constable Viger then looked into the pick-up truck and saw the digital scale he had seen earlier and noticed a white substance on it. He suspected that it was cocaine residue. He searched the vehicle from the outside by looking onto the dash and saw a plastic baggie with a white substance inside, which he suspected was cocaine. During a further search of the inside of the pick-up truck from the outside, Cst. Viger observed a glass pipe. He testified that he formed the grounds to believe Mr. Bonson was in possession of a controlled substance for the purpose of trafficking.
- [19] At 6:35 a.m., Cst. Viger returned to the police vehicle and informed Mr. Bonson he was under arrest for possession of a controlled substance for the purpose of trafficking. He informed Mr. Bonson of his s. 10(b) rights, and Mr. Bonson said he wanted to speak to a lawyer.
- [20] Constable Viger contacted legal aid, and Mr. Bonson spoke to a lawyer while in the back of the police vehicle.
- [21] At 7:00 a.m., Cst. Viger began to search the interior of the pick-up truck. As a result of the search, Cst. Viger located and seized numerous baggies of controlled substances.
- [22] The following drugs were seized:
- 1394 doses of LSD;
 - 28 grams of cocaine;

- 90.31 grams of methamphetamine;
- 0.5 grams of fentanyl; and
- 11.72 grams of carfentanil and fentanyl.

[23] At 8:21 a.m., Cst. Viger completed the search of the pick-up truck.

[24] At 8:58 a.m., Cst. Viger released Mr. Bonson at the scene.

[3] In the result, the application was granted in part. Out of the nine alleged breaches of Mr. Bonson's Charter rights, six of them were found. Paragraph 101 of the Reasons set out the six breaches as follows:

[101] I find that Mr. Bonson's Charter rights were breached as follows:

- a) Section 9 - by failing to release him at the RCMP detachment on the appearance notice;
- b) Section 8 - by continuing to search the pick-up truck from the outside after the investigation became a drug investigation;
- c) Sections 10(a) and 10(b) - by failing to provide Charter rights when the investigation switched to a drug investigation;
- d) Section 9 - by the arrest for possession for the purpose of trafficking without reasonable grounds; and
- e) Section 8 - by searching the pick-up truck after an unlawful arrest.

[4] In chart form, the breaches found are as follows:

Section

Description of Breach

Time of Breach

Duration

9

Failure to release on appearance notice

6:20 a.m.

To 8:58 a.m.

[2 hours, 38 minutes]

8

Search of pick up truck from the outside (visual search)

6:31 a.m.

To 6:35 a.m.

[4 minutes]

10(a)

Failure to advise of reasons for detention - drug investigation

6:31 a.m.

10(b)

Failure to provide right to counsel for drug investigation detention

6:31 a.m.

9

Arrest for possession for the purpose of trafficking ("PPT") without reasonable and probable grounds

6:35 a.m.

To 8:58 a.m.

[2 hours 23 minutes]

8

Unreasonable search of truck incident to unlawful arrest

7:00 a.m.

To 8:21 a.m.

[1 hour 21 minutes]

The duration of the breaches run concurrently.

[5] The law with regard to exclusion of evidence pursuant to s. 24(2) of the Charter is both well known and worth repeating.

[6] Section 24(2) of the Charter states:

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

[7] The requirement that the evidence seized be "obtained in a manner" is not in issue in this case. It is accepted that the seizure of the evidence was connected to the Charter breaches.

[8] Following their decision in *R. v. Grant*, 2009 SCC 32, the Supreme Court of Canada in *R. v. Le*, 2019 SCC 34 discussed the governing principles and objectives of the application of s. 24(2). The Supreme Court of Canada stated:

[139] Section 24(2) of the Charter provides that, where evidence was obtained in a manner that infringed a Charter right or freedom, that evidence shall be excluded if it is established that, having regard to all the circumstances, its admission would bring the administration of justice into disrepute. While the judicial inquiry under s. 24(2) is often rhetorically cast as asking whether evidence should be excluded, that is not the question to be decided. Rather, it is whether the administration of justice would be brought into disrepute by its admission (*R. v. Taylor*, 2014 SCC 50, [2014] 2 S.C.R. 495, at para. 42). If so, there is nothing left to decide about exclusion: our Charter directs that such evidence must be excluded, not to punish police or compensate for a rights infringement, but because it is necessary to do so to maintain the "integrity of, and public confidence in, the justice system" (*Grant*, at paras. 68-70).

[140] Where the state seeks to benefit from the evidentiary fruits of Charter-offending conduct, our focus must be directed not to the impact of state misconduct upon the criminal trial, but upon the administration of justice. Courts must also bear in mind that the fact of a Charter breach signifies, in and of itself, injustice, and a consequent diminishment of administration of justice. What courts are mandated by s. 24(2) to consider is whether the admission of evidence risks doing further damage by diminishing the reputation of the administration of justice -- such that, for example, reasonable members of Canadian society might wonder whether courts take individual rights and freedoms from police misconduct seriously. We endorse this Court's caution in *Grant*, at para. 68, that, while the exclusion of evidence "may provoke immediate criticism", our focus is on "the overall repute of the justice system, viewed in the long term" by a reasonable person, informed of all relevant circumstances and of the importance of Charter rights.

[Emphasis in original.]

[9] At paras. 141-142 of *Le*, the Supreme Court of Canada referred to the three lines of inquiry from *Grant* at para. 71. They are:

- a) the seriousness of the Charter-infringing state conduct (admission may send the message the justice system condones serious state misconduct);
- b) the impact of the breach on the Charter-protected interests of the accused (admission may send the message that individual rights count for little); and
- c) society's interest in the adjudication of the case on its merits.

- [10] Each of the first two inquiries for each of the Charter breaches will be dealt with, together with the third inquiry, based on consideration of all of the relevant circumstances (Grant at para. 68), and then, finally, the balancing of the three inquiries. However, at the outset, as there are a number of Charter breaches arising in a short period of time, I will consider the recent Supreme Court of Canada case of *R. v. Zacharias*, 2023 SCC 30 regarding consequential or cascading breaches as opposed to cumulative or independent breaches.
- [11] In *Zacharias*, the majority of the Supreme Court of Canada discussed the s. 24(2) analysis in situations where there are multiple Charter breaches that are all dependent on an initial breach, and therefore "cascading" or "consequential" to the initial breach. The Supreme Court of Canada stated that the initial breach, which involved the unlawful sniffer dog search, led to the unlawful search of the truck and the consequential unlawful subsequent arrests. The Supreme Court of Canada stated:
- [47] Where an arrest is unlawful because it is premised on the results of a Charter breach, it is the initial Charter breach that renders what follows unlawful. In other words, there is a situation of linked or "cascading" Charter breaches (see *Blanchard*, at para. 34). We use the term "consequential" to refer to such breaches in the s. 24(2) analysis because the subsequent arrest is unlawful only as a consequence of the "initial" breach or breaches that preceded it.
- [12] The Supreme Court of Canada noted that the cascading breaches scenario is distinct from situations where there are new, independent breaches, stating the following:
- [48] Importantly, an arrest that can be viewed only as a consequential breach is distinct from state action that is characterized by additional or independent misconduct, including conduct that can be considered an "independent" breach of the Charter (such as failing to give an arbitrarily detained accused their right to counsel upon arrest). In those circumstances, the subsequent state action is of a different character and will be factored into the s. 24(2) analysis differently.

[Emphasis in original.]

- [13] In *Zacharias*, the majority affirmed that a pattern of Charter breaches may cumulatively increase the seriousness of the state conduct, but differentiated multiple breaches in the cascading-breach context:
- [49] A pattern of Charter breaches, for example, may cumulatively increase the seriousness of the Charter- infringing state conduct (see *R. v. Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353 ("*Grant 2009*"), at para. 75). Some factual scenarios will raise the issue of cumulative breaches, which may evidence a pattern of misconduct, rather than consequential ones alone, which will likely not [citations omitted].

- [14] The majority held that under the first line of inquiry in the s. 24(2) analysis, the seriousness of the state conduct, multiple Charter breaches that are consequential from an initial breach are "unlikely to significantly impact the overall seriousness of the Charter-infringing state conduct": Zacharias at para. 52. However, the Supreme Court of Canada added that if "the initial breach involves deliberate, intentional, or flagrant state misconduct", it may affect the overall seriousness of the Charter-infringing state conduct: Zacharias para. 54.
- [15] The decision of our Court of Appeal in *R. v. Lauriente*, 2010 BCCA 72 is one of the decisions cited with approval in Zacharias relating to multiple independent breaches and their cumulative effect on the seriousness of the state conduct.
- [16] In the present case with six Charter breaches, it is necessary to differentiate independent from consequential breaches in the first inquiry of seriousness of the breach.
- [17] It is the defence's submission that there were five, or possibly four, independent Charter breaches, with the unlawful search of the truck being consequential to the unlawful arrest. They also say that the first search of the truck may be consequential to the unlawful detention. The Crown submits that since the unlawful search of the truck from outside and the ss. 10(a) and (b) breaches all occurred in the same short time frame as a result of the same error of the police officer--the failure to advise the accused of the switch in the investigation from possession of stolen property ("PSP") to PPT--those three breaches are also consequential rather than independent.
- [18] In my view, the breaches are all independent except for the final unlawful search of the truck after the unlawful arrest, which was consequential. I find a pattern of breaches which will be considered for their cumulative seriousness.
- [19] The first breach found is the failure to release Mr. Bonson at the RCMP detachment on the appearance notice, or the over-holding. While this breach continued for most of 2 hours and 38 minutes (a factor to also be considered in the second line of inquiry), it did not of itself start a chain of cascading breaches. It was an independent breach. That the arbitrary detention continued for that length of time, with Mr. Bonson held in the back of a police cruiser parked in a public gas station, is of itself a serious breach.
- [20] The Crown submits, and I accept, that at no time during the arbitrary detention did the police attempt to take a statement.
- [21] The arbitrary detention as a result of the over-hold on the appearance notice was interrupted when Mr. Bonson was lawfully detained for 11 minutes on the investigation into whether the truck was stolen property. Although Mr. Bonson was advised at the detachment before driving back to the gas station of his detention, he was not given his ss. 10(a) and (b) rights. Constable Viger agreed that he did not fully inform Mr. Bonson of his Charter rights, and that he made no note. The defence did not allege a separate breach in this regard, and I do not find one. But the disregard for the accused's s. 10 Charter rights at that point in that investigation is part of the officer's continuing pattern of disregard of Charter rights.

- [22] Next in the sequence of events is the "switch", in Cst. Viger's words, of the investigation from PSP to PPT. This occurred after Cst. Viger's search of Mr. Bonson's vehicle from the outside for the VIN indicated that the VIN had been removed.
- [23] Those circumstances are set out in the Reasons:
- [64] However, Cst. Viger continued his examination of the pick-up truck. When looking for the VIN, he again saw the scale on the front seat. Earlier, during the arrest process, he had seen the scale, but in the improved daylight he now saw white residue or a trace of cocaine on the scale. He testified that he got excited as he had found something significant, and that he switched to a drug investigation. He continued to search the pick-up truck through the windows. This is apparent on the video from 6:31 a.m. to 6:35 a.m., as he walks from the driver's side window, where he looked for the VIN, to the passenger window and continues to look inside the pick-up truck, possibly taking a photograph.
- [65] Mr. Bonson was not informed that the investigation was now a drug investigation and that the reason for the detention had changed. He was not provided with his ss. 10(a) and (b) Charter rights when the investigation changed to a drug investigation. He was not arrested for possession for the purpose of trafficking until Cst. Viger had searched the vehicle for four further minutes. At this point, the officer had also located the baggie and the pipe which together with the scale formed the initial grounds for the arrest.
- [66] While Mr. Bonson was detained for possession of stolen property, Cst. Viger conducted a search of the pick-up truck in a drug investigation and located items which formed the grounds for the arrest of Mr. Bonson for possession for the purpose of trafficking.
- [24] Three breaches were found as a result of these actions taken by Cst. Viger--an unlawful search of the vehicle from the outside, ss. 10(a) and (b).
- [25] It is the Crown's submission that this search was unlawful only because of the s. 10 Charter breaches. They submitted case law regarding the reduced expectation of privacy in a vehicle, which here was parked in a public place. Thus, the seriousness, they submit, is reduced.
- [26] In the Reasons, I set out the law regarding refraining from taking additional investigative steps absent s. 10 Charter rights being provided:
- [71] As discussed above, [R. v. Mann, 2004 SCC 52] and [R. v. Taylor, 2014 SCC 50] set out the requirements of ss. 10(a) and 10(b), respectively, and the reasons for the requirements of police compliance with those requirements. Specifically: "Until the requested access to counsel is provided, it is uncontroversial that there is an obligation on the police to refrain from taking further investigative steps to elicit evidence": Taylor at para. 26. As is apparent, Cst. Viger did not refrain from taking further steps when he commenced a drug investigation without providing Mr. Bonson his Charter rights. This is not a case involving rapidly evolving external circumstances but, rather, an investigation without urgency.

- [27] Thus, it is not only that the accused's s. 10 Charter rights were not provided which renders the search unlawful and serious. It is that the officer either did not know the law or did not comply with it.
- [28] The next breach was the arrest for PPT at 6:35 a.m. without reasonable and probable grounds.
- [29] The defence submits that this is an independent breach that is not coincidental with the unlawful search of the vehicle from the outside. Although the arrest followed the unlawful search of the vehicle from the outside, they submit that the finding of the unlawful arrest is not dependent on the finding that the search was unlawful because whether or not the search from the outside was lawful, the grounds to arrest for PPT were not present. I agree. Even if Cst. Viger's search of the truck from the outside was lawful, the lack of reasonable and probable grounds for the arrest for PPT would still exist. The arrest for PPT was therefore an independent breach.
- [30] The finding that there were not reasonable and probable grounds for this warrantless arrest, which is serious on its own, also involves an assessment of the reliability of Cst. Viger. As discussed in the Reasons at paras. 76-97, Cst. Viger's stated grounds changed from his notes taken at the scene, to his report to Crown counsel, to his testimony at the preliminary inquiry, to the trial. The Court's task in assessing grounds for arrest is made more complex without straightforward and consistent evidence from the arresting officer.
- [31] With regard to Cst. Viger's evidence and actions, the Crown submits that the recent Supreme Court of Canada case of *R. v. Tim*, 2022 SCC 12 must be considered. There, an officer, also inexperienced, made an error of law in his arrest for an offence which does not exist. The Supreme Court of Canada found that, in the circumstances, the single error was honest and inadvertent. It situated the breach at the less serious end of the scale of culpability, weakly favouring exclusion.
- [32] However, while both officers, in *Tim* and here, made an error of law, the other circumstances are not comparable to *Tim*.
- [33] In this case, the evidence illustrates the unreliability of the evidence of Cst. Viger on relevant issues such as the increased visibility of the scale with the daylight; from where and when Mr. Bonson's wallet was seized in terms of the officer's view of the front seat of the truck, and potentially the scale, at that time; and the size and fullness of the baggie found on the dashboard. In addition to the unreliable evidence, there is a series of Charter breaches, not the single breach that occurred in *Tim*.
- [34] The defence also submits that as a factor in all the circumstances, it is to be noted that five other officers attended the scene before the arrest, looked into the truck, and implicitly made no notes. I note that, somewhat inexplicably given the evidence and observations of Cst. Viger, those who testified did not recall anything of relevance.

- [35] The last breach found in this case, the unlawful search of the truck which located the evidence in issue, is consequential from the unlawful arrest.
- [36] In *Tim*, the Supreme Court of Canada reiterated the direction that the court must situate the Charter-infringing conduct on a spectrum or a scale of culpability, with wilful or reckless disregard of Charter rights at the more serious end of the scale. Courts should dissociate themselves from such conduct because it risks bringing the administration of justice into disrepute. At the less serious end of the culpability scale are Charter breaches that are inadvertent, technical, or minor: *Tim* at para. 82.
- [37] In the present case, the totality of the circumstances places the conduct towards the more serious end of the scale. There was a series of independent Charter breaches cumulatively evincing a pattern of reckless or careless disregard for Mr. Bonson's Charter rights. The defence does not allege, and I do not find, bad faith on the part of Cst. Viger. However, there was not good faith as there were, at a minimum, unreasonable errors and ignorance of Charter standards: *Tim* at para. 85.
- [38] On the first line of inquiry, I find that the number and seriousness of the breaches overall pulls strongly towards exclusion of the evidence.
- [39] The second line of inquiry focusses on the seriousness of the infringement from the accused's perspective. It involves a consideration of the right infringed, and the impact and manner of infringement: *Grant* at paras. 76-77.
- [40] The interests engaged by an unreasonable search, for example, include the accused's right to privacy and human dignity in degrees dependent on the place searched and the circumstances of the search: *Grant* at para. 78. Like the first line of inquiry, this inquiry also entails answering a question of the degree of seriousness.
- [41] With regard to the *Zacharias* distinction between independent and consequential breaches, the Court at para. 57 confirmed that consequential breaches are considered in relation to the impact on the accused's Charter-protected interests.
- [42] In this case, there were two breaches of each of ss. 9, 8, and 10. I will address them in that sequence.
- [43] The two breaches of s. 9 were the unlawful detention by the over-holding in failing to release Mr. Bonson at the detachment, and the unlawful arrest for PPT. For both breaches, which overlapped, Mr. Bonson was held in the back seat of the police cruiser. It is not clear if he remained handcuffed the entire time. The duration of the unlawful detention, discussed above, was 2 hours and 38 minutes, with an interruption of 11 minutes for a lawful detention on the PSP investigation. From 6:35 a.m. to 8:58 a.m., the unlawful detention was uninterrupted, and ran concurrent to the unlawful arrest which occurred at 6:35 a.m.
- [44] In *Le*, the Supreme Court of Canada noted that the stakes are undeniably high when a court is presented with a breach of s. 9: *Le* at para. 153.

- [45] I note here as well the submission of the Crown that there was no attempt to take a statement from Mr. Bonson. In other words, the circumstances were not at the highest end of egregiousness. However, in the totality of the circumstances set out above and in the Reasons, these two s. 9 Charter breaches had a serious impact on Mr. Bonson.
- [46] The two breaches of s. 8 were the search of the truck from the outside, and the search of the truck and its contents, including the backpack, after the unlawful arrest for PPT.
- [47] The Crown raises the issue of discoverability of this evidence in any event of the unlawful arrest. It submits that discoverability relates to all situations in which the police obtain evidence following a Charter breach which they could have obtained without breaching the Charter: Grant at para. 119.
- [48] This arises in their submission because Cst. Viger had the grounds to arrest Mr. Bonson for simple possession, and the police would have been able to search the truck pursuant to that arrest and seize the evidence lawfully. Thus, they say, the seriousness of the search of the interior of the truck and the backpack in which the evidence was located was attenuated.
- [49] With respect, I do not accept this submission. Mr. Bonson was not arrestable for simple possession, absent a similarly unlawful search of the truck from the outside. That search was unlawful for the reasons set out above and in the Reasons. The same unlawful search from the outside, even if the officer relied on the same grounds for arrest on a different offence, would have resulted in an unlawful search. It is not shown that the evidence would have been found in any event, absent the Charter breaches. As stated in Le at para. 156, the drugs were not discoverable absent a breach. Discovery required an unconstitutional search. The doctrine of discoverability has no application in these circumstances.
- [50] Because the first search of the vehicle from outside was brief, and as Mr. Bonson had a minimal expectation of privacy, it was of low impact. The second search of the interior was lengthy and thorough, including his personal backpack, and had a more serious or moderate impact.
- [51] The two s. 10 Charter breaches are of themselves a serious breach as discussed in the first line of inquiry. However, with regard to impact, I find that to be low because Mr. Bonson was given his s. 10 rights and exercised them with a phone call to counsel four minutes later when he was arrested for PPT.
- [52] In the result on the second inquiry, taking the sum of the impacts and not the average, I find the impact to be moderate. It was not fleeting, technical, transient, or trivial, but it was not profoundly intrusive either: Tim at para. 91. The impact moderately pulls to exclusion of the evidence.
- [53] I turn now to the third inquiry--the interest of society in the adjudication of the case on its merits.

- [54] The factors to be considered in this third line of inquiry include the reliability of the evidence and secondarily, its importance to the Crown's case. Since physical evidence is generally reliable, and its existence and reliability is unrelated to the Charter breach, this avenue of inquiry favours its admission.
- [55] This evidence of drugs is real physical evidence which is reliable. Without it, the Crown's case is gutted.
- [56] In this regard, the weightiest of the circumstances is the nature of the drugs, which included the high-potency drugs of fentanyl and carfentanyl. Society has a high interest in seeing the adjudication of cases involving these drugs. Well documented are the multitude of tragedies--personal and family and societal tragedies--as a result of the availability of such drugs. The words "scourge on society" aptly describe society's view of the distribution of fentanyl and carfentanyl.
- [57] This line of inquiry pulls strongly towards admissibility of the evidence.
- [58] Finally, the three lines of inquiry must be balanced and a decision reached with regard to whether or not the evidence should be excluded.
- [59] Learned jurists have grappled with the application of this important provision of the law of our country. One such determination is from our Court of Appeal in *R. v. Caron*, 2011 BCCA 56:
- [68] Admittedly, this case is close to the line, particularly since what is in issue is highly reliable evidence, critical to the successful prosecution of serious offences. However, balancing all the factors, I have concluded that, in the long-term, the reputé of the administration of justice is best served by excluding that evidence. Mr. Caron's privacy rights with respect to the contents of his camera were not only violated, they were violated without any consideration being given to whether, in the particular circumstances, a warrantless examination of the camera fell within the limits of the law. Those limits exist for the benefit of society at large. But for the unreasonable search of the camera, the pistol and money would not have been discovered. As in [*R. v. Harrison*, 2009 SCC 34], where a substantial quantity of drugs was excluded, in this case "the price paid by society for an acquittal ... is outweighed by the importance of maintaining Charter standards": para. 42
- [60] I arrive at the same conclusion. In this case, the price paid by society of an acquittal is outweighed by the importance of maintaining Charter standards.
- [61] Therefore, despite the reliability of the evidence and its importance to the Crown's case, Mr. Bonson has discharged his onus of showing, on a balance of probabilities, that the administration of justice would be brought into disrepute by its admission at trial.
- [62] The application pursuant to s. 24(2) of the Charter is granted.

"The Honourable Madam Justice Watchuk"

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