

CANADA / JUDGMENT

R. v. Carlson

2024 BCSC 496

COURT

Supreme Court of British Columbia

DECIDED

23 February 2024

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2024 BCSC 496 R. v. Carlson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Carlson, 2024 BCSC 496 Date: 20240223 Docket: 181215-2 Registry: Victoria Rex v. Dana Stanly Gordon Carlson Corrected Judgment: The text of the judgment was corrected at paragraph 10 on April 2, 2024. Before: The Honourable Mr. Justice Baird Oral Reasons for Sentence Counsel for the Crown: T. Corsi Counsel for the Offender: T. Spettigue Place and Date of Hearing: Victoria, B.C. February 23, 2024 Place and Date of Judgment: Victoria, B.C. February 23, 2024

INTRODUCTION

[1] On November 16, 2023, at his invitation, I found Dana Carlson guilty of a single count of possession of fentanyl for the purpose of trafficking. This resulted from his arrest and the search of his pickup truck in Victoria, B.C., in the vicinity of the Chateau Victoria Hotel on January 6, 2021, over three years ago now. This followed a Charter voir dire declared at the outset of his trial in which I determined that his warrantless arrest was lawful and did not infringe his right guaranteed by s. 9 of the Charter not to be arbitrarily detained or imprisoned. I also ruled that a statement taken from him at the scene of the arrest was admissible and not obtained from him in a manner that infringed his rights guaranteed by ss. 10(a) and (b) of the Charter, to be promptly informed of the reason for his arrest, and to retain and instruct counsel without delay.

[2] Mr. Carlson is here before me today for sentencing.

FACTS

[3] On January 6, 2021, the Victoria Police Emergency Response Team executed a warrant to search a hotel room occupied by someone called Tighson Laughren at the Chateau Victoria Hotel located at 740 Burdett Avenue. The search was part of a drug trafficking investigation. Tighson Laughren was arrested at the scene, and in the course of their search of his room, the police seized Mr. Laughren's mobile telephone. The phone was not locked and did not require a passcode to access data stored inside of it.

- [4] Sgt. Lawson was the watch commander that day supervising all street units from Victoria Police headquarters. One of the Chateau Victoria search team brought him Mr. Laughren's mobile phone. He examined it for evidence related to the drug investigation underway. He saw that the phone was loaded with an application called "Signal", which in his experience is an encrypted messaging application commonly used by drug traffickers.
- [5] Sgt. Lawson opened the Signal application and saw that, earlier in the day, Mr. Laughren had been exchanging text messages with someone who identified him or herself by the handle "Bradpitt". These messages included a discussion about the delivery of fentanyl to Mr. Laughren. Based on the content of these messages, Sgt. Lawson believed "Bradpitt" was trafficking in mid-level amounts of fentanyl from the region of Nanaimo, British Columbia. Pretending to be Mr. Laughren, Sgt. Lawson engaged with "Bradpitt" by text message and purported to renew this earlier conversation. In the end, Sgt. Lawson placed an order for seven ounces of fentanyl for an agreed price of \$24,000. "Bradpitt" agreed to this and said that "his driver" would be on his way presently to Victoria with this delivery. This was at 5:43 p.m.
- [6] To make a long story short, Mr. Carlson has now admitted that he was that delivery driver. He was arrested at the Chateau Victoria Hotel at just after 8:30 p.m. on the date in question. "Bradpitt" had explained to Sgt. Lawson that his driver was driving a black truck. A black truck duly arrived and parked in front of the Greek restaurant next door to the hotel. A team of police officers closed in, and the arresting officer, Cst. Howe, dealt with Mr. Carlson. He said that Mr. Carlson seemed surprised at first but was cooperative with him throughout. Mr. Carlson confirmed that there was nobody else in the truck. He also said there was a paper bag in the cab that might have drugs in it.
- [7] The pickup truck was searched as an incident to Mr. Carlson's arrest. The investigators found a brown White Spot bag containing, as had been promised by "Bradpitt", seven ounces of fentanyl at 14-percent purity. Mr. Corsi made the point, and it accords with my experience judging these cases, that fentanyl is typically trafficked at street level at a lesser purity than this, meaning that Mr. Carlson's delivery could be cut or diluted producing more trafficable doses and profit. Mr. Carlson has admitted that he possessed this often-lethal substance for the purposes of trafficking, but I accept that he was merely a courier dropping off a package, and I accept that he did not know how much of the substance was in the bag or how much it was worth. He was not getting a cut; he was paid a fee to make a delivery. CIRCUMSTANCES OF THE OFFENDER
- [8] Dana Stanly Gordon Carlson was born on November 18, 1974. He will be 50 years old on his next birthday. His only involvement with the criminal justice system was in 2001 when he was convicted for driving over .08. He was fined \$600 for that offence and prohibited from driving for one year. He has no other criminal convictions. He has never served any jail time in his life. According to a presentence report filed on this proceeding, Mr. Carlson grew up in an unstable environment. His natural father left his mother when he was an infant and he has never had any relationship with him.

- [9] Mr. Carlson lived with his mother, to whom he was strongly bonded and devoted, but unfortunately his mother struggled with addiction, and they moved frequently due to her lifestyle. Mr. Carlson dropped out of school in grade 8. His mother had a number of partners during his childhood and Mr. Carlson says that he often saw violence and substance abuse in his home. His mother passed away when he was 23 years old. This impacted Mr. Carlson profoundly and he experienced depression for a period of approximately three years after she passed.
- [10] Mr. Carlson has had three long-term partners - his present partner is here in court today - and he has seven children. None of his children are currently in his care. He told the probation officer who wrote the presentence report that he has worked for most of his life as a drywaller. His trade was interrupted abruptly with the onset of the COVID-19 pandemic, and I accept that this disrupted his life and put him in a bind financially. He was unemployed at the time of the present offence. He was short of cash, not making his rent. His trade substantially shut down, there was no work to be had, and he made a disastrous choice while he was in this straitened financial situation. He had certain "contacts" in Nanaimo, and he was offered \$500 by somebody to deliver the White Spot bag and its contents. He agreed because he needed money. He did not think it through, his lawyer told me.
- [11] Since this supply of drugs was confiscated he has been hectored and pursued and threatened by the people who gave it to him to deliver because, of course, he "lost" their product and with it a significant amount of money, or at least that is how they look at it. Mr. Carlson is not himself a fentanyl addict. He is not a hard drug addict at all. He drinks now and again. He smokes marihuana regularly, and he told the probation officer, with his usual candour, that he sometimes uses cocaine when he has the money. He takes responsibility for the offence for which he has been convicted. He said that it was an impulse decision that he made in order to pay his rent, but he knew what he was doing. He told the report writer that he regrets this decision, this mistake, every day. It has impacted his life in many negative ways.
- [12] My remarks earlier this morning are a matter of record. I approach this case on the footing that Mr. Carlson is more or less a first offender. It has been obvious to me throughout this proceeding that Mr. Carlson is filled with remorse about what he has done. He has never given me even the smallest intimation that he is trying to evade responsibility for what happened. As I have already said, on the advice of counsel, he explored the possibility that his arrest may have been unlawful, but when I ruled against him, I could tell that he was not surprised. He invited me to convict him immediately thereafter.
- [13] I accept, Mr. Carlson, that you were in dire financial circumstances, that you come from a disadvantaged background, that you have only a grade eight education, and that your trade was shut down because of the pandemic. These are sympathetic circumstances, and of course it is no small matter that you are almost 50. You have no relevant record. You have lived a law-abiding life until now and I know that you are going to return to a law-abiding

life. But none of that alters the fact that in a case like this, the preeminent principles of sentencing are those of denunciation and deterrence. The devastating effects of fentanyl distribution and use are by now notorious. We all know what is going on, Mr. Carlson, and you do, too. Drug addicts are dropping dead all over the place from the abuse of this substance, and living at Our Place in Victoria you must see it with your own eyes every single day.

[14] THE ACCUSED: Right.

[15] THE COURT: The numbers are staggering. Illicit trade in fentanyl not only destroys lives but entire communities. Consider its profoundly negative effects on the public. It severely compromises the peace, the health, the sense of well-being that should be every British Columbian's right to expect in every community in this province, and what we have instead are legions of ill and impoverished addicts in every downtown core, every town and municipality in our province. It is a disaster.

[16] So notwithstanding your minor criminal record, or the absence of a criminal record virtually, your acceptance of responsibility, your expressions of sincere and obvious remorse, a jail sentence is inevitable. It is only a matter of how long it should be. You are not being singled out here. You are getting the kind of punishment that everyone else gets and must expect to get for doing what you did. The Crown is seeking a sentence of four years. Mr. Corsi has referred me to *R. v. Davies*, 2019 BCCA 359; *R. v. Campbell*, 2021 BCSC 853; and *R. v. Dinh*, 2024 BCSC 109. Mr. Carlson, through Mr. Spettigue, has submitted that a just and fit sentence would be a conditional sentence order, or in the alternative a jail sentence of 12 months.

[17] I have already said that, in my view, a CSO would not be a fit sentence, based on the ever-widening body of appellate authority enjoining trial judges to impose penitentiary sentences in cases involving the mid-level trade in this pernicious substance, even for first timers, even for bit players, given the blight that this trade inflicts on pretty well every community in Canada. A CSO would fail adequately to express the court's condemnation of Mr. Carlson's criminal misconduct, even though his role in the supply chain was limited to that of a courier or delivery driver.

[18] Mr. Spettigue, in his able submissions, referred me to the decision of my good friend, Judge Jette, over in Surrey, in *R. v. Coppick*, 2023 BCPC 71; and an Ontario decision, *R. v. Williams*, 2023 ONCJ 259, in which conditional sentences were imposed. But the facts in both of those cases are distinguishable. The amounts involved were smaller, and I simply do not accept in the present day, this many years into the opioid crisis, that in a case like yours a CSO is a fit penalty.

[19] Stand up please, Mr. Carlson. Before I impose this sentence, Mr. Carlson, is there anything else you would like to say, other than what we have already discussed?

[20] THE ACCUSED: I'm sorry, I just -- I don't know what else to say.

- [21] THE COURT: That's fine.
- [22] CNSL T. SPETTIGUE: Perhaps, Justice, his letter could be made an exhibit after -- after the completion.
- [23] THE COURT: Yes. I note your letter, Mr. Carlson, and I accept that it is sincere. I accept your expressions of remorse and I accept your apology. I know that you are never going to put a foot wrong again, but for now you have got to take your lumps for what you did. That is all there is to it.
- [24] Madam Clerk, could you mark this letter as Exhibit 1.
- [25] THE CLERK: Yes, Justice. EXHIBIT 1: Letter from Accused to the Court
- [26] THE COURT: As I was saying, taking all of the circumstances into account, in my view a penitentiary sentence is required. Your circumstances are sympathetic but not exceptional. A lot of people were negatively affected by the pandemic, and a lot of people suffered hard times, but not a lot of people go out and deliver fentanyl when they are up against it financially. You decided to make that choice and now you are going to pay for it.
- [27] Having said that, Mr. Carlson, I intend to emphasise the very lower end of sentencing range. I do so, as I have said, on the basis of your age and history. You are 50 years old. You have no related record. I consider you to be a low risk to re-offend. I say this because of your law-abiding background, your ready acceptance of responsibility, your obvious and sincere remorse, and your awareness that this was a disastrous mistake in your life that must never be repeated.
- [28] I hereby order you serve a sentence of two years plus one day in a federal penitentiary. Serve your time, and when you are released, I expect you to return to your law-abiding ways and take care of your family.
- [29] Is there anything else? We have yet to talk about ancillary orders, Mr. Corsi.
- [30] CNSL T. CORSI: Yes. Thank you. Nothing --
- [31] THE COURT: You can sit down, Mr. Carlson. Go ahead.
- [32] CNSL T. CORSI: Nothing in terms of a forfeiture order.
- [33] THE COURT: Okay.
- [34] CNSL T. CORSI: There is the mandatory s. 109, weapons and firearms prohibition. Ten years is the minimum. So I am going to suggest that.
- [35] THE COURT: Have you discussed that with Mr. Carlson, Mr. Spettigue?
- [36] CNSL T. SPETTIGUE: Yes, no issue with that, Justice.
- [37] THE COURT: All right. I will make that order.

- [38] CNSL T. CORSI: Thank you. There is for your consideration - I am not pushing on this - there is a DNA order, secondary designated offence. So you have discretion. Given these circumstances, I am not really pushing on that door --
- [39] THE COURT: Yes.
- [40] CNSL T. CORSI: -- but I put it out to the court for your consideration.
- [41] THE COURT: All right. I am not going to make a DNA order. I have confidence in you, Mr. Carlson.
- [42] THE ACCUSED: Thank you.
- [43] THE COURT: The point of a DNA order is so that you can be tracked if you commit any criminal offences in the future. And you are not going to do any such thing.
- [44] THE ACCUSED: No.
- [45] THE COURT: I will be astonished if I see you again. So I am not going to make that order.
- [46] THE ACCUSED: Thank you.
- [47] THE COURT: Anything else?
- [48] CNSL T. CORSI: I think those are all the ancillary orders that I can think of.
- [49] THE COURT: In the circumstances, I also decline to impose a victim fine surcharge.
- [50] All right Mr. Carlson. Good luck to you.
- [51] THE ACCUSED: Thank you.
- [52] Thank you counsel. "Baird J."

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