

CANADA / JUDGMENT

## R. v. Chang

2024 BCSC 725

COURT

Supreme Court of British Columbia

DECIDED

29 April 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 725 R. v. Chang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Chang,

2024 BCSC 725

Date: 20240429

Docket: 89207-2

Registry: Nanaimo

Rex

v.

Kerry Wallace Chang, Wendell Johnson Hirt and

Daniel Harold Moore

Before: The Honourable Mr. Justice Baird

Oral Reasons for Judgment

Counsel for the Crown:

C. Gibson

Counsel for the Accused, Kerry Chang:

K. Bradshaw

K. Kerr-Donohue

No other appearances.

**Place and Dates of Hearing:**

Nanaimo, B.C.

December 5-8, 12-15,

December 18-20, 2023 &

January 15, 2024

**Place and Date of Judgment:**

Nanaimo, B.C.

April 29, 2024

**INTRODUCTION**

- [1] On November 20, 2020, RCMP officers entered a residential dwelling house at 91 Twelfth Street, Nanaimo, B.C. with a warrant authorising them to search it for narcotics. The house was owned by Wendell Hirt, and the accused, Kerry Chang, lived in one of the main floor bedrooms with his common-law spouse, Janine Vautour. The police found 9.65 grams of methamphetamine and 700 ml. of GHB in Mr. Chang's bedroom. He has admitted that these substances belonged to him, and has invited me to convict him of Counts 2 and 3 of the indictment before the court, which allege simple possession of those substances. Convictions are hereby entered on those counts.
- [2] This leaves only Count 1 to be dealt with. It alleges that Mr. Chang possessed fentanyl for the purpose of trafficking. He does not deny possession of 62.24 grams of that substance found in his bedroom, but he claims that it was all for his own personal use. He concedes that the half kilogram or so of fentanyl located in the living room area of the house was for trafficking, but he denies possessing it in the legal sense of the word. He says the drugs were not his, although he knew that other people, including his friend Patrick Lussier, until recently a fellow resident of the house, used the living room as a place to cut fentanyl with caffeine in preparation for personal use and for sale on a daily basis both from within the house and on the street.
- [3] On a charge of possession or possession for the purpose of trafficking, the Crown must prove, beyond a reasonable doubt, the elements of possession as defined in s. 4(3) of the Criminal Code, R.S.C. 1985, c. C-46:
- 4(3) For the purposes of this Act,
- (a) a person has anything in possession when he has it in his personal possession or knowingly
  - (i) has it in the actual possession or custody of another person, or
  - (ii) has it in any place, whether or not that place belongs to or is occupied by him, for the use or benefit of himself or of another person; and

- (b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.
- [4] Manual handling is not a prerequisite to a finding of possession. Possession can be personal, constructive, or joint: see *R. v. Ahmadzai*, 2012 BCCA 215 at para. 26 and *R. v. Morelli*, 2010 SCC 8 at paras. 15, 17. Possession does not require any proprietary interest in the item: see *R. v. Arason*, 78 C.C.C. (3d) 1 (B.C.C.A) at para. 172.

## BACKGROUND

- [5] The investigation of Mr. Chang that led to the search of his home and the charges at bar was triggered by a report to Nanaimo RCMP from the manager of intelligence at the Vancouver Island Regional Correctional Centre. The report was to the effect that, from roughly mid-June to mid-August, 2020, an inmate named Christopher Mitchell had used the Correctional Centre's phone system to communicate with people, including Mr. Chang, about drug trafficking in the Nanaimo area. Recordings of the jail calls were seized under a production order and analysed by members of the Nanaimo RCMP Projects Unit.
- [6] Those calls directly involving Mr. Chang went into the trial record by admission. They indicated, and Mr. Chang confirmed in his trial testimony, that during the interval in question, he was dealing fentanyl to street retailers from his house, including, on at least one occasion, in the quantity of an ounce, an amount usually sold by so-called "mid-level" dealers. Mr. Chang said in one of the phone calls that this was how he was conducting his business now, dealing in larger quantities, mostly to out of town buyers, and "staying out of the limelight". Mr. Chang's defence to Count 1 is that he stopped dealing in fentanyl altogether after July 29, 2020, when he was seriously injured in a motor vehicle accident.
- [7] Mr. Chang claims, in effect, that he was forced to abandon his fentanyl trafficking business because of physical incapacity. He called Janine Vautour to the witness stand to confirm this. He told me that the fentanyl found in his bedroom, in a much larger amount than I would expect to be associated with personal use, was for his own consumption in large and continuous doses that had become habitual for him to manage the severe and relentless physical pain from his accident-related injuries. He told me that, by the date of his arrest on November 20, 2020, he had become a "raging" fentanyl addict, and that the house on Twelfth Street deteriorated into a "flop house" where a multitude of people came to use and deal in drugs.
- [8] He said that he "believed" the drugs found on his living room table, over 16 ounces, belonged to his friend of forty years, Patrick Lussier, now deceased. As previously mentioned, Mr. Lussier was a former resident of the house. He had moved out a few months before, but according to Mr. Chang, he returned there every day to mix, sell and use fentanyl. The fact that Mr. Lussier had been at 91 Twelfth Street on November 19, 2020, the day before the police raid, was confirmed by surveillance officers who arrested him after he left the place at

around 2:30 p.m. The arresting officer noted that Mr. Lussier was obviously intoxicated by an opioid, but was in possession of only a small Ziploc baggie containing fentanyl residue.

- [9] I set out the details of the police investigation in a previous voir dire ruling and I will not repeat them here, except to say that I found that the warrant to search the residence was valid and the police entered and searched it lawfully. This was done at around 7:00 a.m. on November 20, 2020. The first officers to enter the house were members of the Emergency Response Team ("ERT"). At least a couple of them came in through the front door which opened directly into the living room. There they found Mr. Chang and Wendell Hirt, the registered owner of the house, near a coffee table in the middle of the room. Found elsewhere in the house was one of Mr. Lussier's alleged street vendors, Amanda Schilling, who now occupied the main floor bedroom next to Mr. Chang's, the one recently vacated by Mr. Lussier.
- [10] On the living room coffee table, in and around a metal tin that Mr. Chang told me belonged to Patrick Lussier and was used by him for the storage and concealment of retail street drugs, there was almost half a kilogram of fentanyl (471 grams, to be precise) cut with caffeine in separate plastic baggies, one of them lying in plain view on the table top containing approximately 280 grams. There was also a hand mixer, an electronic scale, and a knife, all smudged with caffeine and fentanyl residue. A credit card in Mr. Chang's name was on top of the electronic scale. The police also found a large container of caffeine on one of the kitchen counters. A smaller jar of caffeine was found in Mr. Chang's bedroom. It turned out that there were 11 or 12 people in the house, all of them addicts according to Mr. Chang.
- [11] Mr. Chang and Ms. Vautour testified just before Christmas, 2023. I adjourned the trial on Mr. Chang's application until after the New Year so that he could present evidence from Amanda Schilling. He assured me directly that she was a local resident who had volunteered to testify in support of his version of events, namely that the living room fentanyl belonged to her or the late Patrick Lussier. However, when we reconvened in January, I was told, without explanation, that Ms. Schilling would not be testifying after all, and I was asked for no assistance in securing her attendance in court.

## DEFENCE EVIDENCE

- [12] Mr. Chang told me that he got out of bed 20 minutes or so before the ERT officers came crashing into the house, and went to the kitchen to prepare breakfast for Ms. Vautour. He entered the adjoining living room area, where Wendell Hirt was sitting in an armchair, because he heard the sound of a diesel engine idling outside the front of the house, and he thought a visitor might be calling. It seems, instead, that it was a large transport truck full of ERT officers poised to mount an assault on the residence. As he walked toward front door with the intention of looking outside, the door was breached, and in rushed heavily armed officers in combat gear yelling at him to get on the floor, and so on. He was arrested along with everyone else in the house.

- [13] Mr. Chang testified that he is now 55 years old. On November 20, 2020 he was 52. He has lived in a common-law relationship with Ms. Vautour for 32 years. He has a criminal record consisting of approximately 35 convictions for various offences including breach of bail, possession of stolen property, possession of controlled substances, resisting a peace officer, theft, and impaired driving. By the beginning of 2020 he had lived at 91 Twelfth Street for three years. Wendell Hirt, whom he has known since adolescence, inherited the place from his mother.
- [14] Mr. Chang acknowledged that he had been dealing drugs from the house since as far back as 2019, principally in methamphetamine but, from January to July 2020, in fentanyl. He confirmed, as established by the jailhouse phone calls, that on June 15, 2020, he sold an ounce of the substance to someone called "Bree" for \$1400, but he claims mostly to have been a street-level operator selling in small amounts to individual users. He said that whenever he bought an ounce of fentanyl, it cost him between \$1,000 and \$1,200. He said that during COVID the price went up. He testified, as I have said, that his drug dealing activities stopped abruptly after his motor vehicle accident on July 29, 2020, in which he suffered serious injuries including a broken neck, a broken back, a shattered ankle, a broken sternum, a broken pelvis, and unspecified internal injuries.
- [15] After his accident, he remained under observation in hospital for a reasonably brief period, all things considered. He discharged himself against medical advice and went home to 91 Twelfth Street, saying that if he was going to die, he wanted to do so at home. He told me that he was bedridden for at least a couple of months. He claims to have started using fentanyl in large amounts to manage his pain and became profoundly addicted to it. He said that the fentanyl was all supplied, whether to Mr. Lussier or himself, by Kenny Pham, an offender whom I recently convicted of drug and firearms offences after a lengthy trial and sentenced to 15 years in jail. Mr. Chang told me that he and Mr. Pham have been associates for many years.
- [16] In brief terms, Mr. Chang's evidence constituted an attempt, first of all, to persuade me that, because his appetite for fentanyl had grown so voracious, the two or so ounces found in his bedroom were for his personal use, and secondly, to fasten responsibility for the living-room fentanyl on the departed Mr. Lussier, who he said was selling from the house on a daily basis, assisted by Amanda Schilling, and two of his other housemates, Brooke Pasek and Jessica White, all of whom, he claimed, had been in the living room just before the police entered. He wanted me to believe that they were the ones in possession of the fentanyl, which he said Mr. Lussier had cut and mixed with caffeine the previous day. He acknowledged that it was his credit card on top of the digital scale on the same table, but said he did not know how it got there. He said "our house was very communal".
- [17] On cross-examination Mr. Chang confirmed that he and Mr. Hirt were the longest standing residents of the house, and in effect the only permanent ones. Based on my appreciation of the evidence, I would say that they were the anchor or controlling residents. As I have already said, another friend of 40 years, Mr. Lussier, had lived there until recently. By Mr.

Chang's own admission, confirmed by his spouse Ms. Vautour, the rest of the occupants were a kaleidoscope of transients who rapidly came and went, dossing down for a little while in a drug addled "flophouse" where, I have decided, Mr. Hirt and Mr. Chang made the rules and called the shots. Mr. Chang himself had trafficked drugs from the house going back at least to 2019, and, obviously, it suited him perfectly well that Mr. Lussier was doing so everyday both before and after he moved out. I find that either Mr. Chang or Mr. Hirt could have barred Mr. Lussier from the premises, but instead he was a welcome guest in the house whose constant trafficking activities were permitted and sanctioned.

- [18] In the final analysis, Mr. Chang confirmed the Crown's evidence that, at the precise moment where the ERT team entered the house, he and Wendell Hirt were the only people in the living room. If Amanda Schilling, Brooke Pasek and Jessica White had been present, the ERT officers would have seen and arrested them immediately. In any event, although Mr. Chang claimed not to remember seeing the metal cookie tin on the living room table that morning, he remembered seeing it there the previous day when Patrick Lussier was preparing caffeine-cut fentanyl for sale. He did not specifically mention the clear plastic bag in plain view containing over a quarter kilogram of fentanyl, but based on the totality of his evidence, I cannot think that its presence would have bothered him at all, or that he would have done anything to dispose of it, or to distance himself from it, or that he would have taken steps to prevent people from using, sharing and selling it, both in and outside the house. Neither did the presence of a reasonably large quantity of fentanyl directly in his midst seem to concern Mr. Hirt, who at the time of the police raid was seated in an armchair only a few feet from the living room table and would certainly have seen what was on it.
- [19] Mr. Chang, when asked about the drugs on the table, testified "it is my belief that Amanda [Schilling] would have had possession of the drugs". This part of his evidence was plainly rehearsed and contrived, and I don't believe it. In any event, possession can be established in more than one way. Crown counsel has argued that this is a case of constructive possession. I have concluded, at a minimum, and based, for emphasis, on Mr. Chang's own testimony, that the living room fentanyl was there with Mr. Chang's knowledge, consent and approval, and Mr. Hirt's, for that matter. I find that they were in charge of the house - my sense of it, in fact, is that Mr. Chang was the true master of the place, even though the property belonged to Mr. Hirt - and, together, they were in a position to control everything that went on inside it.
- [20] I find as a fact, at the very least, that the daily fentanyl trade from this house was conducted with the blessing of both Mr. Chang and Mr. Hirt. It was not a question of passive acquiescence but active connivance and encouragement. They were knowingly providing a venue for daily criminal activity. All of the elements of constructive possession are made out beyond a reasonable doubt: see *R. v. Wiwchar*, 2015 BCSC 973, aff'd 2017 BCCA 9, especially the survey of cases referred to at paras. 41-47, to the effect that possession, as a matter of law, is established where the accused knew of the presence of contraband, and had some measure of control over it for his or another person's use and benefit.

[21] My conclusion in this connection is fortified by Ms. Vautour's evidence. She testified that people were mixing and using fentanyl in the living room as a matter of daily routine, including on the day before the police raid. Her evidence about this was the same as Mr. Chang's: that the house had become a destination for drug users, that people moved in and out of the house all the time, and the trafficking activity in and from it was approved and encouraged by everyone associated with it, including, I find, Mr. Chang. She confirmed that Mr. Chang had a history of dealing fentanyl and other drugs from the house. She also knew that Mr. Lussier continued to do so, and that he used the place as his base of operations until the very day before the police raid.

[22] Other highlights of Ms. Vautour's evidence included:

- that Amanda Schilling came to the house to get "loaded up" with drugs to sell on the street both before and after she moved in as a tenant.
- that by the end of October 2020 Mr. Chang was up and around and could walk with the assistance of a walker.
- Kenny Pham supplied both Mr. Chang and Mr. Lussier with fentanyl.

[23] The proof of constructive possession is, I think, conclusive, and is not called into question by the defence evidence presented. I would go farther, however, and say that I do not for a second believe that Mr. Chang suddenly stopped trafficking fentanyl because his car accident. I accept that he was seriously injured, and that he must have been laid up pretty substantially for a while. But the business of receiving wholesale fentanyl from Kenny Pham and peddling it from his living room required no great mobility, a fact eventually conceded by Mr. Chang during cross-examination. In any event, by the time of his arrest, the evidence establishes clearly that he was able to move around the house and perform routine physical tasks. If he was able to prepare breakfast, as he claims to have been doing when the ERT members came into the house, he could also mix fentanyl with caffeine and put it in bags for resale.

[24] I reject Mr. Chang's evidence, along with Ms. Vautour's, on the question of the impact of the motor vehicle accident on Mr. Chang's trafficking operations. Ms. Vautour confirmed, after all, that drug-dealing had been Mr. Chang's only occupation for a long time before the accident. She said that this was a point of contention between them. She was a methamphetamine addict back in 2020, but she was working a proper job in the building trades. She was unhappy that Mr. Chang was not similarly engaged in legitimate work. She disapproved of fentanyl in particular, she said. She dutifully backed up her husband's story that he stopped selling fentanyl after his accident, but I do not accept it. Ms. Vautour has been in a common law relationship with Mr. Chang for over 30 years, and she is obviously loyal and devoted to him. I am certain that she confabulated with Mr. Chang in the confection of this false narrative with the compelling motivation of attempting to avoid a conviction for a serious crime.

- [25] I also reject the imputation that Mr. Patrick Lussier would have left almost half a kilogram of fentanyl lying about on the living room table. Mr. Chang agreed with the suggestion that the cost of purchasing this amount in bulk would have been around \$10,000, and sold to street users in the typical dose of 0.1 grams at the 2020 going price of \$20, it could have produced returns of over \$90,000. No drug dealer in his right mind would leave inventory of this value unattended, especially in a houseful of fentanyl addicts. I bear in mind, as well, that Mr. Lussier had been arrested at around 2:30 p.m. the previous day, which means that I am expected to believe that this bounty of fentanyl had been left on the living table for over 16 hours before the police raid. I reject this notion out of hand. I do not believe that the fentanyl belonged to Mr. Lussier.
- [26] Instead, I am convinced, considering all of the ambient circumstances, that it belonged to Mr. Chang. Those circumstances include, it should not be forgotten, Mr. Chang's acknowledgement that he had 62.24 grams, over two ounces, of fentanyl in his bedroom; that the almost half a kilogram of fentanyl in the living room was lying in plain view on a table in his immediate vicinity when the police burst in; that the only other person in the room was Mr. Hirt; that there was a big container of caffeine nearby in the kitchen; that there was a fentanyl besmirched hand mixer, knife and digital scale on the table, indicating that mixing and weighing was presently underway or had recently been done; that Mr. Chang's credit card was on top of the digital scale; and that Mr. Chang had \$1,000 in cash in his jean pockets when he was arrested. I find as a fact that the ERT team interrupted Mr. Chang, not while he was making his wife's breakfast, but while he was preparing a substantial load of fentanyl for retail and use by himself and others.
- [27] Judging by the quantity of fentanyl found in Mr. Chang's bedroom alone, and his own admission that it belonged to him, it is obvious that he was receiving this substance in significant, trafficable quantities well after his car accident and, in fact, right up the date of his arrest. I note that he had recently sold an ounce of fentanyl to "Bree" for \$1,400, so I infer the amount in his bedroom could have fetched him twice that. Once again, if sold in the common quantity for street retail, 0.1 grams for \$20, it would have made a return of over \$12,000.
- [28] It exceeds the limits of credulity for me to accept, or even entertain the notion, that this accused, with his admitted history of fentanyl dealing in amounts of up to an ounce, this being, even by his wife's account, his only occupation, would stop the flow of easy money by quitting the business. I say this not only because it seems to have been his customary occupation, but also because it involved no energy or effort and, in fact, was perfectly suited to a person with physical limitations. I take the firm view that, up to and including November 20, 2020, Mr. Chang was heavily entrenched in the local fentanyl trafficking scene, and would not voluntarily have relinquished his habitual lucrative trade activities notwithstanding his injuries.

[29] I have decided beyond a reasonable doubt, in other words, that this was not only a case of constructive possession, but that the fentanyl in the living room was in Mr. Chang's personal possession, his actual possession, that it belonged to him, that he owned it, and that he had probably bought it from Mr. Pham. On this specific issue of personal or actual possession, I reject the accused's evidence, and that of his wife. I do not believe either of them. Their evidence does not raise a reasonable doubt. On the basis of all the other evidence that I do accept, I am satisfied beyond a reasonable doubt that Mr. Chang is guilty of the crime set out in Count 1 of the indictment, possession of fentanyl for the purpose of trafficking. I am prepared to accept that he may have planned to consume some of the fentanyl himself, but I have no hesitation in concluding that most of it was intended for sale or distribution, including the product found in his bedroom.

[30] Convictions will be recorded on all three counts in the indictment.

"Baird J."

---

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**      <https://www.bccourts.ca/jdb-txt/sc/24/07/2024BCSC0725.htm>

**CASE PAGE**              <https://chat.esheria.ai/case-law/canada/r-v-chang-2024>

Prepared on 29 October 2026 · Esheria