
CANADA / JUDGMENT

R. v. Hernandez

2012 BCSC 238

COURT

Supreme Court of British Columbia

DECIDED

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2012 BCSC 238 R. v. Hernandez

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hernandez,

2012 BCSC 238

Date: 20120217

Docket: 24736

Registry: Vancouver

Regina

v.

Julio Cesar Hernandez

Before: The Honourable Madam Justice Russell

Corrected Judgment: Judgment was corrected at pages 5-8 and paras. 37, 46, 59, 65 and 67 on February 17, 2012

Oral Reasons for Sentence

Counsel for the Crown:

C.W. Bruce

Counsel for the Accused:

P.H. Edelman

J. Godwin-Ellis

Place and Date of Hearing:

Vancouver, B.C.

February 1, 2012

Place and Date of Judgment:

Vancouver, B.C.

February 17, 2012

Introduction and Background

This case involved the re-trial of Mr. Hernandez. Mr. Hernandez was convicted at his first trial by Mr. Justice McEwan on June 30, 2009. His appeal was allowed and the matter remitted for retrial: See *R. v. Hernandez*, 2010 BCCA 514.

- [2] On January 6, 2012, I convicted Mr. Hernandez of four charges under the Controlled Drugs and Substances Act, S.C. 1996, c. 19, s. 5. These are my reasons for sentence.
- [3] I will provide a brief summary of the facts for the purpose of context.
- [4] On August 24, 2007, Constable Fisher of the Vancouver Police Department was in an unmarked police car in the 300 block of Columbia Street on the downtown eastside. Around 8:50 a.m., she observed Mr. Hernandez enter the 300 block of Columbia Street with a group of males and one female. The female was later identified as Ms. Pennington.
- [5] The group stopped about a quarter of the way up the block. Two of the males in the group handed Mr. Hernandez some money, while Ms. Pennington, and possibly a third male, stood as lookouts. After the men had left, Mr. Hernandez motioned Ms. Pennington to come with him and they walked to a lamp post located at the corner of Columbia Street and East Hastings.
- [6] Mr. Hernandez then opened a small black change purse. While he and Ms. Pennington looked inside, Constable Fisher heard Mr. Hernandez say something that she could not quite make out. She believed it was something like "this is the rock" or "this is the bunk" or "this is the up." She then clearly heard Mr. Hernandez say "and this is the dope."
- [7] Constable Fisher's unmarked police vehicle was approximately two to three feet from the interaction between Mr. Hernandez and Ms. Pennington.
- [8] Ms. Pennington then took the change purse and leaned against the wall of the Radio Station Cafe, located at the corner of Columbia and East Hastings. Mr. Hernandez stayed by the lamp post and watched her. She was quickly approached by two males. She provided them with items from the change purse in exchange for money.
- [9] Constable Fisher radioed two of her colleagues located nearby requesting that they arrest Mr. Hernandez and Ms. Pennington. Detective Constable Munro and Constable Russell arrived on the scene and proceeded with the arrests.

- [10] Detective Constable Munro arrested Ms. Pennington. When she searched her incident to the arrest, she found a black coin purse in Ms. Pennington's left hand. The purse contained 18 lotto paper flaps and 12 yellow plastic balls.
- [11] Testing revealed that the lotto paper flaps contained heroin. The heroin weighed 4.0 grams in total, including the packaging. Tests revealed the balls to be cocaine. The yellow balls weighed 1.90 grams in total, including the packaging.
- [12] Detective Constable Munro continued to search Ms. Pennington. She recovered a used crack pipe and another black change purse located in her left front pants pocket. In her right front pants pocket, she found two five dollar bills, five loonies, 12 quarters, three dimes and three nickels, for a total of \$18.45.
- [13] Constable Russell arrested Mr. Hernandez. He performed a search incident to the arrest and located one 20 dollar bill, seven 10 dollar bills, two five dollar bills, five toonies and three loonies, for a total of \$113.
- [14] Mr. Hernandez was charged with two counts under s. 5(1) of trafficking and two counts under s. 5(2) of possession for the purpose of trafficking.
- [15] At trial, Detective Constable Yee testified as an expert witness regarding the drug trade on the Downtown Eastside. It was his opinion, and I accepted, that Mr. Hernandez was in a supervisory role over Ms. Pennington. Her standing as a lookout when the group was first observed by Constable Fisher, as well as her selling the drugs while Mr. Hernandez watched, all indicated that she was working for him.
- [16] The evidence also indicated that Ms. Pennington was herself a user, if not an addict. Detective Constable Yee testified that it is common for drug traffickers to use addicts to sell their product.

History of the Defendant

- [17] Defence counsel gave a picture of the defendant for the court.
- [18] Mr. Hernandez is 53 years old. He emigrated from Guatemala as a refugee in 1985. He is now a Canadian citizen.
- [19] Mr. Hernandez has a high school diploma, as well as some post-secondary courses in accounting. He has also attended ESL classes.
- [20] He was married in 1991. He and his wife have four sons, all still dependent upon their parents. Ms. Hernandez is a stay-at-home mother. Mr. Hernandez is the sole income earner.
- [21] According to defence counsel, Mr. Hernandez is actively involved in the raising of the children. He oversees their homework and after school activities.
- [22] Mr. Hernandez's wife attended his sentencing hearing and wrote a letter to the court on his behalf.

- [23] Over much of his time in Canada, Mr. Hernandez has been employed in the construction industry, either as an employee or a sub-contractor. He is currently sub-contracting as a renovator and painter to various construction companies.
- [24] Mr. Hernandez attends a church in East Vancouver. Defence counsel provided a letter from the church's pastor, Rolando Trujillo, outlining Mr. Hernandez's work with the church. There is also attached a list of members' names, telephone numbers and signatures. If they were signing in support of Mr. Hernandez, there is nothing on the page to indicate this. I cannot give this list any weight.

The Parties' Submissions

- [25] Crown counsel seeks a nine-month custodial sentence; a firearms prohibition pursuant to s. 109(1)(c) of the Criminal Code, R.S.C. 1985, c. C-46, which I note is mandatory; a DNA order pursuant to s. 487.051(3); forfeiture of the monies seized from Mr. Hernandez and Ms. Pennington incident to their arrests pursuant to s. 16 of the CDSA; and a victim fine surcharge of \$400 pursuant to s. 737 of the Criminal Code.
- [26] Crown counsel cites the following cases in support of a nine month custodial sentence: R. v. Win, 2000 BCSC 1929 [Win, BCSC]; R. v. Win, 2001 BCCA 721, R. v. Duong, 2003 BCCA 120; R. v. Tran, 2007 BCCA 613; R. v. Sandher, 2008 BCSC 263; R. v. Luong, 2010 BCCA 283. She argues that the following aggravating factors are present:
- a) the large quantity of drugs seized from Ms. Pennington;
 - b) the two different types of drugs, namely heroin and cocaine, that were involved;
 - c) the seriousness of the types of drugs seized;
 - d) the number of people involved in a series of interactions;
 - e) the area in which the offence occurred - the Downtown Eastside is where the most vulnerable in our society live;
 - f) Mr. Hernandez preying on the vulnerable residents of the downtown eastside by providing them with their "drugs of choice";
 - g) Mr. Hernandez exploiting a user by employing her to sell his drugs and, thereby, distancing himself from the transaction;
 - h) Mr. Hernandez not being a user himself; and
 - i) the planning involved.

- [27] Many of the cases cited by Crown counsel involve what is commonly referred to as a "dial-a-dope" operation. Crown counsel has likened Mr. Hernandez's "trafficking scheme" to a dial-a-dope operation. She asserts that the planning required, the use of others to sell his product and the "simply for profit" nature of his operation, increase the seriousness of his actions putting it on par with the seriousness of a dial-a-dope scheme.
- [28] Defence counsel takes exception to Crown counsel characterizing these circumstances as akin to a dial-a-dope operation. She characterizes Mr. Hernandez's scheme as "steering" which involves a user looking to purchase drugs on the street approaching one party and being directed by that person to another party from whom he/she can buy the drugs.
- [29] She distinguishes this case from a dial-a-dope operation. She asserts that dial-a-dope operations are sophisticated. The operation is ongoing and, unlike in the case before me, extends past a single incident. In many cases, the police seize numerous cell phones, which she argues shows the intricacies of these types of operations. Furthermore, she states that dial-a-dope operations bring the drugs to the customer for easier access.
- [30] Defence counsel also argues that in dial-a-dope schemes, the sellers often keep track of the users they have sold to. These records, according to defence counsel, are known as "score cards". There was no indication in this case that Mr. Hernandez was tracking his customers or the quantities they purchased.
- [31] Counsel for the defendant asserts that a conditional sentence pursuant to s. 742.1 is appropriate and consistent with *R. v. Proulx*, 2000 SCC 5. She did not detail the basis for this submission.
- [32] In support of a conditional sentence, defence counsel asserts that Mr. Hernandez's conviction is a "small blip in his history" and out of character for him. She points out that all four counts stem from the same incident and he has no criminal record. She also states that Mr. Hernandez has been under conditions for his bail over extended periods of time. He has not breached any of those conditions since his 2007 arrest.
- [33] The following cases were cited by defence counsel in the course of her submissions: *R. v. Chang*, 2002 BCCA 644; *R. v. Whyte*, 2002 BCCA 293; *R. v. Kozma*, 2000 BCCA 440; *R. v. Poole*, 2001 BCCA 689; *R. v. Sidhu*, 2007 BCSC 876. In all of these cases, the court ordered a conditional sentence for offences involving the drug trade.
- [34] Defence counsel submits that if the court determines a custodial sentence is necessary, a six month sentence is the outside limit based on the mitigating factors present in this case.
- [35] She made no submissions regarding the other orders sought by Crown counsel with the exception of the DNA order, which she opposes.

The Law and Analysis

- [36] The principles of sentencing are set out in s. 718 of the Criminal Code:

Purpose and Principles of Sentencing

Purpose

718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (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 and to the community.

[37] It is clear from the cases presented to me by counsel that denunciation and deterrence should be at the forefront of a sentencing judge's considerations in cases involving drug trafficking: See for example, *Win*, BCSC, at para. 13; *Sidhu*, at para. 40. Courts have also noted that general deterrence is especially important for drug trafficking cases "because of the easy profits involved": *Duong*, at para. 7.

[38] There can be no doubt that the cost to society of the sale of cocaine and heroin is grave. As stated by Mr. Justice Drost in *Win*, BCSC, at paras. 11-12:

[11] So far as the gravity of the offence of trafficking cocaine is concerned, in *R. v. Gilbertson*, a decision of the British Columbia Court of Appeal ... Mr. Justice Hinkson, writing for the court, said:

As this court has commented in the past cocaine is becoming a more serious problem in our society with the passage of time. The court has taken steps in the past to try to curb trafficking in cocaine because of the disastrous social consequences to those who indulge in its use.

[12] More recently, in *Pushpanathan v. Canada* ... a decision of the Supreme Court of Canada, Mr. Justice Cory wrote:

The costs to society of drug abuse and trafficking in illicit drugs are at least significant if not staggering. They include direct costs such as healthcare and law enforcement, and indirect costs of lost productivity.

Mr. Justice Cory went on to give some statistics as to the cost of indulgence in 1996 of \$1.4 billion annually and the cost in lives resulting from the distribution and use of illicit drugs, and, he then continued with the observation that:

These significant and often tragic consequences serve to emphasize that the harm caused by trafficking in illicit drugs is very properly a matter of grave concern in Canada, as it is throughout the world. [Citations omitted.]

[39] I recognize that Mr. Hernandez is 53 years old. This is his first criminal conviction. He has a supportive wife, with whom he has children. He is the family's sole supporter. The small amount of evidence presented seems to indicate that he is involved in his local church. He has not had any breaches of his conditions of bail at any time since the offence in 2007.

[40] However, the gravity of the offence that Mr. Hernandez has been convicted of, as well as the need to deter Mr. Hernandez and others from making an easy profit by selling drugs, warrants a sentence of incarceration.

[41] While his arrest stems from several consecutive interactions witnessed by a police officer over a short period of time on one morning, the quantity of drugs involved was significant. Mr. Hernandez also sold not one, but two types of what are referred to as "hard" drugs openly on the streets.

[42] I disagree with Crown counsel's characterization of the trafficking scheme in this case as being akin in sophistication to a dial-a-dope operation. As Madam Justice Saunders said in *Tran*, at para. 9:

One of the hallmarks of a "dial-a-dope" scheme is the multiple delivery of drugs to users in a pattern dispersed over a wide geographic area, with the aspects referred to by Chief Justice McEachern in *To*.

[43] There is no evidence before this court that Mr. Hernandez's operation consisted of any such sophistication.

[44] Equally, I do not accept defence counsel's explanation that this was simply a case where Mr. Hernandez was "steering" purchasers to a seller. Mr. Hernandez had clearly sought out a user, likely an addict, to sell his product. He then supervised her. His role was much more involved than steering. If there were others involved who were supervisors over Mr. Hernandez, there is no evidence of that before this court. Mr. Hernandez was, to some extent at least, in charge.

[45] He also had the forethought to distance himself from the transaction by using others to sell the product and ensuring that no drugs could be found on him. He created a situation of plausible deniability. This does not occur by accident. There was an element of planning involved.

[46] Mr. Hernandez preyed on both the users he sold to and the addict he used to sell his product. I would agree that the citizens of the Downtown Eastside are a vulnerable group and that Mr. Hernandez used that vulnerability to his advantage.

- [47] Furthermore, as noted by Crown counsel, in cases where the defendant trafficked the drugs solely for profit, the fact that he was not a user is aggravating: *R. v. Ahmed*, 2001 BCCA 504 at para. 2. It makes the act that much worse. The defendant was not selling drugs in order to fund an addiction. He was simply profiting off others' addictions.
- [48] I, therefore, sentence Mr. Hernandez to six months in custody. In doing so, I am aware of the cases cited by defence counsel in support of a conditional sentence. Most of the cases can be distinguished on the basis that they involved only one charge: possession for the purpose of trafficking. Mr. Hernandez was seen involved in actually trafficking the drugs.
- [49] I would also note that *R. v. Preymak*, 2003 BCCA 260, cited by defence counsel in support of a conditional sentence where the convicted drug trafficker is not himself an addict, is clearly distinguishable on its facts. The court in *Preymak* stated at para. 7:
- [7] In considering the custodial period of 6 months, the cases that surround the 6 month range seems to be cases where there are comparatively small amounts of drugs involved but where the distribution network is part of an organization, Dial-A-Dope, or some other organized system, and there is more than an accidental quality to the circumstances of the offence. That is not so in this case. After being clear from the law for a period of 6 years, this offence occurred in what could be described as accidental or opportunistic circumstances. In my opinion, the range within which the circumstances of this offence and this offender fall is a range significantly below the 6 month period of custody that was set by the sentencing judge [Emphasis added]
- [50] Mr. Hernandez's offence is not one that could be described as accidental or opportunistic. It quite clearly reflected some element of planning. Furthermore, the quantity of drugs seized from Ms. Pennington was not a "small amount".
- [51] One case cited by defence counsel in support of a bid for a conditional sentence for Mr. Hernandez does have facts more extreme than the case before me. In *Kozma*, the Court of Appeal overturned the defendant's custodial sentence and sentenced him to a conditional sentence. This was despite Mr. Kozma being convicted of four counts of trafficking cocaine that took place over several months. His last sale involved three quarters of a pound of cocaine worth \$5,200.
- [52] Subsequent courts have since commented on this decision. In *Ahmed*, the Court of Appeal said at para. 7:
- [7] ... I think it is fair to say that the *Kozma* decision approaches the limits of how far the courts might go in imposing a non-custodial sentence in a cocaine-trafficking case.
- (See also *R. v. Rastgoei*, 2008 BCCA 242 at paras. 37 - 39.)
- [53] The court in *Ahmed* went on to say at para. 8:

- [8] ... In a case involving trafficking in hard drugs, there must be some significant factor or factors relating to the background of the offender, his underlying reasons for trafficking or his pre-sentence efforts at rehabilitation that would support the imposition of a conditional sentence.
- [54] I take from this that a conditional sentence in cases involving trafficking of hard drugs should be the exception and should be ordered only where it is warranted on the facts. This is not one of those cases. In fact, much of what the court said in the following excerpt from Ahmed at para. 10, is applicable in this case as well:
- [10] In the present case, Kozma should be distinguished for other reasons. I think the sentencing judge was correct in concluding that a custodial sentence was appropriate. In Proulx the court stated that it would be in the best interests of the offender to "acknowledge responsibility" and "propose a plan of rehabilitation". Mr. Ahmed denied these offences on evidence the trial judge found to be "fanciful and unreliable". There was nothing before the court in the sentence proceeding to suggest that Mr. Ahmed then accepted responsibility for his unlawful conduct or saw a route to his own rehabilitation. It is in his favour that he has letters of support from his community, is in a stable relationship with a child born since the sentencing and is employed by a janitorial service. But these things are not enough to show that he is rehabilitated. Denunciation and deterrence remain the most important factors in this case because Mr. Ahmed acted entirely out of greed over several weeks in a neighbourhood where there is a particular need to deter drug trafficking. The factors of denunciation, general deterrence and specific deterrence simply cannot be met in this case by a non-custodial sentence. [Emphasis added]
- [55] I agree with both counsel that Mr. Hernandez should receive credit for the 29 days he served for his conviction after the first trial of this matter.
- [56] Crown counsel submitted that it was possible that Mr. Hernandez should receive 1.5 time for the 29 days, which would bring his time served to 44 days. Defence counsel agreed.
- [57] At the time Mr. Hernandez was charged on October 16, 2008, s. 719(3) of the Criminal Code read as follows:

Determination of sentence

- (3) In determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence.
- [58] I find that it is open to me to give Mr. Hernandez 1.5 time credit for the 29 days he spent in custody. By doing so, it would help account for the remission credits he would have received had he served those 29 days as part of the six months to which I have sentenced him. Accordingly, his sentence is reduced to 4 months and 18 days.

- [59] Mr. Hernandez is prohibited from possessing any firearms, cross-bows, prohibited weapons, restricted weapons, prohibited devices, ammunition, prohibited ammunition and explosive substances commencing from today's date until 10 years from his release from custody pursuant to s. 109(1) and (2) of the Criminal Code.
- [60] Crown counsel asks the court to make a DNA order under s. 487.015(3) of the Criminal Code. Section 487.015(3) states:

Order -- persons found not criminally responsible and secondary designated offences

- (3) The court may, on application by the prosecutor and if it is satisfied that it is in the best interests of the administration of justice to do so, make such an order in Form 5.04 in relation to
- ...
- (b) a person who is convicted, ... of an offence committed at any time, including before June 30, 2000, if that offence is a secondary designated offence when the person is sentenced or discharged.

In deciding whether to make the order, the court shall consider the person's criminal record, ... the nature of the offence, the circumstances surrounding its commission and the impact such an order would have on the person's privacy and security of the person and shall give reasons for its decision.

- [61] As noted previously, defence counsel opposes the DNA order. In support, she cites *R. v. Cheung*, 2008 BCSC 1834. In *Cheung*, Madam Justice Loo stated at para. 32:
- [32] Crown in the case of Mr. Cheung only asked for the order under s. 487.051 and made no submissions or arguments as to why it should be made. Mr. Justice Low in *Durham* ... stated in part:

The legislation has a broad scope with respect to the administration of justice. Risk of re-offence by the person being sentenced is not a prerequisite to the making of the order. Weiler J.A. succinctly stated the overall purpose of the provisions in *R. v. Briggs* ... :

In this case, the state's interest is not simply one of law enforcement vis-à-vis an individual - It has a much broader purpose. The DNA data bank will: (1) deter potential repeat offenders; (2) promote the safety of the community; (3) detect when a serial offender is at work; (4) assist in solving cold crimes; (5) streamline investigations; and most importantly, (6) assist the innocent by early exclusion from investigative suspicion (or in exonerating those who have been wrongfully convicted). [Citations omitted.]

- [62] Loo J. declined to make the order, stating that there was no indication Mr. Cheung would reoffend, that he was not violent and that he was not a risk to the community: at para. 33. Defence counsel argues the same facts are present in this case.
- [63] Crown counsel points out that Cheung was decided before the British Columbia Court of Appeal's decision in *R. v. Awasis*, 2009 BCCA 134. Awasis involved an appeal from a sentencing judge's decision not to make a DNA order. The sentencing judge held that ordering a DNA sample for drug trafficking cases would not serve as a deterrent; assist in resolving cold cases; assist in detecting serial offenders; assist in streamlining investigations; or assist in exonerating innocent persons: at paras. 29-30. On appeal, the court analyzed the trial judge's reasons and stated at paras. 50-59:
- [50] With respect, in the absence of a constitutional challenge, the learned sentencing judge was bound to accept Parliament's determination that an order authorizing the forensic analysis of the DNA of a person convicted of offences contrary to s. 5 of the CDSA is capable of furthering the purposes of the DNA data bank in advancing related state interests. In *R. v. Hendry et al* the Ontario Court of Appeal put it this way: " the fact that the offence of which the accused was convicted is not ordinarily one where DNA evidence might be found is not necessarily relevant. The legislation has already struck a balance by limiting the reach of the DNA data bank orders to persons convicted of serious offenses, being those designated as primary or secondary offenses" ...
- [51] Parliament has seen fit to include possession for the purpose of trafficking as a designated offence ...
- [52] In addition, as explained above, the purposes of the DNA legislation are broader than simply identifying the offender should she reoffend. In *R. v. Jordan* ... Cromwell J.A. (as he then was) said ... :
- ...The fact that DNA identification was not, or is not, likely to be useful with respect to the offender, may tend to show that obtaining the samples will not further the legislation's identification purpose. However, such evidence does not negate the testing of the offender in relation to the legislation's other purposes.
- [53] The judge also considered the nature of the offence in relation to the other state interests outlined in *Briggs*. He held, first, that a DNA order would have no deterrent effect ... With respect, the judge took too narrow a view of this issue. In *R. v. Jordan* ... Cromwell J.A. said:
- [35] The DNA provisions may be seen as furthering the objective of deterrence -- both general and specific. The fact that reliable identification may result from DNA analysis and, therefore, that the risk of apprehension and conviction is increased may, itself, deter criminal activity. In other words, the increased effectiveness of criminal investigation as a result of DNA technology will, as LaForest, J. put it in *Thomson Newspapers v. Canada* (Director of Investigation and Research), "...enhance the law's potency as a deterrent to potential wrong doers." It has been noted that the retention of samples in a DNA data bank

further the objective of specific deterrence of those whose samples are placed in the bank.

- [54] Even if the judge was correct that in general, possessors of cocaine for the purpose of trafficking are not thinking about having to give a DNA sample, those who have already given DNA samples may be deterred from committing further offences, especially offences where DNA evidence is often utilized. For example, drug users may be deterred from committing certain kinds of property crimes to support their drug habits.

...

- [56] ...[T]he judge appears to have overlooked an important way in which the data bank can be used to exonerate an innocent person. DNA found at the scene of a crime believed to be that of a perpetrator can be subjected to forensic analysis and compared to the entries in the data bank. If Ms. Awasis' DNA was in the data bank and was not a match, that would tend to suggest she was not the perpetrator of the crime. This would benefit her if she would otherwise have been suspected or investigated ... Moreover, in *R. v. Ku* ... this Court expressly rejected the argument accepted by the sentencing judge ...

...

- [58] The judge accepted that a convicted offender had a reduced expectation of privacy with respect to her identity and that the sampling process is minimally invasive. The privacy interests of the accused were "not a major consideration here" ...
- [59] There is now a series of cases where DNA orders have been made for secondary offences, including the trafficking of controlled substances ... These cases have uniformly rejected the argument that the subject crime would not be amenable to investigation using DNA evidence, and have placed a high importance on the utility, in a broad sense, of maintaining the DNA data bank. [Citations omitted]
- [64] On the facts of this case, I find that it is in the best interests of the administration of justice to order Mr. Hernandez to provide a sample of his DNA. While Mr. Hernandez does not have a pre-existing criminal record, I find that the nature and seriousness of his offences warrant a DNA order. As has been noted previously, his actions involved using and profiting from vulnerable members of our society. Should he consider such actions in the future, having his DNA on file may serve both to deter him from committing a crime, as well as assist in his apprehension if required.
- [65] This order may also serve to deter other persons from involving themselves in the drug trade, especially on the Downtown Eastside. This may assist in protecting an already vulnerable community.
- [66] Conversely, the impact on Mr. Hernandez's privacy and security is extremely low. As in *Awasis*, in this case, Mr. Hernandez, as a convicted offender, has a lowered expectation of privacy and taking a DNA sample from him is "minimally invasive."

[67] The monies seized from Mr. Hernandez and Ms. Pennington in the amounts of \$113 and \$18.45 respectively, are ordered forfeited to Her Majesty the Queen pursuant to s. 16 of the CDSA.

[68] The victim fine surcharge is waived.

"L.D. Russell J."

The Honourable Madam Justice Loryl D. Russell

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