

CANADA / JUDGMENT

R. v. Wilkinson

2020 BCSC 2234

COURT

Supreme Court of British Columbia

DECIDED

26 November 2020

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

2020 BCSC 2234 R. v. Wilkinson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Wilkinson,

2020 BCSC 2234

Date: 20201126

Docket: 42009-2

Registry: Duncan

Regina

v.

James Christopher Wilkinson

Before: The Honourable Mr. Justice Steeves

Oral Reasons for Judgment

Counsel for the Crown appearing by teleconference:

B. Lansdowne

Counsel for the Accused appearing by teleconference:

C. L. Hodson

Place and Date of Trial/Hearing:

Duncan, B.C.

November 16, 2020

Place and Date of Judgment:

Duncan, B.C.

November 26, 2020

[1] THE COURT: The accused, Mr. Wilkinson, has been charged with three counts related to drugs as follows:

Count 1

James Christopher WILKINSON, on or about the 13th day of July, 2019, at or near the City of Duncan, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Diacetylmorphine (heroin)/Fentanyl, for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

Count 2

James Christopher WILKINSON, on or about the 13th day of July, 2019, at or near the City of Duncan, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Cocaine, for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

Count 3

James Christopher WILKINSON, on or about the 13th day of July, 2019, at or near Duncan, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Methamphetamine, contrary to Section 4(1) of the Controlled Drugs and Substances Act.

[2] I also set out the procedural developments in this case to date and these are:

1. On July 2, 2020, Mr. Wilkinson filed an application under s. 8 and 9 of the Charter with respect to his allegations that he had been searched and detained contrary to those provisions. A voir dire was held on September 9, 2020. Mr. Wilkinson's application was amended to include s. 10(a) and 10(b) of the Charter.
2. In reasons given on September 25, 2020, I allowed Mr. Wilkinson's application under s. 9 of the Charter. I denied the applications under s. 10 and s. 8.
3. Mr. Wilkinson applied to exclude the evidence that was the subject of my s. 8 ruling under s. 24(2) of the Charter. On November 6, 2020, I denied the s. 24(2) application.
4. Mr. Wilkinson elected a trial by jury and the Stage 1 of the jury selection took place on November 12, 2020. Mr. Wilkinson was arraigned by video.

5. On November 13, 2020, I heard Mr. Wilkinson's application that he attend the trial by video under s. 650(2) of the Criminal Code. I denied the application and advised counsel of that decision by telephone the same day, my reasons to be given at the Stage 2 of jury selection on November 15, 2020. I permitted Mr. Wilkinson to attend that hearing by video, but not at the trial.
 6. At the Stage 2 jury selection, I gave my reasons for denying Mr. Wilkinson's attendance by video at trial. Mr. Wilkinson then requested an adjournment. The jury panel was literally waiting in the hall outside the courtroom, and I denied the adjournment request. Mr. Wilkinson then said he might re-elect. At that point, his counsel, who had not spoken with or for Mr. Wilkinson up to that point, suggested selecting the jury and then he would get instructions from his client.
 7. We selected a jury on November 15, 2020, for the trial to start the next day.
 8. At the first day of trial, counsel for Mr. Wilkinson stated that Mr. Wilkinson wished to re-elect to be tried by judge alone. The Crown agreed. A notice of re-election was entered as an exhibit.
 9. The Crown and counsel for Mr. Wilkinson proposed a process whereby the Crown would put in its case by way of an agreed statement of facts and by admissions under s. 655 of the Criminal Code. I agreed with that proposal.
 10. On November 16, 2020, the Crown entered a document described, titled, "Admissions and agreed statement of facts" signed by both counsel. It included photographs and an expert report. Counsel for the Crown made submissions on the issues of possession, knowledge, and control. Counsel for Mr. Wilkinson said he had no submissions. I reserved my decision and this is that decision.
- [3] The admissions and agreed facts are set out here. I have not included the exhibits and photographs. The agreed facts were signed by both counsel for the Crown and for Mr. Wilkinson:

The Accused, James Christopher WILKINSON by his counsel, admits that:

1. That the offences as alleged in Indictment 42009-2 occurred at or near Duncan, in the Province of British Columbia.
2. That the offences as alleged in Indictment 42009-2 occurred on or about the 13th day of July 2019.
3. That the person named and charged in Indictment 42009-2 as James Christopher WILKINSON ("WILKINSON") is the accused person who is present before the Court.
4. That the substances alleged in Indictment 42009-2 analyzed as the substances as set out in Indictment 42009-2. In particular: Count 1: Diacetylmorphine (Heroin)/Fentanyl; Count 2: Cocaine; Count 3: Methamphetamine.

5. That on July 13, 2019, Cst. Houlgate and Cpl. March were on patrol driving on Howard Street in Duncan, British Columbia. Both officers were in plain clothes and in an unmarked police vehicle.
6. The officers observed 2 males in dark clothing walking on the sidewalk southbound on Howard Street next to a vacant lot (the "Vacant Lot"). The Vacant Lot is situated at the corner of the intersection of Howard Street and Dingwall Street in Duncan, British Columbia. One of the males was wearing a backpack.
7. As the police slowed their vehicle at the stop sign, these individuals turned and began running. One of the individuals fled and got away.
8. Cst. Houlgate and Cpl. March got out of their police vehicle and gave chase to the individual later identified to be James Christopher WILKINSON ("WILKINSON"). Both police officers called out "stop police".
9. The male with the backpack; WILKINSON, ran back into the Vacant Lot tripping on a fence, which bordered Dingwall Street, at the south end of the lot (the "South Fence").
10. Mr. WILKINSON then got up and continued running across the Vacant Lot, again tripping on another fence at the north of the Vacant Lot (the "North Fence"). During this time, Cpl. March was running behind and following Mr. Wilkinson.
11. During this time, Cst. Houlgate was paralleling Cpl. March and WILKINSON, by running northbound on the sidewalk on Howard Street.
12. WILKINSON then exited the Vacant Lot and began running on the sidewalk in front of Cst. Houlgate. WILKINSON encountered a dip in the sidewalk, where the sidewalk lowered for a driveway, and WILKINSON tripped and fell.
13. As WILKINSON fell, Cst. Houlgate caught up with him and placed him in handcuffs. Cst. Houlgate noted that WILKINSON no longer had a backpack and was not wearing any shoes.
14. Cst. Houlgate, using his flashlight, re-traced WILKINSON's steps through the Vacant Lot finding first, one red shoe (The "First Red Shoe"), near the North Fence. Near the South Fence, Cst. Houlgate located a Backpack (The "Backpack") and another matching Red Shoe (The "Second Red Shoe").
15. Cst. Houlgate brought the Backpack to where Cpl. March and WILKINSON were on the sidewalk and opened the Backpack.
16. During the time Cst. Houlgate was gone, Cpl. March had asked the male his name and he provided the name of James Christopher Wilkinson.
17. Attached hereto as Exhibit "1" is Crown's Book of Photos.
 - a. In Exhibit "1" at tab 1, are photographs that Cpl. March took of the search of the backpack on July 13, 2019.

- i. At tab 1, photo 1: the Backpack and its contents, as well as the First and Second Red Shoes.
- b. In Exhibit "1" at tab 2, are photographs that Cpl. March took of the Vacant Lot in July 2019.
- i. At tab 2, photo 5, is a view of Howard Street looking southbound, the Vacant Lot is on the right side of the picture.
- ii. At tab 2, photo 7, is the North Fence, the First Red Shoe was located at the base of the fence towards the bottom right of the picture.
- iii. At tab 2, photo 8, is the South Fence, the Second Red Shoe and the Backpack were located to the right of the fence between the foliage on the right of the picture, and below the white, red and black sign.
- c. In Exhibit "1" at tab 3, are photographs that both Cpl. March and Cst. Houlgate took of the exhibits seized by the police with respect to this investigation.
- 18. Attached hereto as Exhibit "2" are supplemental photos, taken by Cst. Houlgate.
- 19. Cst. Houlgate opened and searched the backpack and inside the backpack, Cst. Houlgate found and seized:
 - a. A manila envelope, which contained \$1035 cash (See: Exhibit "1" Crown's Book of Photos at tab 3 photos 12 - 15);
 - b. In the backpack, Cst. Houlgate located a black case (See: Exhibit "1", Crown's Book of Photos at tab 3 photo 16 and Exhibit "2" Supplemental Photo 1);
 - c. Inside the black case Cst. Houlgate found:
 - i. 97.3 grams, subsequently weighed without packaging, of what analyzed to be (diacetylmorphine) Heroin and Fentanyl, which was bulk packaged in a plastic bag (See: Exhibit "1" Crown's Book of Photos tab 3 photos 21 to 29);
 - ii. 1.6 grams of crack cocaine (See: Exhibit "1", Crown's Book of Photos at tab 3 photos 39 - 47);
 - iii. 7.7 grams of powder cocaine (See: Exhibit "1", Crown's Book of Photos at tab 3 photos 49-57);
 - iv. and 3.3 grams of crack cocaine (See: Exhibit "1", Crown's Book of Photographs tab 3 at photos 61-67);
 - v. 0.5 grams of methamphetamine, subsequently weighed without packaging (See: Exhibit "1", Crown's Book of Photos at tab 3 photos 30 - 37);
 - vi. \$1330 Cash (see Exhibit "1", Crown's Book of Photos tab 3 photos 16 -20);
 - vii. 2 empty unused small pink plastic bags and clean unused tinfoil (see: Exhibit "2", Crown's supplemental photos at photos 2- 4);
 - d. A purple charging cable (see: Exhibit "2", Crown's supplemental photos at photo 5 and 6);

- e. Keys for a Mercedes Vehicle;
 - f. Cst. Houlgate also located some other items such as an unopened package of lighters, syringes, and some coins.
20. Cst. Osborne attended the scene and conducted a search of Mr. Wilkinson's person. Cst. Osborne located: Another set of keys for a Mercedes vehicle in his front left pocket, and a cellphone called a SONIM mobile device (the "SONIM mobile device") in WILKINSON's front right pocket.
21. Cst. Houlgate subsequently determined that the purple charging cable that was located in the Backpack fit with the SONIM mobile device.
22. That S/Sgt. Bosnell is qualified to provide expert opinion evidence with respect to the methods of packaging and concealment, trafficking, prices, usage, drug jargon and slang, manufacturing and production of certain drugs under the Controlled Drugs and Substances Act namely Diacetylmorphine (Heroin), Fentanyl, and Cocaine.
23. That attached hereto as Exhibit "3" is S/Sgt. Bosnell's Curriculum Vitae.
24. That attached here to as Exhibit "4" is S/Sgt. Bosnell's Expert Opinion Report and Supplemental Opinion Report, with respect to the purpose of possession of the Diacetylmorphine (Heroin) and Fentanyl as well as Cocaine seized.
25. Attached hereto as exhibit "5" is a power point presentation prepared by Cst. Houlgate, which sets out a diagram of the locations on a map of the "Backpack", "First Red Shoe" and "Second Red Shoe."
- [4] Despite the admissions made above by Mr. Wilkinson, the burden of proof remains with the Crown. The legal context is usefully set out in a previous judgment, *R. v. Liu*, 2011 BCSC 1269. It discusses the issues of knowledge and control as part of the offence of possession (citing *R. v. Ngo*, 2009 BCCA 301 at para. 51). It also discusses the issues of constructive possession, para. 21, and it describes the inferences that can be taken from evidence of quantity and packaging of drugs and the presence of money on the accused's person, paras. 30 to 36.
- [5] Here we have Mr. Wilkinson being detained with the items described above on his person. There is also the backpack which was found in close proximity to where the detention took place, and Mr. Wilkinson was seen carrying the backpack. I set out the definition of possession from s. 4(3) of the Criminal Code here. This is incorporated into the Controlled Drugs and Substances Act by virtue of s. 2(1). I set out s. 4(3) of the Criminal Code:
- 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.
- [6] I note that Mr. Wilkinson did not have the backpack with him when he was detained. However, in my view, the circumstantial evidence leads to a strong conclusion that he had knowledge and control of it. This evidence includes Constable Houlgate's observations that the male later identified to be Mr. Wilkinson was observed running with a backpack, then once arrested no longer had the backpack and no longer had shoes. The backpack was located in the vacant lot where Mr. Wilkinson had run. Notably two shoes were also located in the path where Mr. Wilkinson ran. Where he was detained was a short distance from where the backpack was found.
- [7] The purple charging cable located in the backpack fit with the Sonim mobile device that Constable Osborne located on Mr. Wilkinson's person. There was a set of Mercedes keys located in the backpack and another set located on Mr. Wilkinson's person.
- [8] The value of the cash seized from the backpack was \$2,405 cash, and the heroin/fentanyl valued at between \$7,200 if purchased by the ounce, and \$19,460 or so by a smaller amount such as a point or gram. That is in the expert opinion of Constable Bosnell. The cocaine was valued at \$820.
- [9] I conclude that the Crown has proven beyond a reasonable doubt that Mr. Wilkinson had possession of the backpack at the material times.
- [10] Returning to the indictment, Count 3 is a charge that Mr. Wilkinson had possession of methamphetamine contrary to the Controlled Drugs and Substances Act. I find that he is guilty of that count.
- [11] I turn to the issue of trafficking. This is Counts 1 and 2 of the indictment and it relates to heroin, fentanyl, and cocaine. There is the expert report referred to in paragraph 24 of the agreed facts. With respect to heroin/fentanyl, there was 97.3 grams or 3.475 ounces of heroin/fentanyl in one zip-lock bag. The amount of heroin/fentanyl was a larger amount than typically possessed by users and represents a bulk quantity of the drug. The 97.3 grams of heroin/fentanyl is consistent with amounts found on those involved in street-level trafficking of heroin and fentanyl. I have set out the value of the heroin/fentanyl above.
- [12] With respect to cocaine, the expert opinion is that those involved with the trafficking of illicit drugs are known to possess various quantities of drugs to meet the supply and demand required through frequent sales. The 12.6 grams of cocaine was seized in two forms of cocaine: powder and rock. This amount of cocaine is more than typically observed by the user of the drug and is consistent with a street-level trafficker. The value is described above.

- [13] In my view, these quantities lead to a strong inference that they were in the possession of Mr. Wilkinson for the purpose of trafficking. I also rely on other evidence, including the amount of cash that was seized. Staff Sergeant Bosnell explained that illicit drugs are usually purchased in cash. One of the quantities of cash, the \$1,330, was found to be stored in with the drugs. There was a combination of drugs seized, namely the heroin/fentanyl, both crack and powder cocaine, and methamphetamine. Staff Sergeant Bosnell testified that a drug trafficker will retain various types of drugs to cater to a larger target audience and maximize profit.
- [14] A cutting agent, namely 53.4 grams of caffeine, was seized. Caffeine is a cutting agent for fentanyl-based drugs. The evidence is that cutting agents would be added to drugs to dilute them to increase yield. Staff Sergeant Bosnell notes that users of heroin/fentanyl do not introduce cutting agents to drugs they intend to consume. There were packaging materials seized, two new and unused baggies, as well as new, unused foil. In the supplemental expert opinion, it was explained that a trafficker is often found with new and unused packaging materials to package drugs for distribution to others. There was a lack of a crack pipe for consuming the crack cocaine.
- [15] Taken all together, I conclude again that the Crown has proven beyond reasonable doubt that Mr. Wilkinson was in possession of heroin/fentanyl and cocaine for the purposes of trafficking.
- [16] By way of summary, with respect to Count 1, I find Mr. Wilkinson guilty of possession of heroin/fentanyl for the purposes of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act. With respect to Count 2, I find Mr. Wilkinson guilty of possession for the purpose of trafficking in cocaine, contrary to s. 5(2) of the Controlled Drugs and Substances Act. With respect to Count 3, I find Mr. Wilkinson guilty of possession of methamphetamine, contrary to s. 4(1) of the Controlled Drugs and Substances Act.

"J. J. Steeves, J."

The Honourable Mr. Justice Steeves

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/20/22/2020BCSC2234.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-wilkinson-2020-bcsc-2234>

Prepared on 28 October 2026 · Esheria