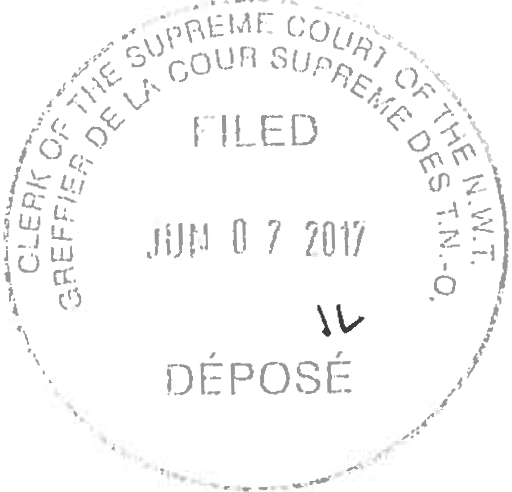
***V II*** *I ..;:* ***11 V***



I *R. v. Oake,* 2017 NWTSC 41 S-1-CR-2017-000038

I IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

I IN THE MATTER OF:

# I

I HER MAJESTY THE QUEEN

I - v -

I DARCY OAKE

# I I

Transcript of the Oral Decision on Bail delivered by The

Honourable Justice L. A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 25th day of May, 2017.

APPEARANCES:

Mr. D. Praught: Counsel for the Crown

Mr. C. Davison: Counsel for the Accused

A n O r d e r o f t h e C o u r t h a s b e e n m a d e p r o h ib i t ing p ub l i c a ti o n , b r o a d c a s t o r t r a n s m i s s i o n o f inf o r m a t i o n c o n t a i n e d h e r e in

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**Publication Ban no longer in effect pursuant to the direction of the Honourable Justice L.A. Charbonneau dated December 5, 2018.**

*Official Court Reporters*

R. v. Oake, 2017 NWTSC 41 S-1-CR-2017-000038

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

DARCY OAKE

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APPEARANCES:

Mr. D. Praught: Counsel for the Crown

Mr. C. Davison: Counsel for the Accused

An Order of the Court has been made prohibiting publication,

broadcast or transmission of information contained herein

pursuant to s. 525(8) and 517 of the Criminal Code of Canada

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1 THE COURT: Would you like Mr. Oake seated

2 with you?

3 MR. DAVISON: Yes, please.

4 THE COURT: You can have a seat, sir.

5 MR. DAVISON: And, Your Honour, this is a

6 matter that's here for decision, but I do want to

7 mention, and I've mentioned this to Mr. Praught,

8 that Mr. Oake has brought with him this afternoon

9 some paperwork. He tells me he has been able to

10 start a treatment program while in North Slave

11 Correctional Centre. If he's granted release,

12 what he's just briefly told me about the program

13 is such he would be able to continue the program

14 outside of the facility pending his departure for

15 the treatment centre if that is arranged and

16 permitted under the terms of release. The flip

17 side is if he's not granted release, he will

18 still be able to carry on with the program inside

19 the correctional centre.

20 THE COURT: You've made the Crown aware of

21 just now.

22 MR. DAVISON: Yes. I've just learned of

23 this myself.

24 THE COURT: There's no need to be file --

25 the documents to be filed here. You're just

26 telling me so I'm aware?

27 MR. DAVISON: Yes. I haven't looked at the

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1

1 documents myself. So I'm just telling you so

2 you're aware.

3 THE COURT: All right. Thank you. I am

4 ready to give my decision on this. I'm just

5 going to say at the outset and remind everyone

6 that there is a publication ban in effect that

7 relates to the evidence that was presented at

8 this hearing a few weeks ago. That ban applies

9 to the things I am about to say.

10 Mr. Oake faces a number of charges arising

11 out of events that are alleged to have happened

12 here in Yellowknife. He has one Information that

13 includes two breaches of recognizance said to

14 have happened on the 19th of November, 2016, and

15 he also faces charges on a five-count

16 Information. The charges on that Information

17 include importation of furanyl fentanyl between

18 October 30th and November 28th, 2016; trafficking

19 in fentanyl on the 23rd of November 2016;

20 possession of fentanyl for the purpose of

21 trafficking on November 25th, 2016; criminal

22 negligence causing bodily harm on the 23rd of

23 November 2016; and a breach of recognizance also

24 on the 25th of November, 2016.

25 I heard at the bail hearing that he is also

26 awaiting trial in Alberta on a charge of

27 possession of cocaine for the purposes of

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1 trafficking in relation to events that date back

2 to October 2015.

3 Since his arrest on the charges most

4 recently laid against him in the Northwest

5 Territories, he has been on remand. His charges

6 came before this Court for review by operation of

7 Section 525 of the Criminal Code and he now

8 applies for release for the first time.

9 In support of his application, he has filed

10 an affidavit that sets out his release plan. The

11 Crown did not cross-examine him on that

12 affidavit. Mr. Oake's parents also both

13 testified at the hearing. They are both being

14 proposed as sureties.

15 The Crown opposes Mr. Oake's release on all

16 three grounds of detention that are set out at

17 Section 515 of the Criminal Code.

18 I will start by summarizing the allegations.

19 The Alberta charge, as I mentioned, stems from

20 allegations dating back to October 18th, 2015. I

21 was told that on that date a vehicle was

22 intercepted by police following a complaint.

23 There were three people in that vehicle: the

24 driver and two passengers. Mr. Oake was one of

25 the passengers.

26 After the vehicle was stopped, the police

27 officer noticed a strong odour of cannabis inside

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1 the vehicle. The driver gave a false name when

2 he identified himself to the officer. The

3 vehicle was searched and cocaine was found in the

4 vehicle. I heard that just over 141 grams of

5 powder cocaine and 142 grams of crack cocaine

6 were seized from the vehicle.

7 According to the copy of the Indictment that

8 was filed at the bail hearing, Mr. Oake and the

9 driver of the vehicle are jointly charged with

10 two counts of possession of cocaine for the

11 purpose of trafficking.

12 I heard the case has passed the preliminary

13 hearing stage and is currently pending before the

14 Court of Queen's Bench in Alberta.

15 Mr. Oake was released on October 27th, 2015,

16 on a recognizance with a cash deposit of $1500.

17 His father was the one who provided the funds for

18 that deposit and he is noted as the assignee on

19 the recognizance. But Mr. Oake's father was not

20 named as a surety. There were no sureties on

21 that recognizance.

22 The release conditions included, among other

23 things, that Mr. Oake was to reside at 166 Borden

24 Drive, in Yellowknife, (that is his father's

25 residence) and that he was to abide by a curfew

26 between 10 p.m. and 6 a.m. every day. He was

27 also required from refraining to possess,

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1 consume, or purchase illegal drugs.

2 The Crown alleges that on November 19th,

3 2016, Mr. Oake was a passenger in a vehicle that

4 was intercepted in Yellowknife as a result of a

5 traffic violation. This occurred at 1:50 a.m.

6 The police officer who stopped the vehicle knew

7 that Mr. Oake was on a curfew and that is what

8 led to the two-count Information alleging

9 breaches. There is a breach of the curfew and a

10 breach of the condition that he keep the peace

11 and be of good behaviour. The two charges are

12 based on the same allegations.

13 Mr. Oake was released on a recognizance

14 before an officer in charge that same day, and

15 the only condition in that recognizance was the

16 requirement that he abide by a curfew between

17 10 p.m. and 6 a.m.

18 The next set of allegations are by far the

19 most serious. Between November 23rd and 25th,

20 2016, there were a number of fentanyl overdoses

21 in Yellowknife. I heard that the situation was

22 so serious that medical officials issued

23 advisories in the media that there was a

24 particularly potent and dangerous type of

25 fentanyl being sold on the streets of

26 Yellowknife.

27 Mr. Oake was one of the people who overdosed

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1 on fentanyl. This happened on November 25th at

2 his father's residence at 166 Borden Drive. He

3 was, as a result of that overdose, in extreme

4 medical distress. Paramedics were called, and

5 police were also called to assist. He was

6 treated with the type of medication that is used

7 in these situations and was rushed to the

8 hospital.

9 The police officers that were at the scene

10 spoke with his parents. They learned that

11 Mr. Oake had used fentanyl on multiple occasions

12 at the residence. Police officers felt that they

13 needed to search the residence based on exigent

14 circumstances given the very dangerous nature of

15 the drug and the possibility there could still be

16 some in the residence. Mr. Oake's father

17 consented to the search of the residence.

18 As a result of the cursory search of the

19 residence and garage, police found in Mr. Oake's

20 bedroom a number of items, including a clear

21 baggie that had a white substance in it and a

22 digital scale. In the garage, they found a torn,

23 empty envelope which appeared to have been mailed

24 from Hong Kong. Police learned from Mr. Oake's

25 father that Mr. Oake sometime spent time in the

26 garage.

27 One of the officers who was involved in the

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1 search began to experience worrisome symptoms

2 suggesting that he might be affected by the

3 substance that was being handled. That officer

4 required medical attention, but, as far as I

5 heard, was ultimately fine.

6 A search warrant was obtained for the

7 residence. During the execution of that warrant,

8 two more scales were found as well as another

9 empty envelope which appeared to have been mailed

10 from China. A laptop was also seized and it is

11 still being examined, so at this point it is not

12 known whether there is anything relevant to this

13 investigation that will be found in it. The

14 white substance in the baggies seized in

15 Mr. Oake's room was tested and it was found to be

16 furanyl fentanyl. Swabs taken from the inside of

17 both envelopes tested positive for the same

18 substance.

19 During the investigation, police interviewed

20 Courtney Janes, one of the persons who had

21 overdosed on fentanyl during those days in

22 November 2016. She advised that she went to 166

23 Borden Drive and saw Mr. Oake there. They went

24 inside the garage and there Mr. Oake made a line

25 of drugs for them. He gave her some as well and

26 some paper and told her to be careful on it as he

27 had overdosed on it the day before. Ms. Janes

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1 advised that later that day she blacked out. It

2 is alleged that members of her family found her

3 in medical distress and called emergency

4 services. Ms. Janes also told police that she

5 was present when Mr. Oake ordered some fentanyl

6 from China.

7 During the investigation, Mr. Oake's parents

8 were also interviewed. They both confirmed they

9 knew their son was using drugs. His mother is a

10 nurse and had talked to him about getting into a

11 treatment program and he had agreed to go.

12 On November 28th, the police in Yellowknife

13 were advised by their colleagues in British

14 Columbia that as part of a seizure that occurred

15 at the Vancouver airport an envelope addressed to

16 Mr. Oake at 166 Borden Drive, mailed from China,

17 was found to contain 11.7 grams of furanyl

18 fentanyl.

19 The charges arising out of the November

20 events were sworn on November 30th and a warrant

21 for Mr. Oake's arrest was issued. He was still

22 in hospital at that point. The Crown alleges

23 that he was, at that point or shortly after, in

24 hospital voluntarily in the sense that there was

25 no medical requirement for him to remain there.

26 On December 2nd police made attempts to make

27 arrangements for him to turn himself in.

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1 Surveillance was established at the hospital

2 because police were concerned that Mr. Oake might

3 decide to leave and not turn himself in.

4 The Crown alleges that Mr. Oake's mother was

5 seen arriving at the hospital in a vehicle and

6 that shortly after that Mr. Oake was seen walking

7 out of the hospital with a hood over his head.

8 The Crown further alleges that Mr. Oake went back

9 inside the hospital and his mother drove away. I

10 understand the Crown's allegation to be that this

11 happened because they saw police were there. But

12 the discussions continued and eventually Mr. Oake

13 did come out of the hospital and was arrested.

14 The Crown supplemented these allegation with

15 background information about the drug fentanyl.

16 These remain allegations at this stage, but the

17 nature of this drug and its dangerousness has

18 been the subject of comments by this Court over

19 the past few months and by other Courts across

20 the country as well, so at least some aspects of

21 this are not really in issue.

22 Fentanyl is a very potent drug that creates

23 physical dependency and it involves a high risk

24 of overdose. The Crown has provided statistical

25 information about the drastic increase, over the

26 past few years, in deaths resulting from fentanyl

27 overdoses. There have been two separate public

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1 health advisories in the NWT in relation to this

2 drug, one in February and one in November. I do

3 not think anybody takes issue with the fact that

4 this is indeed a very dangerous drug.

5 Mr. Oake's election on the five-count

6 Information is trial by judge alone. At the time

7 of the bail hearing, no date had been scheduled

8 for the preliminary hearing into these matters,

9 and I know from reviewing the file that the

10 matter is actually to be spoken to in Territorial

11 Court tomorrow unless something has changed since

12 those endorsements were made on the Territorial

13 Court file.

14 Those are the allegations that provide

15 context for this application for release. The

16 other important piece of course is the release

17 plan being proposed.

18 It is clear on the evidence that Mr. Oake

19 was born in Yellowknife and raised here. He

20 spent virtually all his life here. His immediate

21 family is here (his parents and his brother) and

22 so are members of his extended family (an aunt,

23 an uncle, and cousin). He is 22 years old and he

24 does not have a criminal record.

25 In his affidavit, Mr. Oake acknowledges that

26 he is an addict and needs treatment. He has

27 attended Narcotics Anonymous meetings while on

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1 remand. At the time of the bail hearing, he had

2 not been able to access the substance abuse

3 program offered at the jail because priority is

4 given to people serving sentences. At the time

5 he swore his affidavit, he was on the waiting

6 list, but I heard just after we opened court this

7 afternoon that he has now been able to begin a

8 treatment program within the jail and that is a

9 very positive thing.

10 Mr. Oake had taken steps to attend treatment

11 before his arrest. I heard that he had been

12 accepted into treatment at the Edgewood Facility

13 in British Columbia and he was scheduled to

14 attend in December 2016. His arrest prevented

15 that from happening. His plan, if released, is

16 to renew his application to attend this treatment

17 facility.

18 My understanding of the evidence and the

19 submissions made on the application is that

20 Mr. Oake is not able to reapply to Edgewood until

21 and unless he is actually released on bail. His

22 counsel advised that based on the information he

23 has been able to gather, the application process

24 to get into this treatment program requires the

25 applicant to be "available", which to them means

26 "not in custody" at the time the application is

27 submitted.

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1 I am going to open a brief parenthesis here

2 just to draw to counsels' attention something

3 that I came across more by coincidence than

4 anything else, which does not change anything to

5 my decision in this matter but I thought I should

6 raise because it came to my attention.

7 In an entirely different context recently,

8 and Mr. Praught will be aware of this matter, as

9 part of an estreatment hearing and, as part, I

10 was provided background materials on another drug

11 case. Of course, at the stage of the estreatment

12 hearing, the only question was whether money

13 should be forfeited, but I was provided the

14 pre-sentence report that was prepared for that

15 sentence as well as the Reasons for Sentence of

16 the sentencing judge. And it may just be that

17 information was reported incorrectly or that I

18 misunderstood what I read, but it appeared that

19 in that case when the accused had been released

20 at some point during his case, he was released

21 directly into the treatment plan at Edgewood. In

22 other words, it sounded from what was referred to

23 in the pre-sentence report that when he was in

24 custody he was able to somehow apply while he was

25 still in custody. Just so counsel are aware, the

26 sentencing decision on that is reported at 2017

27 NWTTC 01, and this court's estreatment file is

Official Court Reporters

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1 2017-000009. I did not look at this very

2 closely, I just happened to notice it because I

3 had just heard this bail hearing.

4 I want to make it clear that I do not doubt

5 for a second that the information I was provided

6 at this hearing is the information that counsel

7 were given and was an accurate representation of

8 the situation as it was explained to counsel. I

9 raise it only because it may be that there is a

10 case where it does make a difference whether a

11 person may be released directly to this treatment

12 program. And, if not whoever is applying for

13 release at any given point, the Crown would have

14 an interest in knowing whether in fact it is

15 possible or not to submit an application while in

16 custody. But as I say, it makes no difference to

17 my decision on this matter. I just wanted to

18 raise it and now I close that parenthesis.

19 Turning back to this case, the information

20 and the evidence that I have is that there is

21 some uncertainty about when Mr. Oake might be

22 able to attend treatment if he is released. It

23 would depend on how quickly his application

24 process can be completed and, of course, when

25 space is available for him at the facility.

26 Also as part of the release plan, Mr. Oake

27 is prepared to consent to provide samples of his

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1 blood and urine, to allow his hands to be swabbed

2 for the purposes of ensuring that he is

3 continuing to abstain from consuming illicit

4 drugs. He is prepared to subject himself to

5 random testing without there being a need for the

6 police officer requesting this to have any

7 grounds to believe that he has actually breached

8 his release terms, and he is prepared to waive

9 his right to confidentiality as to any medical

10 attention or intervention that he might receive

11 and to authorization any medical personnel who

12 deals with him to contact police and report

13 details of his condition should he require

14 intervention after have consumed illicit

15 substances. So I guess, in summary, he is

16 prepared to comply with any conditions the Court

17 may place on him and he has proposed to give up

18 several aspects of his rights to facilitate and

19 encourage the monitoring of these conditions. It

20 is proposed in the release plan that he would

21 live with his mother.

22 As I have said already, Mr. Oake's parents

23 are both prepared for act as sureties for him.

24 His father is prepared to cash in some of his

25 investments and deposit an amount of $1,000. His

26 mother is proposing to pledge a surety in the

27 same amount but without a deposit. Both of them

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1 testified that they are prepared to monitor their

2 son's compliance with conditions and to call the

3 police if there are any breaches. Neither of

4 them was a surety on the earlier recognizance.

5 Mr. Oake's mother was asked why she thought

6 it would be any different this time if her son

7 was released and why she believed this time he

8 would abstain from consuming drugs and take

9 treatment, considering that treatment had been

10 discussed and arranged in the past and evidently

11 he still continued to use. Her answer was "His

12 death." I take this to mean that she believes

13 that the near fatal consequences that he suffered

14 as a result of his last overdose is what will

15 make a difference to his resolve in tackling his

16 addiction issues.

17 With respect to what happened when the

18 police were trying to execute the arrest warrant

19 in early December, Mr. Oake's mother explained

20 that her intentions when she went to the hospital

21 that day were to facilitate her son's attendance

22 at the treatment program. She answered those

23 questions very directly and she did not try to

24 put any other spin on that. She said the

25 treatment was something that Mr. Oake's doctors

26 had approved and that, in effect, his arrest and

27 preventing him from attending treatment at that

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1 point went against what she understood his

2 doctors wanted to see happen. Of course I do not

3 have any evidence from the doctors, but this is

4 what she said in her testimony. I think her

5 evidence makes it quite clear that her priority

6 at that time was to try to get her son into

7 treatment. She believed that is where he should

8 be and not in police custody.

9 She also testified that if her son is

10 released and is accepted at the treatment

11 facility, she intends on travelling there with

12 him and take him to the treatment centre herself.

13 She says she realizes it could take a long time

14 before these matters go to trial, and she

15 understands that by agreeing to be a surety and

16 monitoring her son's compliance with conditions,

17 she is making a major commitment. She maintained

18 that she is prepared to follow through with that

19 commitment.

20 Mr. Oake's father said he never saw evidence

21 of the drug-related activities in the garage at

22 his house on Borden Drive. He did acknowledge

23 that he saw evidence of drug use in his son's

24 room from time to time. He was asked why he did

25 not report this illegal activity to the police

26 and he said he did not think it was his

27 responsibility. He maintained that he does

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1 understand that as a surety it would now very

2 much be his responsibility to call the police if

3 this were to happen again, or if he became aware

4 of any breaches of the release terms. He

5 testified that he is between jobs at the moment

6 and he would have some time and flexibility to

7 check in on his son and make sure he is complying

8 with the terms of his release. He acknowledged

9 it may be difficult for him to monitor compliance

10 with the curfew as Mr. Oake would not be living

11 with him, and he also added that there is no

12 landline at the residence, but he said he could

13 drive over and make some checks himself.

14 Again, Mr. Oake did not seem to me to be

15 trying to overstate anything. He answered the

16 questions he was asked in a very matter-of-fact

17 way and he did not try to justify or rationalize

18 his conduct or any of the things that he was

19 being cross-examined about during the hearing.

20 The Crown, as I have said at the outset,

21 opposes Mr. Oake's release on all three grounds,

22 emphasizing particularly the second and the

23 third.

24 On the primary ground, the Crown says that

25 the allegations involve very serious offences,

26 that significant sentences will be imposed if

27 Mr. Oake is found guilty, and that this gives

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1 rise to a high risk that he may be tempted to

2 abscond. The Crown also notes that Mr. Oake,

3 knowing that there was a warrant for his arrest,

4 appears to have attempted to leave the hospital,

5 and his mother effectively confirmed that her

6 intention, as I have said already, was to try to

7 get him to treatment.

8 With respect to the second ground, which is

9 focused on public safety, the Crown notes that

10 the allegations reflect increasingly serious

11 behaviour and suggest that being on conditions,

12 even with a cash deposit, has not been a

13 sufficient incentive to ensure that further

14 offences would not be committed. The Crown also

15 noted that Mr. Oake's acknowledged addiction is a

16 powerful factor and creates a high risk of

17 reoffending. The Crown is concerned that the

18 proposed plan is not sufficient to control that

19 risk. Mr. Oake lived with one of his parents

20 when he is alleged to have committed the breaches

21 and the subsequent drug offences. There is no

22 guarantee that he will be accepted into treatment

23 and no certainty as to when he will go. The

24 Crown is not suggesting that Mr. Oake's parents

25 do not have the best of intentions, but argued

26 that especially given his involvement in

27 importing and trafficking a highly dangerous

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18

1 substance, Mr. Oake poses a significant risk to

2 others.

3 On the tertiary ground, the Crown argues

4 that its case is strong and, if convicted,

5 Mr. Oake faces a significant penalty. The Crown

6 says that it is of particular concern that

7 Mr. Oake, having overdosed on the drug before,

8 knew how dangerous it was and still provided it

9 to another person. The Crown argues that

10 Mr. Oake's release in light of all of this would

11 cause the public to lose confidence in the

12 administration of justice.

13 Mr. Oake's counsel argues that the primary

14 ground is not really a concern given Mr. Oake's

15 ties to Yellowknife and his lack of criminal

16 record. On the secondary ground, the defence

17 notes that the allegations do not suggest that

18 Mr. Oake is involved in commercial trafficking

19 based on greed but, rather, that he is an addict

20 and that this is what is at the root of his

21 activities. Defence points out that the heart of

22 the release plan is to ensure that Mr. Oake

23 receives the treatment that he needs as soon as

24 possible and that once that happens and the issue

25 of his addiction is addressed, the concerns for

26 public safety would no longer exist.

27 Defence notes that because there were no

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19

1 sureties before, Mr. Oake's parents were, in

2 fact, not under any obligation to report anything

3 to police in the past, but that they have both

4 now sworn that they understand their

5 responsibilities if they do become sureties and

6 have sworn that they will abide by them.

7 Defence notes that Mr. Oake is a young

8 person without a criminal record and argues that

9 his detention is not necessary to protect the

10 public.

11 On the tertiary ground, the defence

12 acknowledges that the Crown's case on the

13 importation charge is strong and that the likely

14 sentence for that offence, if Mr. Oake is

15 convicted, will be significant.

16 The defence points to the other factors set

17 out in the Criminal Code, however, including the

18 circumstance of the offence. Defence notes again

19 that the situation of an addict who is primarily

20 supporting his habit engages different

21 considerations than the situation of someone who

22 traffics in these dangerous substances purely for

23 commercial and mercantile purposes. There is no

24 allegation here or evidence suggesting

25 involvement with gangs, weapons, or violence.

26 Defence argues that Mr. Oake's involvement is at

27 the lower end of the scale and that his release

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1 plan meets the concerns that may exist under the

2 tertiary ground.

3 I have given the evidence, the submissions,

4 and the case law that I was referred to a lot of

5 thought in what I consider to be a difficult

6 decision to make in this case.

7 On the primary ground, the question I must

8 ask myself is whether Mr. Oake's detention is

9 necessary to ensure that he will attend court.

10 To be sure, he faces a significant sentence if he

11 is convicted, and that is always something that

12 can raise concerns about the temptation a person

13 might have to try to flee to try to avoid facing

14 the consequences of a possible conviction.

15 At the same time, Mr. Oake is from

16 Yellowknife, his family is here. I think that

17 there are ways to craft release terms that will

18 minimize any flight risk that he might represent.

19 There can never be any guarantees in this regard.

20 Decisions on bail always require a risk

21 assessment, but, on the primary ground, I am

22 satisfied that it is possible to craft tight

23 conditions that would ensure Mr. Oake will come

24 to court as required and face trial when the time

25 comes.

26 The question I must ask myself on the

27 secondary ground is whether Mr. Oake's detention

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1 is necessary for the protection of the public. I

2 must consider whether there is a substantial

3 likelihood that if released he will commit an

4 offence or interfere with the administration of

5 justice.

6 With respect to this ground for detention,

7 counsel have both referred to the Supreme Court

8 of Canada decision in R. v. Pearson, [1992] 3 SCR

9 665, and I want to say a few words about that

10 decision.

11 Pearson was the case where the

12 constitutional validity of the reverse onus bail

13 provisions for drug charges were challenged. In

14 explaining why these provisions were Charter

15 compliant, the Court made comments about the

16 unique characteristics of drug trafficking

17 offences, including how lucrative and organized a

18 business it is and how strong the incentive is to

19 continue trafficking even for someone awaiting

20 trial. The Crown emphasized those comments and

21 urged me to take them to heart and to recognize,

22 when considering whether Mr. Oake's detention is

23 necessary for the protection of the public, the

24 incentive he will have to continue trafficking in

25 this drug, because it is a very lucrative

26 business and also because of the fact that he is

27 an addict. Many addicts who traffic, traffic to

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1 support their habits, and if Mr. Oake is not able

2 to address his addiction, the risk that he may

3 traffic again, if released, to resume supporting

4 his habit is high. I have taken this into

5 account, but, as noted by defence, there are

6 other aspects of the Pearson decision that must

7 also be considered.

8 One of the arguments that was made in

9 Pearson was that because of the very broad

10 definition of the concept of trafficking in the

11 Act, the effect of the reverse onus provisions on

12 bail was too far reaching. The Supreme Court of

13 Canada's answer to that argument was that for the

14 "small fry", or people who traffic essentially by

15 sharing drugs with their friends and supplying

16 their friends, it would be easier to rebut the

17 reverse onus and be granted release. That is

18 discussed as page 698 of the decision.

19 The Supreme Court recognized in this

20 context, as it should, that not all trafficking

21 offences are the same and not all drug

22 traffickers are in the same position vis-a-vis

23 the criminal organizations that effectively run

24 drug trafficking activities and profit from it.

25 The evidence adduced at this hearing is more

26 consistent with Mr. Oake being an addict who

27 trafficked primarily to support his habit as

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1 opposed to being high up in an organized

2 hierarchy of fentanyl distribution in

3 Yellowknife. That is not to minimize the

4 seriousness of what he is alleged to have done.

5 But the allegations before me, taken at their

6 highest, do not suggest, not at this stage at

7 least, that he is a high level trafficker making

8 considerable profit. There no evidence that

9 score sheets were found, there is no evidence

10 that large sums of money were found on him or at

11 the house. His father was the one who put up

12 that cash deposit to secure his release on the

13 Alberta charges.

14 Of course there is always a concern where

15 there is evidence suggesting that an accused may

16 not be inclined to comply with release terms, and

17 there is that kind of evidence before me. The

18 case on the breach of curfew appears to be

19 strong, and, as the Crown noted, the next series

20 of substantive charges that also represented

21 breaches of the release terms arose just a few

22 days after Mr. Oake was arrested for the breach

23 of curfew. At the same time, I must recognize

24 the difference between the release plan that was

25 in place on the Alberta charges and the one that

26 is being proposed now. The Alberta recognizance

27 did not involve sureties. Mr. Oake was not being

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1 supervised by anyone. The plan proposed now is

2 much stronger. There is always a question as to

3 whether a young adult's parents can actually have

4 any control over his behaviour. I have not lost

5 sight of the fact that Mr. Oake was living with

6 his father when the November events arose. And I

7 have not lost sight of the fact that one could

8 say that his mother was not as cooperative or

9 aligned with what the police were trying to do as

10 she could have been when they tried to execute

11 the arrest warrant. But, she has explained what

12 her point of view was and she has sworn before

13 this court that she understands what her

14 responsibilities as a surety would be. She has

15 sworn that she knows now that it would be her

16 obligation to report any breach of the release

17 terms immediately if that should happen.

18 Mr. Oake lived with his father at the time

19 of the November incidents. But, again, the

20 father had supplied the cash deposit for the

21 Alberta charges but he was not a surety. And he,

22 too, at this hearing, swore that he understands

23 the responsibilities that come with this. I have

24 no reason to doubt the sincerity of either of

25 these people and I did not understand the Crown

26 to actually be questioning their sincerity

27 either.

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1 I am also mindful that Mr. Oake's parents

2 also have a powerful incentive, quite apart from

3 financial consequences to them should there be

4 breaches, to keep a close eye on their son. It

5 could be said that at this point for Mr. Oake to

6 address in a meaningful way his addiction could

7 very well be a question of life and death. And I

8 am confident that for a parent that is a powerful

9 incentive to do everything that they can to make

10 sure that he does comply with his release terms.

11 As I said already, bail always involves a

12 risk assessment. Can I be certain today that if

13 I release Mr. Oake he will not engage in illegal

14 activities again? Can I be 100 percent certain

15 of that? Absolutely not, but that is not what is

16 required for him to meet his onus. I am

17 satisfied that with two sureties, with strict

18 conditions, with some of the random monitoring

19 measures he is willing to subject himself to, and

20 with the plan of accessing treatment for his

21 addiction, the risk that his release presents

22 from the point of view of public safety can be

23 sufficiently mitigated to not make his detention

24 necessary.

25 That leaves the tertiary ground. The

26 question that I must ask myself on that ground is

27 whether Mr. Oake's detention is necessary to

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1 maintain public confidence in the administration

2 of justice. That proves to be a challenging

3 ground, I think, in any case that involves

4 allegations of trafficking in this very dangerous

5 drug.

6 The Supreme Court of Canada in St-Cloud,

7 [2015] 2 SCR 328, has provided some welcome

8 guidance as to how the tertiary ground should be

9 approached. The Criminal Code itself says that

10 some factors must be considered. They include

11 the apparent strength of the Crown's case, the

12 gravity of the offence, the circumstances of the

13 offence, including whether firearms were used,

14 and the fact that the accused could face a

15 lengthy jail term if convicted. To this the

16 Supreme Court of Canada has added in St-Cloud, at

17 paragraph 71, that the circumstances of the

18 accused should be considered: age, whether there

19 is a criminal record, any physical or mental

20 condition that is relevant, whether the person is

21 part of a criminal organization.

22 On this ground, the defence has fairly

23 conceded that the Crown's case on the importation

24 case is strong and that these are serious

25 offences that would carry, in the event of

26 conviction, lengthy sentences.

27 The Alberta charge on its face is also

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1 serious, but it is more difficult for me to

2 assess the strength of the Crown's case on that

3 charge based on what is before me. At the

4 hearing, the Crown noted that there has been a

5 committal to stand trial, but, in my respectful

6 view, that means very little given the very low

7 threshold under our law for committal after a

8 preliminary hearing. The allegations as I heard

9 them were in some respects quite vague. There

10 are no details, for example, as to where the

11 drugs were found in the vehicle. What I have is

12 an allegation that there was a vehicle, three

13 people in it, including Mr. Oake, and drugs found

14 somewhere it. So the outcome of the application

15 today and whether the onus and the tertiary

16 ground can be met turns much more on the nature

17 of the Yellowknife charges and their

18 circumstances.

19 The Crown has understandably emphasized the

20 very dangerous nature of the drug fentanyl. The

21 Crown also emphasized, also understandably, that

22 Mr. Oake was aware how dangerous it was because

23 he had overdosed on it already and still he chose

24 to provide it to someone else. And there appears

25 to be strong evidence that he is the one who was

26 bringing this drug into the community.

27 As I have said, the defence has acknowledged

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1 all of this but points that the overall

2 circumstances do not suggest this was done for

3 greed but rather, was the desperate action of an

4 addict feeding his habit.

5 In St-Cloud, the Supreme Court clarified

6 which public must be considered when deciding

7 whether an accused's release, and sometimes

8 whether an accused's detention, would undermine

9 confidence in the administration of justice.

10 Some of the key things include that that public

11 is supposed to be someone who understands that

12 accused persons are presumed innocent until

13 proven guilty, have the right to reasonable bail,

14 and that the right to bail is constitutionally

15 protected for everyone in this country.

16 To be sure, there is considerable concern

17 around drug trafficking in general and with

18 respect to trafficking in fentanyl in particular.

19 That concern is growing exponentially as the

20 number of overdoses and death overdoses continue

21 to rise across this country. That concern is

22 well felt in this community as I have had

23 occasion to mention in a few decisions where I

24 sentenced people for trafficking in this drug.

25 But that concern, real as it is, cannot overtake

26 the entire analysis. If it did, no one charged

27 with fentanyl trafficking would ever be released

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1 on bail, no matter what the circumstances and no

2 matter what release plan was presented. That is

3 not an acceptable outcome under our law. Under

4 our law, even people charged with very serious

5 offences, even murder, are entitled to reasonable

6 bail if their detention is not necessary for one

7 of the three grounds listed in the Criminal Code.

8 The detention has to be necessary, not just

9 helpful or convenient.

10 This Court is very concerned about the

11 public health risk associated with fentanyl and

12 its trafficking, but after considerable thought I

13 have concluded that the release plan that

14 Mr. Oake has presented meets the concerns under

15 the tertiary ground as well. I conclude that

16 given the nature of the terms that he is prepared

17 to agree to, given his parents' willingness to

18 act as sureties, given that they, too, know that

19 for him at this point getting treatment may be a

20 question of life and death, I have come to the

21 conclusion that Mr. Oake has met his onus on the

22 tertiary ground.

23 Mr. Oake, I hope you understand that you are

24 walking a very fine line for the next while. Do

25 not expect leniency if you are caught breaching

26 any of your release terms, at least not from me.

27 There will be cumbersome conditions, that you

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1 have agreed to, that you outlined in your

2 affidavit. They could be in force for a long

3 time. But if you do not want to end up back in

4 custody, you have to follow them, as hard as it

5 may be. The main objective here is get you to

6 treatment and, once you return from treatment, to

7 have you remain sober.

8 The other case I was talking about, and you

9 know about it, I am sure, was one where the

10 person did go to treatment, came back and

11 overdosed again. So it is a long road and I know

12 you know that.

13 It is essentially going to be up to you, and

14 I hope that what happened in November has been

15 the last lesson you needed to actually do what

16 you need to do.

17 I will grant the application and release

18 Mr. Oake on a recognizance, and I followed for

19 the most part the conditions that were set out at

20 Exhibit "B" of Mr. Oake's affidavit. On the

21 recognizance there will be two surety. Mr. Dean

22 Oake will be the first surety and there will be a

23 requirement for $1,000 cash deposit by him. Lori

24 Dashney will be the second surety. There will be

25 a $1,000 amount pledged by her but without a cash

26 deposit. The other conditions are as follows,

27 and listen carefully to these, Mr. Oake: You are

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1 to attend court as required. You are to reside

2 at 4919 - 44th Street in Yellowknife. You are to

3 comply with a curfew every day from 8 p.m. until

4 7 a.m. You are to come to the door of the

5 residence or answer the telephone if the police

6 or bail supervision authorities come to check on

7 your curfew compliance. You are not to possess

8 or consume any drugs except in accordance with a

9 medical prescription. In order to enforce that

10 term, I am going to include the three things that

11 are listed in the exhibit to your affidavit. I

12 will not read it all out here, Madam Clerk, but

13 you can refer to the exhibit.

14 COURT CLERK: Certainly, Your Honour.

15 THE COURT: Essentially, you are agreeing

16 that you are to provide samples of your blood or

17 urine, if needed, and you are waiving a lot of

18 your confidentiality rights with respect to

19 medical matters, and you are saying that you

20 understand that checks can be done at random.

21 I am going to require you to report - this

22 is cumbersome, but I feel it is important for all

23 the reasons I have been talking about - Mondays,

24 Wednesdays, Fridays, and Sundays in person. The

25 proposed conditions refer to "bail supervision

26 authorities". Often reporting conditions are

27 worded as "requirements to report to the RCMP".

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1 Mr. Davison, has the situation changed or is

2 that intended to mean the RCMP? The reporting

3 conditions, it is worded "to bail supervision

4 authorities". I am more familiar with "report to

5 the RCMP", but we do not deal with that many bail

6 matters in this court.

7 MR. DAVISON: I had put it that way because

8 there is a bail supervisor -- effectively,

9 they're probation officers that do the bail

10 supervision duties as well. However, I'm going

11 to guess that there is a duty probation office

12 who's on call on weekends or holidays. But there

13 wouldn't be anybody in the office. So --

14 THE COURT: I think we will make the

15 reporting requirement to the RCMP.

16 MR. DAVISON: Thank you.

17 THE COURT: To the RCMP detachment because

18 we know that they are always there.

19 The next condition is that if you obtain

20 employment, you are to provide the full details

21 of that employment to the RCMP in Yellowknife and

22 to the bail supervision authorities, including

23 who your employer is, where you are working, and

24 what your schedule is going to be.

25 I did not ask this at the hearing,

26 Mr. Praught, but it was contemplated that there

27 be a no-contact order. Are there specific

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1 individuals you would like listed?

2 MR. PRAUGHT: Yes, Your Honour.

3 Ms. Courtney Janes.

4 THE COURT: Yes.

5 MR. PRAUGHT: There are other witnesses,

6 potential witnesses, on the file we'd ask to

7 include as well. That would be Dwight Carpenter,

8 Samantha Janes, Barb Mezaros. Just if I may have

9 a moment?

10 THE COURT: Yes.

11 MR. DAVISON: If I can help out. I did see

12 a Lance Kristensen named in the file, and I think

13 he's also somebody that is associated with the

14 Section 145 charges. I would submit that's a

15 name that should be on the list, too, if my

16 friend wasn't going to propose --

17 MR. PRAUGHT: I thank my friend for that,

18 yes. And the Alberta recognizance will still be

19 in place.

20 THE COURT: Yes, and I know that file is

21 not before me. So maybe when we are done here, I

22 am just going to ask that you make sure the clerk

23 has the correct spelling of those names.

24 You recognize those names, Mr. Oake?

25 THE ACCUSED: Yeah.

26 THE COURT: All right. So you are to have

27 no contact with any of them, directly or

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1 indirectly.

2 The next condition is that upon your release

3 you will take immediate steps to complete the

4 application process to be admitted to the

5 Edgewood treatment program.

6 The next condition -- here again, Madam

7 Clerk, I am using essentially what was paragraph

8 10 of the exhibit to Mr. Oake's affidavit.

9 THE COURT CLERK: Certainly, Your Honour.

10 THE COURT: It is a series of conditions

11 that will apply if you are accepted into the

12 treatment program. The idea there is that you

13 will have to make sure the RCMP and the bail

14 supervision authorities here know when you are

15 going and when you come back so that they know

16 where you are. Your lawyer prepared this, so I

17 think you are familiar with it, but the

18 conditions include: to provide your bail

19 supervisor with full details and provide your

20 written consent to allow the persons assisting

21 you in accessing the treatment program to provide

22 ongoing details about your program and your

23 progress; provide the Yellowknife RCMP with the

24 details of your travel itinerary to and from the

25 treatment program, including when you will be

26 travelling, the route, and your expected arrival.

27 You are to report in person to the local police

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1 department or the closest RCMP detachment upon

2 your arrival at the treatment program in question

3 and provide them with a copy of your release

4 documents.

5 Once you return to Yellowknife, the

6 reporting conditions that I have already talked

7 about will resume. You are to travel as directly

8 as possible both to and from the treatment

9 program in the company of your surety, Lori

10 Dashney. This is not in what Mr. Davison had

11 listed, but I think it is crucial that someone be

12 with you. For the travel, I mean.

13 There is another paragraph that refers to

14 the requirement if you have to overnight on your

15 way to the treatment program: to advise the

16 Yellowknife RCMP of the details of where you are

17 staying and to continue to obey all the terms of

18 your release.

19 The last subparagraph confirms, and I want

20 this to be very clear to you, that all the other

21 conditions, including the monitoring conditions,

22 continue to apply whether you are in Yellowknife

23 or at the treatment program. The only conditions

24 that will not apply will be the residency

25 requirement, obviously, because you will not be

26 at home, and the reporting to the RCMP in

27 Yellowknife requirement because you cannot do

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1 that if you are not here. But whoever the police

2 force is in the location you will be will be

3 authorized to monitor your compliance with the

4 other conditions exactly the same way as the

5 police here are.

6 The next condition -- you understand?

7 THE ACCUSED: Yeah.

8 THE COURT: The next condition is you will

9 remain in regular contact with your counsel and

10 you will keep yourself informed of all court

11 appearance dates scheduled for your case.

12 I forgot to ask this at the time of the

13 hearing, but do you have a passport?

14 THE ACCUSED: I think it's expired.

15 THE COURT: All right. Well, if -- I am

16 going to ask you to surrender your passport to

17 the RCMP even if it is expired.

18 THE ACCUSED: Okay.

19 THE COURT: I doubt these days you would

20 get very far with an expired passport --

21 THE ACCUSED: Yeah.

22 THE COURT: -- but surrender it.

23 I am also -- this is not going to come up

24 for some time, but I am going to include a

25 condition that you are to surrender yourself to

26 the custody of the North Slave Correctional

27 Centre, I think would be the logical place, no

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1 later than 72 hours before the date scheduled for

2 the start of your trial. The proceedings in

3 Territorial Court are another matter. I am just

4 talking about trial here. When we get to the

5 point of the trial in this court (we do not know

6 when that will be but at some point you will

7 know), 72 hours before that, at the latest, you

8 have to surrender yourself in custody.

9 THE ACCUSED: Yeah.

10 THE COURT: Do you understand all that?

11 THE ACCUSED: Yeah.

12 THE COURT: Is there anything that I have

13 overlooked, Mr. Praught?

14 MR. PRAUGHT: Your Honour, I think a weapons

15 -- firearm condition is mandatory pursuant to

16 515(4.1) given that Mr. Oake is charged with a

17 Section 5 and Section 6 CDSA offence.

18 THE COURT: Do you agree, Mr. Davison?

19 MR. DAVISON: I think I do. If I can just

20 check?

21 THE COURT: Yes, yes.

22 MR. DAVISON: I hadn't thought about this,

23 but I think my friend is right.

24 Yes, I do agree.

25 THE COURT: So that mandatory condition.

26 And the reference, Madam Clerk, do you have it?

27 COURT CLERK: Section 515, Your Honour?

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1 MR. PRAUGHT: Sub (4.1) sub (c).

2 THE COURT: (4.1)(c). Section 515 is a

3 long section. Anything else Mr. Praught that I

4 might have overlooked?

5 MR. PRAUGHT: No.

6 THE COURT: Anything not clear,

7 Mr. Davison?

8 MR. DAVISON: No. But if I might check one

9 point with his mother?

10 THE COURT: Yes.

11 MR. DAVISON: I was just checking about the

12 passport. Mr. Oake thinks it was at his

13 mother's. His mother thinks it may have been

14 disposed of given it was expired. I wonder if we

15 could simply say surrender it by 4:30 tomorrow

16 afternoon?

17 THE COURT: If it, if it --

18 MR. DAVISON: Or confirm that --

19 THE COURT: Or confirm that there isn't

20 one.

21 MR. DAVISON: Yes. That they can't find

22 one, yes.

23 THE COURT: All right. So one or the

24 other. Surrender or confirm that there isn't

25 one.

26 MR. DAVISON: And I am just thinking here.

27 Often that clause comes with an obligation or

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1 prohibition against applying for any further

2 passport or further travel documents if that's of

3 concern to the Court.

4 THE COURT: Actually, now that you say

5 that, I will include a condition that aside from

6 the requirements of treatment, he is not to leave

7 the Northwest Territories. And also I think it

8 is a good idea as a subset of the passport

9 condition that he is not to apply for a passport.

10 That is clear enough, I think.

11 MR. DAVISON: Now, in terms of not leaving

12 the Northwest Territories, of course the

13 treatment program is in British Columbia. So --

14 THE COURT: Yes, I said except for the

15 purposes of attending treatment.

16 MR. DAVISON: Oh, I see. Okay. I'm sorry,

17 I didn't hear that.

18 THE COURT: Now, I think I made reference

19 specifically to Edgewood in some of these

20 conditions. That is the treatment program that

21 is being applied for, correct?

22 MR. DAVISON: It is. Now, I don't know if

23 -- for example, if they say they're full, I don't

24 know if the authorities here will have another

25 alternative to offer. But that is the program

26 that we had in mind and referred to in the

27 affidavit, that we've had in contemplation

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1 throughout.

2 THE COURT: Well, I think that what I will

3 say is if that does not work out for some reason,

4 then presumably a written application for consent

5 amendment to include whatever other treatment

6 program could be submitted. I am deliberately

7 not leaving it very vague because if it was going

8 to be somewhere else, I would want the

9 arrangements to have been made, confirmed, and

10 that the Crown have an opportunity to make sure

11 that it is a known program. And I hesitate to

12 say legitimate, but there are all sorts of

13 programs that could justify leaving the

14 territories and that is not my intention.

15 MR. DAVISON: No, I understand that.

16 THE COURT: Now, the other thing,

17 logistically -- I don't know. There is an

18 appearance tomorrow in Territorial Court and on

19 the endorsement its says "removal order by

20 video". I do not know how long it will take to

21 perfect this recognizance. The clerk has some

22 work to do and I will have to review it and then

23 there is the issue of the money deposit. So

24 there is nothing I can do about the Territorial

25 Court appearance other than to say, Madam Clerk,

26 that the original Territorial Court file should

27 be returned to them as soon as possible because

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1 they will need it tomorrow morning at 9:30.

2 COURT CLERK: Yes, Your Honour.

3 THE COURT: And for the rest, if

4 everything happens and you happen to be out of

5 custody by tomorrow morning by 9:30, then you

6 have to be next door.

7 THE ACCUSED: Okay.

8 THE COURT: I am not sure how long this

9 would take, but it is already 2:30 and it may be

10 some time.

11 MR. DAVISON: Understandable, yes.

12 THE COURT: Anything else?

13 MR. PRAUGHT: No, Your Honour.

14 THE COURT: Thank you, counsel.

15 MR. DAVISON: Thank you, Your Honour.

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20 Certified Pursuant to Rule 723

of the Rules of Court

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23 Jane Romanowich, CSR(A)

Court Reporter

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