

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

-and-

DARCY OAKE

**Transcript of the Reasons for Decision of the Honourable Justice
S. H. Smallwood, sitting in Yellowknife, in the Northwest
Territories, on the 11th day of March, 2020.**

APPEARANCES:

D. Praught:

Counsel for the Crown

P. Harte:

Counsel for the Defence

Charges under s. 6(1), 5(1), 5(2) *Controlled Drug and Substances Act*,

and s. 221 of the *Criminal Code*

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DECISION: GUILTY ON COUNTS 1, 2, 3 AND 4

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1 THE COURT: On November 25, 2016, Darcy Oake
2 overdosed at his father's home in Yellowknife for the
3 second time in three days. When paramedics and the
4 RCMP responded, the RCMP were given permission
5 by his father to search his bedroom and the garage. In
6 Darcy Oake's bedroom, the police found a bag of
7 furanylfentanyl in his dresser. In the garage, the police
8 found an envelope addressed to Darcy Oake, with a
9 label stating "Hong Kong" on it.

10 Darcy Oake overdosed on furanylfentanyl
11 that he ordered on the internet. The furanylfentanyl
12 was shipped from Hong Kong and sent to Darcy Oake's
13 father's mailbox. Shortly after he received the
14 furanylfentanyl on November 23, 2016, Darcy Oake
15 took some. He then collapsed while walking his dog.

16 Once he was released from the hospital
17 later that day, Darcy Oake continued to take the
18 furanylfentanyl and gave some to Courtney Janes.
19 Courtney Janes snorted the furanylfentanyl in Darcy
20 Oake's garage before going home. Once she got
21 home, she went in the kitchen for a moment and then
22 sat on the couch. There she slumped over and was
23 unconscious until the next evening.

24 When Courtney Janes regained
25 consciousness, she could not walk without assistance.
26 She was taken to the hospital that evening, where she
27 was diagnosed and hospitalized for Rhabdomyolysis, a

1 breakdown of muscles resulting from a long period of
2 immobility. Courtney Janes suffered the effects of
3 Rhabdomyolysis for several months afterwards.

4 Darcy Oake was charged with four
5 counts: (1) importing furanylfentanyl into Canada; (2)
6 trafficking in furanylfentanyl; (3) possession of
7 furanylfentanyl, for the purpose of trafficking; and (4)
8 criminal negligence causing bodily harm by providing
9 furanylfentanyl to Courtney Janes.

10 The trial was held before me from August
11 19 to 30, 2019, December 6 and 16, 2019. At the
12 outset of the trial, Darcy Oake entered a guilty plea to
13 trafficking in furanylfentanyl and plead not guilty to the
14 other offences.

15 There are a number of things which are
16 not in issue and there were a number of admissions,
17 including that Darcy Oake ordered the furanylfentanyl
18 off of the internet; that the furanylfentanyl came from
19 Hong Kong; that Darcy Oake gave furanylfentanyl to
20 Courtney Janes; that Courtney Janes suffered injuries
21 which equate to bodily harm; and that Darcy Oake was
22 in possession of the furanylfentanyl.

23 What is an issue is whether Darcy Oake
24 knew that the furanylfentanyl was coming from outside
25 Canada; whether the furanylfentanyl caused the injuries
26 to Courtney Janes; and whether Darcy Oake was in
27 possession of the furanylfentanyl for the purpose of

1 trafficking.

2 The Crown's position is that the evidence
3 establishes beyond a reasonable doubt that Darcy
4 Oake purchased furanylfentanyl knowing that it was
5 coming from outside of Canada; that he intended to
6 traffic the furanylfentanyl; and that the furanylfentanyl
7 was a significant contributing cause of Courtney Janes'
8 bodily harm.

9 The Crown argues that Darcy Oake
10 should be found guilty of importing furanylfentanyl into
11 Canada; possession of furanylfentanyl for the purpose
12 of trafficking; and criminal negligence causing bodily
13 harm.

14 The Defence position is that there is no
15 evidence that Darcy Oake knew that the furanylfentanyl
16 he was ordering was coming from China or Hong Kong,
17 and that he thought it was coming from Canada
18 because the website was in English and the prices
19 were in Canadian dollars. He did not intend to import
20 furanylfentanyl into Canada.

21 The Defence also argues that Darcy
22 Oake is an addict who purchased the furanylfentanyl for
23 personal use. He gave some to Courtney Janes in
24 exchange for some Clonazepam, which is he why he
25 plead guilty to trafficking, but his intention was to
26 consume the furanylfentanyl himself.

27 With respect to the criminal negligence

1 causing bodily harm, the Defence argues that there is a
2 possibility that Courtney Janes ingested another drug,
3 like Clonazepam, which breaks the chain of causation
4 so that the furanylfentanyl did not cause Courtney
5 Janes' bodily harm.

6 The Defence argues that the evidence
7 does not prove beyond reasonable doubt that Darcy
8 Oake is guilty of importing furanylfentanyl; possession
9 of furanylfentanyl for the purpose of trafficking; or a
10 criminal negligence causing bodily harm, and he should
11 be found not guilty of those offences.

12 The Crown called eighteen witnesses
13 during the trial: Corporal Ben Fage, Constable James
14 Gallant, Constable Tyler Dunphy, Corporal William
15 Sturgeon, Corporal John Hartnett, Corporal Jason
16 Hancey, Constable Paul Mounsey, Dean Oake, Lori
17 Dashney, Courtney Janes, Samantha Janes, Barbara
18 Mezaros, Blaine McDonald, Dwight Carpenter, Sam
19 Anderson, Genevieve Benoit, Dr. Graham Jones, and
20 Dr. Jennifer Butler.

21 The Defence called Darcy Oake to testify.

22 There were a number of exhibits entered
23 as evidence, including agreed statements of facts,
24 photographs, a phone extraction report from Darcy
25 Oake's cell phone, a laptop extraction report from Dean
26 Oake's laptop, and medical records. I am not going to
27 summarize all of the evidence in my decision today, but

1 I will refer to significant portions of the evidence. I am
2 going to focus on the evidence that is relevant to the
3 issues that I have to decide. But in coming to my
4 decision, I have reviewed and considered all of the
5 evidence that was presented.

6 At the outset, I want to refer to several
7 fundamental principles that are applicable in all criminal
8 cases. The first is that Darcy Oake is presumed
9 innocent of these charges; he does not have the
10 burden of proving that he is not guilty. Darcy Oake is
11 considered innocent throughout the case. The
12 presumption of innocence means that the burden of
13 proof is on the Crown and always remains on the
14 Crown.

15 The second principle is the requirement
16 for proof beyond a reasonable doubt. The Crown is
17 required to prove each element of the offences beyond
18 a reasonable doubt. This is a high standard of proof;
19 probably, or likely guilt, is not proof of guilt beyond a
20 reasonable doubt. It is not proof to an absolute
21 certainty, but it is a very high standard of proof. A
22 reasonable doubt is not an imaginary, far-fetched, or
23 frivolous doubt. It is not a doubt based on sympathy or
24 prejudice. Instead, a reasonable doubt is a doubt
25 based on reason and common sense. It is a doubt that
26 comes logically from the evidence, or that comes from
27 the absence of evidence.

1 evidence, considered in the context of the evidence as
2 a whole, raises a reasonable doubt about his guilt. If
3 the evidence of the accused does not leave me in a
4 reasonable doubt, then I must consider whether I am
5 convinced of the guilt of the accused beyond a
6 reasonable doubt on the basis of the evidence that I do
7 accept.

8 In this case, some of the evidence
9 against Mr. Oake is circumstantial. In considering
10 circumstantial evidence, a trier of fact is asked to draw
11 certain inferences from the evidence. A verdict of guilty
12 based entirely or substantially on circumstantial
13 evidence cannot be reached unless the trier of fact is
14 satisfied beyond a reasonable doubt that guilt is the
15 only reasonable inference to be drawn from the whole
16 of the evidence.

17 In deciding whether the only reasonable
18 inference is that the accused is guilty, the trier of fact
19 must consider whether there are other reasonable
20 possibilities that are inconsistent with guilt. If there are
21 reasonable inferences other than guilt, the Crown's
22 evidence does not meet the standard of proof beyond a
23 reasonable doubt. *R. v. Villaroman*, 2016 SCC 33.

24 A gap in the evidence may lead to
25 inferences other than guilt, however those inferences
26 must be reasonable considering the evidence,
27 assessed logically and in light of human experience

1 and common sense. Other reasonable possibilities
2 must be based on logic and experience applied to the
3 evidence, or the lack of evidence, and not on
4 speculation. *Villaroman* at para. 36-37.

5 The Supreme Court of Canada in
6 *Villaroman* also cited the Alberta Court of Appeal
7 decision in *Dipnarine*, 2014 ABCA 328 at para. 29,
8 which held that “alternative inferences must be
9 reasonable and rational, not just possible.” A trier of
10 fact cannot base a decision on irrational or
11 unreasonable inferences.

12 These are some of the principles which
13 are applicable in this case.

14 Turning now to the elements of the
15 offences. In order to prove the offence of importing a
16 controlled substance, contrary to s. 6(1) of the
17 *Controlled Drugs and Substances Act*, the Crown must
18 prove each of these essential elements of the offence
19 beyond a reasonable doubt:

- 20 (1) That Darcy Oake imported a
- 21 substance into Canada;
- 22 (2) That the substance was
- 23 furanylfentanyl;
- 24 (3) That Darcy Oake knew that the
- 25 substance was furanylfentanyl; and
- 26 (4) That the importing was intentional.
- 27 Darcy acknowledged that he ordered

1 furanylfentanyl off of the internet and that the
2 furanylfentanyl came in a package with Hong Kong on
3 the label. He testified that he did not know that the
4 furanylfentanyl was coming from outside of Canada
5 and thought it was coming from within Canada. The
6 issue then for this offence is whether importing was
7 intentional, whether Darcy Oake knew that the
8 furanylfentanyl was coming from outside of Canada.

9 In order to prove the offence of trafficking
10 in furanylfentanyl contrary to s. 5(1) of the *Controlled*
11 *Drugs and Substances Act*, the Crown must prove each
12 of these essential elements of the offence beyond a
13 reasonable doubt:

- 14 (1) That the substance was a controlled
15 substance, namely furanylfentanyl;
- 16 (2) Darcy Oake trafficked in
17 furanylfentanyl;
- 18 (3) Darcy Oake knew the nature of the
19 substance; and
- 20 (4) Darcy Oake intentionally trafficked.

21 This offence is not in dispute. Darcy
22 Oake entered a guilty plea to this offence. When he
23 testified, Darcy Oake acknowledged that he gave
24 furanylfentanyl to Courtney Janes on November 23,
25 2016, in exchange for some of her Clonazepam.

26 In order to prove the offence of
27 possession for the purpose of trafficking contrary to s.

1 5(2) of the *Controlled Drugs and Substances Act*, the
2 Crown must prove each of these essential elements of
3 the offence beyond a reasonable doubt:

4 (1) That the substance was a controlled
5 substance, namely furanylfentanyl;

6 (2) That Darcy Oake was in possession
7 of the substance;

8 (3) That Darcy Oake knew the nature of
9 the substance; and

10 (4) That Darcy Oake possessed the
11 substance for the purpose of trafficking.

12 Darcy Oake acknowledged that he was in
13 possession of the furanylfentanyl, but denied that he
14 possessed it for the purpose of trafficking, claiming that
15 he had the furanylfentanyl for personal use. The issue
16 for this offence is whether Darcy Oake possessed the
17 furanylfentanyl for the purpose of trafficking.

18 In order to prove the offence of criminal
19 negligence causing bodily harm contrary to s. 221 of
20 the *Criminal Code*, the Crown must prove each of these
21 essential elements of the offence beyond a reasonable
22 doubt:

23 (1) Darcy Oake gave furanylfentanyl to
24 Courtney Janes;

25 (2) In giving furanylfentanyl to Courtney
26 Janes, Darcy Oake showed a wanton or
27 reckless disregard for the lives or safety

1 of others; and
2 (3) Darcy Oake's conduct caused bodily
3 harm to Courtney Janes.

4 Darcy Oake acknowledged that he gave
5 furanylfentanyl to Courtney Janes, and that the
6 Rhabdomyolysis that she suffered consisted bodily
7 harm, but argued that it has not been proven that the
8 furanylfentanyl caused her bodily harm, and that he did
9 not show wanton or reckless disregard for her life or
10 safety in giving her the furanylfentanyl.

11 The Crown has also argued that bodily
12 harm can result from the extended period of
13 unconsciousness that Courtney Janes experienced, in
14 addition to the Rhabdomyolysis that she suffered.
15 However, given the Defence's acknowledgement that
16 the effects of the Rhabdomyolysis consisted bodily
17 harm, it is not necessary to decide whether bodily harm
18 also resulted from the period of time Courtney Janes
19 was unconscious.

20 So there are four issues that are in
21 dispute following the trial and that must be decided:

- 22 (1) Whether Darcy Oake intentionally
23 imported the furanylfentanyl into Canada;
24 (2) Whether Darcy Oake possessed the
25 furanylfentanyl for the purpose of
26 trafficking;
27 (3) Whether, in giving Courtney Janes

1 the furanylfentanyl, Darcy Oake showed
2 a wanton or reckless disregard for her life
3 or safety; and

4 (4) Whether the furanylfentanyl caused
5 the bodily harm suffered by Courtney
6 Janes.

7 I have considered the other elements of
8 each of the offences and the acknowledgement by
9 Defence that those elements are not in dispute based
10 on the evidence. I have also considered the evidence
11 that has been presented in this trial and Darcy Oake's
12 testimony, acknowledging his conduct with respect to
13 those other elements, and as such, I do not intend to
14 review those elements and the evidence on those
15 elements in this decision in detail.

16 I have considered all of the evidence, and
17 I am satisfied that the other elements of each of the
18 offences have been proven beyond a reasonable
19 doubt. This decision will mainly focus on what is an
20 issue in this trial and the evidence applicable to those
21 issues.

22 The Crown must prove beyond a
23 reasonable doubt that Darcy Oake intended to import
24 furanylfentanyl into Canada. In considering the
25 meaning of importing, the ordinary meaning of the word
26 applies, which means, to bring the drugs into the
27 country or to cause the drugs to be brought into the

1 country, *Bell v. the Queen*, [1983] 2 S.C.R. 471 at 489.

2 In *Bell*, the Supreme Court of Canada
3 considered whether importing was complete once the
4 drugs had crossed the border into Canada, or whether
5 it was a continuing offence that was not complete until
6 the drugs reached its final destination in Canada. The
7 majority in *Bell* concluded that it was not a continuing
8 offence and was complete when the drugs entered the
9 country. The minority in *Bell* was of a different view.
10 Justice Dickson viewed the offence of importation as
11 follows (at page 481):

12 The elements of an offence of importing
13 are present as soon as the goods cross
14 the border, but the offence is not over
15 and done with until the goods have
16 reached their intended final destination
17 within Canada. Accordingly, a charge
18 could be laid relating to the point of entry
19 or of destination or anywhere in between.

20 In the more recent case of *R. v. Vu*, 2012
21 SCC 40, the Supreme Court of Canada revisited the
22 issue of continuing offences, this time in the context of
23 a kidnapping offence. The Court drew a distinction
24 between when an offence was complete in law and
25 when an offence was complete in fact, stating (at
26 paragraph 67) that:

27 Just because the offence was complete

1 in law does not mean that it was also
2 complete in fact.

3 Subsequent courts have considered the
4 reasoning in *Vu* in the context of importation cases, and
5 have concluded that:

6 While importing may be legally complete
7 on entry into Canada, it is not factually
8 complete until the contraband and its
9 carrier have cleared customs and thereby
10 become available to their ultimate
11 recipient.

12 *R. v. Foster*, 2018 ONCA 53 at paragraph
13 106.

14 In *R. v. Onyedinefu*, 2018 ONCA 795 at
15 para. 8, the Ontario Court of Appeal described
16 importing as:

17 A process that begins with the
18 procurement of the contraband, its
19 transport to a point of entry, and
20 ultimately to a domestic destination or
21 recipient.

22 While the offence of importation may be
23 considered to be legally complete at the time that the
24 drugs cross the border or are transported to a point of
25 entry, it is now not considered factually complete until
26 the drugs have cleared customs and are available to
27 the intended recipient: *R. v. Badu*, 2019 ABQB 68.

1 to do so because he did not want to know the truth
2 about it.

3 Darcy Oake testified that he ordered the
4 furanylfentanyl off a website on the internet. He was
5 interested in purchasing drugs from the internet and
6 thought maybe he could get drugs cheaper by ordering
7 from the internet. He began by searching using
8 Google, using regular internet browsers. During this
9 process, he came across instructions about how to buy
10 drugs on the darkweb using a Tor browser and similar
11 programs. Darcy Oake eventually downloaded the Tor
12 browser. He testified that he thought the website that
13 he used to purchase the furanylfentanyl was Black
14 Market Reloaded or Black Market v2.0, which I will refer
15 to as the drug website.

16 The drug website required payment in
17 bitcoins. Darcy Oake went to a website called
18 localbitcoins.com and set up a trade to purchase
19 bitcoins. Once the trade was set up, he was sent
20 instructions on how to pay for the bitcoins. Once
21 payment was sent, then the bitcoins would be released
22 to Darcy Oake's account on the localbitcoins.com site.
23 In this case, Darcy Oake deposited \$550 to a bank
24 account at TD Canada Trust on October 21, 2016. He
25 was instructed to then write "No Refunds" on the receipt
26 and send a picture of the receipt to the person selling
27 the bitcoins.

1 Darcy Oake initially planned to buy Xanax
2 and knew from his internet research that they went for
3 between two and five dollars a pill, so he planned to
4 buy 100 or more Xanax. He purchased an extra \$50 in
5 bitcoins because the price of bitcoins fluctuated, he
6 explained, and he wanted to ensure that he would have
7 enough bitcoins in case the price fluctuated.

8 Darcy Oake testified that once he had the
9 bitcoins, he went on the drug website. There, the
10 prices were displayed in Canadian dollars. Xanax was
11 offered on the website and he thought it was a 100
12 Xanax for \$200 Canadian. Once he realized that the
13 Xanax was going to be cheaper than he had
14 anticipated, Darcy Oake started to look at other items
15 on the drug website. He noticed that furanylfentanyl
16 was advertised for sale, and ten grams could be
17 purchased for \$200. He clicked on the description and
18 it said it was ten times less potent than fentanyl.
19 Furanylfentanyl did not have any customer reviews,
20 unlike some of the other products, so he was skeptical
21 about whether he would receive the furanylfentanyl, but
22 he decided to purchase and see if it would come. There
23 was a little bit of money left over, so he decided to
24 purchase some cigarettes as well.

25 Darcy Oake testified that he ordered the
26 drugs and cigarettes. He sent bitcoins to pay for the
27 transaction to the address for payment listed on the

1 drug website. Darcy Oake testified that he
2 communicated with the seller using PGP4win, which is
3 an encrypted message system. He sent this person his
4 name and mailing address, so that the packages could
5 be shipped to him. The shipper sent back three
6 tracking numbers.

7 Darcy Oake testified that he did not know
8 where the person he sent the bitcoins to was located.
9 He also testified that the site was in English and was
10 displaying prices in Canadian dollars, so he assumed
11 the drugs were coming from Canada. Darcy Oake
12 testified that there was nothing on the website that
13 indicated where the furanylfentanyl was coming from.

14 Darcy Oake testified that he copied and
15 pasted the three tracking numbers into a text message,
16 or a text document on his computer. He thought that
17 after the Xanax arrived, he deleted the tracking number
18 for that package.

19 Once Darcy Oake received the tracking
20 numbers from the seller, he used them to track the
21 packages on the Canada Post website. He testified
22 that the package with the RC tracking number was not
23 working on the Canada Post website. He initially
24 thought that the Canada Post website had not been
25 updated yet, and waited to check the number again.
26 When he checked the RC tracking number again, it still
27 did not work. He then put the RC tracking number in

1 Google. Google returned a tracking site, which was a
2 Hong Kong tracking site or perhaps China, he thought.
3 The only information that showed for the package was
4 that it was shipped. At that point, Darcy Oake
5 suspected that the package was coming from outside
6 of Canada. He testified as follows:

7 Question: And what did you learn about
8 your package at that point?

9 Answer: Well, I thought maybe this is --
10 maybe it's coming from Hong Kong or
11 China, maybe...

12 The package of Xanax arrived a week
13 and a half after Darcy Oake placed the order. The third
14 and fourth week after placing the order, Darcy Oake
15 had not received the furanylfentanyl and was
16 wondering about the package. The tracking site was
17 not showing any updates. Darcy Oake thought he had
18 gotten ripped off.

19 Darcy Oake testified he sent a message
20 through the encrypted mail program to the seller, telling
21 the seller the furanylfentanyl had not arrived, and
22 asking about it. He stated that he wanted to, "maybe,
23 like, get my money back or something, and see what
24 happened".

25 A few hours later, he got a response.
26 The seller responded that the tracking number did not
27 seem to be working and to wait a couple more days

1 and see if the package arrived. Darcy Oake waited a
2 couple more days and the package did not arrive. He
3 messaged the seller again, saying that the package still
4 had not arrived. The seller later responded with a
5 message saying that a replacement package had been
6 sent, and provided a tracking number for the second
7 package.

8 The tracking number was
9 EA172312646CN. For convenience, I will refer to this
10 number as the EA tracking number, and I do not think
11 that there is any issue regarding the accuracy of this
12 number or that this was the tracking number that the
13 witnesses were referring to in their testimony.

14 Similarly, with the package with the
15 RC891008003HK tracking number, I do not believe
16 there is any issue with this one as well, and I have and
17 will continue to refer to this as the RC tracking number.

18 Darcy Oake copied the EA tracking
19 number into the same text document on his computer.
20 The next day, he testified, on November 23, 2016, the
21 original package of furanylfentanyl arrived. The
22 cigarettes also arrived the same day.

23 The package with the EA tracking
24 number was mailed from China on November 21, 2016.
25 It arrived at Vancouver on November 24, 2016, where it
26 was sent for customs review. At approximately 12:20
27 pm on November 27, 2016, a Canadian Border

1 Services Agency Officer seized the parcel containing
2 furanylfentanyl at the CBSA Screening Facility in
3 Richmond, British Columbia. The parcel was
4 addressed to Darcy Oake.

5 The package with the RC tracking
6 number was dispatched from Hong Kong on October
7 28, 2016, according to Canada Post tracking. The
8 package was next processed at a postal facility in
9 Edmonton, on November 17, 2016. An opened
10 envelope with the RC tracking number on a label that
11 also said Hong Kong on it and addressed to Darcy
12 Oake, at his father's address, was located by the police
13 in a garbage in the garage, at Darcy Oake's residence,
14 on November 25, 2016.

15 Corporal Hancey was qualified as an
16 expert in the acquisition, examination and analysis of
17 digital evidence. He conducted a forensic examination
18 of the laptop seized at Darcy Oake's residence. The
19 laptop belonged to Dean Oake, and Darcy Oake
20 acknowledged that he regularly used the laptop, and he
21 said he used the laptop to purchase the bitcoins and
22 furanylfentanyl, to communicate with the seller, and to
23 monitor the shipping progress of the packages.

24 Corporal Hancey's examination of the
25 laptop did not reveal any information which would
26 indicate which website Darcy Oake used to purchase
27 the furanylfentanyl, whether he would have known

1 where the seller was located, or whether he would have
2 known that the furanylfentanyl was coming from outside
3 Canada at the time of purchase.

4 In his examination of the laptop, Corporal
5 Hancey located multiple hits for keywords, including the
6 RC tracking number, the EA tracking number, Hong
7 Kong, China Post, Canada Post, and Hong Kong Post.
8 Corporal Hancey located a text document on the laptop
9 which contained the two tracking numbers: the EA
10 tracking number and the RC tracking number.

11 In examining the laptop, Corporal Hancey
12 also located a URL which showed that the website
13 www.hongkongpost.hk/mail_tracking was last accessed
14 by someone using the computer on October 29, 2016.
15 This is all consistent with Darcy Oake's evidence that
16 once he received the tracking numbers, he began to do
17 searches trying to track the packages.

18 Courtney Janes was a friend of Darcy
19 Oake's and visited him during the time he was either
20 researching or purchasing the bitcoins for
21 furanylfentanyl. In her evidence, she said that she
22 thought the furanylfentanyl came from China. Her
23 evidence on this point was as follows:

24 Question: Ms. Janes, do you know
25 where Mr. Oake got the furanylfentanyl?
26 Answer: I don't know. Like, I think it
27 came from China. I'm not -- I'm

1 hundred -- not a hundred percent sure.
2 Question: Well, why do you say this?
3 Why do you say China?
4 Answer: Why? What do you mean?
5 Like, how I know that?
6 Question: Yes. How do you know that?
7 Answer: Because I was there when he
8 ordered it online.
9 Later she was asked again about where
10 the furanylfentanyl came from:
11 Question: Okay. And so you started off
12 saying, when I asked you if you knew
13 where Mr. Oake got the fentanyl, by
14 saying from China. So why -- why do you
15 -- what did you see or hear that made you
16 think that it was coming from China?
17 Answer: I'm pretty sure I'd seen it on the
18 website and that's why it took so long for
19 it to get here, because the Xanax got
20 here, like, a couple weeks before
21 fentanyl did.
22 Question: What did you see on the
23 website?
24 Answer: What do you mean?
25 Question: Well, you said you're pretty
26 sure you saw it on the website.
27 Answer: Oh, on the side it says where

1 it's coming from and the weight and price.
2 Question: Did Mr. Oake ever discuss
3 with you where it was coming from after
4 the order?

5 Answer: I don't remember.

6 In cross-examination, Courtney Janes
7 reiterated that she was pretty sure that the fentanyl that
8 Darcy Oake ordered came from China or Hong Kong.
9 Later when asked if she knew the fentanyl Darcy Oake
10 ordered was coming from China, she said, "Not now, I
11 don't know".

12 It was clear from Courtney Janes'
13 evidence that while she testified that she was present
14 when Darcy Oake ordered the drugs, she was not
15 paying close attention to the process. She testified that
16 she was looking back and forth as Darcy Oake was on
17 the drug website, and she was not watching him the
18 whole time he was on the computer. She was
19 uncertain about a number of things regarding the
20 transaction, including how much Darcy Oake ordered
21 and how much the drugs cost. Ultimately, she was not
22 sure where the drugs were coming from.

23 Considering the evidence on this issue, I
24 am unable to reject Darcy Oake's evidence that he did
25 not know the fentanyl was coming from outside
26 Canada when he ordered it. Even if there were a
27 reason to reject Darcy Oake's evidence on this point,

1 there is no evidence to conclusively establish that
2 Darcy Oake purchased furanylfentanyl knowing that it
3 was coming from outside Canada.

4 While I cannot conclude that Darcy Oake
5 was aware that the furanylfentanyl was coming from
6 outside Canada at the time he ordered it, the evidence
7 does establish that he became aware of this shortly
8 after he placed the order and long before he received
9 the furanylfentanyl.

10 The package with the RC tracking
11 number was shipped on October 28, 2016, from Hong
12 Kong, and the forensic examination of the laptop shows
13 that by the next day, Darcy Oake had accessed the
14 hongkongpost.hk mail tracking website. He testified
15 that he began by searching the tracking number on the
16 Canada Post website. When the RC tracking number
17 did not work on the Canada Post site, he entered the
18 number in Google and the Hong Kong tracking site
19 came up. At that point, he thought, "maybe it's coming
20 from Hong Kong or China."

21 In cross-examination, Darcy Oake
22 testified:

23 Question: Right. And when did you start
24 checking hongkongpost.hk?

25 Answer: Like I said, it was like I -- I had
26 tried using the first number, that RC one,
27 in the Canada Post website. And then it

1 wasn't working, like I said. And then like I
2 said, I thought it would maybe be
3 updated. I thought maybe it wasn't
4 working or something. And then, so I, it
5 was like maybe the next day that I
6 punched it into Google -- the tracking
7 number. And then it came up with a link
8 for a Hong Kong tracking, or some kind of
9 tracking website for China or something.
10 Question: Right. So at that point you
11 knew that the package was coming from
12 Hong Kong?

13 Answer: I knew, yeah. But like I said, it
14 was like -- it was like -- it was like I was
15 still kind of skeptical because it didn't
16 show any tracking updates.

17 I am satisfied beyond a reasonable doubt
18 that by October 29, 2016, Darcy Oake knew that the
19 furanylfentanyl was coming from outside of Canada; he
20 knew that the furanylfentanyl was coming from either
21 Hong Kong or China. I am also satisfied beyond a
22 reasonable doubt that in subsequent exchanges with
23 the seller, he would have known or suspected that the
24 second package was also coming from outside of
25 Canada.

26 Darcy Oake contacted the seller when
27 the first package did not arrive and inquired about the

1 package. He stated that his purpose in contacting the
2 seller was that he wanted his money back or
3 something. Darcy Oake did not solicit a replacement
4 package and did not explicitly ask the seller for his
5 money back. He stated that he simply messaged the
6 seller that the package had not arrived, and when that
7 package had not arrived a few days later, he again
8 messaged the seller that the package had not arrived.
9 Darcy Oake's actions in messaging the seller twice
10 about the package not arriving caused a replacement
11 package to be sent. When informed that a replacement
12 package had been sent and provided with the tracking
13 number, Darcy Oake copied and pasted the EA
14 tracking number into the text document. It is apparent
15 that he wanted the furanylfentanyl and was not
16 concerned with whether it was being sent from Canada
17 or from another country.

18 The offence of importation was legally
19 complete when the package entered into Canada and
20 factually complete when it was placed in the mailbox
21 and retrieved by Darcy Oake. The package with the
22 RC tracking number entered Canada on November 17,
23 2016, in Edmonton, and the package with the EA
24 tracking number entered Canada on November 21,
25 2016, in Vancouver. The package with the RC tracking
26 number was placed in Dean Oake's mailbox and picked
27 up by Darcy Oake on November 23, 2016. Prior to any

1 of these dates, Darcy Oake knew that the
2 furanylfentanyl he ordered was coming from outside of
3 Canada. For these reasons, I am satisfied beyond a
4 reasonable doubt that Darcy Oake intended to import
5 furanylfentanyl into Canada.

6 Now the Crown must prove beyond a
7 reasonable doubt that the accused possessed the
8 furanylfentanyl for the purpose of trafficking. Often in
9 cases where an accused is facing a charge of
10 possession for the purpose of trafficking, the Crown will
11 call expert evidence to assist the Court in making the
12 determination of whether the possession of the drugs
13 by the accused is consistent with possession for the
14 purpose of trafficking.

15 In this case, the Crown called Constable
16 Paul Mounsey who was qualified as an expert in: the
17 methods of distribution, packaging and consumption of
18 cocaine and opioids; the pricing of cocaine and opioids;
19 the language and paraphernalia associated with
20 cocaine and opioids; and drug jargon in general.

21 The Defence contested Corporal
22 Mounsey's qualifications and cross-examined him
23 extensively on them. The challenge of the Defence
24 was whether the officer was a properly qualified expert
25 in the area of fentanyl or furanylfentanyl. I ruled that
26 the officer was qualified and that some of the issues
27 that Defence counsel had raised went to the weight to

1 be given to Constable Mounsey's opinion. And I will
2 not repeat my reasons and I do not intend to add to
3 those reasons, although I had given that idea some
4 consideration.

5 In closing submissions, the Crown
6 conceded that Corporal Mounsey's evidence was
7 problematic in many respects, and stated that the
8 Crown was not relying on the Officer's evidence for the
9 proposition that possession for the purpose of
10 trafficking had been proven beyond a reasonable
11 doubt.

12 In light of this concession, I do not intend
13 to review Corporal Mounsey's evidence other than to
14 note that the cross-examination of Corporal Mounsey
15 revealed a number of problems with his evidence
16 regarding fentanyl and furanylfentanyl, and the base of
17 knowledge used to come to his opinion. It conflicted
18 with the evidence of Dr. Jones, a toxicologist, in some
19 respects. But I would also note that Dr. Jones also
20 testified that furanylfentanyl had not been scientifically
21 tested like fentanyl has, and the conclusions regarding
22 its potency are based in part on anecdotal evidence.

23 In any event, there were enough
24 problems with Corporal Mounsey's evidence that I
25 would be reluctant to use it to come to the conclusion
26 that Darcy Oake possessed the furanylfentanyl for the
27 purpose of trafficking, so I have not considered

1 Corporal Mounsey's evidence in my analysis on this
2 issue.

3 Trafficking is considered broadly. It does
4 not mean just to sell, but it also covers activities such
5 as giving or delivering drugs to someone. It is not
6 required that the accused profits from the activity.
7 Therefore, to traffic can mean to sell, administer, give,
8 transfer, transport, send, or deliver something to
9 someone.

10 Darcy Oake testified that he did not have
11 the intention of selling or giving away the
12 furanylfentanyl. He purchased the furanylfentanyl on
13 the internet so that he could get it cheaper for himself
14 than buying drugs on the street. He explained that he
15 gave the furanylfentanyl to Courtney Janes in
16 exchange for Clonazepam because she was always
17 asking him and he eventually gave in. He testified
18 about this as follows:

19 Question: How is it that the transaction
20 with Courtney came to take place?

21 Answer: Well, like, it -- she was -- she
22 was always asking me, like I said. I think
23 that day even she had asked me if I had
24 it, and I told her I did, and she wanted
25 some, and I told her no, initially, like I
26 said. And then after her constant --
27 constantly asking me, nagging me, I

1 guess, like begging me, pretty much, I
2 gave in and I gave her some.

3 Other evidence adduced in the trial
4 contradicted Darcy Oake's assertion that he did not
5 intend to traffic the furanylfentanyl. The forensic
6 analysis of Darcy Oake's cell phone, conducted by
7 Corporal Hancey, contained a number of text message
8 exchanges with several people.

9 Darcy Oake had an exchange with
10 someone labelled "Big" on his cellphone. On
11 November 2, 2016, they had a text exchange regarding
12 selling the furanylfentanyl:

13 16:13:07, Darcy Oake to Big:

14 And I'm going to test the fent wit u
15 when it comes

16 16:13:14, Darcy Oake, again, to Big:
17 Free.

18 16:16:12, Big in response to Darcy Oake:

19 Sweet bro that would be awesome
20 and I will bring a bunch of paper as well.

21 Please don't tell a soul when it gets in.

22 Just tell me cuz we will test everything
23 and if it's good I will just buy everything

24 that u want to sell. I will buy everything

25 bro lol but don't tell a soul.

26 16:17:23, Darcy Oake to Big:

27 Yes my plan exactlyp

1 Later, on November 2, 2016, at 17:49:10,
2 Darcy Oake texts Big:

3 And I'm giving u free samples on the
4 fennies when there here.

5 Big and Darcy Oake have several
6 conversations through text messages about the
7 purchase of drugs and it is apparent that Darcy Oake
8 purchased or attempted to purchased drugs from Big
9 on several occasions.

10 Darcy Oake also had text exchanges with
11 someone labelled Tamara Marie on his telephone
12 about what appeared to be drug transactions between
13 October 2, 2016 and November 22, 2016. It appears
14 that Darcy Oake facilitated a drug transaction between
15 Tamara Marie and someone, in which Tamara Marie
16 got ripped-off, getting less than what she had paid for.
17 Many of the text exchanges involving Tamara Marie
18 asking about getting either her money back or the
19 missing drugs, and Darcy Oake promising Tamara
20 Marie that the situation would be taken care of.

21 On October 12, 2016, Darcy Oake texted
22 Tamara Marie stating:

23 21:13:58: Ya I kno fkin idiot and then
24 leaves town trying to sell weed and ur
25 2nd person he ripped off, he got the other
26 ppl back tho

27 21:14:53, again, Darcy Oake to Tamara

1 Marie:
2 Like believe me I'm fkin choked too,
3 gonna have to pay this if he doesn't, and
4 then in defiantly not gonna f wit him
5 anymore if I gotta pay it.

6 At 21:16:06, again, Darcy Oake to

7 Tamara Marie:

8 And I kno this is my fault cause u
9 asked me to get it not him, so I will make
10 it right thanks for bearing wit me, and
11 stupid thing is too I have him the whole
12 1000.

13 21:16:13, again, Darcy Oake to Tamara

14 Marie:

15 Didn't even make a dime.

16 Eventually Darcy Oake texts Tamara
17 Marie that he will probably have to be the one to get her
18 back when she continues to text him and he is unable
19 to get the other person to compensate her.

20 Later, Darcy Oake and Tamara Marie text
21 about a planned trip, driving, where they would go with
22 someone and split the cost. This is November 10,
23 2016, before the furanylfentanyl arrives. Darcy Oake
24 texts Tamara Marie, that he, "might not have enough
25 I'm waiting on mail".

26 Courtney Janes' evidence was also that
27 Darcy Oake was going to sell the furanylfentanyl. She

1 testified that he was going to sell the furanylfentanyl
2 because he was in debt and needed to make money.
3 She testified that she purchased Xanax from Darcy
4 Oake a week or two before she got the furanylfentanyl
5 from him.

6 She also testified that when Darcy Oake
7 texted that he was not going to front her the
8 furanylfentanyl, he also said that he needed money and
9 he was not going to fuck this up like he did the other
10 one. This text exchange between Courtney Janes and
11 Darcy Oake was located on Darcy Oake's cell phone.
12 It occurred on November 23, 2016, as follows:

13 At 18:37:51, Courtney Janes to Darcy
14 Oake:

15 If I can only get those pam's till tomorrow
16 will you trade me, then tomorrow I'll buy
17 some?? Pleaaseeeee, you know I'd do it
18 for you.

19 At 18:38:15, Courtney Janes, again, to
20 Darcy Oake:

21 Ad you promises you'd let me know when
22 it was in ans you didn't ... wth, bruh.

23 At 18:43:20, Darcy Oake responded to
24 Courtney Janes:

25 wth, I didn promise u.

26 At 18:43:36, Darcy Oake again to
27 Courtney Janes:

1 just said be really careful with it. Don't do a lot."

2 Courtney Janes explained that she was
3 really out of it when she spoke to the police. The
4 questions and the statement of Courtney Janes which
5 preceded that question related to Darcy Oake providing
6 her with furanylfentanyl in the garage.

7 The inconsistency in Courtney Janes'
8 evidence regarding whether Darcy Oake mentioned
9 that he was considering selling the furanylfentanyl to
10 anybody else does cause me some concern. Her
11 statement to the police was taken on November 25,
12 2016, at the hospital. Her explanation was that she
13 was still out of it is a plausible one. Courtney Janes
14 had also just experienced a significant medical incident.
15 Her evidence was that after taking the furanylfentanyl,
16 she did not remember going home, and her next
17 memory was waking a day later being unable to walk.
18 There is a possibility that the furanylfentanyl affected
19 Courtney Janes' memory of events prior to her
20 ingesting it.

21 In the circumstances, were this the only
22 evidence of Darcy Oake's intention to sell the
23 furanylfentanyl I would not be satisfied solely on
24 Courtney Janes' evidence of Darcy Oake's intentions.
25 In considering this evidence, I do not accept Darcy
26 Oake's evidence that he did not intend to sell the
27 furanylfentanyl.

1 giving Courtney Janes furanylfentanyl, where he
2 testified in detail about these topics. In testifying about
3 these areas, Darcy Oake's evidence was much more
4 detailed and sure than evidence like the text messages
5 which tended to implicate him.

6 For these reasons, I reject Darcy Oake's
7 evidence on this issue, and his evidence, when
8 considered in the context of the evidence as a whole,
9 does not raise a reasonable doubt. While Courtney
10 Janes may have owed money to Darcy Oake for the
11 Xanax, or for another reason and his text that he was
12 not fronting her could have been a reference to that. It
13 could also indicate that Darcy Oake was not fronting
14 anyone and was planning on selling the furanylfentanyl.

15 Just prior to Darcy Oake texting Courtney
16 Janes that he would not front her, he also texted her,
17 telling her to see if she could get some money together.
18 When considered with the evidence contained in the
19 other text messages, it is likely that this reference was
20 that he was not fronting anyone, including Courtney
21 Janes, and was going to sell the furanylfentanyl.

22 Considering the other evidence, the text
23 message exchanges with Big, Courtney Janes and
24 Tamara Marie, and Courtney Janes' evidence, these all
25 demonstrate that Darcy Oake was having money
26 issues, he was in debt, he is an addict who was
27 purchasing drugs, and he was planning on selling the

1 furanylfentanyl to make some money. I am satisfied
2 beyond a reasonable doubt that Darcy Oake
3 possessed the furanylfentanyl for the purpose of
4 trafficking.

5 Darcy Oake was using the furanylfentanyl
6 personally, as the two overdoses he experienced attest
7 to, but he also had another purpose in possessing the
8 furanylfentanyl. In addition to supplying himself with the
9 furanylfentanyl, he intended to sell some of the
10 furanylfentanyl in order to make some money.
11 Given his addictions, it is likely that the money he made
12 from selling the furanylfentanyl would have been used
13 to purchase other drugs.

14 Turning now to the criminal negligence
15 causing bodily harm charge. As I mentioned, there are
16 two issues to be considered for this charge.

17 To show that Darcy Oake showed a
18 wanton or reckless disregard for the lives or safety of
19 others, in this case Courtney Janes, the Crown does
20 not have to prove that Darcy Oake meant to kill or
21 seriously harm Courtney Janes, or anybody else.
22 Rather, the Crown must prove beyond a reasonable
23 doubt that:

24 (1) The accused's conduct represented a
25 marked and substantial departure from
26 the conduct of a reasonable person in the
27 circumstances; and

1 (2) A reasonable person in the same
2 circumstances would have foreseen that
3 their conduct posed a serious risk to the
4 lives or safety of others, or alternatively
5 gave no thought to that risk. *R. v. J. F.*,
6 2008 SCC 60 at paras. 7-9.

7 The accused's conduct is measured
8 against an objective standard, specifically what a
9 reasonable person would have done or foreseen in the
10 circumstances. The test is a modified objective test, as
11 elaborated in *R. v. Creighton*, [1993] 3 S.C.R. 3 by
12 Chief Justice Lamer, at page 26:

13 The Crown bears the burden of proving
14 beyond a reasonable doubt that a
15 reasonable person in the context of the
16 offence would have foreseen the risk of
17 death created by his or her
18 conduct ...[T]he reasonable person will
19 be invested with any enhanced foresight
20 the accused may have enjoyed by virtue
21 of his or her membership in a group with
22 special experience or knowledge related
23 to the conduct giving rise to the
24 offence.... In the present case, the
25 reasonable person should be deemed to
26 possess Mr. Creighton's considerable
27 experience in drug use. Once the Crown

1 has established beyond a reasonable
2 doubt that this reasonable person in the
3 context of the offence would have
4 foreseen the risk of death created by his
5 or her conduct, the focus of the
6 investigation must shift to the question of
7 whether a reasonable person in the
8 position of the accused would have been
9 capable of foreseeing such a risk.

10 While *Creighton* and *J. F.* and many of
11 the other cases deal with charges involving criminal
12 negligence causing death, the principles with respect to
13 the accused's conduct are equally applicable to
14 charges of criminal negligence causing bodily harm.

15 The conduct in this case is Darcy Oake
16 providing furanylfentanyl to Courtney Janes. Darcy
17 Oake received the furanylfentanyl on November 23,
18 2016, and he testified he took the package back to the
19 garage and laid out two lines of furanylfentanyl. He
20 snorted the first line, waited a bit, then snorted the
21 second line. He then went to take his dog for a walk
22 and he started blacking out. He staggered across the
23 street and collapsed in the snow. A passerby saw him
24 and called an ambulance.

25 Darcy Oake woke up in the hospital. The
26 medical records show he was treated with Narcan
27 before being discharged under his mother's care that

1 afternoon. The emergency room doctor spoke to him
2 about the dangers of fentanyl while he was in the
3 hospital.

4 After he was discharged from the
5 hospital, Darcy Oake testified he was still getting high
6 on the furanylfentanyl, but doing a lot less than he had.
7 He was not weighing it, initially, but he testified that it
8 looked like less. Later he did use a scale to try and
9 weigh out a point, or a tenth of a gram, so that he knew
10 how much he was doing.

11 Darcy Oake testified that the
12 furanylfentanyl was really powerful and he told
13 Courtney Janes to be super careful with it. Darcy Oake
14 prepared the line of furanylfentanyl for Courtney Janes
15 in the garage, and when she came over she snorted
16 the furanylfentanyl. He testified that he wanted to put
17 out an amount for her that would not be too much. He
18 testified that he put out, “a few grains of the stuff for
19 her,” and that it “wasn’t even really a line”.

20 In determining how much to give
21 Courtney Janes, he testified, “well, based on what, like,
22 the amounts I was doing and then that I’d OD’d and I
23 did way too much, and then so I weighed out like a
24 point, and then I took like a tiny portion of that to give to
25 her”.

26 In cross-examination, Darcy Oake said it
27 was a very, very, very tiny line of furanylfentanyl that he

1 laid out for Courtney Janes in the garage. After
2 Courtney Janes snorted the furanylfentanyl, she asked
3 him for more and he gave her some furanylfentanyl on
4 a piece of paper in exchange for 15 to 20 Clonazepam.

5 Darcy Oake testified that he told
6 Courtney Janes in person to be careful not to mix the
7 furanylfentanyl with any of her medication, and to do a
8 tiny, tiny amount. Darcy Oake also testified that he told
9 Courtney Janes on the phone that he did not want to
10 give the furanylfentanyl to her because he had
11 overdosed.

12 The text messages between Darcy Oake
13 and Courtney Janes demonstrate that Courtney Janes
14 was eager to try the furanylfentanyl and she
15 acknowledged that in her testimony.

16 Prior to Courtney Janes going over to
17 Darcy Oake's house, she tested him, asking if the stuff
18 was good. Darcy Oake responded, "it is insane," "I will
19 show u" and then, "u have to be super careful."
20 Courtney Janes testified that when she arrived at the
21 garage, Darcy Oake was there. He told her about how
22 he overdosed on the fentanyl earlier that day, and told
23 her to be, "really, really careful with it". Courtney Janes
24 testified that she was not really concerned about taking
25 the furanylfentanyl because she figured she was going
26 to be okay.

27 Courtney Janes testified that Darcy Oake

1 had laid out a big line of furanylfentanyl for her. Bigger
2 than the lines of fake OxyContin that she had done with
3 him in the past. She snorted the line of furanylfentanyl
4 that he laid out for her. After that, she kind of
5 remembered walking out the door. Courtney Janes'
6 memory of what occurred in the garage was somewhat
7 vague. She could not recall the details of the
8 conversation she had with Darcy Oake, and she was
9 unsure about how she had provided the Clonazepam to
10 Darcy Oake, whether she had counted out the
11 Clonazepam at Darcy Oake's, at Walmart, or in Dwight
12 Carpenter's vehicle. Courtney Janes did remember
13 that Darcy Oake went upstairs to get more
14 furanylfentanyl for her to take with her, and he gave her
15 a piece of paper with the furanylfentanyl in it.

16 Darcy Oake testified in direct examination
17 that he snorted furanylfentanyl on November 23rd
18 before he overdosed. In cross-examination he said he
19 snorted one pretty big line of furanylfentanyl. Then he
20 said that he actually did two big lines. He snorted the
21 first line, waited a bit, and then snorted the second line.
22 However, he texted Big while in the hospital that day,
23 that he only did "a tiny line".

24 This inconsistency and other concerns I
25 have previously stated with respect to Darcy Oake's
26 evidence cause me to question how much
27 furanylfentanyl Darcy Oake prepared for Courtney

1 Janes. Did he prepare only a tiny, tiny, tiny line, as he
2 testified, or was it a big line, as Courtney Janes
3 testified. I suspect that it was not a tiny, tiny line, but
4 was larger than Darcy Oake is willing to admit now. In
5 any event, the precise size of the line Darcy Oake laid
6 out for Courtney Janes is not determinative on this
7 issue.

8 In reviewing the evidence, the question is
9 whether a reasonable person in these circumstances
10 and with Darcy Oake's experience in drug use would
11 have been aware of the risk to the life or safety of
12 Courtney Janes by providing her with furanylfentanyl.
13 Objectively, the risk would have been obvious to a
14 reasonable person in the circumstances. Darcy Oake
15 had received the package of furanylfentanyl earlier that
16 day and had immediately opened the package and
17 snorted the substance which he had no assurance was
18 furanylfentanyl. He apparently had little knowledge
19 about the dangers of fentanyl and his only evidence
20 regarding the furanylfentanyl was that the website
21 indicated that it was ten-times less potent than fentanyl.

22 The website itself was a website on the
23 darkweb. Darcy Oake was not sure of the name, and
24 he had no familiarity with the supplier. Assuming that it
25 can somehow be said that a drug dealer can be
26 reputable, Darcy Oake had no assurance about the
27 quality of the product he was receiving from this

1 supplier.

2 It is clear from the evidence that Darcy
3 Oake was subjectively aware that the furanylfentanyl
4 posed a serious and obvious risk to the life or safety of
5 Courtney Janes. Darcy Oake had overdosed on the
6 furanylfentanyl earlier that day, and he had been
7 advised about the general risks of fentanyl at the
8 hospital. Darcy Oake was an experienced drug user
9 and he had used drugs with Courtney Janes on several
10 occasions prior to this.

11 Both Darcy Oake and Courtney Janes
12 testified that he told her to be careful, super careful, or
13 really, really careful with the furanylfentanyl. I conclude
14 that Darcy Oake knew that he was giving Courtney
15 Janes a drug that was dangerous and capable of
16 causing her death or serious bodily harm. He knew
17 there was a very real risk that she could overdose. He
18 knew this because he had overdosed on the same drug
19 less than 12 hours before. Despite this, Darcy Oake
20 provided Courtney Janes with furanylfentanyl. He
21 warned her about the furanylfentanyl, but ultimately he
22 willingly prepared a line that she snorted. He gave her
23 more furanylfentanyl to take with her, and let her walk
24 out of his garage. He took no steps to ensure that she
25 was okay before she left his garage.

26 I find that the accused's conduct
27 represented a marked and substantial departure from

1 the conduct of a reasonable person in the
2 circumstances. A reasonable person in Darcy Oake's
3 circumstances would have foreseen the obvious risk to
4 Courtney Janes' life and safety. In my view, Darcy
5 Oake's conduct showed a wanton or reckless disregard
6 for the life or safety of Courtney Janes.

7 To prove that Darcy Oake caused bodily
8 harm to Courtney Janes, the Crown must prove beyond
9 a reasonable doubt that Darcy Oake's conduct
10 contributed significantly to the bodily harm Courtney
11 Janes suffered.

12 The law with respect to causation was
13 summarized in *R. v. Hass*, 2016 MBCA 42, and while it
14 is a lengthy quote, it is a helpful summary of the law:

15 The test for causation in manslaughter is
16 whether an accused person's actions
17 were a "contributing cause of death
18 outside the *de minimis* range". This test
19 has also been expressed as a "significant
20 contributing cause" or "substantial
21 cause." As explained in *Nette*, causation
22 has two components -- factual causation
23 and legal causation.

24 Factual causation concerns "an inquiry
25 about how the victim came to his or her
26 death in a medical, mechanical, or
27 physical sense, and with the contribution

1 of the accused to that result.”
2 Furthermore, “factual causation is not
3 limited to the direct and immediate cause,
4 nor is it limited to the most significant
5 cause.” In any given case, the trier of
6 fact will have to make an assessment of
7 the medical cause of death and consider
8 the contribution of the accused to that
9 result, usually by asking whether the
10 deceased would have died but for the
11 actions of the accused.

12 Legal causation is “directed at the
13 question of whether the accused person
14 should be held criminally responsible for
15 the consequences that occurred.” It is
16 based on “concepts of moral
17 responsibility and is not a mechanical or
18 mathematical exercise.” As stated by
19 Karakatsanis in *Maybin*:

20 Any assessment of legal causation
21 should maintain focus on whether
22 the accused should be held legally
23 responsible for the consequences
24 of his actions, or whether holding
25 the accused responsible for the
26 death would amount to punishing
27 a moral innocent.

1 Even though both factual and legal
2 causation must be present, a distinct two-
3 step inquiry is not required. The two
4 inquiries may be joined into one by
5 asking whether the accused person's
6 actions significantly contributed to the
7 victim's death. [citations omitted]

8 The Supreme Court of Canada
9 considered the issue of an intervening act in *R. v.*
10 *Maybin*, 2012 SCC 24 and whether an intervening
11 event could interrupt legal causation and result in the
12 accused's actions not being a significant contributing
13 cause of death. The Court concluded at paragraph 28:

14 Even in cases where it is alleged that an
15 intervening act has interrupted the chain
16 of legal causation, the causation test
17 articulated in *Smithers* and confirmed in
18 *Nette* remains the same: Were the
19 dangerous, unlawful acts of the accused
20 a significant contributing cause of the
21 victim's death?

22 An intervening act and the accompanying
23 risk of harm that is reasonably foreseeable will not
24 usually break the chain of causation. It is sufficient if
25 the general nature of the intervening act and the risk of
26 serious harm are objectively foreseeable at the time of
27 the accused's actions. *Maybin*, para. 34, 38.

1 The voluntary consumption of drugs by a
2 victim is one of many considerations in the
3 circumstances of a case to determine whether the
4 chain of causation is broken. Whether the voluntary
5 consumption of drugs constitutes an intervening act will
6 depend on the facts and circumstances of each case,
7 considered along with the principles regarding
8 causation. *Hass*, para. 62.

9 The Crown called two witnesses who are
10 qualified as experts to provide opinion evidence to the
11 Court. Dr. Graham Jones is a forensic toxicologist and
12 was the Chief Toxicologist with the Chief Medical
13 Examiner's office of Alberta for 37 years until he retired
14 in 2018. He was qualified as an expert in forensic
15 toxicology, including the analysis of bodily fluids,
16 tissues, and various powders, liquids, tablets, and
17 capsules for the presence of alcohol, drugs, and other
18 similar volatile compounds; the pharmacological and
19 toxicological effects of alcohol, drugs and other similar
20 volatile compounds on the human body; the
21 pharmacokinetics of alcohol, drugs, and other similar
22 compounds with respect to the absorption, distribution,
23 and elimination of alcohol and drugs in the human
24 body.

25 Dr. Jennifer Butler was the emergency
26 room physician who initially examined Courtney Janes
27 and who ordered her admitted into the hospital. She

1 was the Chief of Staff at Stanton Territorial Hospital, as
2 well as an emergency room physician. She is now a
3 fulltime emergency physician at the Abbotsford
4 Regional Hospital. She was qualified as an expert in
5 family and emergency medicine, specifically
6 diagnosing, treating, and caring for unscheduled
7 patients with illness or injuries requiring immediate
8 medical attention, and making decisions regarding a
9 patient's need for hospital admission, observation, or
10 discharge.

11 Courtney Janes testified that she had no
12 memory between her vague recollection of leaving
13 Darcy Oake's garage and waking up the next evening.
14 She testified that she did not take any other drugs,
15 other than the furanylfentanyl that day.

16 Dwight Carpenter, who was driving
17 Courtney Janes around that night, testified that after
18 Courtney Janes came out from Darcy Oake's house,
19 they drove back to the house where he, Courtney
20 Janes and her boyfriend Blaine McDonald were living.
21 They went inside and Courtney Janes grabbed
22 something from the kitchen. He assumed she was
23 getting a drink of water when he a heard a tap come
24 on. Courtney Janes then went to sit on the couch,
25 saying she felt -- she was feeling sleeping. Courtney
26 Janes remained on the couch, sitting up sleeping for
27 the next two to three hours until Dwight Carpenter went

1 to bed around 1 am. When he got up the next day,
2 around noon or 1 pm, and he went into the kitchen and
3 saw Courtney Janes still passed on the couch in the
4 living-room.

5 Barbara Mezaros, Courtney's mother,
6 went to Courtney Janes' residence the next morning
7 because Blaine McDonald could not get ahold of
8 Courtney. She saw Courtney Janes sitting on the
9 couch, slumped down asleep. She tried to wake her
10 up, but was unable to wake her. She looked for drugs
11 in the house, but was unable to find any. She stayed at
12 the house for close to two hours. During that time,
13 Courtney Janes was unconscious. Barbara Mezaros
14 took a photograph of Courtney Janes that morning.
15 The photograph was entered into evidence, and it
16 shows Courtney Janes slumped down on the couch,
17 unconscious. Barbara Mezaros testified that she laid
18 Courtney Janes down on the couch and put a pillow
19 under her head.

20 Later that same day, she asked her
21 daughter Samantha to go check on Courtney.
22 Samantha Janes, who is Courtney's sister, came over
23 that afternoon and tried to wake Courtney Janes up, but
24 could not get her up. She testified that Courtney Janes
25 said she could not sit up, her legs would not work, she
26 did not know where she was, and did not know who
27 Samantha was.

1 Courtney Janes was mumbling, she was
2 in and out of consciousness. She described Courtney
3 Janes' breathing as shallow, long breaths, where in
4 between breaths was seven or eight seconds, almost
5 like Courtney was holding her breath. Samantha Janes
6 testified that Courtney Janes told her that she took all
7 her sleeping pills, which was why she could not move.

8 After about 45 minutes, Samantha gave
9 up and went back to her mother's house, and Dwight
10 Carpenter said that he would keep an eye on Courtney
11 Janes.

12 Courtney Janes testified that when she
13 woke up, she was on the couch in the living room, she
14 had no recollection of interacting with her mother or her
15 sister at the house. She could not walk and had to
16 crawl to the bathroom. The back of her neck was
17 numb, as was her right side and right leg. Dwight
18 Carpenter took Courtney Janes to the hospital.
19 Courtney Janes could not walk and Dwight Carpenter
20 had to help her.

21 At the hospital, Dr. Butler diagnosed
22 Courtney Janes with Rhabdomyolysis, which she
23 describes as a severe muscle injury which involves the
24 breakdown of muscle cells. It can occur due to a crush
25 injury, a major trauma, or if one has been in a coma-like
26 state and not been moving their body adequately to
27 ensure that muscle cells are not being damaged. The

1 breakdown of muscle cells causes a release of
2 potassium which is toxic to the heart. Rhabdomyolysis
3 can also cause kidney failure because a product of cell
4 breakdown is myoglobin which is toxic to kidneys.

5 Dr. Butler admitted Courtney Janes for
6 this condition. Dr. Butler was unable to say how long
7 someone would have to be immobile to suffer this
8 condition. She testified that it would be a number of
9 hours of being in a coma-like state where the levels of
10 creatinine kinase, which is how muscle breakdown is
11 measured, would begin to increase.

12 Dr. Butler testified that Courtney Janes
13 reported taking fentanyl, which she found somewhat
14 odd, because the fentanyl used in the hospital only
15 lasts for twenty-minutes and does not result in a coma-
16 like state. Courtney Janes denied to Dr. Butler that she
17 had taken any other drugs.

18 Dr. Butler testified that drugs taken in
19 combination can have longer effects. Her opinion was
20 that Courtney Janes could have taken any number of
21 ingestions that could have had long-acting effects. The
22 Clonazepam could have acted with fentanyl if she took
23 too much, or if she took too much Seroquel. The
24 problem, stated Dr. Butler, was that there was no
25 quantifiable way of measuring those things. When
26 asked about the idea that Courtney Janes took fentanyl
27 and whether that seemed odd with her presentation,

1 Dr. Butler testified:

2 Well, knowing that there are different
3 forms of fentanyl, such as carfentanil and
4 regular fentanyl, so -- so the fact that the
5 type of fentanyl -- you know, the -- the
6 questions you've been asking me have
7 been referring to the same fentanyl that
8 we give in the hospital -- which we know
9 well, we've studied well and we've given
10 to our patients -- is not the same as
11 carfentanil, or a variation of that fentanyl.
12 And at that point, it just becomes a
13 narcotic like any other, and it is treated
14 like any other. And so the long-acting
15 narcotics could certainly cause all of
16 those symptoms, and when I say, initially,
17 yes, was puzzling, because you do
18 wonder about co-ingestion. But that
19 being said, all drug ingestions from the
20 street are -- are up for speculation, and
21 certainly carfentanil is a completely
22 different animal to the regular fentanyl
23 that we use in the hospital.

24 One of the other drugs that Courtney
25 Janes was prescribed was Clonazepam, which is a
26 short-acting benzodiazepine that has a sedating effect.
27 Dr. Butler testified that lab tests at the hospital can be

1 ordered for benzodiazepines. Dr. Butler did not order
2 the test because Courtney Janes was providing what
3 she viewed as an accurate history, and the test can be
4 inaccurate as it simply detects the presence of
5 benzodiazepines but not the quantity. Clonazepam,
6 she testified, has a short-acting effect, but it can be
7 present in lab tests for a significant period of time
8 following ingestion.

9 Dr. Jones testified that fentanyl is a
10 synthetic opioid analgesic used as a pain killer or an
11 anesthesia in medical settings. Fentanyl can induce
12 sedation to the point of anesthesia if the dose is
13 sufficient. Fentanyl is 50 to 100 times more potent than
14 morphine, and 25 to 100 times more potent than
15 heroine. The higher the potency will initially cause
16 sedation. If the dose is high enough, unconsciousness
17 or coma and ultimately death can occur. Death is
18 caused, usually, because respiration is slowed to a
19 lower rate than is sufficient to maintain the required
20 level of oxygen in the blood, or it decreases the
21 sensitivity of the body to a build-up of carbon dioxide.
22 Normally, the build-up of carbon dioxide will trigger an
23 increase in respiration to increase the rate of breathing
24 to blow off the carbon dioxide and increase the level of
25 oxygen.

26 Dr. Jones described furanylfentanyl as an
27 analog, a chemical derivative of fentanyl. When asked

1 about whether furanylfentanyl had a similar effect on
2 the body as fentanyl, Dr. Jones testified:

3 Yes, to the best of our knowledge, it
4 does. Furanylfentanyl, like a number of
5 analogs, has never been tested in
6 humans. It's never undergone any
7 clinical trials of any type that I am aware
8 of. I think it may have undergone basic
9 animal studies many, many years ago,
10 when it was synthesized, but we know
11 from those limited studies and the --
12 anecdotally, the reports from it being
13 used illicitly -- that it has similar effects
14 and would be expected to have similar
15 effects to fentanyl.

16 Dr. Jones testified that the potency of
17 furanylfentanyl was a matter of conjecture to some
18 degree, because the drug has never really been
19 studied clinically. Anecdotal reports indicate that
20 furanylfentanyl may be up to about five times less
21 potent than fentanyl. Other reports indicate that it may
22 be roughly equivalent to fentanyl. Overall, Dr. Jones
23 considered furanylfentanyl a potent opioid which
24 probably is not significantly less potent than about five
25 times less than fentanyl.

26 Dr. Jones testified that the presence of
27 other substances in addition to fentanyl can have a

1 significant effect. Any drug that will increase or cause
2 sedation, would be a risk factor. Dr. Jones testified that
3 Clonazepam is a benzodiazepine tranquilizer which has
4 sedative effects. Clonazepam works on different
5 receptors in the brain than furanylfentanyl. Dr. Jones'
6 opinion was that if one were to overdose on a large
7 amount of Clonazepam, it is unlikely to kill you unless
8 there are other drugs present, or you are very young or
9 very old, or really compromised health-wise.
10 Clonazepam does not produce a severe sedative effect
11 on its own.

12 If Clonazepam was co-ingested with
13 furanylfentanyl, Dr. Jones testified that this would cause
14 increased sedation compared to either one alone.
15 They can have, at the very least, additive sedative
16 effects, and there is some indication that the effects
17 may be more than just additive. Clonazepam would
18 likely extend a period of unconsciousness if taken in
19 combination with furanylfentanyl.

20 In Dr. Jones' opinion, there would not be
21 a dosage level of Clonazepam which would render the
22 furanylfentanyl insignificant if co-ingested, because the
23 furanylfentanyl always has to be significant. Dr. Jones
24 was asked about the effect of a fentanyl overdose:

25 Question: Wouldn't -- wouldn't you
26 expect someone to die of a fentanyl
27 overdose in relatively short order, within

1 an hour or so of taking the dosage?
2 Answer: No. Not necessarily. We've --
3 there's usually two scenarios with
4 fentanyl or any opioid overdose, and one
5 of them is somebody who takes a dose,
6 whether it's a recreational dose, where
7 they go to a period of unconsciousness.
8 They are still breathing, they are still
9 getting enough oxygen in, and eventually
10 at some point, whether it's two hours, five
11 hours, or ten hours or more, they'll wake
12 up and they're fine. At the other end of
13 the spectrum is you have somebody that
14 uses fentanyl at a higher dose, or a dose
15 to which they're not tolerant, where they
16 can -- they can die, as you said, fairly
17 quickly. There is a third category that's in
18 between that, where somebody has
19 enough drug to render them
20 unconscious, but where they don't die
21 immediately. They're taken to an
22 emergency room, their vital signs are not
23 great, but they're still breathing, they're
24 still technically alive, where that may be
25 24 hours after the event took place.
26 They're treated in a hospital, but they
27 realize when they evaluate the patient

1 fully that while they may not be suffering
2 from an opioid intoxication anymore,
3 because that state cannot be reversed by
4 Narcan Naloxone, that that individual has
5 brain damage and basically, that's the
6 primary reason why they're still
7 unconscious, is because they've suffered
8 brain damage. And typically in those
9 circumstances, they're eventually
10 removed from life-support and allowed to
11 die.

12 Dr. Jones testified that if someone took
13 fentanyl and was unconscious for 24 hours, he would
14 suspect that they had taken another drug in addition to
15 the fentanyl. It would be possible that it was solely due
16 to fentanyl, but his opinion was that it would not likely to
17 have been solely due to fentanyl, because he would
18 expect that if a person was unrousable for that period of
19 time, the 24 hours, it would be because there was brain
20 damage involved, or another drug. Being unrousable
21 for a period of 24 hours could be consistent with Dr.
22 Jones' opinion with ingesting fentanyl and Clonazepam.

23 Dr. Butler testified that there was no
24 indication that Courtney Janes had suffered a brain
25 injury or hypoxic brain injury.

26 There is no dispute that Courtney Janes
27 was unconscious for a significant period of time. She

1 was at Darcy Oake's garage at approximately 9:30 pm
2 on November 23, 2016, and she presented at the
3 hospital at 11:35 pm on November 24, 2016. For much
4 of the time in between, it appears that Courtney Janes
5 was unconscious and this caused the Rhabdomyolysis
6 that she suffered.

7 The issue is whether the furanylfentanyl
8 or another drug in combination with the furanylfentanyl
9 caused Courtney Janes to be unconscious for that
10 period of time. One of the possibilities raised by the
11 Defence is that Courtney Janes took Clonazepam in
12 addition to the furanylfentanyl, which was an
13 intervening act which broke the chain of causation.

14 The evidence at the trial was that
15 Courtney Janes had a prescription for 90 pills of 1mg
16 Clonazepam and 90 pills of .5mg of Clonazepam.
17 Courtney Janes got a refill of her prescriptions of
18 Clonazepam prior to going over to Darcy Oake's house.
19 Darcy Oake testified that Courtney Janes gave him 15
20 to 20 Clonazepam in exchange for the furanylfentanyl.
21 When Courtney Janes was in the hospital, her medical
22 records showed that she had a bottle of 90 1mg
23 Clonazepam in her effects. It is not clear from the
24 records whether anyone actually counted the pills or
25 just recorded what was indicated on the label. The
26 bottle of .5mg of Clonazepam was not among her
27 effects.

1 Courtney Janes testified that she may
2 have given her medications to her doctor or her
3 boyfriend to throw out, as she did not want to take them
4 anymore. She was not sure how the medication got
5 disposed of, and it is not clear what happened to the
6 bottle of .5mg Clonazepam.

7 If Courtney Janes also took another drug,
8 like Clonazepam, then the question remains whether
9 Darcy Oake providing furanylfentanyl to Courtney
10 Janes was a significant contributing cause of the bodily
11 harm she suffered. Based upon the evidence of Dr.
12 Jones and Dr. Butler, there is a reasonable possibility
13 that Courtney Janes took another drug, possibly
14 Clonazepam, at some point either before or after she
15 ingested the furanylfentanyl.

16 The evidence of Courtney Janes was that
17 she had not taken any other drugs. But she also
18 testified that when she went to Darcy Oake's garage to
19 do the furanylfentanyl, she "probably wasn't sober".
20 Courtney Janes was not asked about what she meant
21 by that or what she might have consumed, but it raises
22 the possibility that Courtney Janes took something else
23 prior to going to Darcy Oake's house.

24 The evidence of both Dr. Butler and Dr.
25 Jones appears to suggest that it was unlikely that the
26 furanylfentanyl would cause an extended period of
27 unconsciousness in the range of 24 hours. Dr. Jones

1 allowed that it was possible, but viewed it as unlikely.

2 Both doctors were of the opinion that
3 Courtney Janes could have taken another drug, like
4 Clonazepam, which would have added sedative effects.
5 Dr. Jones' opinion was that an extended period of
6 unconsciousness of up to 24 hours was possible solely
7 from the ingestion of furanylfentanyl, but unlikely. It
8 was more likely that another drug, like Clonazepam,
9 was co-ingested. The Clonazepam on its own,
10 according to Dr. Jones, would have not had this effect
11 on Courtney Janes. It would not have resulted in an
12 extended period of unconsciousness.

13 As to whether it was reasonably
14 foreseeable that Courtney Janes might ingest another
15 drug, Darcy Oake knew Courtney Janes, and they had
16 taken drugs together in the past. He knew she had a
17 prescription for Clonazepam and that she had just re-
18 filled it. Darcy Oake was concerned that Courtney
19 Janes might take her other medications in addition to
20 the furanylfentanyl, because he warned her not to take
21 her other medications. He knew that it was a possibility
22 that she could. He knew how powerful the
23 furanylfentanyl was, based on his own experience, and
24 he knew the effect the furanylfentanyl had on him.
25 Courtney Janes left his garage with most of the
26 Clonazepam after giving him 15 or 20 Clonazepam pills
27 for the furanylfentanyl.

1 I conclude that it was objectively
2 reasonably foreseeable that Courtney Janes might
3 ingest another drug after having taken the
4 furanylfentanyl. It is clear from the evidence that
5 Courtney Janes did ingest furanylfentanyl. While there
6 is a reasonable possibility that Courtney Janes also
7 took Clonazepam or another sedative drug in addition
8 to the furanylfentanyl, the furanylfentanyl remained a
9 significant contributing cause of Courtney Janes'
10 lengthy period of unconsciousness and resulting
11 Rhabdomyolysis. The Clonazepam would have added
12 to the sedative effect of the furanylfentanyl, but as Dr.
13 Jones testified, the furanylfentanyl always has to be
14 significant in this scenario. Without the furanylfentanyl,
15 but for her ingestion of the furanylfentanyl, Courtney
16 Janes would have not experienced the extended period
17 of unconsciousness.

18 Therefore, I conclude that the Crown has
19 proven beyond a reasonable doubt that Darcy Oake
20 provided furanylfentanyl to Courtney Janes and it was a
21 significant contributing cause to the bodily harm
22 Courtney Janes suffered, even if she had ingested
23 another drug.

24 Therefore, for these reasons I find Darcy
25 Oake guilty of:
26 Count 1, unlawfully importing furanylfentanyl into
27 Canada;

1 Count 2, trafficking in furanylfentanyl;
2 Count 3, possession of furanylfentanyl for the purpose
3 of trafficking; and
4 Count 4, criminal negligence causing bodily harm to
5 Courtney Janes.

6

7 (PROCEEDINGS CONCLUDED)

8

9 **CERTIFICATE OF TRANSCRIPT**

10 Neesons, the undersigned, hereby certify that the foregoing
11 pages are a complete and accurate transcript of the
12 proceedings transcribed from the audio recording to the best
13 of our skill and ability. Judicial amendments have been
14 applied to this transcript.

15

16

17 Dated at the City of Toronto, in the Province of Ontario, this
18 1st day of June, 2020.

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22

Kim Neeson

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Principal

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