

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**-v-**

**DARCY OAKE**

---

**Transcript of the Reasons for Sentence delivered by the Honourable Justice S. H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 30th day of June, 2020.**

---

**APPEARANCES:**

**D. Praught:**

**Counsel for the Crown**

**K. Oja:**

**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*

**INDEX**

**PAGE**

**REASONS FOR SENTENCE**

**1**

1           **(TELECONFERENCING COMMENCES)**

2           **(VIDEOCONFERENCING COMMENCES)**

3           THE COURT:           Okay. All right. Good afternoon. Okay.  
4                           Mr. Oake, do you have anything to say before I pass  
5                           sentence?

6           THE ACCUSED:           No, I don't.

7           **(REASONS FOR SENTENCE)**

8           THE COURT:           Okay. So Darcy Oake was convicted  
9                           after trial of four offences: importing furanylfentanyl into  
10                          Canada contrary to s. 6(1) of the *Controlled Drugs and*  
11                          *Substances Act*, trafficking in furanylfentanyl contrary to  
12                          s. 5(1) of the *Controlled Drugs and Substances Act*,  
13                          possession of furanylfentanyl for the purposes of  
14                          trafficking contrary to s. 5(2) of the *Controlled Drugs*  
15                          *and Substances Act*, and criminal negligence causing  
16                          bodily harm by providing furanylfentanyl to Courtney  
17                          Janes contrary to s. 221 of the *Criminal Code*.

18                           The trial was held before me in August  
19                          and December 2019. At the outset of the trial, Darcy  
20                          entered a guilty plea to trafficking in furanylfentanyl and  
21                          pled not guilty to the other offences. Following the trial  
22                          on March 11, 2020, I found Darcy Oake guilty of  
23                          importing furanylfentanyl, possession of furanylfentanyl  
24                          for the purpose of trafficking, and criminal negligence  
25                          causing bodily harm.

26                           Sentencing was adjourned for the  
27                          preparation of a pre-sentence report. There were some

1 delays in proceeding in sentencing in part due to the  
2 coronavirus pandemic. Mr. Oake also switched counsel  
3 following his conviction. Counsel made their  
4 submissions on sentence on June 24, 2020, and I  
5 adjourned to today to consider the sentence.

6 Position of the Parties

7 The Crown is seeking a global sentence  
8 of nine years imprisonment, less credit for remand time.  
9 In coming to that position, the Crown is proposing eight  
10 years imprisonment for the importation of  
11 furanylfentanyl, six years imprisonment concurrent for  
12 the possession of furanylfentanyl for the purpose of  
13 trafficking, three years imprisonment for trafficking in  
14 furanylfentanyl consecutive to the possession for the  
15 purpose of trafficking, and two years imprisonment for  
16 criminal negligence causing bodily harm consecutive,  
17 that would amount to an 11 year sentence which the  
18 Crown proposes should be reduced to 9 years  
19 imprisonment on the basis of totality.

20 The defence is seeking a sentence of five  
21 to six years imprisonment, less credit for remand time.  
22 For each offence, the defence is seeking a sentence of  
23 five to six years imprisonment for the importation of  
24 furanylfentanyl, four years imprisonment for the  
25 possession of furanylfentanyl for the purpose of  
26 trafficking, three years imprisonment for criminal  
27 negligence causing bodily harm, and two and a half to

1 three years imprisonment for trafficking in  
2 furanylfentanyl.

3 The defence argues that concurrent  
4 sentences are appropriate for all of the offences  
5 because there was a strong nexus between all offences  
6 and concurrent sentences would properly address the  
7 issue of totality.

8 Mr. Oake has been in custody for this  
9 offence. While he had initially been held in custody, he  
10 was eventually released on a recognizance for a period  
11 of time before being re-arrested and detained again. In  
12 total, he has been in custody for 1,083 days to today's  
13 date.

14 On March 23, 2018, Mr. Oake was  
15 sentenced for possession of a scheduled substance  
16 pursuant to s. 4(1) of the *Controlled Drugs and*  
17 *Substances Act*. He received a sentence of 60 days  
18 pre-sentence custody which equates to 40 days at one  
19 and a half days for every day spent in custody, so 40  
20 days will be deducted from Mr. Oake's remand time,  
21 leaving 1,043 days.

22 While there have been some issues with  
23 Mr. Oake while he has been in custody as outlined in  
24 the pre-sentence report, the Crown is not seeking that  
25 he receive less than one and a half days credit for every  
26 day held in custody. I am satisfied that the  
27 circumstances justify Mr. Oake receiving enhanced

1 credit of one and a half days for each day spent in  
2 custody pursuant to s. 719 (3.1) of the *Criminal Code*  
3 and the principles set out in *R. v. Summers*, 2014 SCC  
4 26. Therefore, 1,565 days or 4 years and 3 months will  
5 be deducted from the sentence I impose on Mr. Oake.

6 Facts

7 Turning to the facts of the offences, I do  
8 not intend to review the facts of the offences in great  
9 detail as my reasons for decision at 2020 NWTSC 17  
10 detail the fact of the offences more fully. The facts of  
11 the offences in brief are on November 25, 2016, Darcy  
12 Oake overdosed at his father's home in Yellowknife for  
13 the second time in three days. The paramedics and  
14 RCMP were called, and they responded.

15 The RCMP were given permission by his  
16 father to search his bedroom and the garage at the  
17 residence. In Darcy Oake's bedroom, the police found  
18 a bag containing four grams of furanylfentanyl in his  
19 dresser. In the garage, the police found an envelope  
20 addressed to Darcy Oake with a label stating Hong  
21 Kong on it.

22 Darcy Oake had overdosed on  
23 furanylfentanyl that he ordered off the Internet. When  
24 he ordered the furanylfentanyl, he also purchased  
25 Xanax and cigarettes. The furanylfentanyl was shipped  
26 from Hong Kong and sent to Darcy Oake's father's  
27 mailbox.

1                                   The package of Xanax arrived a week  
2                                   and a half after Mr. Oake placed the order. The third  
3                                   and fourth week, after placing the order, Mr. Oake had  
4                                   not received the furanylfentanyl and contacted the  
5                                   seller. The seller advised him to wait a few more days,  
6                                   which he did, but he still had not received the  
7                                   furanylfentanyl and contacted the seller again. The  
8                                   seller responded by sending a replacement package.

9                                   On November 23, 2016, the original  
10                                  package of furanylfentanyl arrived. The cigarettes that  
11                                  he had ordered also arrived the same day. The second  
12                                  package of furanylfentanyl was seized by the Canadian  
13                                  Border Services Agency on November 27, 2016. A  
14                                  plastic bag containing furanylfentanyl was located  
15                                  weighing eleven and a half grams. So accounting for  
16                                  the weight of the packaging, the second package  
17                                  contained approximately 10 grams of furanylfentanyl.

18                                 Shortly after receiving the package of  
19                                 furanylfentanyl on November 23, 2016, Darcy Oake  
20                                 took some. He then collapsed while walking his dog.  
21                                 He was taken to the hospital where he was treated and  
22                                 spoke to a doctor about the dangers of fentanyl. Once  
23                                 he was released from the hospital, Darcy Oake  
24                                 continued to take the furanylfentanyl and gave some to  
25                                 others, including Courtney Janes.

26                                 Mr. Oake was using the furanylfentanyl  
27                                 personally, as the two overdoses he experienced show,



1 but he also had another purpose in possessing the  
2 furanylfentanyl. While Mr. Oake had ordered the  
3 furanylfentanyl to get drugs cheaper than buying from a  
4 dealer locally, in addition to supplying himself with  
5 furanylfentanyl, he also intended to sell some of it. The  
6 text exchanges with Big, Tamara Marie, and his  
7 conversations with Courtney Janes, showed he was  
8 also motivated by making some money.

9 Mr. Oake was addicted, and while he  
10 planned on consuming the furanylfentanyl himself, he  
11 also planned on selling some of it. Given his  
12 addictions, it's likely that the money that was made from  
13 selling furanylfentanyl would have been used to  
14 purchase other drugs.

15 Courtney Janes went to Mr. Oake's  
16 residence and snorted the furanylfentanyl in Darcy  
17 Oake's garage before going home. Before she left, Mr.  
18 Oake gave her more furanylfentanyl that she put in her  
19 purse. This was later found by her mother and turned  
20 over to the police.

21 Once Courtney Janes got home, she  
22 went in the kitchen and then sat on the couch in the  
23 living room. There she slumped over and was  
24 unconscious until the next evening. When Ms. Janes  
25 regained consciousness, she could not walk without  
26 assistance. She was taken to the hospital that evening  
27 where she was diagnosed and hospitalized for

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

5 Victim Impact Statement

6 Ms. Janes was advised of the opportunity  
7 to complete a victim impact statement but has not done  
8 so. She did speak to the writer of the pre-sentence  
9 report, and she testified during the trial about the effects  
10 that this incident has had on her life. It is apparent that  
11 it had a significant impact on Ms. Janes' life. It is  
12 perhaps a situation of something good coming out of  
13 something bad which is very lucky. This could have  
14 been a situation where Ms. Janes did not survive what  
15 happened.

16 Ms. Janes described this incident as  
17 being a turning point in her life. Like Mr. Oake, she was  
18 a drug addict. Following this incident, she was scared  
19 and realized how close she had come to dying. She  
20 has since taken treatment and counselling and now has  
21 a stable lifestyle and a job. She also feels guilt at Mr.  
22 Oake's situation but knows that she made the right  
23 choice.

24 She and Mr. Oake had been lifelong  
25 friends, and they had used drugs together before this  
26 incident. They were very close. Ms. Janes stated in  
27 the pre-sentence report, "I have a guilty conscience

1 about his situation. He was a drug addict just like I was.  
2 He's a really nice guy who went down the wrong path."  
3 And I think that is probably very true. Addiction can  
4 have a profound effect on someone, on their life, on  
5 their family, on their relationships, on their employment.  
6 Addiction will touch every aspect of your life. It will  
7 influence the choices that you make and not in a  
8 positive way.

### 9 Pre-Sentence Report

10 A pre-sentence report was completed. In  
11 it, Mr. Oake takes some responsibility for his actions.  
12 However, he also seems to blame Courtney Janes and  
13 denies that he intended to traffic the furanyl fentanyl.

14 It is apparent that Mr. Oake was  
15 motivated by his addictions. His drug use consumed  
16 his life. He started consuming marijuana and alcohol  
17 when he was 12. He eventually started using MDMA  
18 and cocaine before progressing to fentanyl.

19 He did attend treatment following his  
20 arrest on these charges when he was on release, going  
21 to the Edgewood Treatment Program in Nanaimo in  
22 June 2017. He did not complete the program and was  
23 removed for non-compliance with the rules. Mr. Oake,  
24 continued with counselling following this. Mr. Oake has  
25 the support of his mother which is good because he will  
26 need her support if he is to continue with his recovery.

27 Now that Mr. Oake has been in custody,

1 he says that his goals have changed, and his attitude  
2 has changed. He has completed his high school GED  
3 in custody and has plans of pursuing a career involving  
4 computer networking. I hope that Mr. Oake has made a  
5 turning point with his addictions and is able to continue  
6 with his recovery. Continuing down the path of fentanyl  
7 use is only going to risk his life.

8 Sentencing Principles

9 So looking at the sentencing principles.  
10 The fundamental purpose of sentencing is to protect  
11 society and to contribute to respect for the law and  
12 maintenance of a just, peaceful, and safe society. This  
13 is achieved through the imposition of sanctions that  
14 consider the objectives of denunciation, deterrence,  
15 separation of offenders from society, rehabilitation,  
16 providing reparations for harm done, and promoting a  
17 sense of responsibility in offenders, and acknowledging  
18 the harm done to victims or to the community.

19 A fundamental principle of sentencing is  
20 that the sentence must be proportionate to the gravity of  
21 the offence and the degree of responsibility of the  
22 offender.

23 A primary objective in sentencing for  
24 trafficking in fentanyl is deterrence and denunciation.  
25 Denunciation meaning to denounce unlawful conduct  
26 and the harm done to victims or to the community that  
27 is caused by that conduct. Deterrence is to deter the

1 specific offender and other persons generally from  
2 committing similar offences. In trafficking cases, the  
3 focus is on imposing sentence that will deter other  
4 persons who might be tempted to traffic in illicit  
5 substances.

6 Starting Points

7 In the past few years, there have been an  
8 increasing number of decisions that deal with  
9 sentencing for possession for the purpose of trafficking  
10 or trafficking in fentanyl. These decisions and appellate  
11 guidance from the Alberta Court of Appeal have  
12 established starting points for these types of offences.  
13 A starting point is not a sentence that is set in stone or  
14 a minimum sentence. As stated in *R. v. Ostertag*, 2000  
15 ABCA 232 at paragraph 12:

16 Starting-point sentencing does not create  
17 minimum sentences as a by-product of aiming at trying  
18 to achieve greater uniformity of treatment of offenders.  
19 The language of the decisions is clear: when following  
20 such guidelines, the sentencing judge should adjust the  
21 sentence both upwards, to account for aggravating  
22 factors, and downwards, to account for mitigating  
23 factors.

24 Starting points have been established for  
25 trafficking and possession for the purpose of trafficking  
26 in fentanyl. For the offence of importation of fentanyl  
27 and criminal negligence causing bodily harm involving

1 fentanyl, there are no starting points but a review of the  
2 case law establishes an acceptable range of sentence.  
3 I will deal with the range of sentence for each offence.  
4 Each offence has its own appropriate range of sentence  
5 or starting point and factors to consider.

6 Counsel have very helpfully provided  
7 cases which have guided my consideration of the  
8 appropriate sentences. It is important to remember that  
9 none of these cases is exactly the same as Mr. Oake's  
10 case, and they are not readily comparable, for example,  
11 comparing the *Dube* case to Mr. Oake's.

12 Todd Dube was convicted of conspiracy  
13 to traffic in several drugs, including fentanyl, as well as  
14 possession of the proceeds of crime and conspiring to  
15 commit aggravated assault. He was the head of a  
16 relatively sophisticated drug trafficking network in  
17 Yellowknife, with multiple other people who worked for  
18 him but he did not import fentanyl which is an offence  
19 that carries its own range of sentence and  
20 considerations that were not present in the *Dube* case.  
21 Mr. Oake, for his part, imported fentanyl but he was not  
22 the head of any kind of drug network and did not have  
23 anyone working for him.

24 Trafficking and Possession for the Purpose of  
25 Trafficking in Fentanyl

26 The Alberta Court of Appeal recently  
27 established a starting point for trafficking in fentanyl in

1                    *R. v. Felix*, 2019 ABCA 458. Decisions of the Alberta  
2                    Court of Appeal with respect to starting points and in  
3                    general are persuasive as our Court of Appeal is  
4                    primarily composed of justices from the Alberta Court of  
5                    Appeal. The range of sentences imposed in Alberta are  
6                    often similar to those imposed in the Northwest  
7                    Territories.

8                                       A starting point reflects the seriousness of  
9                    the crime and its increasing prevalence in Alberta and  
10                    this jurisdiction and the need to impose deterrence  
11                    sanctions. It also reflects the moral blame worthiness  
12                    of those who traffic in illicit substances on a significant  
13                    scale.

14                                       From the starting point, the sentence is  
15                    adjusted to reflect the mitigating and aggravating  
16                    factors of each case, taking into account the  
17                    circumstances of that offence and of that offender. A  
18                    starting point presumes an offender with no criminal  
19                    record who is of prior good character and who has been  
20                    found guilty after trial. The starting point applies to  
21                    trafficking and possession for the purpose of trafficking  
22                    of fentanyl and its analogues. The starting point is  
23                    defined by the dangerousness of the drug and the scale  
24                    of the offender's involvement: *Felix*, paragraph 45.

25                                       While this Court has for many years dealt  
26                    with sentencing offenders for offences like trafficking in  
27                    cocaine and possession for the purpose of trafficking in

1 cocaine, it has only recently begun to see cases  
2 involving trafficking or possession for the purpose of  
3 trafficking in fentanyl and its analogues: furanylfentanyl  
4 and carfentanyl. In imposing sentences for these  
5 cases, our Court has open remained open to the  
6 possibility that a higher starting point for trafficking in  
7 fentanyl may be necessary. The *Felix* case provides  
8 helpful guidance in that regard. The increasing trend is  
9 that courts across Canada have begun to accept that  
10 fentanyl is more dangerous than heroin and more  
11 destructive of human lives and potential. Where a drug  
12 is more dangerous, the gravity of the trafficking is  
13 increased: *Felix* paragraph 49, 50.

14 During the trial, the Crown called Dr.  
15 Graham Jones who is a forensic toxicologist and was  
16 qualified as an expert in forensic toxicology. Dr. Jones  
17 testified that fentanyl is a synthetic opioid analgesic  
18 used as a painkiller or an anaesthesia in medical  
19 settings. Fentanyl can induce sedation to the point of  
20 anaesthesia if the doze is sufficient.

21 Fentanyl is 50 to 100 times more potent  
22 than morphine and 25 to 50 times more potent than  
23 heroin. The higher the potency will initially cause  
24 sedation. If a dose is high enough, unconsciousness or  
25 coma and ultimately death can occur. Death is caused  
26 usually either because respiration is slowed to a lower  
27 rate than is sufficient to maintain the required level of



1 oxygen in the blood or it decreases the sensitivity of the  
2 body to a buildup of carbon dioxide. Normally, the  
3 buildup the carbon dioxide will trigger an increase in  
4 respiration to increase the rate of breathing to blow off  
5 the carbon dioxide and increase the level of oxygen.

6 Dr. Jones described furanylfentanyl as an  
7 analogue, a chemical derivative of fentanyl.

8 Furanylfentanyl has not been studied in humans but his  
9 experience was that furanylfentanyl had similar effects  
10 and would be expected to have similar effects to  
11 fentanyl. Anecdotal reports indicated that  
12 furanylfentanyl may be up to about five times less  
13 potent than fentanyl. Other reports indicated that it may  
14 be roughly equivalent to fentanyl. Overall, Dr. Jones'  
15 opinion was that furanylfentanyl was a potent opioid  
16 which would probably be no more than about five times  
17 less potent than fentanyl.

18 In this case, Dr. Oake overdosed twice on  
19 the drug, and Courtney Janes was rendered  
20 unconscious by furanylfentanyl, whether it was alone or  
21 in combination with another drug, for approximately 24  
22 hours. Constable Gallant, an RCMP officer who had  
23 contact with the bag of furanylfentanyl while searching  
24 Darcy Oake's residence, began to feel the effects of the  
25 drug and had to be taken to the hospital. It is clear that  
26 the furanylfentanyl was a potent opioid and was very  
27 dangerous.

1                                   The dangers of the use of fentanyl are  
2                                   well-known today. But as early as February 2015, the  
3                                   dangers of fentanyl use became known to the public.  
4                                   On February 16, 2015, the chief public health officer  
5                                   issued a public health advisory regarding the dangers  
6                                   of using fentanyl. The advisory stated that fentanyl is  
7                                   very toxic and even small quantities of the drug can  
8                                   cause death. I accept that at the time of offences in  
9                                   October and November 2016 the dangers of fentanyl  
10                                   were known generally.

11                                   The dangers of furanylfentanyl were also  
12                                   known to Darcy Oake at the time of the offence. When  
13                                   he received the package of furanylfentanyl, he  
14                                   immediately took some and overdosed. If he did not  
15                                   know about the dangers of furanylfentanyl before his  
16                                   overdose, he certainly did after. Following this, he  
17                                   continued to consumed the furanylfentanyl and give it to  
18                                   others, including Courtney Janes.

19                                   Fentanyl today continues to be a  
20                                   concern. In Alberta, 142 people died from opioid  
21                                   poisoning in the first three months of 2020, and in the  
22                                   last three months of 2019, there were almost 2,500  
23                                   emergency and urgent care visits related to opioids and  
24                                   other drug use. I do not know what the comparable  
25                                   statistics are for the Northwest Territories but as  
26                                   recently as June 17, 2020, the RCMP issued a warning  
27                                   about fentanyl in the Northwest Territories after two

1 recent overdoses.

2 The effects of drug trafficking in the  
3 Northwest Territories have been commented on by the  
4 courts for many years. Cocaine has been prevalent  
5 and has had a devastating affect on the people in  
6 Yellowknife and elsewhere in the Northwest Territories.  
7 Fentanyl has the potential to be even more devastating.  
8 It is cheap, and it is dangerous, and the risk of overdose  
9 is always present. The most vulnerable in society are  
10 at risk to fentanyl. I accept that fentanyl continues to be  
11 a concern and is a danger to the public of the  
12 Northwest Territories.

13 In *Felix*, a starting point sentence for  
14 wholesale fentanyl trafficking was established of nine  
15 years imprisonment. As stated in *Felix* at paragraph 2,

16 [A] 'wholesale' operation is one that traffics large  
17 amounts of one or more drugs, or that distributes drugs  
18 on a large scale, possibly for resale. Individuals who  
19 advance the wholesale aims of these operations, for  
20 instance by trafficking wholesale amounts, selling for  
21 resale, or directing the activities of other traffickers, are  
22 subject to the wholesale starting point.

23 Counsel have provided several cases of  
24 sentences involving trafficking or possession for the  
25 purpose of trafficking in fentanyl. Each case is unique  
26 in its facts and the circumstances of the offender.

27 Some cases involve guilty pleas, others are after trial.

1           There are several cases which involve joint  
2           submissions.

3                         Cases where there was a joint  
4           submission are often of limited precedential value.  
5           Judges are required to impose joint submissions even  
6           when they feel that the sentence requested is  
7           demonstrably unfit. Counsel agree to joint submissions  
8           for a variety of reasons, and they do have a valid  
9           purpose, and the required acceptance of joint  
10          submissions allows cases to be resolved and frees up  
11          judicial resources. A frequent result is that sentences  
12          are often lower than what would be otherwise imposed  
13          in that situation.

14                        The cases provided established that there  
15          is a broad range of sentence for trafficking or  
16          possession for the purpose of trafficking in  
17          furanylfentanyl ranging from two and a half years to  
18          nine years. The case of *Dube* from this jurisdiction  
19          where a nine year sentence was imposed can be  
20          considered in line with the wholesale trafficking starting  
21          point established in *Felix*. At the low end was a  
22          sentence of two and a half years for trafficking in one  
23          pill of fentanyl in *R. v. Fyfe*, 2017 SKQB 5. In between  
24          those two points are a range of sentences.

25                        In the Northwest Territories, the  
26          sentences imposed have been, in the case of *Hein*  
27          which involved a guilty plea, a joint submission for three

1 years imprisonment. In the case of *Moore*, a guilty plea  
2 as well, a sentence was imposed of three and a half  
3 years imprisonment. In the case of *Castro*, another  
4 guilty plea, a sentence of six years imprisonment was  
5 imposed. The amounts of fentanyl involved in each of  
6 these cases varied.

7 In determining whether trafficking is  
8 commercial or wholesale, there are typical indicators  
9 which can determine the scale of the trafficking  
10 operation such as the amount of drugs being trafficked  
11 and the nature of the operation. The offender's role in  
12 the operation is also relevant. The wholesale trafficking  
13 starting point only applies to those involved at the  
14 wholesale level; *Felix*, paragraph 58.

15 There is often no clear distinction  
16 between commercial and wholesale trafficking. A case  
17 can have features of both wholesale trafficking and  
18 commercial trafficking. In this case, the amount of  
19 drugs was not significant; although, it is not clear from  
20 the evidence what the end result could have been in  
21 terms of the number of pills that could have been made  
22 or the number of units of furanylfentanyl that could have  
23 been sold.

24 While Mr. Oake exchanged text  
25 messages with Big about selling the furanylfentanyl to  
26 him, there is no evidence that he did sell furanylfentanyl  
27 to Big. He provided furanylfentanyl to his friend Lance

1 Christensen, he provided a sample to Big, and he  
2 traded Clonazepam for furanylfentanyl with Courtney  
3 Janes.

4 In terms of an operation, there really was  
5 no operation. Mr. Oake was using furanylfentanyl and  
6 casually trafficking. He had plans to do more, but it is  
7 not apparent that he did so. It seems that he was, in  
8 the throes of his addiction, too busy using the  
9 furanylfentanyl to implement his plans. While given  
10 time this may have turned into more of a commercial or  
11 wholesale operation, I conclude that Mr. Oake was a  
12 low level trafficker of fentanyl.

13 Importing Furanylfentanyl

14 Looking at the importation of fentanyl,  
15 there are fewer cases which consider importation. The  
16 case law that has been provided has sentences which  
17 range from seven and a half to fifteen years  
18 imprisonment. It appears that sentences for offenders  
19 who import furanylfentanyl have been treated more  
20 harshly than those who traffic in fentanyl, and the  
21 importation of fentanyl has been viewed as more  
22 serious than the importation of cocaine or heroin  
23 because of the acknowledged increased potency of  
24 fentanyl and the dangers associated with its use. Often  
25 people who import the drug are higher up in a drug  
26 trafficking organization, and the sentences have  
27 reflected this as well.

1 In this case, Mr. Oake imported  
2 furanylfentanyl from Hong Kong essentially on two  
3 occasions. The first package that he ordered did not  
4 arrived, and he contacted the seller twice before a  
5 replacement package was sent. The original package  
6 did arrive while the replacement package was seized by  
7 the CBSA. Each package contained approximately 10  
8 grams of furanylfentanyl.

9 While this was not a large-scale operation  
10 nor a sophisticated network, there was a significant  
11 degree of planning and sophistication required to do  
12 this to order the furanylfentanyl. Mr. Oake researched  
13 the purchase on the Internet. He accessed the  
14 darkweb. He downloaded a Tor browser. He engaged  
15 in a Bitcoin transaction in order to purchase the  
16 furanylfentanyl. He took a number of steps to complete  
17 this purchase. So it wasn't just a case of ordering from  
18 Amazon. I expect that the average person would not  
19 have been able to carry out this operation.

#### 20 Criminal Negligence Causing Bodily Harm

21 There are even fewer cases which involve  
22 the sentencing for criminal negligence causing bodily  
23 which involve fentanyl. Some cases involve criminal  
24 negligence causing death. None of the cases that were  
25 provided are very similar to this case. The cases that  
26 were provided do suggest a range of sentence between  
27 two and five years imprisonment. That range is

1 dependent on whether the offence is criminal  
2 negligence causing death or bodily harm, whether there  
3 was a guilty plea, whether there was a joint submission,  
4 the number of counts, the circumstances of the offence,  
5 and the personal circumstances of the offender.

6 In this case, Mr. Oake provided  
7 furanylfentanyl to Courtney Janes. He provided her  
8 with a drug that he ordered off the darkweb. At trial,  
9 Darcy Oake was not sure of the name of the website,  
10 and he had no familiarity with the supplier. He had no  
11 assurance about the quality of the product he was  
12 receiving from this supplier. When the package arrived,  
13 he had no idea what he actually received from the  
14 supplier.

15 Mr. Oake provided the furanylfentanyl to  
16 Ms. Janes knowing how dangerous it was. He had  
17 overdosed on the furanylfentanyl earlier that day, and  
18 he had been advised about the general risks of fentanyl  
19 at the hospital. Mr. Oake was an experienced drug  
20 user, and he and Courtney Janes had used drugs  
21 together before.

22 While he told Courtney Janes to be really  
23 careful with the furanylfentanyl, he was essentially  
24 rolling the dice with her life. He gave Courtney Janes a  
25 drug that was dangerous and capable of causing her  
26 death or serious bodily harm. He knew there was a  
27 very real risk that she could overdose, and he knew this



1 because he himself had overdosed on the same drug  
2 less than 12 hours before.

3 Despite this, Mr. Oake provided Ms.  
4 Janes with furanylfentanyl. He warned her about the  
5 furanylfentanyl but ultimately he prepared a line for her  
6 that she snorted. He gave her more furanylfentanyl to  
7 take with her, and he let her walk out of his garage,  
8 taking no steps to ensure that she was okay before she  
9 did so.

10 One of the things Mr. Oake said in the  
11 pre-sentence report was that he cautioned Ms. Janes  
12 about the drug. He also said that he knew that he  
13 contributed but asked why there was no blame on her.  
14 The evidence was clear that Courtney Janes was eager  
15 to use the drugs and that Mr. Oake had warned her  
16 about the drug. She acknowledged in her testimony  
17 that he had warned her.

18 But this is not a situation about whether  
19 she should share in the blame. She is not the one who  
20 provided a dangerous drug to her friend. If you supply  
21 a potentially deadly drug to someone knowing the risks  
22 of taking that drug, it does not reduce your culpability to  
23 claim that they were eager, that they pressured you to  
24 give them the drug or that you warned them. Addicts  
25 are eager to use a drug and they may ignore warnings.  
26 Supplying Courtney Janes with furanylfentanyl had  
27 consequences which Mr. Oake must accept.

1                                Ultimately, Courtney Janes suffered  
2                                bodily harm as a result of taking the furanylfentanyl.  
3                                She was unconscious for approximately 24 hours and  
4                                was diagnosed with Rhabdomyolysis when she was  
5                                taken to the hospital. She had a severe muscle injury  
6                                which was caused by being immobile for a lengthy  
7                                period of time.

8                                                               The breakdown of muscle cells can cause  
9                                a release of potassium which can be toxic to the heart.  
10                                She required treatment for this. It can also cause  
11                                kidney failure because a product of cell breakdown is  
12                                myoglobin which is toxic to the kidneys. Ms. Courtney  
13                                Janes was hospitalized for this and received treatment.  
14                                She testified that she was weak and suffered pain and  
15                                that she suffered the effects of this condition for months  
16                                afterwards.

17                                                               It is mitigating that Mr. Oake entered a  
18                                guilty plea to trafficking in furanylfentanyl. He  
19                                acknowledged that he trafficked furanylfentanyl to  
20                                Courtney Janes. The guilty plea cannot be considered  
21                                an early guilty plea, and it did not significantly save  
22                                judicial resources as the other matters did proceed to  
23                                trial, and Ms. Janes still had to testify. But it is a guilty  
24                                plea, it is an acknowledgment of responsibility, and it is  
25                                worthy of credit.

26                                                               Mr. Oake does have a criminal record  
27                                with two convictions on it, one for failing to comply with

1 a recognizance and another for possession of a  
2 scheduled substance. Both convictions were entered in  
3 2018, so after these offences. And at the time of these  
4 offences, Mr. Oake did not have a criminal record. The  
5 offences that he is facing today are by far more serious  
6 than the two offences on his criminal record. I'm  
7 cognizant that Mr. Oake is essentially a youthful, first  
8 time offender, and that the sentences that are imposed  
9 today must reflect the seriousness of the offences but  
10 must also take into account totality.

11 Sentence

12 Dealing first with the ancillary orders  
13 sought by the Crown. First, a firearms prohibition order  
14 is mandatory pursuant to s. 109 (1)(c) of the *Criminal*  
15 *Code*. Therefore, Mr. Oake will be prohibited from  
16 possessing firearms commencing today and for a  
17 period ending 10 years after his release from  
18 imprisonment.

19 Second, the drug offences are secondary  
20 designated offences pursuant to s. 487.04 of the  
21 *Criminal Code*. It is a discretionary order, and the  
22 Crown is seeking that the order be made. The defence  
23 does not strongly object to the granting of the order.  
24 Section 487.05(1) permits the court to make an order if  
25 it is satisfied that it is in the best interests of the  
26 administration of justice considering the offenders  
27 criminal record, the nature of the offence, the

1 circumstances surrounding the commission of the  
2 offence, and the impact that an order would have on the  
3 offenders privacy and security of person.

4 Mr. Oake did not have a criminal record at  
5 the time of these offences. However, the offences that  
6 he has been convicted of are serious offences, and the  
7 nature of the offences, drug offences, is an area where  
8 forensic analysis could be useful. Fingerprint and DNA  
9 evidence can assist the police in solving drug crimes.  
10 Considering the circumstances of the offences, the  
11 value of DNA in solving crimes of this nature, Mr.  
12 Oake's privacy and the minimal intrusiveness involved  
13 in collecting a DNA sample, I am satisfied that there  
14 should be an order collecting Mr. Oake's DNA for  
15 inclusion in the DNA databank.

16 Third, the Crown has submitted a draft  
17 forfeiture and return order to deal with some of the  
18 exhibits seized during the investigation. Some items  
19 are classified as offence related property, and some  
20 items the Crown is seeking to have returned to their  
21 lawful owner. The defence does not take issue with the  
22 proposed order, and having reviewed the order, I am  
23 prepared to grant it. The items in Appendix 'A' will be  
24 forfeited to Her Majesty the Queen, and the items in  
25 Appendix 'B' will be returned to their lawful owner, and  
26 that order can issue as drafted.

27 And lastly, the victim of crime surcharge

1 will be waived in the circumstances.

2 I've considered what an appropriate  
3 sentence is given the circumstances of the offences,  
4 Mr. Oake's personal circumstances, and the applicable  
5 sentencing principles. Please stand, Mr. Oake.

6 For the offence of importing  
7 furanylfentanyl into Canada, I impose a sentence of  
8 eight years imprisonment.

9 For the offence of trafficking in  
10 furanylfentanyl, I impose a sentence of three years  
11 imprisonment.

12 For the offence of possession of  
13 furanylfentanyl for the purpose of trafficking, I impose a  
14 sentence of five years imprisonment.

15 And for the offence of criminal negligence  
16 causing bodily harm, I impose a sentence of two years  
17 imprisonment.

18 In consideration of totality, the sentences  
19 on Counts 2, 3, and 4 will be concurrent to Count 1, so  
20 a total of eight years imprisonment. Four years and  
21 three months of remand time will be deducted from the  
22 sentence, leaving a sentence of three years and nine  
23 months imprisonment to be served. You may have a  
24 seat, Mr. Oake.

25 Counsel, thank you. Is there anything  
26 that I have overlooked. Mr. Praught?

27 D. PRAUGHT: I don't believe so, Your Honour.

1 THE COURT: Okay. Ms. Oja?

2 K. OJA: No, Your Honour, not from my perspective.

3 THE COURT: Okay. Thank you. All right. I want to  
4 thank counsel for their assistance during the  
5 submissions for the sentence and Ms. Oja for stepping  
6 in after Mr. Harte was discharged. And if you can pass  
7 along my thanks to Mr. Harte for his assistance during  
8 the trial, it was very helpful. And I want to thank  
9 counsel just for their conduct of the trial and for the  
10 sentencing submissions.

11 K. OJA: Thank you, Your Honour. I'll pass that along.

12 THE COURT: Thank you. All right. We will adjourn.

13

14 **(PROCEEDINGS CONCLUDED)**

15

16

17

18

19

20

21

22

23

24

25

26

27

1           **CERTIFICATE OF TRANSCRIPT**

2           Neesons, the undersigned, hereby certify that the foregoing  
3           pages are a complete and accurate transcript of the  
4           proceedings transcribed from the audio recording to the best  
5           of our skill and ability. Judicial amendments have been  
6           applied to this transcript.

7  
8           Dated at the City of Toronto, in the Province of Ontario, this  
9           21st day of August, 2020.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27



---

Kim Neeson  
Principal