

CITATION: R. v. Bailey-Ricketts, 2024 ONSC 1834
COURT FILE NO.: CR-23-30000276-0000 and CR-23-10000241-0000
DATE: 20240328

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HIS MAJESTY THE KING

– and –

VITO BAILEY-RICKETTS

Defendant

)
)
) Adam Schultz, for the Crown
)
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)

) Kaila Wilowski, for the Defendant
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) **HEARD: March 7 and 27, 2024**

REASONS FOR SENTENCE

G. ROBERTS, J.:

OVERVIEW

[1] Following an eight-week trial, I found Vito Bailey-Ricketts guilty of trafficking fentanyl and cocaine in Thunder Bay, in association with a criminal organization (the Eglinton West Crips or EWC), over the two-month period set out in the indictment. I also found that he was a high-level member of the EWC who directed lower-level members of the EWC, namely Carlton Jones and KG, to traffic in cocaine and fentanyl, by bringing drugs north, and selling them in Thunder Bay.

[2] Counsel agree about how the sentence should be approached. They agree that a sentence should be fashioned for trafficking in fentanyl, and the trafficking in cocaine, possession of fentanyl and cocaine for the purpose of trafficking, and possession of proceeds, from April 21 and May 7, 2020, should be considered in understanding the nature of the trafficking, and the sentences for these other non-criminal organization counts made concurrent. Counsel differ only on the appropriate sentence for trafficking in fentanyl: the Crown says it should be 8 years; the defence says 6 years.

[3] Counsel also agree that the *Criminal Code* requires that the sentence for trafficking in association with a criminal organization be consecutive to the substantive trafficking offence. They also agree that the two additional criminal organization counts should be concurrent. Again, they differ only on the number: the Crown says it should be 6 years; defence says 2 years.

[4] In all the circumstances of these offences and this offender, I believe that a total sentence of 13 years is the minimum sentence that will adequately provide for general deterrence and denunciation in the circumstances of this case.

CIRCUMSTANCES OF THE OFFENCE

[5] I gave lengthy reasons explaining why I found Mr. Bailey-Ricketts guilty of counts 23-27 of the indictment: *R. v. Bailey-Ricketts*, 2023 ONCS 4721. I list these counts in Appendix A to the reasons for judgment. Much of the evidence at the trial came from intercepted communications that Justice Code ruled admissible in *R. v. McPherson and 49 Others*, 2023 ONSC 232.

[6] In a nutshell, I found that in the spring of 2020, Mr. Bailey-Ricketts was selling cocaine and fentanyl in Thunder Bay, where he could sell for higher prices than in Toronto, in association with and for the benefit of a criminal organization, namely the EWC. Mr. Bailey-Ricketts was assisted in his trafficking operation by other members of the EWC, including Carlton Jones, KG, and Ammaan Charley. Mr. Bailey-Ricketts was a high-ranking member of the EWC and gave direction to Mr. Jones and KG in their trafficking.

[7] I found that Mr. Bailey-Ricketts was using his grandmother's home at 568 Lauder Avenue, where he lived growing up, and from time to time as an adult, as a stash house for drugs. Mr. Bailey-Ricketts and the EWC also used 568 Lauder Avenue as a safe place to meet. Police surveillance, both live and through a covert camera, and LBS data associated with the devices being intercepted, showed people associated with the EWC, including Mr. Bailey-Ricketts, Mr. Charley, and KG, repeatedly attending at 568 Lauder Avenue, often at the same time. For example, KG attended at 568 Lauder Avenue on the evening of April 20, shortly before heading north with Mr. Bailey-Ricketts and Victoria Ditmer. The LBS data associated to Mr. Bailey-Ricketts's telephone put Mr. Bailey-Ricketts in the same area at the same time. Mr. Bailey-Ricketts described himself as being in the "zone" when in the vicinity of 568 Lauder Avenue, a term he also used to describe his location when in Thunder Bay trafficking drugs.

[8] Mr. Jones and KG were younger, lower level members of the EWC. Mr. Jones carried drugs to Thunder Bay in March 2020, and sold them in association with and at Mr. Bailey-Ricketts's instruction. The intercepts captured Mr. Bailey-Ricketts advising Mr. Jones how to carry drugs north ("ball it"), and what buses to take to get to Thunder Bay. Mr. Bailey-Ricketts picked Mr. Jones up from the bus depot. Mr. Bailey-Ricketts instructed Mr. Jones to keep the "trizzie", or drug house, low key in order to avoid conflict with other trizzies affiliated with gangs. During a period when sales were slow, Mr. Bailey-Ricketts reminded Mr. Jones that baby bonus cheques were due out shortly (intercepted conversation, March 11, 2020, Vol.III, item 3).

[9] KG was carrying drugs north for Mr. Bailey-Ricketts when he, Mr. Bailey-Ricketts, and Ms. Ditmer were stopped just north of Barrie and arrested on April 21, 2020. KG was 17. Ms. Ditmer, Mr. Bailey-Ricketts's girlfriend-driver-drug selling agent was also carrying drugs for Mr. Bailey-Ricketts. She was 18. Mr. Bailey-Ricketts was not personally carrying any drugs, or anything of interest to police.

[10] More specifically, Ms. Ditmer was carrying the following in the front pouch of her sweater pocket:

- (a) A purple rock, weighing 0.6 grams, found wrapped in brown packing tape inside a black glove (assigned Canada Health certificate #ON0081664 and found to contain fentanyl);
- (b) A dark purple rock, weighing 1.0 grams (assigned Canada Health certificate #ON0081665 and found to contain opium and some form of Fentanyl);
- (c) A purple rock weighing 6.5 grams inside the brown packing tape and black glove (a 1 g sample assigned Canada Health certificate #ON0081666 and found to contain heroin and fentanyl); and
- (d) 57.8 g of a chunk of white powder (1.2 g sample assigned Canada Health certificate #ON0081667 and found to contain cocaine and phenacetin).

[11] KG was carrying the following drugs in his bag, together additional packages of what appeared to be cocaine, a digital scale, plastic gloves, and packaging material:

- (i) A 20.9 g light purple rock (2 g sample assigned Canada Health certificate #ON0081668 and found to contain heroin, fentanyl, and caffeine);
- (ii) A 44.5 g dark purple rock (a sample assigned Canada Health certificate #ON0081669 and found to contain heroin, fentanyl, benzodiazepine, and caffeine);
- (iii) 59.1 g of white rocks tied up in plastic (0.6 g sample assigned Canada Health certificate #ON0081670 found to contain cocaine).

[12] Mr. Charley assisted Mr. Bailey-Ricketts with his Thunder Bay trafficking program, generally helping to staff and protect it. Mr. Charley was also a high-ranking member of the EWC, and a close-confident of Mr. Bailey-Ricketts. He dropped Jose Lopez-Valencia in Thunder Bay on March 29, 2020. Mr. Lopez-Valencia helped Mr. Bailey-Ricketts with his Thunder Bay trafficking program by selling drugs. Mr. Charley coordinated the involvement of KG, who travelled north with Mr. Bailey-Ricketts on April 21, 2020 carrying drugs, as I have described. Mr. Bailey-Ricketts, Ms. Ditmer, and KG were all released later the same day that they were arrested. A few days later, on April 25, Mr. Charley asked KG to get boys to help with the Thunder Bay trafficking operation.

[13] Mr. Bailey-Ricketts was arrested again on May 7, 2020 while Ms. Ditmer was driving him to a drug deal for “3 points” of “Dizz” for \$100. Based on the expert evidence about the meaning of Dizz, the amount sold and the price and location (Thunder Bay where prices were higher than Toronto), and the state of the market for heroin (street levels sales almost invariably included fentanyl), I am satisfied that Mr. Bailey-Ricketts was purporting to sell a drug which included fentanyl. Upon arrest, cocaine and disposable gloves were found in his car:

- (1) a small clear plastic bag containing a blue rock like substance that looked like fentanyl was on the floor of the front passenger seat (as shown in photographs 8, 15, 20 of exhibit 38); it weighed 1.8 g and proved to contain cocaine (LL0371781);
- (2) a box of disposable gloves on the floor adjacent to the rear passenger side seat.

[14] More cocaine, cash, and a digital scale were found in room 127 of the Econo Lodge, which Mr. Bailey-Ricketts was using at the time to sell drugs:

- (a) a baggie containing what appeared to be cocaine and fentanyl was under top right corner of the mattress (when standing at the bottom of the bed and looking toward the top); the white powder weighed 8.5 g and contained cocaine (ON0029276); the blue crystal substance weighed 21.2 g and contained cocaine and phenacetin (ON0029277);
- (b) a black digital scale in working order with white residue; and
- (c) the jacket in photo in ex 40 (worn by Mr. Bailey-Ricketts during his arrest on April 21, 2020, and when he was observed by police during surveillance on March 29, 2020) was found in the closet with \$255 Canadian cash and the receipt for a \$250 hotel room deposit in the pockets.

[15] In addition, cocaine and drug trafficking paraphernalia such as a digital scale and cutting agent were found at 369 North Syndicate Avenue North, a location Mr. Bailey-Ricketts was also using to traffic drugs.

Rule Against Multiple Convictions

[16] The “rule” against multiple convictions (the "*Kienapple*" principle) rule is essentially a principle of fairness that prevents an accused from being convicted of multiple offences arising from the same transaction where the elements of the offences are substantially the same, i.e. there is both a factual and legal nexus. In such cases the accused should only be convicted of the most serious offence, and the other offences should be conditionally stayed: *R. v. Kienapple* (1974), 15 C.C.C. (2d) 524 (S.C.C.); *R. v. Prince* (1986), 30 C.C.C. (3d) 35 (S.C.C.).

[17] Despite the complexity and overlapping nature of the indictment, counsel are in agreement that the "*Kienapple*" principle largely does not apply in this case. Counsel jointly submit that the only count caught by the *Kienapple* principle is count 20, a conspiracy between Ammaan Charley and Mr. Bailey-Ricketts and others to traffic in controlled substances in Thunder Bay. Counsel agree that, in the particular circumstances of this case, this count is effectively subsumed in count 19, which charged Ammaan Charley and Mr. Bailey-Ricketts with conspiracy to traffic in a controlled substance in Thunder Bay in association with a criminal organization for the same time period. I agree. Unlike *R. v. Evans*, 2013 ONSC 7003 at para. 96, there is the necessary factual overlap in this case; it is the same conspiracy, over the same time period. I agree with counsel that *Kienapple* does not apply to any of the other counts.

[18] However, the principle of totality must be carefully considered. Not only can the various substantive counts be seen as “a single criminal adventure”, but I agree with counsel that the principle of totality requires concurrent sentences: *R. v. Friesen*, 2020 SCC 9 at para.155. I also agree with the particular approach suggested by counsel: sentence on trafficking in fentanyl (count 22) and make the sentences on the other non-criminal organization counts concurrent. These other counts inform the nature of the trafficking, sometimes as aggravating circumstances, and should not receive separate consecutive sentences.

[19] Section 467.14 of the *Criminal Code* mandates that the sentence for conspiracy to traffic in Thunder Bay for the benefit of or in association with a criminal organization (count 19), during the same period as the substantive charge of trafficking, be consecutive. As Justice Dambrot explained in *R. v. Evans* (trial decision), s.467.14 effectively provides for an aggravated form of the underlying offence (in this case trafficking) where it is committed for the benefit of, or in association with, a criminal organization. Counsel agree, as do I, that the other two criminal organization counts (counts 17 and 18) should be concurrent to count 19 in recognition of the principle of totality.

CIRCUMSTANCES OF THE OFFENDER

[20] Mr. Bailey-Ricketts did not testify at the trial. But I spent a lot of time with him in court, and heard a lot about him, and sometimes from him, in the course of listening to the intercepted communications. He was guarded on the telephone, often punctuating or ending a conversation with “don’t say a word”. He was captured speaking freely on the car probe. He sat at counsel table throughout the trial. He was always dressed immaculately and always behaved impeccably.

[21] A detailed PSR was prepared. The PSR writer consulted the following sources:

- Vito Bailey-Ricketts, the subject of this report
- Sandra Thompson, the subject’s mother
- Onega Ricketts, the subject’s grandmother
- Kashawna Bogle, the subject’s common law partner
- Sacha Cleary, the subject’s sister
- Jamar Harrison, the subject’s brother
- Antonio Carvallo, the subject’s friend
- Shawn Bogle, the mother of the subject’s common law partner
- Yvonne Williams, the subject’s great aunt
- Toronto Police Service Records
- Canadian Police Information Centre (CPIC)
- Ministry of the Solicitor General Records

[22] Mr. Bailey-Ricketts was born in Jamaica on September 8, 1987. He is currently 36 years old. He has two older brothers and two younger sisters.

[23] Mr. Bailey-Ricketts’s early childhood was spent with his mother and younger sister in Jamaica. They lived in a one-bedroom home. The toilet was outside. There were other similar homes nearby and the main road was about 10 minutes away. It was a dangerous area, and it was

not safe to be outside about 5 pm. His mother worked a lot to support the family. Mr. Bailey-Ricketts had a very good relationship with her.

[24] Mr. Bailey-Ricketts's father lived in New York City. He died of gun violence in 1992, when Mr. Bailey-Ricketts was 9. Mr. Bailey-Ricketts never knew his father. Mr. Bailey-Ricketts's mother reported that Mr. Bailey-Ricketts "saw his father for the first time in a casket".

[25] After his father died, when he was 10, Mr. Bailey-Ricketts was adopted by his paternal grandmother Onega Ricketts in Toronto, in order for him to have a better life. He moved in with his grandmother, and her then husband, in the neighbourhood of Dufferin and Eglinton. They lived in a detached three bedroom home with a yard and an unfinished basement. His older brother moved in with them, at a later time. He sister Sacha Cleary visited in summer (Ms. Cleary grew up in New York but spent summers in Toronto).

[26] Mrs. Ricketts was a strict disciplinarian. She was also loving. Her then husband could be abusive, both to her and Mr. Bailey-Ricketts. Mrs. Ricketts struggled with alcohol abuse when Mr. Bailey-Ricketts was growing up but has no current issues with alcohol. Mr. Bailey-Ricketts notes that he was and still is very close to her. Mrs. Ricketts was in court almost every day of this lengthy trial and sentencing.

[27] Ms. Cleary described the area of her grandmother's home as a nice quiet neighbourhood. They would go to the park, pools and she never saw any drugs, weapons, or violence. Jamar Harrison, Mr. Bailey-Ricketts's older brother, described the neighbourhood as "good and bad". It was diverse, with many family-oriented businesses, a lot of basketball courts, a tight knit community that hosted street festivals. The bad side "was it was a low-income area, there was a nightlife 'where stuff went on,' 'people died out there,' raids happened, and there were a lot of problems. Mr. Bailey-Ricketts's friend, Antonio Carvallo, described the neighbourhood as having a lot of "mom and pop shops" but also issues with drug dealing and rival gangs. Mr. Bailey-Ricketts described the Dufferin/Eglinton area near his grandmother's home as:

"hustling and bustling" being a mix of storefronts, houses, high rises, and multiple bars... there were many people inside and outside of these bars selling illicit substances... there were certain bars where it was well known anything could be sold out of....he was exposed to significant violent issues from a young age...[including seeing] an individual be fatally shot in the head, multiple stabbings, as well as numerous illicit drug transactions which often led to violence such as robberies, shootings, and stabbings.... parties would run through the night where he would see people drinking, smoking, and consuming illicit drugs.

[28] Mr. Bailey-Ricketts did not flourish at school. After moving to Canada, he was identified as having a learning disability. (I cannot help but wonder whether there was actually a language issue as the evidence in this trial shows Mr. Bailey-Ricketts to be highly intelligent and highly capable.) Mr. Bailey-Ricketts excelled at track and field, particularly running, but did not achieve his potential. He reported that his grandmother missed signing a permission slip in grade 8, there

was “an issue” in grade 9 (he was expelled due to an allegation of sexual assault in gym class, which was ultimately dismissed), and his school in grade 10 did not have a track and field team (he attended a specialized school due to his learning disability up to grade 10, transferring to an ordinary public school in grade 11.) His school in grade 11 did have a track team, but, by that time, “he was focused on his activities outside of school”. He was suspended and ultimately expelled for lack of attendance. He went to Jamaica the following year and never returned to school. He reported that he is working on completing his high school diploma in custody. On the first date of sentencing submissions, counsel submitted that he is “one assignment away” from completing it. On the second date, Mr. Bailey-Ricketts reported that he had completed the assignment.

[29] Mr. Bailey-Ricketts began to hang out with “the wrong crowd”, and did not graduate from high school. His friend Antonio Carvallo noted that he and Mr. Bailey-Ricketts “were exposed to criminal activity from a young age, had no supervision, and had no rules”. He noted that Mr. Bailey-Ricketts’s male role models were “not the best people to look up to”. Their shared friends are either “dead, deported, or in jail.”

[30] Mr. Bailey-Ricketts’s grandmother reported that, throughout his life, Mr. Bailey-Ricketts has been targeted by police due to his race. His partner, Ms. Bogle, noted he was frequently stopped by police, carded, and discriminated against. She noted he experienced significant trauma being separated from his mother and sister in Jamaica. Mr. Bailey-Ricketts’s brother Jamar Harrison also believed Mr. Bailey-Ricketts had been unfairly targeted by police throughout his life, including in relation to the instant case. (I cannot accept this latter assertion. The evidence in this case comes from intercepted communications ruled lawful, supported by extensive surveillance, as described in my reasons for judgment. I found it overwhelmingly established the charges set out in the indictment.) All noted that Mr. Bailey-Ricketts was in a serious car accident that left him badly injured and traumatized. Mr. Bailey-Ricketts’s friend Antonio Carvallo noted that Mr. Bailey-Ricketts “witnessed crime and violence as a child, was “carded” and discriminated against due to his race, and noted there were issues within the neighbourhood that caused fights and disputes. He also stated it was traumatic for the subject to grow up without either of his parents. Mr. Bailey-Ricketts reported being targeted due to his race from a young age, including the sexual assault allegations in grade 9, and being stopped and frisked by police while walking on Eglinton as a teenager. He was first arrested at 19, after being stopped “for no reason”. He claimed he was stopped so often by police when driving that he stopped driving in Toronto. (I note he has a criminal record for impaired driving from 2016 which may also have something to do with his decision to stop driving.)

[31] Mr. Bailey-Ricketts noted that around grade 10 he started spending more time on Eglinton “to be noticed and to feel like he belonged to something”. By 17 he was part of the Eglinton West Crips (EWC) and was selling drugs to support himself and his grandmother. He advised the PSR writer that “he was mainly involved with EWC from the ages of 17-20” but is not currently associated with the gang, though some of his friends are. (This is contrary to the evidence at trial, and my factual findings, and I cannot rely on it. I found him to be a high-ranking member of the EWC.)

[32] Mrs. Ricketts noted that she knows some of Mr. Bailey-Ricketts's friends and described them as "good boys" he grew up with who are not part of a gang. This is inconsistent with some of Mr. Bailey-Ricketts's admissions to the PSR writer. It is also inconsistent with my factual findings at trial. I found that Mr. Bailey-Ricketts used his grandmother's home as a stash house and meeting place for the EWC. While I believe Mrs. Ricketts is well-meaning, I cannot place weight on this statement.

[33] Mr. Bailey-Ricketts worked at a fast food restaurant between the ages of around 16 to 18 in order to help his grandmother. He advised that, after this, he began to support himself and his family through the sale of illicit drugs. He reported doing some work through job agencies while he was 20 and 21, but "has not worked a formal job since that time". He claimed that he had immigration issues and was unable to work legally until these issues were resolved in 2021, when he became a Canadian citizen. He explained that he was supported through "his grandmother, Ms. Bogle, reselling game systems, and occasional illicit drug transactions." His goal is to open his own business so he can support his family in a pro-social way. I have no doubt that he has the ability and skills do this. The evidence I heard at trial shows him to be highly intelligent and highly skilled.

[34] Mr. Bailey-Ricketts reports no concerns regarding substance use and addictions. He acknowledged that the illicit drugs at issue in this case were intended for sale.

[35] Mr. Bailey-Ricketts has a long-term partner, Kashawna Bogle. They have been together for 14 years and have three children together, aged 14, 11, and 10. The family lives in Mississauga. They were separated at the time of the offences at issue in this case but have since reconciled. Ms. Bogle describes Mr. Bailey-Ricketts as a loving and involved father. Mr. Bailey-Ricketts's mother, grandmother, great aunt Yvonne Williams, and sister Sacha Cleary, all say he is a good father.

[36] Mr. Bailey-Ricketts admitted to the PSR writer that he was in Thunder Bay for the purpose of selling illicit drugs, but claimed he fell into this when he returned to living at his grandmother's home:

He stated while there some of his old friends were released from custody and they connected with him. He noted he needed money and could not legally work due to his ongoing immigration issues. He reported he decided to sell illicit drugs in Thunder Bay to support his family and agreed to provide a ride to an individual and was not aware of what this individual was in possession of. Mr. Bailey-Ricketts was aware his friends were in EWC, however, denied his activities were to support EWC and noted he has his "own thing" which was separate from EWC.

Mr. Bailey-Ricketts did not testify or call any evidence at the trial. These assertions are contrary to the evidence at trial, and my factual findings, and I do not rely on them. I rely on the facts I found in my reasons for judgment, summarized above in the section on circumstances of the offence.

[37] Mr. Bailey-Ricketts has the following criminal record:

Court and Date	Offence(s)	Disposition(s)
Toronto, ON Jul-07-2009	(1) Poss of a Loaded Prohibited or Restricted Firearm Sec 95(1) CC	(1-2) 1 Day On Each Chg Conc (Credit For Equivalent Of 1 Yr & 4 Mos & 20 Days PSC) & Mand 109
	(2) Carry Concealed Weapon Sec 90(1) CC	
	(3) Poss of a Schedule I Substance Sec 4(3) CDS Act	(3) 6 Mos Conditional Sentence Order & Probation 2 Yrs
Toronto, ON Mar-03-2016	Driving While Ability Impaired Sec 253(1)(A) CC	\$1,000 & Probation 2 Yrs & 259(1) driving prohibition 1 year
Toronto, ON Feb-08-2017	(1) Traffic In Schedule I Substance Sec 5(1) CDS Act	(1) 6 Mos Less A Day & Probation 2 Yrs (5 Days PSC) & Mandatory 109
	(2) Fail To Comply Recog Sec 145(3) CC	(2) 3 Mos Conc
	(3) Poss of Proceeds of Property Obtained by Crime Sec 354(1) CC	(3) 6 Mos Less 6 Days Conc

[38] Mr. Bailey-Ricketts has completed 18 programs while in custody (listed in his affidavit). Brighter Dayz, a not-for-profit organization assisting offenders at the TEDC re-integrate into society by, among other things, offering programs in custody, noted that Mr. Bailey-Ricketts took 13 programs which they offered, and commented that he:

attended all the workshops and displayed an avid interest in learning self-control as well as how to develop self-esteem and use them in a positive way. He is an active participant in the workshops – he asks questions and is very co-operative when called upon to answer questions...[and] display an eagerness to learn.

[39] Kashawna Bogle provided a letter of reference describing what an involved and caring father Mr. Bailey-Ricketts is, and how much their children love, miss, and need him, especially their eldest son, noting “Young black men require the presence of their fathers in their lives in order to bring about positive change.” She asks “for a fair chance for the system to demonstrate that it is meant to rehabilitate our men rather than perpetuate the incarceration and oppression of the black community.” She implores me not to punish him “for actions he did not commit”.

[40] All of Mr. Bailey-Ricketts’s children, eldest son J, daughter V, and youngest son C, wrote to me about how much they miss their Dad, and want him home, asking for mercy.

IMPACT ON THE COMMUNITY

[41] The Crown has filed local case law, and a number of reports, showing that the fentanyl crisis is particularly acute in Thunder Bay (in 2023 it had the highest opioid-related mortality rate of any community in Ontario), and that the majority of drug traffickers arrested are from out of town. The Crown materials include:

- *R. v. Puentes-Reed & Yousuf*, 2023 ONSC 1336 and 2023 ONSC 2555;
- Broken Trust – Indigenous People and the Thunder Bay Police Service”, Report by Gerry McNielly, Independent Police Review Director, Office of the Independent Police Review Director (December 2018);
- “Opioid Toxicity Mortality Rate By Census Subdivision (CSD) – Ten (10) CSDs with the highest mortality rates in 2023 (Q1 to Q3),” Chart prepared by the Office of the Chief Coroner for Ontario (OCC), dated February 5, 2024;
- Affidavit of DC Matthew Veal of the Thunder Bay Police Service, Intelligence Branch, dated February 20, 2024, attaching a report prepared by the Thunder Bay Police Service Intelligence Analyst Michelle Merko, dated January 18, 2024, comparing year end totals for drug investigations conducted by all branches of the Thunder Bay Police Service for the years 2020, 2021, 2022, and 2023, and including statistical data from the OCC about overdoses in Thunder Bay.

[42] The expert evidence in *Puentes-Reed* echoes what the Crown proved happened in the instant case. The trial judge, writing in 2022 and 2023, described the situation in Thunder Bay as follows (at paras.24 – of his reasons for judgment):

It is a notorious fact, regrettably, that there is, and has been for several years, a serious and organized drug trade being carried out in Thunder Bay. It has been going on since before the pandemic hit in 2020. This is driven by the fact that the street price in Thunder Bay for illegal drugs is significantly higher than it is in the more populous markets of Southern Ontario.

...[A] favoured method of distribution in Thunder Bay involves a dealer or a gang of dealers taking over residential premises. These dealers are, more often than not, not permanent residents of Thunder Bay. They are assisted by local residents, who often initially “consent” to the takeover of a residence as a kind of storefront. The out-of-town dealers arrive either by air, bus or car. They come prepared to stay here for as long as their supply lasts...

This type of takeover of a residential property where sales are made to “retail customers” causes the location to be known as a “trap house”.

[43] In his reasons for sentence, the trial judge noted that he was “acutely aware of the scourge that the active, violent, lucrative and apparently unending drug trade is having on the community of Thunder Bay and the Northwest Region....”

RANGE OF SENTENCE

[44] I will focus on the two most significant offences in this case, trafficking in a schedule I substance (fentanyl and cocaine in this case), and conspiracy to traffic in association with a criminal organization.

[45] Trafficking in a schedule I substance, contrary to section 5(1) of the *Controlled Drugs and Substances Act (CDSA)*, is punishable by a maximum sentence of life. There is no mandatory minimum sentence.

[46] The offence of trafficking captures a broad spectrum of conduct. The range of sentence generally reflects both the nature of the drug trafficked, and the nature of the trafficking involved. Cocaine, heroin and fentanyl are all considered to be extremely serious drugs, toxic to entire communities, with fentanyl replacing heroin as the “worst of the worst”. Trafficking is considered to fall within the following general hierarchy, from least to most serious:

- (1) Street level seller – small hand-to-hand transactions, often an addict-trafficker;
- (2) Street level supplier – transactions up to an “Eight-Ball” or one ounce;
- (3) Supplier to street level supplier (mid-level) – multi-ounce transactions;
- (4) Distributor to Supplier (high-level) – one-half kilo to multi-kilo transactions;
- (5) Importer to Distributor.

R. v. Haye, [2013] O.J. 6493 per Code J.A., aff’d [2014] O.J. No.6575 (C.A.)

[47] Where the trafficking falls in the hierarchy will turn on all the circumstances, including the amounts trafficked, and the persistence of the trafficking. In *Haye*, Justice Code explained that the amount of cocaine is most significant as a circumstance that helps situate the conduct in the trafficking hierarchy:

Sentences are not calibrated by the precise amounts involved in the sense that having 50 grams less in one case than another does not necessarily result in a discount. The main significance that attaches to the quantity possessed in drug trafficking sentencing is that it helps to give rise to an inference about the position that the accused occupies in the drug trafficking hierarchy.

[48] Similarly, the persistence of the trafficking reveals information about its nature and place in the hierarchy. As Justice Dambrot explained in *R. v. Evans et al*, 2013 ONSC 7003 (sentence upheld in 2019 ONCA 715):

[W]hile the range of sentence for trafficking in small quantities of crack cocaine is six months to two years less a day, the range is higher when the offence involves long-term, persistent trafficking, particularly where that is the sole or primary source of the offender's livelihood. One of the reasons for this is the fact that unlike most street dealers, who obtain a few grams of cocaine and then sell 1/4 or 1/2 gram

amounts, a persistent seller needs to obtain much larger quantities of cocaine, sometimes even ounces of cocaine, and as a result must have access to vendors at a higher level in the chain of distribution. In such circumstances, I believe the range to be two years less a day to four years. Where a street-level trafficker also occasionally traffics at a wholesale level, the top of the range or higher is appropriate.

[49] The range of sentence for cocaine trafficking is well-established: approximately 6 months to two years less a day for a “street-level” trafficker dealing in gram amounts of cocaine, amounts less than an ounce; approximately 2-5 years for a “mid-level” trafficker, capable of supplying ounce amounts to street-level traffickers, and dealing in ounce levels: *R. v. Woolcock*, [2002] O.J. No.4927 at para.15; *R. v. Haye*, *supra* at paras.10-12 (S.C.J); *R. v. Ahmed*, 2016 ONCA 831.

[50] The range of sentence for trafficking fentanyl is still being established. In *R. v. Parranto and Felix*, 2021 SCC 46 at para.68, a majority of the SCC noted cases across the country suggested a “national” range of 8 to 15 years for mid-level and/or wholesale trafficking, affirming 10 and 14 year sentences for two wholesale commercial traffickers who *pleaded guilty* (the former (Felix) was a first offender; the latter (Parranto) had a significant record but was Indigenous and entitled to *Gladue* consideration).

[51] In *R. v. Lynch*, 2022 ONCA 109, post-*Parranto*, the Ontario Court of Appeal approved a range of 6-8 years for mid-level trafficking in fentanyl. Mr. Lynch, who had no criminal record, *pleaded guilty* to being in possession of 41.37 g of fentanyl, 965 g of cocaine, and 149.28 g of MDMA for the purpose of trafficking. His initial sentence of 4 years was increased to 6 years on appeal.

[52] More recently, in *R. v. Owusu*, 2024 ONSC 2024 and *R. v. Gordon-Brown*, 2024 ONSC 1300, after a thorough analysis of *Lynch* and other authority from the Court of Appeal, and *Parranto*, Justice Code put the range for a mid-level fentanyl trafficker dealing at the ounce and multi-ounce level at 8 to 11 years. Justice Code explicitly recognized, as do I, that *Parranto and Felix* involved fentanyl trafficking at the wholesale level, but noted that the Supreme Court’s comments about the seriousness of fentanyl and the significance of the amounts trafficked apply in the context of a mid-level trafficker. Justice Code also recognized that persistent trafficking over a sustained period is a significant aggravating factor.

[53] Section 467.12 makes it an indictable offence to commit an indictable offence “for the benefit of, at the direction of, or in association with, a criminal organization”. The maximum sentence is 14 years. There is no minimum sentence. Section 467.14 explicitly provides that any sentence for s.467.12 or 467.13 shall be consecutive to any other punishment for an offence arising out of the same event or series of events: s.467. 14 *Criminal Code*; *R. v. Beauchamp*, 2015 ONCA 260 at paras. 322-29. Section 718.2(a)(iv) also provides that it is an aggravating factor to commit an offence “in association with a criminal organization”.

[54] Appellate courts have recognized that the essential objective of the criminal organization legislation is to protect society from the violence and other criminal activity of criminals who work together as a group. Such group activity poses an enhanced danger to society, requiring emphasis

on protection of the public, deterrence and denunciation: *R. v. Beauchamp*, at para.260; *R. v. Mastop*, 2013 BCCA 494 at para.46; *Evans Dambrot* at 140.

[55] There is no clear range of sentence for section 467.12 of the *Criminal Code*. This reflects the fact that the underlying offence can vary. It also reflects the fact that courts have taken different approaches to sentencing for s.467.12, with some courts giving it the primary substantial sentence, and other courts giving it the secondary sentence (see discussion in *Gordon-Brown* at para.47). In Ontario, courts have tended to do what counsel suggest I do in this case: sentence on the underlying predicate offences (fentanyl trafficking being the most serious in this case), and then separately on the criminal organization offence (as done in *Evans*, and the cases cited at para.121 of the trial decision in *Evans*). As noted, I agree with the approach suggested by counsel. I view the criminal organization counts as a particularly aggravated form of the underlying offence of trafficking (similar to parallel provisions concerning firearms and terrorism, as discussed in the trial decision in *Evans*, at paras.104-120). The criminal organization counts amplify the range of the underlying offences.

[56] Once the range of sentence is determined for a particular offence, the sentencing court must impose a fit and proportionate sentence, bearing in mind the range of sentence, the gravity of the offence and the degree of responsibility of the offender, as reflected by all the circumstances, including relevant principles and objectives of sentencing, and aggravating and mitigating circumstances (aggravating factors increase the gravity of the offence or degree of responsibility of the offender relative to others committing the same kind of offence; mitigating factors reduce the gravity of the offence or degree of responsibility of the offender relative to other offenders committing the same kind of offence): s.718.1 of the *Criminal Code*; *R. v. Friesen*, 2020 SCC 9 at paras. 34, 37-38, 96-97, and 108-114; *R. v. M.V.*, 2023 ONCA 724 at paras.44-52.

PRINCIPLES OF SENTENCING

[57] The principles of sentencing are now largely codified (mainly in ss.718, 718.01-04, 71.1 of the *Criminal Code*), though the common law remains important. At this point I will only note some of the most important principles; other relevant ones I will address in the course of my analysis. As with any sentencing decision, the relative weight to be accorded to each sentencing principle or objective will vary depending on the circumstances of the particular offence. In all instances, the sentence must be proportionate to both the gravity of the offence and the degree of responsibility of the offender.

[58] Section 10(1) of the *CDSA* incorporates the principles set out in the *Criminal Code*, and notes that “the fundamental purpose of any sentence for an offence under this Part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.”

[59] Appellate courts, including the Supreme Court of Canada, have repeatedly recognized the “significant if not staggering” harm caused by trafficking in hard drugs, directly to users, such as addiction, health problems and death, indirectly to their families and communities, including the “inevitable” violence and crime associated with drug use, trafficking and importation, the

intergenerational trauma, and the staggering cost to society in terms of health care and law enforcement expenses, and lost productivity: *R. v. Parranto*, 2021 SCC per Moldaver at paras.87-92; *Pushpanathan v. Canada (Minister of Employment & Immigration)*, [1998] 1 S.C.R. 982, at pp. 1039-40; *R. v. Smith*, [1987] 1 S.C.R. 1045, at p. 1053; *R. v. Lukaniuk* (1988), 34 O.A.C. 315 (C.A.). Long before the fentanyl crises started to destroy our communities, the Supreme Court noted that trafficking in hard drugs “tears at the very fabric of society”. These words have never seemed more true than at the present time.

[60] Given the immense harm of drug trafficking, denunciation and deterrence are of paramount importance in the sentencing process. As Lamer J. commented almost 40 years ago in *Smith*, at p. 123:

Those who import and market hard drugs for lucre are responsible for the gradual but inexorable degeneration of many of their fellow human beings as a result of their becoming drug addicts. ... Such persons, with few exceptions ... should, upon conviction, in my respectful view, be sentenced to and actually serve long periods of penal servitude.

[61] In *Parranto*, the Brown/Martin majority noted that “Local conditions may enter into the assessment of the gravity of the offence and militate in favour of prioritizing certain sentencing goals” (para.59). The court went on to note that “the offender’s willingness to exploit at-risk populations” is an aggravating fact, increasing the seriousness of the offence and the moral culpability of the offender (70-71):

While all people and places merit protection, sentencing judges may, as they consider appropriate, give special consideration to the disproportionate harm caused to particularly vulnerable groups and/or vulnerable and remote locations, where escaping traffickers is more difficult and resources for combating addiction are more sparse.

ANALYSIS - WHAT IS A FIT SENTENCE IN ALL THE CIRCUMSTANCES?

[62] I will situate the trafficking in this case in the range, and then consider the aggravating circumstances, the mitigating circumstances, and circumstances that have a mitigating effect (namely harsh conditions of pre-sentence custody).

[63] Both counsel refer to the range for a mid-level trafficker as the relevant range. I agree; the drug trafficking in this case falls at the mid-level. Although the wires capture Mr. Bailey-Ricketts conducting street-level trafficking, the evidence also shows that he arranged for the supply of drugs north, bringing significant quantities north (during the April 21, 2020 stop near Barrie, Mr. Bailey-Ricketts’s mules Victoria Ditmer and KG were carrying a total of 116.9 grams of cocaine and 73.5 grams of a fentanyl/heroin mix). Earlier in March he advised Carlton Jones about the bus schedule, and how to carry drugs north (“ball it”), and picked him up at the bus depot in Thunder Bay. The intercepts showed him forging connections with users in Thunder Bay, arranging for “trap” houses, places to sell drugs out of, and places to stay. Mr. Bailey-Ricketts oversaw the sale of drugs in the community. He advised Carlton Jones to keep the “trizzie” “low key”. They discussed the pace of sales; on one occasion he gave Mr. Jones a sort of pep talk, encouraging him that sales would

pick up as social assistance cheques were due out soon. He directed Ms. Ditmer's trafficking in Thunder Bay in his absence, telling her where to go, how much to bring and exactly what to do. When they struggled to keep up with the demand for fentanyl, he sternly rebuked Mr. Lopez-Valencia's suggestion that they find a local supplier, sharply cautioning "not in my vicinities". Mr. Bailey-Ricketts is at least a mid-level trafficker; a highly skilled one.

[64] The trafficking occurred persistently over the two-month period set out in the indictment (March 6 to May 7, 2020). When the wires went up in early March, 2020, it was apparent that Mr. Bailey-Ricketts's Thunder Bay trafficking program was already in full swing: he had established clients, places to stay, places to sell drugs. In a call to Mr. Charley on March 14, 2020, Mr. Bailey-Ricketts noted "it's not the same like when we're here in January fam, I have like two...I have like three cribs we could like, trizzy out of right now". Supply was the issue. In the same call, Mr. Bailey-Ricketts noted that they needed to "front some drugs from a man or rob a man for some drugs or one of the two dog." They also needed a "certified worker" to "mold" (Vol.III, item 14).

[65] The trafficking was well-organized and tightly controlled by Mr. Bailey-Ricketts. He arranged for the supply of drugs (kept safe at his grandmother's home on Lauder Avenue in EWC territory), arranged to bring it north using young or youthful people without criminal history (Carlton Jones, Victoria Ditmer, KG), and arranged for the people and places to sell it. He kept tight control over his Thunder Bay drug trafficking "program". When Carlton Jones was late bringing drugs north, Mr. Bailey-Ricketts mused to Mr. Charley that Mr. Jones better arrive soon otherwise there would be a body in the woods. When Mr. Lopez Valencia discussed finding a local sources for drugs, he issued a sharp rebuke: "not in my vicinities".

[66] Section 10 (2)(c) of the *CDSA* explicitly notes that it is aggravating to use or involve "a person under the age of eighteen years...in the commission of the offence". As noted, KG and Victoria Ditmer were carrying the drugs found during the police stop on April 21, 2020 near Barrie. They were Mr. Bailey-Ricketts's drugs (as I explained in my reasons for judgment), picked up from his grandmother's home on Lauder Avenue. KG was only 17 at the time. Mr. Bailey-Ricketts knew KG had recently been kicked out of his parents' home. Ms. Ditmer was 18. Mr. Charley and Mr. Bailey-Ricketts repeatedly discussed needing new "youth" in their operation.

[67] Mr. Bailey-Ricketts deliberately targeted the vulnerable. Thunder Bay has a notorious drug problem, including a disproportionately high share of opioid-related deaths as compared to other communities, and the province as a whole (this is well-documented in the reports and local caselaw provided by the Crown). Similar to an importer or producer, Mr. Bailey-Ricketts brought drugs into the vulnerable Thunder Bay community. He targeted the community because of its demand and the fact that he could sell for higher prices than in Toronto. Detective Duffus, qualified as an expert in drug language and pricing and common weights, testified that street drugs like cocaine and heroine/fentanyl command higher prices north of Toronto, the further north the higher the premium.

[68] Inside the already vulnerable Thunder Bay "market" for cocaine and heroin/fentanyl, Mr. Bailey-Ricketts deliberately targeted and preyed on the particularly vulnerable. When Carlton Jones complained that sales were slow, Mr. Bailey-Ricketts "encouraged" him by noting that social security cheques were due soon. While the devastating effect of trafficking in serious drugs like

fentanyl is already taken into account in the approximate range of sentence, in *Parranto*, the Brown/Martin majority emphasized that it was open to a sentencing judge to “take into account the offender’s willingness to exploit at-risk populations and communities” as increasing “not only the gravity of the offence but the moral culpability of the offender”: *Parranto*, para.70.

[69] Mr. Bailey-Ricketts did not stop trafficking or even pause the Thunder Bay drug trafficking program after he was arrested and charged with joint possession of the drugs found on April 21, 2020. He was released on bail and went right back to “work” at his Thunder Bay drug program. It was in full swing when he and Victoria Ditmer were arrested on May 7, 2020 on a delivery. A cutting agent was found in the stash house they had been using, and more drugs were found in the hotel room they were selling out of.

[70] Mr. Bailey-Ricketts has a related criminal record. Two of the three entries (the third is impaired driving) are drug related: 2009 for possession of a schedule I substance and a s.95 firearm (a well-established “tool” of the drug trade); 2017 for trafficking in a schedule I substance. There are gaps in the record, but considered in the context of the evidence in this case, I do not believe the gaps suggest a break in criminal activity so much as Mr. Bailey-Ricketts’s skill as a drug dealer. According to Mr. Bailey-Ricketts and the many friends and family interviewed by the PSR writer, apart from working at a fast food restaurant when he was a teenager, he has never held a formal job. He supported his grandmother, and was driving a BMW SUV (or rather being driven in a BMW SUV by his teenage driver, Victoria Ditmer) at the time frame of the indictment. In a candid conversation with Ms. Ditmer on May 4, 2020, captured on a vehicle probe in the BMW, he mused about how he gave Jose Lopez-Valencia “80%” of Lopez-Valencia’s “whops” (drug deals), and how he had Crips living with him for years, teaching them “how this all work...these all my underlings....I had generations of little N*****s that I put in there [a trap house]....I had little N*****s come from here to my house and say yo OG” (Vol.IX, item 8).

[71] Mr. Bailey-Ricketts is not an addict trafficker. Trafficking was his livelihood.

[72] Finally, it is well established that cocaine, heroin and fentanyl are extremely dangerous drugs. Fentanyl has been described as “the worst of the worst”. It is ravaging our communities, in particular Thunder Bay, which currently has the highest opioid-related death rate of any community in Ontario.

[73] Turning to mitigating circumstances, Mr. Bailey-Ricketts has comparatively little to offer in mitigation.

[74] It is trite law that neither his decision to exercise his constitutional right to a trial, nor the way his counsel chose to litigate that trial, can be considered as aggravating circumstances on sentence: *R. v. Kozy*, (1990), 80 C.R. (3d) 59. I mention this, however, as it is important when assessing the range case law. Mr. Bailey-Ricketts cannot claim the mitigating benefit of a guilty plea, which is a significant factor in many of the range cases put before me.

[75] Mr. Bailey-Ricketts has had a difficult childhood and upbringing, including suffering the effects of anti-Black racism. The Crown position takes this into account as a mitigating

circumstance. I agree it is important and mitigating, but, for the following reasons, accord it little weight in the circumstances of this case.

[76] While I do not have an Impact of Race and Culture Assessment (IRCA) (it was taking too long), I have a very detailed PSR which includes extensive helpful information about Mr. Bailey-Ricketts's neighbourhood and the anti-Black racism he suffered growing up. In addition, I take judicial notice of anti-Black racism in our society, and counsel agree that I can consider the "Expert Report on Crime, Criminal Justice and the Experience of Black Canadians in Toronto, Ontario", appended to the trial decision in *R. v. Morris*, 2018 ONSC 5186.

[77] Background information about an offender, including how anti-Black racism has impacted the offender, is relevant to the sentencing process in two important ways. First, background information is important in understanding the offender's moral blameworthiness or responsibility for the offence, something essential to arriving at a proportionate balance between the seriousness of the offending conduct and the moral blameworthiness of the offender that is necessary to craft a fit sentence. For example, it may be very helpful to understand an offender's experience, including with anti-Black racism, in assessing the moral blameworthiness of choices they make. Second, background information assists in blending the various objectives of sentencing to arrive at an appropriate sanction in the circumstances.

[78] There is no question that there is a connection between Mr. Bailey-Ricketts's background and the offending behaviour in this case. Racism, the absence of a positive male role model, the presence of gangs in the neighbourhood, all go a good distance toward explaining how Mr. Bailey-Ricketts became involved with the EWC and drug trafficking, and diminishing his moral culpability. In the particular circumstances of this case, however, where he has *stayed* involved in the EWC, and gone on to *deliberately take advantage of vulnerable youth in his community*, I cannot give much weight to Mr. Bailey-Ricketts's background as a mitigating circumstance. The evidence of Mr. Bailey-Ricketts taking advantage of young people includes:

- Advising a much younger Carlton Jones how to bring drugs north ("ball it") for use in Mr. Bailey-Ricketts Thunder Bay drug operation.
- Using an 18 year old Victoria Ditmer to drive him, carry his drugs, and carry out drug transactions in Thunder Bay.
- Using a 17 year old KG to bring his drugs north, and take responsibility for those drugs when Mr. Bailey-Ricketts, Ms. Ditmer and KG were pulled over by police and searched on April 21, 2020. As noted, this was my factual finding at trial. It is confirmed by Ammaan Charley's conversation with Mr. Belfon-Green (a fellow EWC member) about how KG had to "hug" the charges, and protect Mr. Bailey-Ricketts. Mr. Bailey-Ricketts knew KG had been kicked out of his parents' home at the time Mr. Bailey-Ricketts used him to carry drugs north.
- In the car probe on May 4, 2020, Mr. Bailey-Ricketts and Ms. Ditmer discussed how "Fat Boy" (Jose Lopez-Valencia) was not giving Mr. Bailey-Ricketts the respect he deserved. Mr. Bailey-Ricketts noted how he gave Mr. Lopez-Valencia

“80%” of his “whops” (drug deals). Mr. Bailey-Ricketts also mused about how he and a deceased colleague showed “these N***** how this all work”.

[79] Nor can Mr. Bailey-Ricketts’s difficult background justify placing greater weight on rehabilitation or restraint in the circumstances of this case. Mr. Bailey-Ricketts was arrested with Ms. Ditmer and KG on April 21, 2020 with a total of 73.5g of mixed fentanyl/heroin, and 116.9g of cocaine. They were all released on bail. Mr. Bailey-Ricketts and Ms. Ditmer went right back to “work” at their Thunder Bay drug program. It was in full swing when they were arrested again on May 7, 2020. Similar to *R. v. Parranto* (Mr. Parranto was Indigenous and had a long history of drug use and addiction), these circumstances undercut emphasis on rehabilitation that Mr. Bailey-Ricketts’s background might otherwise support. As the majority in *Parranto* explained at para.80:

Mr. Parranto’s background circumstances can be said to have played a part in bringing him before the court. Against this must be weighed the reality that Mr. Parranto committed the second set of offences less than three months after being released on bail for the first set of offences. This suggests that restorative justice principles such as rehabilitation are less salient in this case compared to other objectives including protection of the public.

[80] Finally, the offences in this case are so serious that general deterrence and denunciation eclipse whatever diminution of moral responsibility, and increased emphasis on rehabilitation, Mr. Bailey-Ricketts’ background provides: *R. v. Abdulee*, 2023 ONCA 32 at para.40; *R. v. Husbands*, 2024 ONCA 155 at para.60. The planned and deliberate importation and sale of lethal drugs into a vulnerable community and to a vulnerable population requires a significant sentence to give effect to general deterrence and denunciation.

[81] Mr. Bailey-Ricketts has support in the community. As I have noted, his grandmother was in court almost every day during the long trial, and continues to stand by him. As does his spouse. His children love and miss him.

[82] Mr. Bailey-Ricketts has no work history, nor any trade. But he has taken programs in custody. During the first date for sentencing submissions, I was told that he was “one assignment away” from completing his GED. On the second date for submissions, Mr. Bailey-Ricketts confirmed that he had completed that assignment. I have no doubt that Mr. Bailey-Ricketts has the ability to succeed in pro-social endeavours, should he choose. His Thunder Bay drug trafficking program demonstrates that he is a smart, hard-working, and charismatic “businessman”, albeit a highly manipulative and amoral one, at least at time of these offences.

[83] Mr. Bailey-Ricketts has been in custody for a very long time, since May 7, 2020, almost the entire duration of the COVID-19 pandemic. It is well-established that the pandemic caused custody to be particularly hard for a variety of reasons, including: greater risk of exposure in a communal setting; fear of exposure with very limited ability to control one’s circumstances; limited visits and contacts with the outside world; very limited or no programming; and extensive lock-downs. Mr. Bailey-Ricketts was subjected to lock-downs (partial and full) at all four of the institutions he has been incarcerated pending sentence, as documented in the reports provided from each institution.

I summarize these as follows, noting the duration of custody at the institution in question, followed by total lock-down days (including full and partial), and then breaking out the number of full lock-down days (or near full):

- 2 months at Thunder Bay Jail, 23 total lock-down days, 11 of which were full or nearly full;
- 15 months plus a week and a day at Central North Correctional, 133 total lock-down days, 121 of which were full or nearly full;
- 6 months at the Toronto South Detention Centre, 98 total lock-down days, 14 of which were full (I note that some of these full lock-down days were extremely onerous, for example Mr. Bailey-Ricketts was in full lock-down for six straight days over the Christmas week of 2021 – December 24 to the 29, 2021);
- 22 and a half months at the TEDC, 156 total lock down days, 13 of which were full.

[84] Counsel recognize that the Court of Appeal has directed that particularly harsh conditions of pre-trial custody should be considered as a mitigating circumstance, rather than accorded a specific numeric credit. Nonetheless, in an effort to carefully and fully account for the particularly harsh conditions of Mr. Bailey-Ricketts' custody, much of which was during the pandemic, counsel jointly submit that it should be reflected in a deduction of 1 year and 7 months from the final sentence.

[85] I recognize the harsh conditions Mr. Bailey-Ricketts experienced as a significant mitigating circumstance, but I decline to place a number on this circumstance. I am concerned that doing so will "skew" the calculation of the ultimate sentence, and permit this number to take on "unwarranted significance" in the sentencing process, and result in the imposition of an unfit or inappropriate sentence: *R. v. Marshall*, 2021 ONCA 344 per Doherty JA at para.52; *R. v. Menezes*, 2023 ONCA 838 per the ACJO.

[86] The Crown placed weight on *Morris* factors as a mitigating circumstance. For the reasons I explained, I do not place significant weight on *Morris* factors. I do however place significant weight on harsh conditions of pre-sentence custody as mitigating circumstances. This takes me to a similar place as the Crown position.

[87] As noted above, general deterrence and denunciation are of paramount importance in sentencing for organized, persistent trafficking of hard drugs.

[88] The defence submits that a total sentence of 6 years should be imposed for the fentanyl trafficking and, like the Crown, all the other non-criminal organization counts should be concurrent. While I agree with this general approach, 6 years is too low. It is at the very bottom of the range, or below the bottom, a place neither this offending behaviour nor this offender belong.

[89] In the circumstances of this case, I believe that the 8 year sentence requested by the Crown for trafficking in fentanyl is fit and appropriate. But for the principle of totality, the sentence

should be significantly higher. The trafficking in this case falls at the highest end of the mid-range in terms of seriousness, based on the amounts trafficked, the persistence of the trafficking, and Mr. Bailey-Ricketts as the organizing force bringing hard drugs, including fentanyl, into a vulnerable community. As noted, I agree with counsel that all the other non-criminal organization counts should be concurrent. I have taken these other counts into consideration in analyzing the nature of the fentanyl trafficking. In addition, concurrent sentences are required to ensure that the total sentence is fit and appropriate and not crushing.

[90] Turning to the criminal organization counts, the defence asks for 2 years; the Crown 6. I agree with the Crown that 6 years is a fit and appropriate sentence for conspiracy to traffic in association with or for the benefit of a criminal organization, and that the other criminal organization counts should be concurrent. As I noted above, the criminal organization counts represent a particularly aggravated form of the underlying trafficking. They amplify the underlying charge.

[91] There can be no question that Mr. Bailey-Ricketts's association with a criminal organization significantly aggravates or amplifies the underlying trafficking. It is what enabled him to bring drugs into the vulnerable Thunder Bay community, effectively acting like an importer. Mr. Bailey-Ricketts's association with the EWC meant that he had a safe place to store his drugs (his grandmother's home on Lauder Avenue secure in EWC turf), and access to a steady supply of loyal "youths" he could use as mules to bring his drugs north, man his "trap" houses in Thunder Bay, and sell his drugs. The intercepts show that Carlton Jones and KG were associated with the EWC, though at much lower levels. When Carlton Jones was slow arriving in Thunder Bay with Mr. Bailey-Ricketts's drugs, Mr. Bailey-Ricketts and Mr. Charley express relief that they never let Mr. Jones into "the inner circle".

[92] Mr. Bailey-Ricketts association with the EWC also permitted him to do the dangerous work of drug trafficking more safely. He could shield himself from potential liability by using young people, or younger people, recruited from the gang, to carry his drugs, set up and operate his trap houses, and sell his drugs. He could operate in relative anonymity in Thunder Bay where the police did not know him, and did not have the resources to deal with a Toronto gang. It took a sophisticated, resource-intensive, wiretap project to catch Mr. Bailey-Ricketts. The affidavit the Crown filed at trial in support of its application to have 25 officers from Orillia, Barrie, Thunder Bay, and Vancouver testify remotely provides a sense at the magnitude of resources required to catch Mr. Bailey-Ricketts: Affidavit of DC Brandon Polak of the Toronto Police Service, Intelligence Unit, dated April 11, 2023, in support of authorization for remote testimony during the Defendant's trial.

[93] In all of these circumstances, the total sentence requested by defence counsel of 6 years and 5 months (8 years minus 1 year and 7 months for Duncan credit for harsh conditions of pre-sentence custody) strikes me as grossly unfit in the circumstances of this case. This is brought into sharp relief when compared with the sentence that Carlton Jones received on a guilty plea. Mr. Jones was involved in a fraction of what Mr. Bailey-Ricketts was involved in, with far less moral culpability. He received a sentence of 7 years. It would be perverse if Mr. Bailey-Ricketts, who was the operating mind behind the Thunder Bay drug trafficking program, with a long history of drug trafficking, received a sentence similar to Mr. Jones, particularly given that Mr. Jones pleaded

guilty and had no criminal record. Again, it is in no way aggravating that Mr. Bailey-Ricketts had a trial. But Mr. Jones would have received significant mitigation as a result of his guilty plea, mitigation that Mr. Bailey-Ricketts cannot claim.

[94] In contrast, the total sentence of 14 years requested by the Crown strikes me as a fit and appropriate. If anything, it is lenient. The Crown position placed significant weight on Morris factors as a mitigating circumstance. As I noted, I decline to place significant weight on Morris factors, but I do place significant weight on the harsh conditions of pre-sentence custody as a mitigating circumstance. Ultimately, I am satisfied that 13 years is a fit and appropriate sentence in all the circumstances of this offence and this offender. It will be broken down in the fashion suggested by counsel:

- Trafficking in fentanyl between March 6 and May 7, 2020 (count 22) – 8 years;
- Trafficking in cocaine between March 6 and May 7, 2020 (count 21) – 3 years concurrent to count 22;
- Possession of fentanyl for the purpose of trafficking on April 21, 2010 (count 24) – 6 years concurrent to count 22;
- Possession of cocaine for the purpose of trafficking on April 21, 2020 (count 23) – 3 years concurrent to count 22;
- Possession of the proceeds of crime on April 21, 2020 (count 25) – 2 years concurrent to count 22;
- Possession of cocaine for the purpose of trafficking on May 7, 2020(count 26) – 3 years concurrent to count 22;
- Possession of the proceeds of crime on May 7, 2020 (count 27) – 2 years concurrent to count 22;
- Conspiracy to traffic in association with a criminal organization between March 6 and May 7 (count 19) - 5 years consecutive to count 22;
- Trafficking in association with a criminal organization between March 6 and May 7 (count 18) – 5 years concurrent to count 19;
- Instructing a person to commit the indictable offence of trafficking in association with a criminal organization between March 6 and May 7 (count 17) – 5 years concurrent to count 19.

[95] Mr. Bailey-Ricketts has been in custody continuously since his second arrest on May 7, 2020, a total period of 1421 days. He is entitled to the statutory *Summers* credit of 1.5:1 days for this period. Counsel jointly submit that this comes out to 70 months or 5 years and 10 months. I accept this submission as my numbers come out very close. I will allocate this pre-sentence

custody equally between the two lead sentences (i.e. 35 months on the trafficking in fentanyl, and 35 months on the conspiracy to traffic in schedule I substance in accordance with a criminal organization). This leaves Mr. Bailey-Ricketts with 86 months or 7 years and 2 months left to serve.

[96] Section 743.6(1.2) of the *Criminal Code* provides that (notwithstanding s.120 of the *Corrections and Conditional Release Act*) where an offender is sentenced to two years or more for a terrorism offence or a criminal organization offence under ss.467.11, 467.111, 467.12 or 467.13 the court *shall* order that half of the criminal organization sentence (or 10 years whichever is greater) be served before the offender is released on full parole, unless “satisfied, having regard to the circumstances of the commission of the offence and the character and circumstances of the offender” that denunciation and general and specific deterrence would be adequately served by a period of parole ineligibility determined in accordance with the *Corrections and Conditional Release Act*.

[97] In the circumstances of this offence and offender, I do not believe there is a proper basis to depart from the mandatory language of s.743.6(1.2). I recognize that Mr. Bailey-Ricketts has done some programming in custody, and has the support of family, nonetheless the circumstances of the offence remain extremely serious, and his moral culpability remain extremely high. Mr. Bailey-Ricketts must serve half the sentence on the criminal organization count before being released on full parole.

[98] A s.109 order is mandatory. This is Mr. Bailey-Ricketts’s second s.109 order thus it must be for life.

[99] Trafficking is a secondary designated offence for the purpose of the DNA databank. There is no objection to a DNA order, and, in the circumstances of this offence and this offender, I am satisfied that it is in the interests of justice to make a DNA order pursuant to s.487.051(3).

[100] There will be a forfeiture order in relation to the proceeds and illegal substances seized on April 21, 2020 and May 7, 2020.

[101] The amended victim fine surcharge provisions were in place at the time of the offences in this case (the offences in this case post-date its coming into force on July 22, 2019). Mr. Bailey-Ricketts was running a lucrative drug trafficking operation. No reason has been suggested why there should not be a victim fine surcharge, but I am mindful of the fact that Mr. Bailey-Ricketts has been in custody for nearly four years. He also has a family and three young children. I make it a nominal amount of \$100..

G. ROBERTS, J.

Released: March 28, 2024

CITATION: R. v. Bailey-Ricketts, 2024 ONSC 1834
COURT FILE NO.: CR-23-30000276-0000 and CR-23-10000241-0000
DATE: 20240328

ONTARIO

SUPERIOR COURT OF JUSTICE

HIS MAJESTY THE KING

– and –

VITO BAILEY-RICKETTS

REASONS FOR SENTENCE

G. ROBERTS, J.

Released: March 28, 2024