

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Simpson*, 2022 NSSC 301

Date: 20221025

Docket: *Hfx*, No. 502932

Registry: Halifax

Between:

His Majesty the King

v.

Jesse Arthur Simpson

Sentencing Decision

Judge: The Honourable Justice Christa M. Brothers

Heard: October 6, 2022, in Halifax, Nova Scotia

Oral Decision: October 25, 2022, in Halifax Nova Scotia

Counsel: Melanie Perry, Crown Counsel
Ian Hutchison, Defence Counsel

By the Court:

Overview

[1] This is a sentencing decision in relation to Mr. Simpson's conviction under s. 236(b) of the *Criminal Code*, RSC, 1985, c C-46.

[2] The accused, Jesse Arthur Simpson, was charged with the following:

1. That he, between the 31st day of October, 2018, and the 3rd day of November, 2018, at or near Halifax, in the Halifax Regional Municipality, in the Province of Nova Scotia, did unlawfully traffic in a substance represented or held out by him to be Cocaine, a substance, included in the Schedule 1 of the *Controlled Drugs and Substance Act*, S.C., 1996, c. 19, and did thereby commit an offence contrary to section 5(1) of the said *Act*.

2. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, did unlawfully traffic Fentanyl N-(1 phenethyl-4-piperidyl) propionanilide) a substance included in Schedule 1 of the *Controlled Drugs and Substances Act*, S.C., 1996, c. 19, and did hereby commit an offence contrary to Section 5(1) of the said *Act*.

3. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, by criminal negligence, to wit, drug trafficking, cause the death of Cameron Clairmont, contrary to Section 220 of the *Criminal Code*.

4. AND FURTHER THAT HE AT THE SAME TIME AND PLACE AFORESAID, did unlawfully kill Cameron Clairmont and thereby commit manslaughter, contrary to Section 236(b) of the *Criminal Code*.

[3] Prior to the commencement of trial, counsel advised that Mr. Simpson would be changing his plea and entering a guilty plea to the charge of manslaughter. This was acceptable to the Crown. No evidence was called in relation to the other three charges, and acquittals were entered. The court was kept informed throughout of the possibility of a resolution early in 2022, with confirmation by email on February 8, 2022, and a formal letter from defence counsel on February 10, 2022.

[4] The Crown and defence have agreed that a fit and proper sentence requires the incarceration of Mr. Simpson and that certain ancillary orders should be made. They disagree, however, on the appropriate length of imprisonment. The Crown argues that a sentence of imprisonment of three-and-a-half years is necessary in the circumstances, while the defence submits that two 2 years in a federal penitentiary,

followed by three years of probation, is appropriate, taking into account the principles of denunciation and deterrence.

Facts and Timing

[5] On February 22, 2022, the first day scheduled for trial, counsel entered an Agreed Statement of Facts which provides as follows:

1. On Friday, 2 November, 2018 at 11:12 AM, Jesse Simpson (“Mr. Simpson”), who was 28 years old at the time, called 911 from 13-70 Bedford Highway to report that his friend had overdosed and he thought she was dead;
2. When police officers arrived at the location, they found paramedics on-scene performing life-saving measures on Cameron Clairmont (“Ms. Clairmont”), who was 19 years of age and a resident of the Bedford Highway address;
3. Mr. Simpson was on-scene and he was visibly upset. He told paramedics that he and Clairmont had been partying downtown the night before and that they had consumed heavy amounts of alcohol, as well as cocaine and Molly (MDMA). He stated that around 7 AM, he and Ms. Clairmont had snorted a purple powder that had been given to him, which he thought was heroin. Mr. Simpson provided similar information to the officers on-scene;
4. Despite the best efforts of the paramedics, they were unable to revive Ms. Clairmont and at 11:33 AM, she was pronounced dead;
5. Officers found the remnants of a purple powder on the coffee table beside Ms. Clairmont’s body. The police seized and then sent the purple powder for analysis;
6. Mr. Simpson went to the police station and gave an interview to investigators. During the interview, Mr. Simpson said that he and Ms. Clairmont had dated for three years, but they had broken up and for the past 8 months, he had been dating Anita Brannen (“Ms. Brannen”). Mr. Simpson and Ms. Brannen came to the city to party the evening before, and they met with Ms. Clairmont at a hotel where they had rented a room. Throughout that evening and into the morning the three consumed cocaine, which had been provided by Mr. Simpson, as well as alcohol and Molly (MDMA);
7. Mr. Simpson said that at some point in the early morning hours, Ms. Clairmont and Ms. Brannen began to argue, and Ms. Brannen got arrested for causing a disturbance. Ms. Clairmont took a cab back to her home on the Bedford Highway and Mr. Simpson joined her soon thereafter;
8. Mr. Simpson told the police that when he arrived there, he and Ms. Clairmont wanted to get high, but the only thing he had left in his possession was a purple powder that had been a throw in from the drug dealer who had sold him the cocaine. He had been in possession of the purple powder for about a month, but

had not consumed it because he was afraid of it. Mr. Simpson indicated to the police that the [sic] thought the substance may be oxy (Oxycontin) mixed with fentanyl. Mr. Simpson also went on to tell police that while he was not sure exactly what the substance was, he believed that it was an opioid;

9. Mr. Simpson crushed up a line of the powder for him and one for Ms. Clairmont. He snorted the drug first and she snorted her line directly thereafter. Mr. Simpson said that while Ms. Clairmont went to sleep right away, he tried to stay awake for as long as he could to make sure she was breathing and had a normal heart rate. Mr. Simpson indicated that he did this as a precaution as he knew that there was a high overdose rate with opioids;

10. After a few minutes, Mr. Simpson also fell asleep. When he awoke 3 hours later, he noticed Ms. Clairmont's lips were blue. At that point, he called 911 and waited for paramedics to arrive;

11. Dr. Marnie Wood ("Dr. Wood") of the NS Medical Examiners' Office conducted an autopsy on Ms. Clairmont. Her cause of death was determined to be acute drug and alcohol intoxication. At the preliminary inquiry, Dr. Wood testified that the level of fentanyl found in Ms. Clairmont's blood has, in some cases, been reported to be fatal in and of itself, even without being combined with other drugs;

12. The Forensic Toxicology Lab determined the purple powder to be the opioid fentanyl.

[6] After the Agreed Statement of Facts was entered, the accused entered a change of plea, pleading guilty in relation to the manslaughter charge.

4. AND FURTHER AT THE SAME TIME AND PLACE AFORESAID, did unlawfully kill Cameron Clairmont and thereby commit manslaughter, contrary to Section 236(b) of the *Criminal Code*.

[7] The defence sought a pre-sentence report and the matter was scheduled for sentencing on July 21, 2022. The defence advised the court on June 13, 2022 that they would not be in a position to proceed with sentencing on July 21, 2022 because the forensic psychologist they retained to prepare a report for sentencing purposes could not complete the report in time. On June 23, 2022, the defence requested an adjournment of the sentencing to allow more time to obtain the expert report. The Crown consented. The sentencing was rescheduled for October 6, 2022, and new filing deadlines were set. Due to unforeseen medical circumstances, the defence required an extension on sentencing submissions. The court was then unable to pass sentence on October 6, 2022. Circumstances of the defence reasonably necessitated that this matter be rescheduled for decision today.

[8] What follows is a review of the victim impact statements, the circumstances of the offender, any mitigating and aggravating circumstances, the applicable sentencing principles, and the relevant case law.

Victim Impact Statements

[9] Losing a child is a profoundly, traumatic experience that upends the natural order we expect life to follow. It is trite to acknowledge that nothing I say, and no sentence I impose on Mr. Simpson, can ever relieve Cameron Clairmont's parents of the pain and anguish they experience every day they are forced to live their lives without her. Cameron's mother, Mary Clairmont, and her father, George Clairmont, have given the court a glimpse of that pain through their victim impact statements.

[10] Mary Clairmont detailed the emotional toll her daughter's death has had on her and her family. Ms. Clairmont read her victim impact statement at the sentencing hearing, and I thank her for the resolve, fortitude and courage she showed in sharing this important information with the court. The following excerpts from her statement give some insight into the devastating impact Cameron's death has had on her family:

Nothing is the same. Our family is completely and totally changed. Losing a child feels like being mortally wounded, but you don't die, you just learn to walk around and carry on with this gaping, bleeding hole. ... The wound never, ever heals. It always bleeds. It effects [*sic*] everything.

...

I'll be in therapy for the rest of my life. I struggle with holidays, approaching holidays, anniversaries. I can't work on anniversaries.

...

Cameron was strong, beautiful-extraordinarily beautiful, athletic, motivated, extremely intelligent and artistic. She had a family that invested in her with time and care her whole life, and a whole community that loved her. She had so much to offer the world. She was one of those people who would change the world, once she had some maturity. Everything she had to offer is gone. Her bright future is gone. Our family has struggled to hold onto each other in the aftermath. Both of my remaining children have been so ill they have needed treatment or hospitalization, and the fear of losing another child is ever present, looming. I know I couldn't survive it again.

[11] Cameron's father, George Clairmont described the emotional, physical, and economic impact his daughter's death has had:

Emotional Impact is severe. I feel the most sadness for my two remaining children for the [sic] will bear the loss the longest. Even after four years the nightmares remain. Feels like part of you has died.

I started with insomnia immediately after the incident, a condition I never had before. I am on two different kinds of medication... .

[12] This family has suffered an unimaginable and everlasting loss. Their child was only 19 years of age. A young woman who had the prospect of a long, full life ahead of her is gone. Her life, with all of its potential, was taken away from her and her loved ones when Mr. Simpson gave her fentanyl, a scourge that has caused immeasurable harm in Nova Scotia and across Canada.

Circumstances of the Offender – Jesse Simpson

[13] I turn to the circumstances of Mr. Simpson, as canvassed in the pre-sentence report and the psychological assessment report obtained by the defence.

Pre- Sentence Report

[14] A pre-sentence report was prepared on May 16, 2022.

[15] Mr. Simpson reported that he had a relatively good upbringing and described his formative years as being “very positive”. The report goes on, however, to indicate that the offender’s childhood included being witness to the effects of his father’s drug and alcohol addictions and his abusive behaviour towards his wife, Mr. Simpson’s mother.

[16] Mr. Simpson was first introduced to alcohol when he was 14 years old. By the age of 18 years old, his alcohol consumption had become a problem. In his twenties, Mr. Simpson began to use cocaine and ecstasy. He became addicted to these substances between 2016 and 2018. Mr. Simpson was able to fund his drug addictions through his share of the proceeds from the sale of the family fishing boat. The offender connected his increased use of cocaine with the timing of his father’s sale of the lobster license and boat. Mr. Simpson was deeply hurt by his father’s choice to sell the family business. Since the offence date, Mr. Simpson has taken steps to remain drug free. He has not, however, pursued counseling for his drug addiction. Although Mr. Simpson describes himself as “drug free”, he admits to daily cannabis use. The offender says he was able to address his substance abuse on his own without treatment or counselling, but he would not be against receiving counselling for relapse prevention.

[17] The following excerpts from the pre-sentence report are of particular importance:

The Subject described his formative years as being very positive. The Subject advised his parents kept he and his siblings very active as children. The Subject spoke about how he played a lot of baseball as his father was a coach for minor baseball. The Subject stated his parents played a very active role in his life during his formative years.

...

In terms of substance abuse within his family home, the Subject did report his father abused alcohol and marijuana. The Subject stated his father's abuse of substances eventually escalated to the use of harder drugs such as ecstasy. The Subject also stated when he was a teenager his father permitted him to use alcohol and smoke marijuana in his presence, however, this was usually limited to special occasions, such as holidays and birthdays.

The Subject reported his father's abuse of substances, eventually led to abusive behaviour, which was directed toward the entire family, but mainly toward his mother. The Subject stated he never witnessed or was subjected to any physical abuse, however, his father had certainly been mentally and emotionally abusive. The Subject advised he expects most of the problems between his mother and father occurred after his father cheated on his mother with Ms. Stephanie Decker, the woman his father would eventually leave his mother for.

The Subject stated he continued to have a good relationship with his father and although he considered his father a mentor who played a very significant role in his life, that it has been his mother whom he has remained closer to, in addition to his mother's side of the family.

The Subject stated his relationship with his father became really strained in 2018 after his father decided to sell the family business, which included the fishing vessel and licences. The Subject stated this impacted not only him but his siblings, as it was expected that this intergenerational fishing business would stay in the family.

(p. 3-4)

[18] Ms. Parnell Walker, the offender's mother, was interviewed for the report. She described her son in very positive terms and noted that any negative change in his behavior arose after her separation from his father. She noted that the offender's addiction to drugs had been totally unexpected and out of character, given his history growing up. Ms. Walker said that in the time since Ms. Clairmont's death, her son has taken steps to free himself from illicit drugs and, to the best of her knowledge, he has been clean for a very long time. His mother hopes that he takes part in some form of mental health counseling to address the traumatic events which have

occurred in his life. She also believes that he could benefit from some type of relapse prevention counseling regarding his past substance abuse and addiction.

[19] Mr. Simpson's long-term common-law partner, Ms. Brannen, was interviewed for the report and confirmed their relationship and her continued support of him. Ms. Brannen contended that she and Mr. Simpson are no longer abusing substances as a result of a promise they made to each other to beat their addictions. She acknowledged, however, that the offender does consume cannabis, which she said he uses to help him sleep. She too believed that he would benefit from some form of mental health counselling. Ms. Brannen continues to support the offender as his case moves through the court process.

[20] Prior to 2018, Mr. Simpson was a deckhand in the family fishing business. In 2018, his father decided to sell the family fishing boat. Consequently, the offender lost his job. Mr. Simpson is currently employed as a manager with L. Walker Seafoods. It is understood that Mr. Simpson's employers are aware of these proceedings and his job remains open to him, although his employer did not speak to Probation Services.

[21] Mr. Simpson has had stable, full-time employment with L. Walker Seafoods since 2018. He has no plans to work elsewhere other than with his current employer. The offender stated that his financial situation is stable and he earns a livable wage.

[22] The pre-sentence report goes on to review the offender's past mental health struggles in connection with the death of Ms. Clairmont, the stress he experienced related to the Covid-19 pandemic, and other issues. To date, the offender has never taken part in any mental health counseling or treatment but apparently sought medical advice for anxiety from Dr. Blair, his family doctor.

[23] With regards to factors that contributed to the offence, the pre-sentence report states the following:

In terms of factors which may have contributed to the offence(s), the Subject stated he had been impacted negatively by his father's sale of the family fishing business, an event through which he received a share of the sale of the business, the money received only fuelled his addiction to drugs. As for his contact with the victim, the Subject would only say that he was an addict and that Ms. Cameron Clairmont was an addict and the two of them made a mutual decision to use drugs in the time proceeding her death. The Subject stated he is remorseful for what occurred and he does blame himself for placing both he and the victim in that situation. The Subject

also said there isn't a day which goes by that he does not think of Ms. Clairmont.

(p. 8)

[24] The following comments made by Ian J. Goulden, Probation Officer, the author of the pre-sentence report, are of interest:

The Subject admitted to his involvement in the offence taking limited responsibility for his actions, stating he blamed no others for what occurred, however, minimized the offence by stating he and the victim both made the decision to take the drug(s) which ultimately lead to the victims death, further stating it was because he and the victim had a mutual addiction to drugs.

...

Those interviewed for this Report have described the Subject in favourable terms. These people did say they were aware of the Subject's past addiction to substances, remarking that in the time since the incident which lead to the death of the victim, Ms. Cameron Clairmont, the Subject has taken personal steps toward recovery of his own addiction to substances. These persons reported that to the best of their knowledge, the Subject has maintained abstinence from illicit drugs and alcohol. Both the Subject's mother, Parnell Walker, and his partner, Anita Brannen, suggested the Subject could benefit from some forms of counselling to address the Subject's past trauma and addiction to substances. For the Courts consideration, the Subject could obtain services through community counselling and treatment services such as Nova Scotia Mental Health and Addiction Services. These services would be at no cost to the Subject should the Subject wish to obtain them.

(p.9)

[25] The pre-sentence report is generally favourable. It is clear that Mr. Simpson is trying to lead a more pro-social and productive life and is clearly working on rehabilitation. However, one wonders why he has not used the last four years since the offence date, with his newfound economic stability and motivation, to engage in counselling services which both the professionals and his family believe he could benefit from.

Psychological Assessment – Dr. Andrew Starzomski

[26] Dr. Starzomski, registered psychologist, provided a psychological assessment report dated October 2, 2022. This psychological evaluation of Mr. Simpson was requested to ostensibly assist the court in this sentencing hearing. The report was admitted at the sentencing hearing by way of consent with no cross-examination.

[27] The offender met with Dr. Starzomski on three different occasions over a period of approximately eight and half hours. Dr. Starzomski indicated that “there were notable degrees of shame, regret and guilt evident in his remarks over the course of the interviews” (p. 2). The offender advised Dr. Starzomski that he worked at a small fish plant while in his teens, then moved on to work on the family lobster boat after high school. He worked on the boat as a lobster fisherman from 2009 until 2018. He was the captain from 2016 until the sale of the boat in 2018. The offender indicated that his alcohol use has been problematic and he had been working to curb this since the offence in November 2018. The offender indicated that his increased partying over the years was connected to an upturn in his income as the lobster fishery became more lucrative. Dr. Starzomski wrote:

In the period of five or so months before the index offence Mr. Simpson said he lived off money from the sale of the boat but was not working. He said he felt his world had been ripped out from under him with the sale of the boat and license, as his ongoing lifestyle and future had revolved around working in the family lobster business. He said that at the time of the offence he had no particular prospects lined up for employment.

(p. 5)

[28] Mr. Simpson indicated that his family had helped facilitate an employment opportunity for him. The employment has been significantly positive and a stabilizing force in his life. He said he has a sense of purpose and takes pride in his work. He said he feels supported by his mother as well as his common-law partner. He noted that the death of his father in December 2021 was a significant life event that he has had to deal with. Mr. Simpson advised Dr. Starzomski that he “continues to live with a variety of disturbing psychological experiences and memories” (p. 8) related to the subject offence.

Mr. Simpson indicated to me that he has made progress with significantly reducing his alcohol intake. He told me in June, 2022 that he had consumed no alcohol since April, 2022. He said that he has also been able to refrain from harder drugs with much greater success than in the past but he is aware it is a vulnerability area for him. Mr. Simpson indicated he has not yet been able to muster the focus to attend group programs for addiction, such as Narcotics Anonymous. He told me that he does not feel he is ready for group engagement at this time but would be willing to meet individually with a counsellor to get started on a more formal process of addressing his addiction. He indicated that his mental focus on the consequences of Ms. Clairmont’s death and pouring his energy into positive pursuits (e.g., employment, golf, activities with Ms. Brannen, enjoying nature) have been the main staples of managing his addiction over the past few years. Mr. Simpson noted

that the new presence of a pet dog in the family home over the past years has been especially helpful in his positive efforts to make lifestyle changes and address his addiction issues.

(p. 9)

[29] Dr. Starzomski reported the following at page nine of his report:

Mr. Simpson stated that he has become involved in some prosocial community activities in recent months including helping with fundraising efforts for his step-daughter's dance group and helping out with his wife's horse riding activities. He indicated that his associates are all prosocial people without criminal records as he has moved way from socializing with people involved in the use and sale of drugs.

[30] This statement by Mr. Simpson is contradicted by the following statement at p. 8 of the pre-sentence report:

The Subject admitted that although some of his peer associates continue to use substances, he keeps his distance from them when they are using. The Subject denied any current use of alcohol, but did admit to using marijuana daily to help with his anxiety and sleep.

[31] Some of the tests administered by Dr. Starzomski showed that while Mr. Simpson may be receptive to engaging in treatment for his emotional difficulties, it could be challenging for him to open up and share personal information. Although the depression assessments indicated that Mr. Simpson was not presently experiencing serious problems with low mood, Dr. Starzomski opined that this could change in the future with incarceration, given the loss of access to positive life experiences. In tests measuring trauma symptoms related to the offence, Dr. Starzomski found the offender moderately above average relative to other trauma survivors. He noted ongoing emotional and psychological symptoms tied to the offence, but found no active presence of PTSD at the time of the report. In evaluating his emotional regulation scale, Dr. Starzomski interpreted the results as suggesting that therapy could help the offender and enhance his coping strategies. In assessing Mr. Simpson's risk for recidivism, Dr. Starzomski noted that his greatest trigger for criminal conduct is alcohol and drug issues. Dr. Starzomski's summary of Mr. Simpson's test results included the following:

...Mr. Simpson's results showed there could be contributions to intoxicant use related to moodiness and interpersonal conflict, which offers additional perspective beyond his expressed tendency to describe use as mostly motivated by social opportunities. The results also picked up on the presence of characteristics that can make it hard for him to develop and sustain close, trusting and stable relationships.

These types of issues would be worthwhile to explore in addictions and/or relationship counselling in the future so as to further help in minimizing substance use and maximizing his success in close relationships.

(p. 18)

[32] There were several tests employed by Dr. Starzomski to evaluate the risk for recidivism. Dr. Starzomski summarized the results at page 19 as follows:

Taken together, those tools suggest that Mr. Simpson is a man who is quite unlikely to have further problems with the criminal justice system in the future. The index offence occurred in a context of protracted substance abuse linked to disruptive family and employment problems and a relationship burdened at the time by the lifestyle of addiction. While in my professional opinion Mr. Simpson has made some commendable strides in addressing his addictions issues, there is more to do by way of treatment to stabilize those gains (and perhaps achieve further progress).

[33] Dr. Starzomski noted the offender's need for mental health support as follows:

Mr. Simpson's mental health status is vulnerable to deterioration in contexts where ongoing stabilizing elements are removed or changed dramatically. Loss of access to his employment, access to various relationships that provide positive opportunities and support and even loss of access to stabilizing leisure pursuits can be expected to bring underlying post-trauma experiences much more to the fore. That combination of losing access to buffering influences and the likely escalation of PTSD symptoms stands to challenge his improved hold on his addiction difficulties.

In light of those concerns it would be desirable for Mr. Simpson to have his case flagged on corrections intake and provisions made however possible to ensure he can get timely access to trauma-oriented support during his incarceration.

(p. 19-20)

[34] Dr. Starzomski also recommended addictions treatment and family and relationship counselling.

Mitigating Factors

[35] I accept that Mr. Simpson's guilty plea is a mitigating factor. He has accepted responsibility for the death of Cameron Clairmont and is seemingly remorseful for his actions which led to her death. While the Crown suggests his acceptance of responsibility occurred only after the preliminary inquiry and "not a particularly early opportunity", I disagree. The plea was entered before the trial. The Crown and Court were alerted to the fact this plea would be entered before the trial. This

ensured that no witnesses were inconvenienced. The Clairmont family knew in advance so that they could chose to be present for the plea.

[36] Early guilty pleas are mitigating as they spare those who must testify and they spare the community the expense of a trial (*R. v Johnston and Tremayne*, [1970] 2 OR 780 (Ont CA)).

[37] Additionally, there is no question that after finding Ms. Clairmont in an unconscious state, Mr. Simpson telephoned emergency services in an attempt to save her life. Mr. Simpson told the paramedics that he had provided Ms. Clairmont with a purple powder that he believed contained an opioid.

[38] Lastly, Mr. Simpson has taken positive steps towards rehabilitation by making significant lifestyle changes. He is not unemployed. He has also stopped using illicit substances on his own, without the help of any treatment provider. This is a positive step. He has seemingly been leading a pro-social life.

Aggravating Factors

[39] Mr. Simpson has a small related prior criminal record for which he has one conviction from July 9, 2009, for drug possession (cannabis) contrary to s. 4(1) of the *Controlled Drug and Substances Act*, SC 1996, c.19. I do not consider this to be a particularly aggravating factor, especially since possession of up to 30 grams of dried cannabis for personal use is no longer illegal (see s. 8 of the *Cannabis Act*, SC 2018, c 16). I therefore place little weight on this prior conviction.

Additional Considerations

[40] The Crown submitted that Mr. Simpson's prior record under the *Liquor Control Act*, RSNS 1989, c 260 was an additional aggravating factor. Neither the Crown nor the defence could provide any authority on the point at the sentencing hearing. Since then, the Crown has sent a further written submission relying on *R. v. Pedersen*, [1991] B.C.J. No. 3905. This was a Crown appeal from sentence. The respondent pleaded guilty to a charge of dangerous driving causing death. The respondent's truck collided head-on with the victim's car and the victim was killed. The respondent had several previous driving offences, including several prior *Motor Vehicle Act* convictions. The trial judge sentenced the respondent to 90 days intermittent custody and two years probation. In finding that the sentence was unfit, the Judge reviewed the aggravating factors in the case. On page two of the decision:

The respondent, who is 22 years old, has a criminal record. In May of 1988 he was convicted of impaired driving. In November of that year he was convicted of assault with a weapon. In addition, in the 4 years preceding this accident, he was convicted 5 times for speeding, once for failing to observe a red light, and once for passing improperly. His driving record demonstrates that the respondent represented a serious risk to the community when driving on public roadways prior to the accident in question, and it is relevant to an assessment of the moral culpability of his offence. Notwithstanding the warnings which he has had, as evidenced by these prior convictions, he continued on the night of this offence to drive in a manner dangerous to the public at large.

[41] In addition, at page two and three of the decision:

...By that I mean that it is not proportionate to the moral culpability of the offence committed by the respondent. That culpability is determined by the mental state which accompanies the illegal act. In this case it is aggravated by the fact that on at least eight previous occasions in the 4 years preceding this accident, the respondent had received judicial warning that his driving was so inadequate as to be illegal, and yet he failed to heed those warnings, so much so that on the night in question, that which had heretofore been only a risk became a reality. In my view, that was the most important consideration on sentencing in this case. It required a more severe sanction than that which the judge below imposed.

In the same vein I note from the respondent's driving record, which was filed before us, that between September of 1986 and January of 1990 he had 11 convictions for regulatory offences under the *Motor Vehicle Act*, such as failing to produce a driver's licence or insurance and failing to wear a seat belt. During that same period of time he also received two 24 hour suspensions of his driver's licence under s. 214 of the *Motor Vehicle Act*.

All of this demonstrates a determination on the part of the respondent to persist in unsafe and illegal driving habits. It is that determination which aggravates the moral culpability of the offence and makes the sentence imposed, in my view, unfit.

[42] It is apparent that a regulatory offence can be used to assess the moral blameworthiness of an offender.

[43] I am satisfied that the court can consider Mr. Simpson's prior conviction for providing alcohol to the then 15-year-old Cameron Clairmont as relevant in assessing the offender's moral blameworthiness with regards to the offence before the court.

[44] On November 4, 2014, almost four years prior to Cameron Clairmont's death Jesse Simpson, then 24 years of age, provided alcohol to Cameron, then only 15

years old. As a result, Mr. Simpson was charged with providing liquor to a minor contrary to s. 89(1) of the *Liquor Control Act*. On January 22, 2015, Mr. Simpson pleaded guilty to this offence in front of Judge Burrill.

[45] The Crown was given an opportunity to advise of the facts underlying that guilty plea. The facts were as follows:

The facts are that Mary...on November 4, 2014, Mary Claremont (sp?) reported that her underage daughter was supplied with liquor by Jesse Simpson of Clark's Harbour. Cameron Claremont didn't give many details of the afternoon and evening but did indicate that she received ... Cameron Claremont, sorry, is the daughter and she was 15 years old. That she ... she indicates that she received liquor from Simpson before being returned home by Simpson's father. Those are the facts.

[46] Judge Burrill's comments to Mr. Simpson would prove prophetic:

THE COURT: I will say this to you before I sentence you. This is an offence that still , and for good reason, I think, especially in relation to a 15-year-old, is a serious offence under the *Liquor Control Act*. If the Crown ... If the police had charged you with knowingly supplying liquor to a person under the age of 19, you should know that the minimum penalty that I was entitled to impose under the law is 30 days in jail.

So you could have gone to jail for 30 days today just if the charge had read slightly different. And that would have been the minimum that I could sentence you to. Because they didn't charge you with knowingly supplying liquor to minors, it's a different offence. And I can impose a fine and that's what I intend to do today. But I just want you to know that before you supply liquor to somebody under 19 again, you want to give it some serious consideration because you might not be so lucky next time in the charge that you face.

[47] Just four years later, Mr. Simpson provided a purple powder, now known to be fentanyl, to Ms. Clairmont, which ended her life. It was not just the offender who was not so lucky the next time; it was also Ms. Clairmont, who died as result of Mr. Simpson providing illegal substances to her.

[48] Cameron Clairmont had just started university and had her whole life ahead of her. Mr. Simpson's actions caused Cameron's death. Mr. Simpson trafficked, as the term is defined in the *Criminal Code*, cocaine and fentanyl to Ms. Clairmont. We know that fentanyl is extremely dangerous, and the risk of death from an overdose is obviously high. What is even more noteworthy is that Mr. Simpson had the purple powder in his possession for over a month. He thought it was an opioid and had not previously consumed the drug himself because he was afraid of it.

Despite his belief that the powder was an opioid, and his own fear of its effects, he still gave the drug to Ms. Clairmont. In all of the circumstances, and in light of his previous actions, his degree of moral blameworthiness is high.

Law and Analysis

[49] Section 236(b) of the *Criminal Code* prescribes the punishment for manslaughter:

Manslaughter

236 Every person who commits manslaughter is guilty of an indictable offence and liable

...

(b) in any other case, to imprisonment for life.

[50] As I sentence Mr. Simpson, I bear in mind the Supreme Court of Canada's comments at para 53 in *R. v. Lacasse*, [2015] 3 SCR 1089:

...the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that they never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offenders degree of responsibility in the specific circumstances of each case.

[51] I start by reviewing the general principles of sentencing. The general purpose and principles of sentencing are found in s. 718 of the *Criminal Code*, which states:

718. The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community;
and

(f) to promote a sense of responsibility in offenders, and acknowledgment
of the harm done to victims or to the community.

[52] I have considered s. 718 with regards to denunciation, deterrence, and rehabilitation, and I refer also to section 718.1, which provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2 identifies other specific sentencing principles which must be considered, including the following:

1. The sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender (s. 718.2(a));
2. The sentence should be similar to sentences imposed on similar offenders for similar offences, committed in similar circumstances (s. 718.2(b));
3. An offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances (s. 718.2(d)); and,
4. All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders (s. 718.2(e)).

[53] Any sentencing hearing requires a careful consideration of the unique circumstances of each offender and the offence. It requires the balancing of sentencing objectives.

[54] In addition to both deterrence and denunciation, rehabilitation is always a consideration. As detailed in the pre-sentence report and the report of Dr. Andrew Starzomski at the time of the offence, Mr. Simpson was addicted to illegal substances and lived an unhealthy lifestyle. He has since stopped his consumption of illicit drugs and is gainfully employed. This is obviously to be commended.

Case Law

[55] I will review briefly the cases relied on by both the Crown and Defence.

Case Law Provided by the Crown

[56] In *R. v. Haas*, 2016 MBCA 42, the accused provided morphine pills to two young women. The morphine pills belonged to the accused, who took them for pain control. One of the women who was staying with him in his apartment died as a result of an overdose. The victim had taken 16 pills. The accused was convicted of manslaughter and sentenced to three years in custody, with one year concurrent, for the trafficking of morphine. The Crown argues that Mr. Simpson's circumstances are worse than those considered in *R. v. Haas, supra*, due to the fact that he trafficked in illegal substances, being fentanyl and cocaine.

[57] In *R. v. Walker*, [2019] OJ No 1263 (Ont Ct J), the accused was considered a low-level dealer who sold heroin and fentanyl to the deceased. The deceased was a friend of the accused and both the accused and deceased struggled with addiction. The accused pleaded guilty to criminal negligence causing death and drug trafficking. The accused also testified against a second person charged in the death of the deceased. The court held that five years was a fit and appropriate sentence for criminal negligence causing death, but reduced the sentence by one-and-a-half years because of the accused's substantial assistance in the prosecution of the second suspect. The net custodial sentence was three-and-a-half years.

[58] The facts in *Walker* are distinguishable in that Mr. Simpson did not deal drugs for profit, but had bought the drugs from a dealer for personal use. Mr. Simpson did not, however, provide testimony against the individual who provided the drugs to him, which was a mitigating factor in *Walker*.

[59] In *R. v. Knapp*, 2018 ONSC 2923, the accused was convicted of one count of criminal negligence causing death and one count of trafficking fentanyl. The victim was a young woman who had an addiction to drugs. The accused, who had a life-long chronic disease, sold the victim one of his prescription fentanyl patches. The victim used the patch and died of an overdose. There was a joint recommendation made for two-and-a-half years in custody for the offence of criminal negligence causing death. The Court accepted that the recommendation fell within the reasonable range of similar circumstances, subject to one important qualifier:

[11] This conclusion is subject to one very important qualifier. This offence was committed on January 25, 2016, which is two years and three months ago. It is really only in the last few years that the dangers associated with fentanyl have become public knowledge, as one death after another have been publicized. If this offence were to have been committed now, in 2018, I would not have been satisfied

that two and a half years in penitentiary sufficiently addresses the predominant objectives of denunciation and deterrence that these offences involving such a dangerous drug as fentanyl call for. This drug is so dangerous that those who choose to traffic in it must know that they will be dealt with very severely by the Courts. So, this case should not be taken as an indicator that two and half years will be the appropriate sentence for similar offence on a go forward basis from this day forward. But regarding this particular case, considering the circumstances of the case and the time when it was committed, I accept the joint submission, and I will sentence the accused accordingly.

[60] The Crown offered one other case for its comments on the dangers of fentanyl. In *R. v. Parranto*, 2021 SCC 46, the Court stated:

[93] As grave a threat as drugs such as heroin and cocaine pose, that threat pales in comparison to the one posed by fentanyl and its analogues. Indeed, over the past decade, fentanyl has altered the landscape of the substance abuse crisis in Canada, revealing itself as public enemy number one.

[94] Synthetically produced and readily available on the illicit market, fentanyl is an extremely dangerous and powerful painkiller and sedative. As with other opioids, such as heroin and morphine, it is a highly addictive substance, which, when taken outside of controlled medical environments, puts its users at risk of serious harm, including brain damage, organ damage, coma, and death. Fentanyl's potential for harm is, however, significantly greater than other opioids. It is, for example, estimated to be 80-100 times more potent than morphine and 25-50 times more potent than pharmaceutical grade heroin. Given its strength, a lethal dose will often be less than two milligrams, an amount as small as a single grain of salt (*R. v. Smith*, 2016 BCSC 2148, 363 C.R.R. (2d) 365, at para. 24). The risk of overdose and death from fentanyl is thus extremely high, particularly for naïve users or where it is taken in combination with other substances, such as alcohol or other opioids. The risk of overdose is also one that can be difficult to guard against, as traffickers often surreptitiously mix small amounts of fentanyl with other substances to create a cheaper product with the same effects, thereby drastically increasing their profitability (H. Hrymak, "A Bad Deal: British Columbia's Emphasis on Deterrence and Increasing Prison Sentences for Street-Level Fentanyl Traffickers" (2018), 41 Man. L.J. 149, at p. 153). This deceptive practice leaves users vulnerable and unaware, especially as fentanyl is physically indistinguishable from other hard drugs, such as heroin, oxycodone, and cocaine (C. C. Ruby, *Sentencing* (10th ed. 2020); *Smith*, at para. 24; *R. v. Joumaa*, 2018 ONSC 317, at para. 12 (CanLII)).

[95] Analogues or derivatives of fentanyl further exacerbate the risks, as these substances can be far more potent than even fentanyl itself, with some estimated to be as much as 100 times more potent than fentanyl. One such analogue, carfentanil, is so toxic that it "has no safe or beneficial human use, even within the medical community in highly controlled environments" (A. Sabbadini and A. Boni, *Sentencing Drug Offenders* (loose-leaf), at s. 2:1600.10).

[96] Beyond its mere potential to cause harm, however, fentanyl has had — and continues to have — a real and deadly impact on the lives of Canadians. Indeed, trafficking in fentanyl is so deadly that various courts have described it as a national crisis, reflective of an increased understanding of the gravity of the harm it causes (see, e.g., *R. v. Smith*, 2017 BCCA 112, at para. 50 (CanLII); *R. v. Vezina*, 2017 ONCJ 775, at para. 58 (CanLII); *R. v. Aujla*, 2016 ABPC 272, at para. 1 (CanLII)). This heightened understanding is supported by the available statistical evidence. The expert evidence on the record before us establishes, for instance, that fentanyl-related deaths in Alberta increased by 4,858 percent between 2011 and 2017, rising from 12 deaths in 2011 to 583 deaths in 2017. More broadly, federal statistics on opioid-related deaths show that, between January 2016 and March 2021, approximately 23,000 Canadians lost their lives due to accidental apparent opioid-related deaths, with fentanyl involved in 71 percent of these deaths (Special Advisory Committee on the Epidemic of Opioid Overdoses, Opioid and Stimulant-related Harms in Canada (September 2021) (online)). The epidemic also shows no signs of abating, with over 6,000 accidental deaths occurring in 2020 alone, 82 percent of which involved fentanyl (Government of Canada, Federal actions on opioids to date (June 2021) (online)). These figures throw into stark relief the dark and inescapable reality that “[e]very day in our communities, fentanyl abuse claims the lives of Canadians” (*R. v. Loor*, 2017 ONCA 696, at para. 33 (CanLII)).

[97] The scale of fentanyl’s devastating impact becomes even more apparent when one considers that, between 2016 and 2020, there were approximately 3,400 homicides across Canada, a number far below the number of fentanyl-related deaths (Statistics Canada, Table 35-10-0069-01 — Number of homicide victims, by method used to commit the homicide, July 27, 2021 (online)). This disparity makes clear that, in a very real way, those individuals responsible for the largescale distribution of fentanyl within our communities are a source of far greater harm than even those responsible for the most violent of crimes. The time has thus come for our perception of the gravity of largescale

Defence Case Law

[61] The defence has brought forward the following cases for consideration. In *R. v. Landry*, 2021 NSSC 179, Justice Chipman considered the difficulties in applying the sentencing principle of parity in cases of manslaughter. Justice Chipman acknowledged that the offence of manslaughter can cover acts ranging from near accident to near murder.

[62] In *R. v. White*, 2020 NSCA 22, the court considered an appeal against sentence for the offence of possession of fentanyl for the purposes of trafficking. In increasing the sentence from six years to eight years, Justice Saunders reviewed the dangers associated with fentanyl:

[104] Given the extreme risks associated with fentanyl, the lack of local examples would suggest that fentanyl has been slow to reach the borders of Nova Scotia is not an excuse to ignore the tragic consequences linked to its use. The time has come for this Court to ensure that trafficking in fentanyl does not gain a foothold in this province, and to send a message to traffickers that this is not a place where they would wish to do business.

...

[116] I would also respectfully decline the Crown's invitation, at this time, to establish either a range, or a starting point, for persons convicted in Nova Scotia of trafficking fentanyl or possessing it for the purpose of trafficking. We simply do not have enough experience in dealing with cases involving fentanyl to establish such a range or starting point.

[117] In my view, it would require a suitable evidentiary record, presumably based on persuasive expert evidence in the fields of medicine, toxicology and law enforcement. Such a record would then provide a basis for the trier of fact to properly assess the current situation in Nova Scotia and decide what, if any, further steps ought to be taken to approximately characterize the various levels of participants in the fentanyl distribution chain. That assessment would then enable the trier to consider the placement or ranking of the offender within that hierarchy, which in turn might assist the trier in the necessary proportionality and parity analyses. Such a complete record, together with the trial judge's reasons, would then provide a suitable basis for appellate review. Absent such a foundation I am not prepared, at this time, to declare either a range or a starting point.

[63] The defence argues that increasing the sentence in this case for the presence of fentanyl, as suggested by the Crown, is not proper, and would require more evidence regarding the situation in Nova Scotia. The court in *White* refused to set a starting point or a range, yet the court did focus and reiterate the principles of deterrence and denunciation.

[64] In *R. v. Rodgers*, 2020 ONCJ 495, the accused provided the victim with what he believed to be cocaine. The drug was not cocaine, but a synthetic opioid not intended for human consumption. As a result of consuming the drug, the female victim died. The accused pleaded guilty to manslaughter. Justice Bliss conducted a review of the law relating to the fit and appropriate sentence for the offence of manslaughter arising due to the ingestion of an opioid. Justice Bliss reviewed cases across Canada supporting a range of sentence between 18 months and five years imprisonment.

[65] In *R. v. Clemons*, 2003 MBCA 51, at para. 7 the appellant court explained how the sentencing options for manslaughter are "like no other". They range from a

suspended sentence to life imprisonment. A review of past sentencing decisions, whether in this jurisdiction or others, demonstrate that the breadth of those options has been exercised and it is extremely difficult to attempt to compare facts, circumstances and background of offenders in order to establish a restrictive or narrow range of fit and proper sentences. In colloquial language, the sentences are all over the map.

Consideration

[66] What is clear is that offences involving opioids cry out for denunciation and deterrence. I note and find persuasive the Crown's rhetorical question as to what Mr. Simpson has done over the past four years to get counselling for drug and alcohol abuse, and relationship support. He did not say he could not afford the counselling, nor did he suggest that he could not locate any counselling resources. He simply has not done it. The Crown also pointed out that Mr. Simpson has had the money and time to play more than a hundred rounds of golf in the summer, but not the time to spend at a recovery treatment program. One does question where the desire to get counselling lies, in the face of these facts. Mr. Simpson's mother, his common-law partner and Dr. Starzomski all agree that he should be seeking or would benefit from such treatment. On the other hand, the offender did cooperate from the outset. He called the paramedics and told them about the presumed consumption of opioids. He did what he could after the fact to try to help and save Ms. Clairmont. He also has led a pro-social life with the help of stable employment and reliance on recreational activities to assist in abstaining from illicit substances. These aspects and his work on rehabilitation are noteworthy.

[67] Mr. Simpson's early guilty plea does have value. His statements in court indicated his recognition that what he did was wrong and that he needs to, and does, take responsibility. He said the following:

I want to take this time to address the tragic events that took place on November 2, 2018. Firstly, I want to send my condolences to Cameron's family and friends and apologize for my actions that led to her sudden passing. I know words aren't enough, but I am sorry. I live with a tremendous amount of guilt and regret for how Cam passed, and I have no doubt that will stay with me for as long as I live. I would give anything to change what happened. I accept full responsibility for my actions and hope there is some way that I can make amends for all the hurt I've caused. I'm sorry.

[68] The defence acknowledged that the summary offence under the *Liquor Control Act* was relevant to the calculation of a fit and proper sentence. The defence

agreed that general and specific deterrence should be at the forefront of the court's considerations. Mr. Simpson has never been incarcerated before. The defence indicated that, in those circumstances, the court should exercise restraint in determining a fit and proper sentence. They suggested that a short shock could be more effective for a first-time offender than a longer period of incarceration. There is also evidence that the offender is at a low risk for reoffending, but only so long as he maintains his distance from illicit substances.

[69] The Court must emphasize denunciation of Mr. Simpson's unlawful conduct and the deterrence of both Mr. Simpson and others. Both the Crown and defence agree that this requires removing Mr. Simpson from society. What they disagree on is the length of incarceration necessary to achieve the relevant sentencing objectives.

[70] I have taken into account Mr. Simpson's commitment over the last four years to lead a prosocial life, his abstinence from illicit substances and his remorse. However, I do not accept the defence's proposal that a two-year federal sentence plus three-year probation is enough. I believe a longer term of imprisonment is necessary, given the need for denunciation and deterrence.

Conclusion

[71] Mr. Simpson, while you have accepted responsibility for your actions and demonstrated great remorse, there is no question that this offence cries out for denunciation and deterrence. You were in front of a Court before having provided alcohol to Cameron Clairmont when she was only 15 years old. You did not heed Judge Burrill's warning at the time. Instead, four years later, you trafficked fentanyl to Ms. Clairmont, causing her death.

[72] Your comment that you were both partying at the time suggests some diminishment by you of your responsibility for Ms. Clairmont's death. The fact remains that you provided her with a substance that you yourself had chosen not to consume for a month because you were afraid of its effects. You knew what could happen and you did it anyway.

[73] Your willingness to spare the system and the family of a trial, your plea, your cooperation and your positive reports have factored into the Court's consideration of an appropriate sentence.

[74] As Dr. Starzomski indicated, it will be desirable for you to obtain timely access to trauma-oriented support, addictions and mental health counselling while

incarcerated. I strongly encourage you to take advantage of any such resources offered to you and I encourage you to seek those out.

[75] Taking into account all of the circumstances, the case law, the principles of sentencing and, in particular, the need for the Court to emphasize denunciation and deterrence, I order you to serve 30 months in a federal penitentiary.

Ancillary Orders

[76] Both the Crown and defence agree that the following ancillary orders are appropriate, and I order the following:

- A DNA Order – pursuant to s. 489.04
- A section 109 Order prohibiting possession of a firearm and ammunition for 10 years
- An order pursuant to section 490(9) for the forfeiture of the remaining fentanyl.

Brothers, J.