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R. v. Latimer

2020 BCSC 685

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2020 BCSC 685 R. v. Latimer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Latimer,

2020 BCSC 685

Date: 20200501

Docket: 27798

Registry: Vancouver

Regina

v.

Kyle Latimer, Craig Latimer, Jacob Pereira,

Anduele Pikientio, and Csongor Szucs

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Before: The Honourable Madam Justice Ker

Ruling on Voir Dire #4 - Arrest of Csongor Szucs on June 19, 2017

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Introduction

- [1] The accused, Kyle Latimer, Craig Latimer, Jacob Pereira, Anduele Pikientio and Csongor Szucs, are charged with several offences under the Controlled Drugs and Substances Act, S.C. 1996 c. 19 [CDSA], as well as criminal organization, conspiracy and weapons offences under the Criminal Code, R.S.C., 1985, c. C-46 [Code]. Proceedings on this indictment have been referred to as the "Latimer indictment".
- [2] The charges arise as a result of Project Territory, an investigation that was spawned from "Task Force Tourniquet" in the spring of 2017. Task Force Tourniquet was a proactive task force that the Vancouver Police Department (the "VPD") and other neighbouring police agencies commenced in the spring of 2017 to investigate a number of criminal groups operating in the Lower Mainland of B.C. that were believed to be in conflict with one another and responsible for numerous acts of violence across the Lower Mainland. Project Territory is the investigation of the alleged drug trafficking activities of two different groups - the Kang group and the Latimer group.
- [3] Three different direct indictments charging a total of 12 individuals have been preferred in respect of Project Territory. A brief background overview to the investigation can be found in my reasons on another application, *R. v. Kang et. al.*, 2019 BCSC 2109 at paras. 19-32, which I incorporate into these reasons by reference hereto.
- [4] This ruling addresses an application by Csongor Szucs challenging the validity of his warrantless arrest by Cst. Evan Inkman of the Hope RCMP on June 19, 2017. Cst. Inkman was acting upon a request for assistance from Project Territory investigators to effect the arrest of Mr. Szucs, who was driving a 2017 black Dodge Durango (the "Durango") headed eastbound on Hwy. #1.
- [5] On June 19, 2017, members of the VPD Strike Force Surveillance Team ("SFST") were targeting Gurvinder Randhawa who was believed to be a drug courier associated to the Kang group. SFST members observed what was believed to be a drug transaction between Mr. Randhawa and Jacob Pereira. The SFST followed Mr. Pereira to the Pacific Rim Hotel and Estates (the "Pacific Rim"). One surveillance member followed Mr. Pereira from the hotel lobby into the private residential side of the Pacific Rim and onto the elevator. Mr. Pereira was observed to travel to the 42nd floor, where it was believed that Kyle Latimer resided. He was then seen 10 minutes later exiting the lobby of the Pacific Rim Hotel in the company of Csongor Szucs.
- [6] Surveillance of Mr. Pereira had focused on a backpack he had carried into his brief meeting in Mr. Randhawa's vehicle, then back into his vehicle which he then drove to the Pacific Rim. Mr. Pereira was observed to take the backpack into the Pacific Rim Hotel, and was still carrying the backpack when he and Mr. Szucs exited the hotel lobby approximately 10 minutes later.

- [7] Mr. Pereira entered the front passenger side of Mr. Szucs's Durango with his backpack and Mr. Szucs drove away. Mr. Pereira was observed by members of the SFST to exit the Durango on Homer St. and carry the backpack with him into a residential unit at 1001 Homer St. The Durango remained parked in place with Mr. Szucs inside the vehicle. Approximately 10 minutes later, Mr. Pereira was observed by members of the SFST to exit the residence on Homer St. and place the backpack in the passenger side of the Durango. Mr. Szucs then drove away. Less than hour had elapsed between the initial sighting of the backpack and its departure from the city.
- [8] Based upon the general drug investigation experience of the primary investigator (the "PI") of Project Territory, the information conveyed to him by the surveillance coordinator, as received from the road bosses of the SFST, as well as other information gathered during the course of the overall investigation, the PI believed that:
- i. Mr. Randhawa had removed drugs from what was believed to be a "stash house" for the Kang group at 1221 Bidwell St. and placed them in the trunk of his vehicle and in the body of the vehicle;
 - ii. Mr. Randhawa went to an area away from Bidwell St. and had a pre-arranged meeting with Mr. Pereira;
 - iii. Mr. Pereira met with Mr. Randhawa in Randhawa's vehicle for less than a minute and the backpack he took into the vehicle with him looked distinctly heavier when he exited the vehicle;
 - iv. Mr. Pereira had obtained drugs from Mr. Randhawa and placed them in the backpack and that the backpack contained drugs from what he believed to be a stash house at 1221 Bidwell St.;
 - v. Mr. Pereira had taken the backpack into the Pacific Rim;
 - vi. Mr. Pereira met up with Mr. Szucs at Kyle Latimer's apartment on the 42nd floor of the Pacific Rim;
 - vii. Mr. Pereira, still in possession of the backpack, accompanied by Mr. Szucs left the Pacific Rim in a vehicle leased by Mr. Szucs;
 - viii. after Mr. Pereira's brief attendance at 1001 Homer St. Mr. Szucs took possession of the backpack and was transporting the drugs in the backpack in his Durango out of the city and likely to the interior of the province or to Alberta; and
 - ix. less than 55 minutes had elapsed between the first sighting of the backpack and its departure in the Durango without Mr. Pereira and that this was consistent with his observations of drug couriering activities gained from other higher level drug investigations.
- [9] The PI and the surveillance coordinator each concluded they had grounds to arrest Mr. Szucs under s. 495 of the Code. Arrangements were made for a member of the Hope RCMP, relying upon Project Territory's grounds, to stop Mr. Szucs and arrest him for possession for the purpose of trafficking.

- [10] Given the rapidly developing circumstances and his inability to have instant communication with the VPD, Cst. Inkman pulled over Mr. Szucs before he had an opportunity to speak to a member of the Project Territory investigation and obtain the details of what VPD was seeking assistance on. Consequently, when Mr. Szucs was stopped and he asked for the reason for the stop, he was told by Cst. Inkman that his vehicle matched the description of a vehicle that the Hope RCMP was looking for. Mr. Szucs produced his BC driver's licence and vehicle insurance upon request, thus identifying himself. Cst. Inkman took this information back to his vehicle and then contacted Det. Cst. ("DC") Hill of the VPD, the surveillance coordinator for Project Territory.
- [11] After contacting and speaking to DC Hill, Cst. Inkman returned to Mr. Szucs's vehicle, advised him he was under arrest for possession of a controlled substance for the purpose of trafficking ("PPT"), removed Mr. Szucs from his vehicle and placed him inside the RCMP patrol vehicle. Cst. Inkman then searched the Durango, located the backpack on the passenger side back seat, searched the backpack and found a brick of cocaine weighing 759 gm and 27.43 gm of fentanyl.
- [12] Mr. Szucs remained detained at the roadside for approximately 12 minutes before he was advised of the reason for his detention and his right to counsel. Crown counsel properly concedes that Mr. Szucs's ss. 10(a) and (b) Charter rights were breached during this time period.
- [13] Mr. Szucs asserts that more than his ss. 10(b) and (b) Charter rights were breached. He contends that numerous additional breaches of his Charter rights occurred from the time the roadside stop was initiated through the warrantless search of his vehicle and the backpack in his vehicle, as follows:
- i. his s. 9 right to be free from arbitrary detention as there was no authority under the Motor Vehicle Act, R.S.B.C. 1996, c. 318, to stop him to obtain his identification for an investigative purpose;
 - ii. his s. 8 right to be free from search and seizure related to the obtaining of his BC driver's licence and vehicle insurance documents for an investigative purpose;
 - iii. his s. 7 right to silence given that Cst. Inkman initiated the stop for an investigative purpose and without authority under the Motor Vehicle Act;
 - iv. his s. 9 right to be free from arbitrary detention in so far as his arrest was warrantless and done in the absence of reasonable grounds contrary to s. 495 of the Code and the common law Storrey test; and
 - v. his s. 8 right to be free from unreasonable search and seizure in that the search of his vehicle and the backpack located on the passenger side backseat was not a search incident to lawful arrest.

- [14] Mr. Szucs further maintains that the information that Project Territory gained from the Brighthouse Way searches from May 5 and 9, 2017, must be excised from the grounds relied upon to arrest him, as the Court ruled in 2020 BCSC 488 that the information from those searches was obtained in violation of s. 8 of the Charter.
- [15] The Crown argues that the warrantless arrest of Mr. Szucs was based on reasonable grounds in conformity with the Storrey test, after the seminal Supreme Court of Canada decision in *R. v. Storrey*, [1990] 1 S.C.R. 241. As the arrest was based on reasonable grounds, the Crown argues that the search of his vehicle and the backpack was incidental to his lawful arrest. Accordingly, submits the Crown, there were no breaches of Mr. Szucs's s. 8 or s. 9 Charter rights.
- [16] In so far as the alleged earlier breaches of Mr. Szucs's ss. 7, 8 and 9 Charter rights are concerned, the Crown argues that no such breaches occurred and that the defence has not met its onus of establishing those breaches on a balance of probabilities.
- [17] Thus, the issues before me on this application are whether the Crown has established that Mr. Szucs's warrantless arrest conformed with the provisions of s. 495(1)(a) of the Code and the Storrey test, and whether the defence has established that the detention, arrest and search of Mr. Szucs's vehicle violated his Charter rights guaranteed by ss. 7, 8, and 9. An additional issue to be determined, embedded in the validity of the warrantless arrest issue, is whether the information obtained from Brighthouse Way search ought to be excised from the grounds to arrest.
- [18] On March 23, 2020, I advised counsel that I was satisfied that the warrantless arrest of Mr. Szucs on June 19, 2020 was not unlawful, that the search of his vehicle incident to his lawful arrest was not unreasonable, and that Mr. Szucs had not established any other Charter violations in respect of this stop, save for the two s. 10 breaches conceded by the Crown. I indicated that my reasons would follow. These are my reasons.

The Evidence and Factual Background

- [19] Four police witnesses testified on the voir dire. The accused did not testify. I will not set out the entirety of the witnesses' testimony; rather, I will focus on what I consider most salient to the issues raised on this application.
- [20] As noted in the introduction, Mr. Szucs was stopped outside Hope, B.C. driving a black Durango. The SFST had maintained surveillance on him from the Pacific Rim to a residence at 1001 Homer Street and then to a gas station on East Hastings Street where he filled his vehicle. The SFST followed the Durango out of the city and travelled east on Hwy. #1. When the vehicle passed Chilliwack, B.C., members of Project Territory apprised of the Durango's path of travel and aware of the surveillance observations determined the driver should be stopped and arrested. Contact was made with the Hope RCMP detachment and a dispatcher assigned Cst. Evan Inkman to be on the lookout for the Durango and to stop it if he encountered it. Within minutes, Cst. Inkman observed the Durango pass him continuing

east on Hwy. #1. He initiated a vehicle stop and obtained Mr. Szucs's identification. After speaking with a member of Project Territory, Cst. Inkman, relying on the VPD's grounds, arrested Mr. Szucs for PPT, searched his vehicle and found cocaine and fentanyl in a beige backpack located on the rear passenger seat.

- [21] The police officer who ultimately formed the grounds to arrest and directed that steps be taken to arrest the driver of the Durango was DC Scott Hyde, the PI for Project Territory. DC Hyde formed his grounds through a combination of (i) his previous training, knowledge and experience as a drug investigator, (ii) his knowledge of the details of the Project Territory investigation and analytics, and (iii) information he received from DC Hill as to the observations made by SFST members on June 19, 2017.
- [22] A document entitled Admissions of Facts ("AF") was filed as Ex. #1 on this application outlining the events and observations of the various SFST members on June 19, 2017, that culminated in the decision to arrest Mr. Szucs.[1]
- [23] My summary of the facts is drawn from the information contained in the AF as well as the evidence adduced on the voir dire and the written and oral submissions from counsel.

The Experience of the Officers Involved in the Decision to Arrest Mr. Szucs

- [24] Two officers were involved in the decision to arrest Mr. Szucs: DC Scott Hyde, the PI for Project Territory, and DC Derrick Hill, the surveillance coordinator for Project Territory. Ultimately, however, the officer who formulated the grounds to arrest was DC Hyde given his role as the PI in the investigation.
- [25] DC Derrick Hill - On Monday, June 19, 2017, DC Hill was the surveillance coordinator receiving the radio communications from the SFST "road boss" as to the observations of the SFST members.
- [26] DC Hill has been a member of the VPD for 18 years. He started as part of the beat enforcement team and spent seven years patrolling in various districts of Vancouver including the downtown east side (the "DTES"), the east side and the northeast side of Vancouver. Thereafter he joined the drug investigation unit and was involved in investigating drug offences for approximately six years before joining the organized crime section of the VPD in approximately 2008. In March 2017 he joined the Project Territory investigation as the surveillance coordinator.
- [27] DC Hill testified he had been involved in thousands of drug investigations over the course of his career ranging from small street transactions through to multi-kilo level broad ranging investigations. He has served many different roles in drug investigations including as the PI, file coordinator ("FC"), affiant, source handler and exhibit custodian. Through the course of his years of experience in drug investigations DC Hill learned that in order for drug dealers to be able to supply their customers on an "on demand basis" they need a place to store their product separate from their residences. Accordingly, "stash houses" - apartments and

condominiums rented by others in which nobody actually resides - are used to store the supply of product as well as the proceeds of the enterprise and other contraband such as weapons.

- [28] Another facet of DC Hill's knowledge and experience from other drug investigations is the fact that most drug supply transactions between couriers and suppliers occur in private or in locations where the exchange is not visible. While not frequent, such transactions can also occur in vehicles.
- [29] DC Scott Hyde - DC Hyde was the lead investigator or PI for Project Territory from its inception in March 2017. The PI's role was to control the speed, flow and direction of the investigation; to review all the information and evidence collected during the course of the investigation; and, to make decisions on where the investigation was to move based on that information. On Monday, June 19, 2017, DC Hyde was not on duty but at 13:53 hrs. he was contacted by DC Hill about observations related to a bag exchange between the surveillance target of the day, Gurvinder Randhawa, and another male. DC Hill advised him of the development and informed him that the target of that day's surveillance had been switched to follow the backpack involved in the exchange with Mr. Randhawa.
- [30] DC Hyde has been a member of the VPD for 14 years. He started his career working in the DTES and was in that location for approximately five years. Thereafter, he transferred to the organized crime section of the VPD and spent approximately seven years in that position. It was while posted to that section that he became the lead investigator for Project Territory in March 2017.
- [31] DC Hyde's career with the VPD has involved years of investigating drug offences at all levels of the drug trade. His investigative experience started in the DTES observing low-level hand to hand transactions. As his experience broadened and his career progressed he was involved in investigating dial-a-dope operations, kilo level transactions, transnational and international level investigations. Over the years he has been placed in several different investigative roles including as investigator, surveillance team member, wire room member, affiant, FC, source handler, agent handler and PI.
- [32] Like DC Hill, DC Hyde has a broad base of knowledge - gained through his training and investigative experience - in the packaging, sale and distribution of drugs and was well familiar with the concept of a drug stash house.
- [33] Both officers have many years of experience and significant training and knowledge with respect to the investigation of drug offences from street level all the way up to the transnational and international levels. It is clear from their evidence that the business of drug trafficking enterprises - including storage locations, packaging, supply and delivery, interactions between suppliers and couriers, resupply and distribution - can, and does, occur in a myriad of ways, including seemingly in plain view albeit with the transaction cloaked by the impenetrable nature of vehicle doors. There is no "one size fits all" mode of exchange or delivery between suppliers and recipients / couriers. Adaptability, flexibility

and ingenuity, coupled with audacity on some occasions, is the order of how such a business is conducted. In these reasons, when I refer to the "drug investigation experience" of these officers, I intend it as shorthand for all that I have discussed here.

The General State of Knowledge of the Project Territory Investigation as of June 19, 2017

- [34] An intelligence analyst with the VPD Organized Crime Group prepared a chart entitled "OC Groups - Conflicts and Alliances" dated January 29, 2017 and updated March 16, 2017. The chart was an exhibit on this voir dire (Ex. #5). The chart as of March 16, 2017 appeared to theorize that the Bacon / Red Scorpions (the "RS") / Independent Soldiers and Wolfpack groups worked as one set of groups that supplied both the Kang group and the Dhaliwal / Grewal group. All three groups on the chart were aligned at the time. However, given the fluidity and constantly changing nature of such organizations, alliances change over time as do supply chains. Moreover, further intelligence and observation can change the understanding of the relationships and alignments. So too can perceived slights change the nature of the alignments between various groups. The fact that an intelligence analyst believed in March 2017 that the RS (Kyle Latimer's group) was supplying the Kang group does not, in my view, undermine the later theory that Project Territory was operating on - that the Kang group appeared to be supplying the RS (and therefore Kyle Latimer and his associates) with controlled substances.
- [35] Through reviewing surveillance reports, fob access records and CCTV footage as well as attending various briefings, DC Hyde, DC Hill and other investigators on Project Territory learned of the activities and movements of Randy Kang, Manveer Braich and Gurvinder Randhawa and came to the conclusion that Manveer Braich and Gurvinder Randhawa were drug couriers for the Kang group.
- [36] DC Hill described May 4, 2017 as a big day for Project Territory as it was on that day that Mr. Braich led members of the SFST and Project Territory investigators from 1221 Bidwell St. in Vancouver to 5199 Brighthouse Way in Richmond, B.C. Prior to that date, Mr. Braich's erratic driving behavior on previous occasions made it difficult for SFST members to follow him as he appeared to be engaging in counter-surveillance measures.
- [37] The CCTV footage and other information that Cst. Nielsen obtained on May 5 and 9, 2017, from the concierge at Brighthouse Way led Project Territory to learn of Kyle Latimer's and Jacob Pereira's involvement with Mr. Braich and to see a bag exchange in the strata property's underground parking lot.
- [38] DC Hyde and DC Hill both testified that prior to June 19, 2017, Kyle Latimer was known to the police and believed to be a high-ranking member of the RS. Investigative information from Cst. Dodds of the Gang Crime Unit from about June 15, 2017, indicated that Kyle Latimer resided on the 42nd floor of the Pacific Rim. Jacob Pereira was believed to be a member of the RS, a close associate of Kyle Latimer, and involved in dial-a-dope style drug

trafficking. Csongor Szucs was known to Project Territory investigators as the person who was listed as the tenant for 1204-5177 Brighthouse Way. DC Hyde and DC Hill understood Mr. Szucs to be an associate of Kyle Latimer and also involved in the dial-a-dope operations of Mr. Latimer's drug enterprise.

- [39] Based on the use of a rental vehicle[2] by Mr. Braich on May 4, 2017, the short duration that Mr. Braich was at Bidwell St., the movement of bags from Bidwell St. to Mr. Braich's vehicle, Mr. Braich's travel to Brighthouse Way and into the underground parking garage, and the bag exchanges observed on the CCTV footage from Brighthouse Way, as informed by their drug investigation experience, DC Hyde and DC Hill (as well as other Project Territory investigators) believed that a drug exchange had occurred on May 4, 2017 in the Brighthouse Way underground parking lot and that Bidwell St. was a stash house for the Kang group. After this development, Project Territory focused surveillance resources on the Bidwell St. location.
- [40] The observations from the CCTV footage in the Brighthouse Way parking lot of Mr. Pereira and Mr. Latimer in each other's company was consistent with the previously known information of the associations between the two. Similarly, Mr. Szucs's name on the Form K as the tenant of the Brighthouse Way suite was also consistent with previously known information about the associations of Mr. Latimer and Mr. Szucs.
- [41] Project Territory investigators continued to focus on the activities of Manveer Braich, Gurvinder Randhawa and others from May 4, 2017 onwards. By June 19, 2017, DC Hill and DC Hyde were aware that between May 13, 2017 and June 19, 2017, Mr. Randhawa had been surveilled to and appeared on CCTV footage making short attendances at Bidwell St. a total of 21 times. Mr. Randhawa's first attendance at 1221 Bidwell St. was on May 13, 2017, in the company of Randy Kang. Their attendance was brief. Thereafter, surveillance observed that Mr. Randhawa attended Bidwell St. on his own, his attendances remained brief, and he frequently carried bags to and from his vehicle while at Bidwell St. Indeed, any attendances at Bidwell St. observed by the SFST were of a brief nature and the attendees were frequently carrying bags- shopping bags, duffle bags, backpacks and the like - in or out of the building. No one appeared to be living in 907-1221 Bidwell St.
- [42] For both DC Hill and DC Hyde, the numerous observations by SFST members of an array of bags being taken in and out of the suite, attendances of short duration by a number of associated individuals and seemingly no one living in the suite aligned with their drug investigation experience and supported their belief that the Bidwell St. location was a stash house.

The Surveillance Observations Leading to the Arrest of Mr. Szucs on June 19, 2017

Overview of the Surveillance Process in Place

- [43] On June 19, 2017, members of the SFST were conducting surveillance on Gurvinder Randhawa, an individual that Project Territory believed to be a drug courier associated to the Kang group. SFST members observed what was believed to be a drug transaction between Mr. Randhawa and Jacob Pereira. The focus of the SFST squad's surveillance was switched from Mr. Randhawa to Mr. Pereira who was followed to the Pacific Rim. One surveillance member followed Mr. Pereira from the hotel lobby into the private residential side of the Pacific Rim and onto the elevator. Mr. Pereira was observed to travel to the 42nd floor. He was then seen 10 minutes later exiting the lobby of the Pacific Rim Hotel in the company of Csongor Szucs.
- [44] The surveillance report (Ex. #6), the relevant extracts of which are contained in the AF, outlines the observations made by various SFST team members who were assigned to monitor Mr. Randhawa's movements on June 19, 2017. Two squads from the SFST were involved in the overall surveillance on June 19, 2017: Squad 4 until mid-afternoon with Squad 2 taking over at 15:15 hrs. Each squad had a road boss, the person in charge of the surveillance for the day. On June 19, 2017, the road boss for the morning was DC Minh Tran and after 15:15 hrs. it was DC Armindar Gill.
- [45] The road boss reported the observations of the various SFST members to the surveillance coordinator on an updating basis. DC Hill was the surveillance coordinator for Project Territory and on June 19, 2017 he believed he was scheduled as off duty but was available by cellphone. DC Hill was provided with continuing updates from the SFST road boss and he passed this information on to DC Hyde. As the surveillance coordinator, it was DC Hill who directed that the target of the SFST change through the course of the afternoon, based on the information that the SFST was providing and on his overall knowledge of the investigation and his general experience as a drug investigator.
- [46] In addition to the SFST members providing their surveillance observations to their road boss, and the road boss advising the surveillance coordinator of the ongoing developments, an assigned scribe listened to the transmission of the surveillance members' observations and reduced them to writing in a surveillance report. Once the surveillance report was transcribed, each member of the SFST initialed all entries related to their observations. Nine different SFST members initialed the observations contained in the surveillance report filed on this voir dire (Ex. #6).
- [47] The surveillance report filed on this voir dire contains only the observations of Squad 4 of the SFST, headed by DC Tran as road boss. At 15:15 hrs, Squad 4 handed over surveillance duties to Squad 2, with DC Gill as the road boss. Squad 2 followed the Durango out of Vancouver and east on Hwy. #1.

Initial Surveillance Target: Gurvinder Randhawa

- [48] As noted above, Mr. Randhawa was the surveillance target for the SFST on June 19, 2017. He left his home at 11:58 hrs. driving a grey Ford Fusion (the "Fusion"). After meeting briefly in a Canadian Tire parking lot with an unknown female driving an F150 truck, Mr. Randhawa drove from Coquitlam to Vancouver. At 13:01 hrs. the Fusion drove into the secure underground parkade of 1221 Bidwell St. Twenty-one minutes later, at 13:22 hrs., Mr. Randhawa was observed to walk to the trunk of the Fusion and place a weighted white plastic grocery bag containing a square object of about four inches by four inches inside. He removed a lightly weighted black cloth bag from the trunk and placed it in the back seat of the Fusion. At 13:23 hrs. Mr. Randhawa drove the Fusion out of the parking lot and travelled north on Nelson St. At 13:33 hrs. he parked the Fusion on the north side of Nelson St, west of Richards St. Visual continuity was broken for one minute but regained at 13:34 hrs. with the Fusion still parked on Nelson St. and Mr. Randhawa still in the driver's seat.
- [49] DC Hill testified that based on the observations relayed to him by DC Tran, as outlined in the surveillance report, as well as his general knowledge of delivery and supply arrangements in drug enterprises though his drug investigation experience, it was his belief that Mr. Randhawa was organizing his product at his vehicle trunk and about to do a delivery of drugs from the Bidwell St. stash house. The activities observed and relayed to him were consistent with his experience and knowledge of how various drug groups move their product out of a stash house for delivery to a courier. He relayed these observations to DC Hyde during one of their conversations that afternoon.
- [50] At 13:48 hrs. an unknown Asian male (later identified as Jacob Pereira) approached Mr. Randhawa's parked Fusion and got into the front passenger seat of the vehicle. Mr. Pereira was wearing a red leather jacket[3] and carrying a beige backpack. Mr. Pereira was in Mr. Randhawa's vehicle for less than a minute. When he exited it, two different SFST members involved in the surveillance noted that the backpack now looked distinctly heavier and that the backpack was close to full by its volume as it was being pushed out by its contents.
- [51] At 13:51 hrs., Mr. Pereira was observed to get into a 2014 black Mercedes CL 250. A query of the vehicle plate revealed that Mr. Pereira was the registered lessee.
- [52] These observations were relayed to DC Hill, who reported them to DC Hyde. As a result of the observations, their general drug investigation experience and their knowledge of the Project Territory investigation both DC Hyde and DC Hill formed the belief Mr. Randhawa had supplied Mr. Pereira with drugs from Bidwell St. DC Hill directed the SFST to change the target of the surveillance to Mr. Pereira's vehicle which contained the beige backpack.

Surveillance Target Switches at 13:51 hrs. to Jacob Pereira

- [53] Once Mr. Pereira started to drive away from his meeting with Mr. Randhawa, members of the SFST followed him to 1011 West Cordova St. where he was observed to drive his vehicle into the open breezeway of the Pacific Rim. Mr. Pereira exited his vehicle at 14:02 hrs. and took the backpack with him. A member of the SFST followed him into 1011 West Cordova St. and at 14:05 hrs. travelled on the elevator with him to the 42nd floor of the Pacific Rim. Visual continuity of Mr. Pereira and his backpack was then lost for eight minutes.
- [54] At 14:13 hrs. Mr. Pereira exited the Pacific Rim in the company of another unknown male (later identified as Csongor Szucs). Mr. Pereira still had possession of the backpack. The surveillance report contains no description of any alteration of the appearance of the backpack from the time that its appearance was noted to be distinctly heavier at 13:48 and 13:51 hrs.
- [55] Mr. Pereira entered the passenger side of the Durango, parked outside the Pacific Rim and the unknown male entered the driver's side. Mr. Pereira retained possession of the backpack. A query of the vehicle plate determined that Csongor Szucs was the registered lessee of the Durango.
- [56] Members of the SFST followed the Durango and at 14:26 hrs. observed it to park in front of 1001 Homer St. Mr. Pereira exited the Durango and took the backpack with him into 1001 Homer St. at 14:27 hrs. Access was gained through the use of a fob on a lanyard that Mr. Pereira possessed. At 14:40 hrs. Mr. Pereira was observed to exit 1001 Homer St still carrying the backpack. No changes to the condition of the backpack were noted by the SFST members.
- [57] At 14:43 hrs. Mr. Pereira returned to the parked Durango, placed the backpack in the passenger side and then walked away from the vehicle.
- [58] At 14:45 hrs. the Durango drove south on Richards St. and at 14:48 hrs. Mr. Pereira got into a taxi that travelled north on Seymour St. The Durango was then observed to travel north on Seymour St. as well.
- [59] These observations were related to DC Hill by the road boss. Based on DC Hill's drug investigation experience, his general knowledge of the investigative file and the observations of the SFST members, DC Hill determined that the backpack likely still contained drugs from Mr. Randhawa and was heading out of town. He directed that the target of surveillance be changed to follow the Durango.

Surveillance Target Switches at 14:48 hrs. to the Durango

- [60] At 14:48 hrs. the surveillance target became the Durango based on DC Hill's direction. The SFST squad followed the Durango to a gas station on East Hastings St. At 15:01 hrs. the Durango was observed parked beside a gas pump. Visual continuity was briefly lost but re-established at 15:03 hrs. when the driver of the Durango was observed to exit the gas station kiosk, return to the Durango and start to pump gas into the vehicle. At 15:10 hrs. the driver got back into the Durango and drove east on Hastings St.
- [61] At 15:15 hrs. Squad 4 of the SFST handed over surveillance on the Durango to Squad 2. DC Gill was the road boss for Squad 2 and testified they took over surveillance of the Durango as it drove east on East Hastings St. headed to Hwy. #1. The driver was the lone occupant of the vehicle.
- [62] DC Gill and other members of Squad 2 followed the Durango east on Hwy #1. He was in fairly constant communication with DC Hill. DC Hill remained in contact with DC Hyde and advised him of developments.

The Decision to Have the Durango Stopped and the Driver Arrested

- [63] Based on the observations relayed by the SFST as well as other investigative information pertinent to Project Territory coupled with their drug investigation experience, both DC Hill and DC Hyde believed that the totality of the circumstances viewed by the SFST between 13:22 hrs. and 15:10 hrs., as conveyed to them by the SFST road boss, made it reasonably probable that Mr. Randhawa had obtained drugs from the Bidwell St. suite, that he had placed them in his vehicle, that he drove to a meeting spot and had a prearranged meeting with Mr. Pereira, that the brief meeting between Randhawa and Pereira resulted in Pereira obtaining drugs from Mr. Randhawa (given the changed appearance of the backpack), that the drugs were placed in the backpack Mr. Pereira was carrying, that the drugs came from 1221 Bidwell St., and that the driver of the Durango was carrying the backpack containing the drugs out of the Lower Mainland and acting in the capacity of a drug courier. Based on the foregoing, both officers concluded that the Durango should be stopped and the driver arrested for PPT.
- [64] As the decision to stop the Durango could be a "file ending decision" the officers wanted to do what they could to distance the VPD from the arrest. They determined that they would seek assistance from the RCMP in Hope if the Durango drove past Chilliwack, B.C. If it did, it was their belief, based on years of drug investigations experience that the driver / courier was likely heading to the interior of the province or to Alberta.
- [65] DC Hill directed DC Gill to contact the Hope RCMP to request assistance with the arrest. The RCMP were to be told to stop and arrest the driver for PPT and to not let the driver know that the VPD was involved. DC Hill also asked DC Gill to see if the RCMP could assign someone with "Pipeline" experience.[4]

- [66] DC Gill contacted the Hope RCMP detachment. He requested assistance from the Hope RCMP dispatcher. DC Gill explained that the SFST members surveilling the Durango could not initiate a traffic stop as their vehicles were not equipped with police lights.
- [67] DC Gill recalled DC Hill advising him to tell the dispatcher with the Hope RCMP that the VPD was following a vehicle, that the VPD was working on a drug project investigation, that they needed the vehicle stopped and that the VPD had grounds to make a stop and arrest. DC Gill recalled DC Hill telling him to convey to the dispatcher that there were grounds under the Pipeline project to effect a traffic stop. DC Gill had little experience and limited knowledge of what the Pipeline project was but understood it related to investigations of drug couriers travelling the highway through the Fraser Valley and on into the interior of the province.
- [68] DC Gill contacted the Hope RCMP dispatcher, identified himself as a member of the VPD, advised the dispatcher that they were conducting surveillance of an identified vehicle and needed assistance from the Hope RCMP to pull the vehicle over. He could not recall any other details that he provided apart from a description of the vehicle, its vehicle plate number and DC Hill's telephone number for the officer conducting the stop to contact DC Hill after the vehicle was stopped. In cross-examination DC Gill conceded that the general nature of the direction given to the dispatcher was that they were engaged in a drug project, they had grounds to arrest the driver and asked if Hope RCMP would conduct a traffic stop on their behalf. DC Gill had no recollection of whether DC Hill had advised him that he suspected the driver of the vehicle was Csongor Szucs or that he was provided with that name.
- [69] While DC Gill's inability to recall what exactly he conveyed to the dispatcher might be concerning, the fact of the matter is that the dispatcher, as is evidenced in the radio communication between the dispatcher and Cst. Inkman played on this voir dire, was provided sufficient information to advise Cst. Inkman as to why the VPD wanted the Durango stopped - it related to a drug investigation.
- [70] It is clear from this aspect of the evidence that the Hope RCMP were being asked by the VPD to stop a particular vehicle, the Durango. It does not appear that the dispatcher understood that the VPD had grounds to believe that the driver possessed a controlled substance for the purpose of trafficking and they wanted the driver arrested for that offence and the vehicle searched.

Cst. Evan Inkman's Vehicle Stop of the Durango and the Arrest of the Driver - Csongor Szucs

- [71] At approximately 17:08 hrs. on June 19, 2017, the Hope RCMP dispatcher contacted Cst. Inkman who was on patrol and finishing off another call. The contents of all the conversations between Cst. Inkman and his dispatcher are captured in the audio clips contained in Ex #3. Calls 2, 3, 9, and 10 were played during the voir dire.

- [72] Audio clip number two consists of the dispatcher contacting Cst. Inkman and advising he had another job for him. The dispatcher can be heard advising Cst. Inkman that Vancouver Strike Force was calling, they were following a vehicle involved in "some sort of drug thing", they (SFST members) were travelling eastbound (on Hwy. #1) and had just passed the Jones Lake exit, and they wanted a marked car to pull the vehicle over and once that was achieved the officer should call them (the VPD). Cst. Inkman can be heard to provide dispatch with his personal cellphone number for the dispatcher to pass on to the Vancouver SFST officers. Also heard in this call are comments about Cst. Inkman's radio being "messed up" - as confirmed by intermittent break ups in the communication - and offers by two other patrol vehicles to assist (Charlie 2 and Charlie 5) but which Cst. Inkman declined.
- [73] Audio clip number three is brief and consists of the dispatcher advising Cst. Inkman of the vehicle make - a black Dodge Durango - and the BC vehicle plate number. The dispatcher offered to stay on the line and Cst. Inkman confirmed that would assist as he could not communicate directly with the Vancouver officers. He asked the dispatcher to keep providing updates.
- [74] Audio clip number nine is extremely brief. It consists of the dispatcher checking in with Cst. Inkman after he had stopped the vehicle. Cst. Inkman can be heard to say that he had some paper work that he was dealing with and that he "made up some sort of story as to what going to do with it". The quality of the transmission is not so crisp as to permit the full context of the latter comment to be understood.
- [75] Audio clip number ten consists of Cst. Inkman contacting the dispatcher and stating that it is a "bit confusing here, got the guy pulled over tried the number you gave but it does not work". The dispatcher advised Cst. Inkman that he could provide another number and stated it was for a Cst. Gill.
- [76] Cst. Inkman testified that once he finished with his previous dispatch task, he returned to his patrol vehicle and headed out to Hwy. #1 to see if he could intercept the vehicle that the VPD was following and wanted pulled over.
- [77] Cst. Inkman testified that he thought he was being asked to stop the Durango for the VPD SFST and that it had something to do with identifying the driver. Cst. Inkman moved his patrol vehicle into the eastbound lanes of Hwy. #1 and then parked somewhere between exit #168[5] and exit #170.[6] Within five minutes of parking on the shoulder of the highway, the Durango passed him. Cst. Inkman re-entered the flow of traffic, activated his lights and stopped the Durango at 17:20 hrs. At this time, Cst. Inkman had not yet spoken to anyone from the VPD.

- [78] It is apparent from the time frame between the initial dispatch at 17:08 hrs. and the vehicle stop at 17:20 hrs. that Cst. Inkman was dealing with a rapidly developing and fluid situation and was confounded in not having more precise information due to his inability to communicate directly with anyone at the VPD to obtain more specific directions. No doubt the sometimes garbled nature of the radio transmissions between the dispatcher and the officer added to the lack of clarity.
- [79] Once he had stopped the Durango, Cst. Inkman called in to dispatch to advise he had stopped the vehicle and provided the vehicle plate number to the dispatcher. He then approached the driver's side of the vehicle. He asked the driver for his driver's licence and vehicle insurance documents. When asked by the driver why he had been stopped, Cst. Inkman informed the lone occupant of the vehicle it was because the Hope RCMP was looking for a vehicle like his.
- [80] Cst. Inkman was candid in his testimony that he had no idea why the VPD wanted the vehicle pulled over. When he initiated the stop he knew it was being done at the request of the VPD but he had not been able to speak to anyone before initiating the stop. The information he was operating on was what he had received from the Hope RCMP dispatcher. As he explained in his evidence, he understood the stop had something to do with a drug investigation but he did not know whether there was one occupant in the vehicle or more than one and he did not know if the occupant(s) were suspects, witnesses or something else. Although he observed no motor vehicle infractions and did not stop the vehicle for that purpose, Cst. Inkman was clear that he stopped the vehicle because he had been asked to do so by another police department. That he was uncertain of the purpose is of no moment, in my view, given the rapidly changing, real-time nature of the circumstances.
- [81] Given his uncertainty as to what he was being asked to do by the VPD, Cst. Inkman decided to approach the vehicle immediately and have the driver identify himself in accordance with his standard traffic stop practice. He did not want the driver simply sitting by the side of the road while the officer waited for the VPD to contact him as he felt that that was not safe. Approaching the driver and seeking his identification allowed him to control the tone of the interaction and ensure his safety and the safety of the driver. Controlling the interaction was of particular concern given that he understood the matter to relate to a drug investigation, which can have safety issues such as flight and firearms. I accept Cst. Inkman's evidence on this point and find as a fact that he was not obtaining the identification particulars of Mr. Szucs for an investigative purpose or because he had been directed to do so by the VPD. At that point he had no particulars from the VPD as to what they wanted done, apart from stopping the vehicle.

- [82] It is clear from the totality of the evidence on this point that Cst. Inkman was stopping the vehicle at the behest of the VPD. To that end it was not a routine traffic stop. He obtained Mr. Szucs's particulars in order to keep control of a rapidly developing scenario where he had yet to receive instructions as to why the VPD wanted the vehicle stopped and what the VPD wanted done.
- [83] Cst. Inkman was candid in his evidence, explaining that he could not tell the driver why he had stopped him, apart from that the Hope RCMP was looking for a vehicle like the driver's, because he did not know why he had stopped the driver; he had insufficient details and had had no direct communication with the VPD. What he did know, however, is that he was acting under the direction and request for assistance made by the VPD. At this juncture, Cst. Inkman remained hopeful that the VPD SFST following Mr. Szucs would attend the scene to assist or take over.
- [84] That Cst. Inkman told the driver of the Durango that the Hope RCMP was looking for a vehicle like his instead of stating that in fact they were looking for that exact vehicle or that the VPD was looking for that vehicle, while slightly misleading, is irrelevant in the context of the totality of the circumstances and the real-time evolution of what was occurring. The gist of the information he provided to Mr. Szucs was not inaccurate. Even if it were inaccurate, it is not the sort of unconscionable conduct that would shock the conscience of the community. As has been noted many times before in a variety of circumstances, notably by Lamer J. (as he then was) in *Rothman v. The Queen*, [1981] 1 S.C.R. 640 at p. 697, adopted in *R. v. Collins*, [1987] 1 S.C.R. 265, and *R. v. Oickle*, 2000 SCC 38 at para. 66, "[t]he investigation of crime and the detention of criminals is not a game to be governed by the Marquess of Queensbury rules". The same point was made by Madam Justice Levine in *R. v. Bonisteel*, 2008 BCCA 344 at para. 89, quoting from other decisions:

The difference between the unpalatable and the inedible is generally a matter of personal taste. Absent "dirty tricks", the courts should not set themselves up as the arbiters of good taste or of the preferred methods of investigation. It is unrealistic to demand chivalry from those who must investigate what are often heinous offences against blameless victims. The law should not appear to materialize as a revolutionary rabbit from a judicial magician's hat.

- [85] Although the above quote is taken from the context of confessions, it remains apposite for the circumstances in respect of the explanation provided to Mr. Szucs by Cst. Inkman as to why he had been stopped.
- [86] After obtaining Mr. Szucs's BC driver's licence and vehicle insurance documents, Cst. Inkman returned to his patrol vehicle, queried the vehicle on the ICBC and PRIME databases and tried to contact the VPD member whose number he had received from his dispatcher. When the number did not work he contacted his dispatcher. Eventually, Cst. Inkman was able to speak to DC Hill of the VPD. He provided the identity of the driver to DC Hill who asked Cst. Inkman if he could "Pipeline" the driver. When Cst. Inkman indicated he could not, DC Hill advised that they had observed a transaction which they believed was a drug

transaction and that a beige backpack was being used to carry the drugs and that it was in the Durango.

- [87] Cst. Inkman asked if the VPD had maintained visual continuity of the backpack and was told that they had retained continuity. If they had not maintained continuity that would not necessarily have been fatal to Cst. Inkman proceeding, as it would have depended on how continuity had been lost. Cst. Inkman indicated to DC Hill that he could use the VPD's grounds to arrest the driver and search the vehicle if they were confident they had the grounds. DC Hill responded that they had sufficient grounds based on what they had seen and directed Cst. Inkman to arrest the driver for PPT, to search the vehicle for the backpack and to search the backpack.
- [88] After speaking to DC Hill, Cst. Inkman returned to the Durango, removed Mr. Szucs and arrested him for possession for the purpose of trafficking. Although Mr. Szucs was initially resistant, he complied with Cst. Inkman's directions. Once placed in the patrol vehicle, Mr. Szucs was advised of his right to counsel at 17:32 hrs.
- [89] Cst. Inkman did not advise Mr. Szucs that he was under arrest or of his right to counsel until approximately 12 minutes after he stopped the Durango, obtained the driver's identification and spoke to DC Hill. The Crown properly concedes this represents a violation of Mr. Szucs's s. 10(a) and 10(b) Charter rights.
- [90] Once Mr. Szucs was secured in the patrol vehicle, Cst. Inkman returned to the Durango and searched it. He located the beige backpack on the rear passenger side seat. Inside the backpack he found a brick-like substance in a plastic black and white Beatles bag and a powder-like substance in another plastic bag (later analyzed to be cocaine and fentanyl). The search was conducted at the direction of the VPD, incidental to Mr. Szucs's arrest. The lawfulness of the search is contingent upon the lawfulness of Mr. Szucs's arrest.
- [91] Cst. Inkman seized the backpack and the vehicle, at the request of DC Hill, and released Mr. Szucs at the scene.
- [92] I find that it is clear from the totality of Cst. Inkman's evidence that he stopped the Durango at the request of the VPD. He was assisting them in their arrest of the driver

Detective Constable Scott Hyde's Grounds for Arrest

- [93] DC Hyde outlined several components to his grounds for arrest. As the PI for Project Territory he received information from a variety of sources including (i) all the members of the investigative team (through reviews of reports, discussions and meetings), (ii) the intelligence analysts and their charts that outlined the identities and relationships of various individuals, (iii) source or confidential informant ("CI") information, (iv) information gained from review of CCTV footage from various locations, and (v) a range of information that he outlined in detail during the course of his evidence. Further sources included attendances at daily briefings and review of the task action reports ("TARs") prepared by the various

investigators and members of Project Territory that outlined the steps undertaken and results obtained for each assigned investigative task.

- [94] As a result of his state of knowledge of the overall Project Territory investigation it is accurate to state that DC Hyde was familiar with the various associations and relationships between Kyle Latimer, Jacob Pereira, Csongor Szucs, as well as the identities and believed roles of Manveer Braich, the Kang brothers, Gurvinder Randhawa and others, all of whom were of interest to the investigation.
- [95] Knowledge of the association and relationship between the Kang group and Kyle Latimer came about, in part, as a result of the observations from May 4, 2017, when Manveer Braich was followed by members of the SFST from 1221 Bidwell St. in Vancouver - a place believed by Project Territory investigators to be a drug stash house for the Kang group based on the surveillance observations of that location - to 5199 Brighthouse Way, a location previously unknown to Project Territory.
- [96] DC Hyde was aware through briefings, discussions with DC Unheim (a VPD investigator with Project Territory) and review of her TARs that Mr. Braich had been seen several times attending at Bidwell St. for short periods of time, often taking bags in and / or out of the property. Some of the observations were obtained through review of CCTV footage obtained from 1221 Bidwell St. The investigative information also suggested that no one was living in suite 907 of 1221 Bidwell St, the location that Mr. Braich was seen repeatedly accessing. The totality of this conduct was, in DC Hyde's experience, consistent with suite 907 being a drug stash house.
- [97] DC Hyde was aware that a review of the CCTV footage from Brighthouse Way for May 4, 2017, disclosed a meeting occurring between Manveer Braich, Kyle Latimer and Jacob Pereira at which there was a bag exchange between the three individuals that had the hallmarks of a drug exchange. Other information tied Mr. Szucs to the location - the Form K for the tenancy of suite 1204-5177 Brighthouse Way.
- [98] In addition to the information about Mr. Szucs's ties to 5177 Brighthouse Way through the Form K, DC Hyde was aware of the identities and associations of Kyle Latimer, Jacob Pereira and Csongor Szucs as all three were profiled in an updated chart prepared by Peggy Irwin, an intelligence analyst with Project Territory, that was produced on May 11, 2017.[7] He also had received information about Mr. Szucs from a detective with the Delta Police Department who was involved in another drug investigation that included Mr. Latimer, Mr. Pereira and Mr. Szucs. And, prior to June 19, 2017, DC Hyde was aware of information that caused investigators to believe that Kyle Latimer resided at the Pacific Rim. The information was from a police incident on June 15, 2017 wherein investigators learned from the Pacific Rim that Mr. Latimer was associated to suite 4203 of the Pacific Rim.

- [99] Gurvinder Randhawa became a person of interest to Project Territory on May 13, 2017 when he was observed to attend the Bidwell St. address in the company of Randy Kang, one of the targets of Project Territory. On May 27, 2017 he was stopped in a traffic stop in the company of Randy Kang and inside a vehicle - a Dodge Charger - that was registered to Craig Latimer. [8] On May 31, 2017, Mr. Randhawa was officially identified by Project Territory investigators.
- [100] In addition to the foregoing background information, specifically on June 19, 2017, DC Hyde was informed by DC Hill of various observations made by the SFST. He had three conversations with DC Hill that afternoon that provided him with the information he relied upon to form his grounds for arrest and to make the decision to direct the arrest of the driver of the Durango.
- [101] DC Hill telephoned DC Hyde at 13:53 hrs., 15:35 hrs. and 16:44 hrs. updating him each time as to the observations he had received from the SFST road boss following the various targets. DC Hyde made notes in his notebook of some of the observations that DC Hill related to him in their conversations.
- [102] At 13:53 hrs., DC Hill contacted DC Hyde and advised him that the SFST had observed what they believed to be a drug transaction between Mr. Randhawa and an unknown male in Mr. Randhawa's vehicle. DC Hill advised that as a result of these observations, the surveillance target had been shifted to the unknown male. DC Hyde was unable to recall the specifics of this transaction that DC Hill advised him about. Prior to the change in the SFST's target, DC Hyde was aware that the target of surveillance on June 19, 2017 was Mr. Randhawa - an individual he knew to be associated with the Kang group and who had been observed to attend the Bidwell St. location on a number of occasions between May and July 2017, carrying bags in and out of that location.
- [103] At 15:35 hrs., DC Hyde was contacted by DC Hill and updated on the surveillance observations.
- [104] Among the details that DC Hyde learned from DC Hill in their two conversations - at 13:53 hrs and 15:35 hrs - were the following observations made by the SFST:
- i. Mr. Randhawa had been the target of surveillance early in the afternoon and was observed at 1221 Bidwell St. carrying a weighted white plastic bag, placing it in the trunk of his Fusion, removing a lightly weighted black cloth bag from the vehicle trunk and placing it in the body of the Fusion;
 - ii. Mr. Randhawa drove out of the Bidwell St. parkade and was followed to the area of Nelson and Richards St.;

- iii. after being parked on the street for approximately 14 minutes, an unknown male (later identified as Mr. Pereira) carrying a beige backpack approached Mr. Randhawa's vehicle, got into the front passenger seat, remained in the vehicle for only a minute and then exited Mr. Randhawa's vehicle;
- iv. the unknown male who met with Mr. Randhawa took his beige backpack, which appeared to be more weighted when he exited the Fusion, and entered a vehicle that showed Mr. Pereira as the registered lessee;
- v. the vehicle travelled to 1011 West Cordova St - the Pacific Rim Hotel;
- vi. the driver exited the vehicle and, taking the weighted backpack with him, entered the Pacific Rim Hotel;
- vii. the male took the backpack to the 42nd floor and then left the Pacific Rim minutes later, still carrying the beige backpack, and in the company of another unknown male;
- viii. both males entered the Durango, of which Mr. Szucs was the registered lessee;
- ix. the Durango drove to 1001 Homer St. where the male who had custody of the backpack exited the vehicle, still carrying the backpack, and entered 1001 Homer St.;
- x. the male with custody of the backpack left 1001 Homer St. minutes later, placed the backpack in the passenger side of the Durango and then walked away from the vehicle; and
- xi. the Durango, which had the backpack in it, drove away from the scene.

[105] DC Hyde had a third conversation with DC Hill at 16:44 hrs. DC Hyde was advised that the SFST was following the Durango, which still contained the backpack and was heading east on Hwy. #1, approaching Abbotsford. Based on his previous experience in drug investigations, DC Hyde concluded that if the Durango passed through Abbotsford and Chilliwack, then there were few other major cities before the interior of BC or the province of Alberta. DC Hyde explained that based on all the information he had of the observations of the day as well as his investigative experience and the information from Project Territory, he believed the backpack contained drugs that had been provided by Mr. Randhawa and which had been obtained from the Bidwell St. stash house. Based on his experience from other drug investigations, where a drug transaction occurs in the Lower Mainland and then a driver immediately leaves the area transporting a bag that contains drugs, the drugs are headed to the interior of the province or beyond.

[106] As a result of the foregoing, DC Hyde directed DC Hill that if the Durango passed Chilliwack, the vehicle was to be stopped, the driver arrested for PPT and the vehicle searched incident to the driver's arrest. The identity of the driver was irrelevant to DC Hyde. It was his belief that the backpack in the Durango contained drugs and that was why the vehicle was to be stopped, the driver arrested and the vehicle searched. DC Hyde also discussed with DC Hill that the driver should not be advised that the investigation was connected to Vancouver in order to protect the integrity of the Project Territory

investigation. Finally, DC Hyde discussed with DC Hill using the Hope RCMP to pull over the Durango and arrest the driver.

[107] DC Hyde explained that the purpose of stopping the vehicle and seizing the drugs was to confirm his belief that Bidwell St. was a drug stash house and that the numerous bags - as observed by SFST members over the days leading up to June 19, 2017 - being taken into and out of Bidwell St. were being used to distribute drugs.

[108] When asked specifically to enumerate his grounds for the arrest of the driver of the Durango, DC Hyde laid out his grounds in a clear, logical and matter of fact manner. Summarily, his grounds were:

- i. Mr. Randhawa, whom he believed to be a higher-end drug courier with the Kang group, was observed to leave the Bidwell St. residence and carry a weighted white plastic bag to the trunk of his vehicle and place it in the trunk. He removed a lightly weighted black cloth bag from the trunk and placed it inside the vehicle. Based on his investigative experience, the black bag could have come from the plastic bag or from a hidden compartment in the vehicle trunk. The totality of this observation was consistent with his experience and knowledge of how drugs were moved for distribution as gained through investigating higher level drug trafficking behaviour;
- ii. Mr. Randhawa was believed to be a higher-end drug courier for the Kang group based on the surveillance observations of his numerous attendances at Bidwell St. Based on a variety of sources of information and observation, including source information, Project Territory and the VPD believed the Kang group was transporting or distributing drugs at the kilo level and above;
- iii. SFST members followed Mr. Randhawa's vehicle to the area of Nelson and Richards St. and observed unknown male #1 (believed to be and later identified as Mr. Pereira) enter Mr. Randhawa's vehicle with an unweighted beige backpack;
- iv. The meeting between Mr. Randhawa and unknown male #1 was brief and when the male exited the vehicle his backpack appeared to be weighted. This observation meant to DC Hyde that Mr. Randhawa had provided drugs to the unknown male and they were in the beige backpack. The observations were consistent with DC Hyde's drug investigation experience that drug transactions are very short in duration and do not occur in view of the general public. A transaction inside a vehicle on a public street was not inconsistent with other drug transactions DC Hyde had observed;
- v. The unknown male with custody of the backpack entered a vehicle that was registered to Mr. Pereira. Based on the observations from May 4, 2017 at Brighthouse Way, it was DC Hyde's belief that the Kang group was supplying Kyle Latimer, and Mr. Pereira was believed to be a part of Mr. Latimer's drug trafficking group;

- vi. Unknown male #1 drove to the Pacific Rim, which DC Hyde understood to be the residence of Kyle Latimer, and when he arrived unknown male #1 exited the vehicle and took the beige backpack with him to the 42nd floor. DC Hyde's notes contained a subnote reference, "possibly to meet Latimer";
- vii. Minutes later unknown male #1, still carrying the beige backpack, left the Pacific Rim in the company of unknown male #2 (later identified as Mr. Szucs) and they entered a Dodge Durango registered to Mr. Szucs (as the lessee). DC Hyde explained that based on the totality of the information he had from Project Territory, he believed Mr. Szucs to be involved with Kyle Latimer and his drug trafficking group and so the association of the three men (Latimer, Pereira and Szucs) was important to DC Hyde's grounds;
- viii. Based on the short duration that the backpack was in the Pacific Rim, coupled with DC Hyde's drug investigation experience that the heads of drug groups do not store drugs in their residences, it was his belief that the backpack still contained the drugs from Mr. Randhawa and that unknown male #1 had only attended the Pacific Rim to meet up with unknown male #2;
- ix. The Durango travelled to 1001 Homer St. where unknown male #1 exited the Durango carrying the beige backpack and went inside the residence at 1001 Homer St.;
- x. Approximately 12 minutes later, unknown male #1 exited 1001 Homer St., still carrying the beige backpack, and placed it in the passenger side of the Durango. The significance of this was that based on DC Hyde's investigative experience, drugs usually remained in the same bag from pickup from supplier through to the end point of the distribution chain - drugs were not moved between bags during the course of their transport from pickup to end delivery destination;
- xi. DC Hyde was candid that he did not know what occurred at 1001 Homer St., a location previously unknown to Project Territory. He opined that it was possible that either drugs were partitioned off from the transaction with Mr. Randhawa or another type of drug was picked up at that location;
- xii. Unknown male #1 placed the beige backpack in the Durango and then walked away from it. Unknown male #2 drove away in the Durango with the backpack still inside the vehicle. This observation strengthened DC Hyde's belief that the backpack contained drugs as it was consistent with his investigative experience and knowledge surrounding drug trafficking behaviour - the backpack was given to a second person to continue its travels; and
- xiii. Source information, the details of which DC Hyde could not disclose, included that Sam Kang supplied the RS and Latimer.
- [109] One of the members of the SFST took a photograph of unknown male #1 with the backpack after he exited 1001 Homer St. DC Hyde identified the subject of the photograph as Jacob Pereira (Ex. #4).

- [110] At 16:57 hrs. DC Hill advised DC Hyde that the Durango had passed through Chilliwack. When he received this information, DC Hyde directed DC Hill to make arrangements to have the Durango stopped and the driver arrested for PPT. The decision to arrest the driver of the Durango was DC Hyde's.
- [111] DC Hyde confirmed his grounds through the course of cross-examination. He conceded that visible continuity of the backpack was lost to the SFST when it went into the Pacific Rim and 1001 Homer St. with Mr. Periera. However, it was the overall course of the dealings with the backpack, informed by his drug investigation experience, as well as his overall knowledge of the Project Territory investigation, that caused him to form the belief that the backpack contained drugs from the brief exchange that occurred between Mr. Randhawa and Mr. Pereira. He agreed that his grounds, in so far as those premised on the reported observations from the SFST were concerned, came from what DC Hill reported to him through the course of the afternoon. As the PI for Project Territory and the individual making the decisions for that day, he was entitled to rely upon the observations of the SFST as relayed to him by DC Hill.
- [112] Cross-examination of DC Hyde on his notes from June 19, 2017 as well as the contents of Ex #1, the AF, solidified and confirmed the totality of the grounds he relied upon in determining that the driver of the Durango was arrestable.
- [113] I accept DC Hyde's evidence on the grounds that he relied upon. He was entirely compelling, careful and reliable in his evidence and unshaken on what information he relied upon. His subjective belief was reasonable. In determining the objective reasonableness of that belief, DC Hyde's extensive training and experience in drug investigations provides further context to what a lay person may interpret as the innocuous travels of the beige backpack. What may appear to be innocent dealings to the general public may have a very different meaning to an officer experienced in drug operations. That is particularly so for the circumstances of this case.

The Evidence of Detective Constable Derrick Hill

- [114] DC Hill, an officer with at least 18 years of service with the VPD, was the surveillance coordinator on June 19, 2017. As such he conveyed the SFST observations made on June 19, 2017 to DC Hyde, the PI for Project Territory. DC Hill relayed the observations as he received them from the road boss of the SFST. His specific recollection of details of the events of June 19, 2017 was somewhat limited, and he relied in large measure upon the details captured in the surveillance report (Ex. #6) for the observations that he conveyed to DC Hyde.
- [115] DC Hill believed that the events and observations that lead to the arrest of Mr. Szucs occurred on a Sunday, when he was off-duty but available on call although attending his daughter's soccer game. He made no contemporaneous notes of the developments of the day. The one and a half pages of cryptic notes he included in his notebook were made later

that day as he did not have his notebook with him when he attended his daughter's soccer game, when the bulk of his conversations with DC Hyde and the SFST road bosses occurred. He could not explain why his notes had an entry at 6:00 a.m. of "on duty".

- [116] DC Hill did not think he briefed the surveillance team in person but thought he may have done so over the phone. DC Gill was clear that he started his shift on June 19, 2017, with a briefing from DC Hill in the office at 2:45 p.m. DC Hill had to concede he did attend the office at about 12:30 p.m. to pick up a tracking device to be placed on Mr. Randhawa's vehicle while it was parked at Bidwell St. but maintained that this was a Sunday and he was at his daughter's soccer game.
- [117] DC Hill's recollection of aspects of the events of June 19, 2017, is unreliable and mistaken. The surveillance report (Ex. #6) establishes that the events of June 19, 2017 occurred on a Monday not a Sunday. His recollection about his non-attendance at his office at the VPD to conduct the briefing is tenuous at best. DC Gill has him in attendance at the office. I have no reason to disbelieve DC Gill's evidence on this point. While DC Hill's evidence about being on the phone for the briefing and lack of memory of attending the office that day might, on its own be forgivable as a lapse in memory, there were more troubling features of his evidence on cross-examination that cause me to approach his evidence with caution.
- [118] For instance, while at first clear in his answers on the issue of DC Gill informing him that Cst. Inkman had no grounds, he resiled from that point and then readopted it when directed to a passage in his December 11, 2019 post-interview report to Crown counsel. While his inability to fully recall the flow of information and events around the stop and arrest of the driver of the Durango and who first informed him that Cst. Inkman had no grounds (DC Gill or Cst. Inkman) is understandable given the passage of time and the lack of details in his notes made on June 19, 2017, it was the officer's seeming defensiveness in dealing with various suggestions put to him by the defence on this point that was disconcerting.
- [119] What was more troubling about DC Hill's evidence was his seeming reticence to agree with anything of significance suggested to him by defence counsel during cross-examination. Obviously, a witness does not have to agree with suggestions put to them by the defence but there were at least two instances that agreeing with the defence was the only available answer.
- [120] One such instance occurred when the defence was asking questions about the purported heaviness of the backpack as depicted in video surveillance footage. The surveillance report described the backpack as distinctly heavier and very heavy when Mr. Pereira exited Mr. Randhawa's vehicle. DC Hill was at pains to avoid agreeing with the obvious as evident in the video footage from the entrance and exit of the Pacific Rim - that the contents of the backpack being carried by Mr. Pereira did not look very heavy. DC Hill eventually had to concede that the backpack did not look very heavy at all.

- [121] However, and of more significance, DC Hill disagreed with a suggestion put to him by the defence and yet, when asked to read out his comments in a follow-up report prepared for Crown counsel after his pre-trial interview on December 11, 2019, DC Hill had to acknowledge that the suggestion he was not prepared to agree with actually emanated from his own notes.
- [122] On this point, it was suggested to him that drug traffickers typically use vehicles not registered to them so they can avoid detection and deny knowing drugs were in the vehicle. DC Hill testified he would not say typically but would say that it often occurred. When asked to read from his post-interview report to Crown counsel, DC Hill stated "drug traffickers typically use vehicles that are not registered to them or rental vehicles to avoid detection and to deny knowledge of any illegal property seized from the vehicle by the police." Although unprepared to agree with the Oxford Concise Dictionary definition of typical when put to him, DC Hill testified that it is was a common strategy used by drug traffickers.
- [123] DC Hill also had to concede that if he told Cst. Inkman that they had maintained visual continuity over the backpack that would have been inaccurate. In fact, visual continuity of the backpack was lost for approximately 10 minutes while at the Pacific Rim and a further 13 minutes while it was inside 1001 Homer St. DC Hill had no idea what was done with the backpack in those two locations. Nevertheless, based on all the available information and his years of drug investigation experience, he believed that the backpack contained drugs and that the drugs had originated from the Bidwell St. location with Mr. Randhawa. He explained that the relatively short 55 minute interval that covered the time between the initial sighting of the backpack to when it was placed into the Durango and headed out of town was what was of significance to him as it was consistent with his training, knowledge and experience of investigations of higher level drug trafficking distribution practices.
- [124] If I had to rely only on DC Hill's evidence for the grounds to arrest Mr. Szucs, I would have reservations in doing so as I would be concerned about the reliability of his evidence given the pains he took to disagree with propositions in circumstances where he should simply have acknowledged them. However, I do not have to rely solely on DC Hill's evidence. The salient features of his evidence - the observations he relayed to DC Hyde who formed the grounds to arrest Mr. Szucs - are corroborated by DC Hyde and more importantly the surveillance report prepared by the assigned scribe who took the observations from the radio communications made by members of the SFST as to what they were observing at the time and that are captured by the contents of Ex. #1 (the AF) and Ex. #6 (the surveillance report).
- [125] I do not propose to review or analyze the details of DC Hill's evidence further. I view his role in the events of this arrest as the conveyor of the SFST's surveillance observations over the course of the day to DC Hyde. The AF is instructive as to what was observed and contains the gist of what was conveyed to DC Hyde over the course of the three phone calls.

The Issues

[126] I have previously summarized the issues and positions of counsel in the introduction section of this judgment. At this juncture, I will reframe the issues in the manner that, in my view, they ought to be addressed. There are seven issues that I must determine on this voir dire:

- i. Should the information obtained from the May 5 and 9, 2017 searches and seizures at Brighthouse Way be excised from the grounds to arrest Mr. Szucs?
- ii. Did DC Hyde have the requisite grounds to arrest Mr. Szucs such that his warrantless arrest was not contrary to the Storrey test and not in violation of s. 9 of the Charter?
- iii. Was the search of Mr. Szucs's vehicle incidental to a lawful arrest?
- iv. Did Cst. Inkman breach Mr. Szucs's s. 9 Charter right to be free from unreasonable detention when he initiated his roadside stop?
- v. Did Cst. Inkman breach Mr. Szucs's s. 8 Charter right to be free from unreasonable search and seizure when he obtained Mr. Szucs's BC driver's licence and vehicle insurance documents?
- vi. Did Cst. Inkman breach Mr. Szucs's s. 7 Charter right to silence when he asked Mr. Szucs to identify himself by requesting his BC driver's licence and vehicle insurance documents?
- vii. What are the facts that underlie the conceded breaches of ss. 10(a) and (b) of the Charter?

[127] I will address these issues in the order that I have stated them.

Analysis

[128] Counsel provided detailed and comprehensive written and oral submissions at the conclusion of this voir dire that I have had the opportunity to review and consider in reaching my conclusions on this application. Although I may not mention every case addressed in the submissions before me, I have considered the totality of the evidence adduced and the submissions advanced.

Should the information from the Brighthouse Way searches be excised from the grounds to arrest Mr. Szucs?

Legal Principles

[129] As the authors of *Wiretapping and Other Electronic Surveillance: Law and Procedure* note:

It is trite that, as part of the Garofoli amplification review, illegally or unconstitutionally obtained evidence must be excised from the ITO or supporting documents. Several cases applying the rule of automatic excision of illegal or unconstitutional evidence from ITOs were mentioned in [the section] above. Issues remain however, with the application of the automatic excision principle. [9]

[130] Until the decision in *R. v. Flintroy*, 2019 BCSC 35, the jurisprudence on whether the automatic excision rule from the Garofoli / ITO realm applied in the context of assessing a police officer's grounds for arrest was far from coherent or considered.

[131] In *Flintroy*, Mr. Justice Williams, in dealing with the sufficiency of an officer's grounds to arrest an accused, engaged in a comprehensive review of the jurisprudence addressing the issue of how to determine the lawfulness of an arrest without warrant. Counsel for one of the accused had forcefully argued that the common law doctrine of excision should be applied to the circumstances of a warrantless arrest such that there should be automatic removal from the grounds for arrest of any evidence obtained through a Charter violation. Thus, where the grounds included reliance upon unconstitutionally obtained evidence, such facts or grounds for belief had to be excised from consideration in assessing the lawfulness of the arrest. To support their position the defence relied upon the principle that the state ought not to be entitled to benefit from the unlawful actions of its agents (at paras. 2 and 45). The Crown argued that the governing authority was *Storrey* and that the grounds need only be reasonable from the perspective of the reasonable person in the position of the officer at the time of the arrest (at para. 3).

[132] In his comprehensive and careful review of the jurisprudence, Williams J. referred to *R. v. Golub* (1997), 117 C.C.C. (3d) 193 (Ont. C.A.), leave to appeal ref'd, [1997] S.C.C.A. No. 571 (QL), as especially germane to the determination of the issue of whether the automatic excision rule could sit comfortably in the grounds for arrest context (at para. 13). Justice Williams went on to note that the decision of Mr. Justice Doherty in *Golub* remains the leading jurisprudential statement that the grounds for arrest analysis and the search warrant analysis should be kept separate: *Flintroy* at para. 14; see also *Russell v. British Columbia (Public Safety & Solicitor General)*, 2018 BCSC 1757 at para. 35.

[133] In *Golub*, Doherty J.A. writing for the court, concluded that the arrest context and the search warrant context differed and so the same analysis and rules could not be applied in both situations:

[18] Mr. Harris' reliance on the search warrant cases is misplaced. Both a justice and an arresting officer must assess the reasonableness of the information available to them before acting. It does not follow, however, that information which would not meet the reasonableness standard on an application for a search warrant will also fail to meet that standard in the context of an arrest. In determining whether the reasonableness standard is met, the nature of the power exercised and the context within which it is exercised must be considered. The dynamics at play in an arrest situation are very different than those which operate on an

application for a search warrant. Often, the officer's decision to arrest must be made quickly in volatile and rapidly changing situations. Judicial reflection is not a luxury the officer can afford. The officer must make his or her decision based on available information which is often less than exact or complete. The law does not expect the same kind of inquiry of a police officer deciding whether to make an arrest that it demands of a justice faced with an application for a search warrant.

[Emphasis added.]

[134] In *Flintroy*, Williams J. went on to note the different analytical frameworks for arrest and for a search warrant review:

[15] Doherty J.A.'s analysis in *Golub* is further enhanced by the consideration that the grounds for arrest analysis is based on a snapshot of the arresting officer's subjective and objectively reasonable beliefs at the time of arrest. On the other hand, the automatic excision rule is solely based on the objective existence of erroneous, unreliable or unconstitutionally obtained information considered through a post facto lens, upon a review of the full search warrants record. The automatic excision rule does not consider the beliefs of those involved in the investigation, or whether the excised information was gathered in good faith. There is no Charter s. 24(2)-type analysis to keep such information in the search warrant. In this way, excising information from a search warrant context is strictly an objective determination.

[135] Justice Williams engaged in a thorough review of the cases relied upon by the defence (at paras. 22-44) and concluded that the automatic excision rule ought not to be imported into the assessment of the grounds for a warrantless arrest:

[45] The fundamental legal principle cited by Mr. Halstead as justifying the importation of the automatic excision rule is that the state cannot benefit from the unlawful actions of its agents, and he contends that this principle is better upheld when unlawfulness is analyzed objectively, and not through the lens of an arresting officer's reasonable belief. However, there are benefits to having a framework whereby the validity of an arrest is not a matter of post-facto determination such that an arresting officer can reasonably know at the time of arrest, with some degree of certainty, whether their arrest is valid or not. There is also the matter of the framework being an established legal precedent, and the consideration that modifying this framework would potentially have wide-ranging consequences.

[46] Fundamentally, the issue may be framed as whether the *Storrey* framework effectively balances the rights of those finding themselves under arrest with the need of law enforcement authorities to have a workable, practical method for making warrantless arrests in exigent circumstances or where the seeking of an arrest warrant is otherwise not feasible. As far as the evidence indicates, that balance is properly struck in the present case under the existing *Storrey* framework and need not be modified in the absence of facts that indicate that the use of the framework would lead to an undesirable result.

- [136] Flintroy does, however, contain an acknowledgement that to achieve proper balance between flexibility in the analysis of grounds for arrest, which often occur in volatile and rapidly evolving circumstances, and ensuring that the state cannot be entitled to benefit from the unlawful actions of its agents there may be circumstances where known (at the time) unlawful conduct by state actors should be excised from the grounds for arrest:
- [47] A potentially relevant and important consideration that may be made within the Storrey analysis framework that helps achieve proper balance on an ongoing basis is this: Should an arresting officer believe, or should have reasonably believed, that the grounds for arrest they seek to rely on are unconstitutionally obtained, these grounds for arrest will not meet the reasonable and probable grounds standard. As the Crown submits, a reasonable person would not rely on conduct known to be the result of abusive or unlawful conduct. Ipso facto, it would be unreasonable for an arresting officer to rely on known abusive or unlawful conduct to form the grounds for a warrantless arrest. As the Storrey analysis requires objective justification for the reasonable and probable grounds relied on for the arrest, reliance on grounds known to be based in unlawfulness or a Charter breach makes these grounds to arrest objectively unreasonable, invalid and unlawful. Should insufficient grounds for arrest remain after these grounds are removed from the overall analysis, then the arrest is invalid and hence unlawful.
- [137] Notably, in Flintroy the defence sought to have excised from the arresting officer's grounds for belief information they had obtained through the course of enquiries with the Canadian passport authorities which resulted in the obtaining of the accused's passport photo without a production order (at para. 4). Earlier in the proceedings in Flintroy, Williams J. had found the passport photo was obtained contrary to s. 8 of the Charter. However, the Storrey framework was applied in the context of the accused's arrest and Williams J. concluded that the officer reasonably believed the passport photo was obtained constitutionally and lawfully (at para. 50).

Application of the Principles in this Case

- [138] In this case, counsel for Mr. Szucs argues that the information derived from the Brighthouse Way materials obtained by Cst. Matt Nielsen on May 5 and 9, 2017, must be excised from DC Hyde's grounds for arrest as the Court has found that those materials were obtained in violation of Mr. Szucs's s. 8 Charter right to be free from unreasonable search and seizure. My reasons for finding that Mr. Szucs, Mr. Latimer and Mr. Pereira had a reasonable expectation of privacy in the materials obtained from Brighthouse Way are found at 2020 BCSC 488. Cst. Nielsen obtained the CCTV footage, fob access records and the Form K Notice of Tenant's Responsibilities from the concierge of the River Green complex at Brighthouse Way without resort to a production order. As it was a warrantless search and the applicants in that voir dire were found to have a reasonable expectation of privacy in the materials, they were found to have been obtained in violation of s. 8 of the Charter.

- [139] At the time of Mr. Szucs's arrest, Project Territory investigators were obtaining similar materials from other strata corporations sometimes upon request (e.g. Pacific Rim Estates in Vancouver) and sometimes pursuant to a production order (e.g. residences on Smithe St., Seymour St., and Bidwell St. in Vancouver and Tomicki Ave. in Richmond). Production orders appear to have been obtained when strata corporations required them before the materials could be handed over to the investigators.
- [140] It would be fair to say that in the spring of 2017, the law on reasonable expectation of privacy in such materials - CCTV footage and fob access records from common areas of multi-unit residences and Form Ks - was in a state of flux and that investigators did not anticipate that the actions taken in respect of the Brighthouse Way materials were vulnerable on a s. 8 challenge. Given the circumstances extant at the time of the arrest of Mr. Szucs, it appears the Project Territory investigators reasonably believed that the Brighthouse Way materials were obtained constitutionally and lawfully.
- [141] Counsel for Mr. Szucs urges that I not follow the decision in *Flintroy* in so far as that ruling rejects the concept of excision from an officer's grounds for arrest of information that is subsequently found to have been obtained in violation of an accused's Charter rights. Instead, he urges I reassess all the cases considered by Williams J. and come to the opposite conclusion. He further urges that I ought to prefer and adopt the approach developed by Mr. Justice Funt in *R. v. Brown*, 2014 BCSC 1872.
- [142] Defence counsel also urges that *Flintroy* need not be followed on the basis of the principles from *Re Hansard Spruce Mills Ltd.*, [1954] 4 D.L.R. 590 (B.C.S.C) in so far as the Court of Appeal's decision in *R. v. Reddy*, 2010 BCCA 11 was not before Williams J.
- [143] Defence counsel further argues that Williams J. erred in his interpretation of *R. v. Pelucco*, 2015 BCCA 370 ["*Pelucco BCCA*"] and that the decision actually supports the defence contention that the automatic excision rule has been imported into and applied in the assessment of grounds for arrest.
- [144] I cannot accede to the defence submissions for a number of reasons.
- [145] First, the decision in *Brown* has been specifically confined to the circumstances of that case: *R. v. Holmes*, 2019 BCCA 138 at para. 24; *R. v. Vickerson*, 2018 BCCA 39 at para. 49.
- [146] Second, the argument advanced by the defence is essentially a re-argument of the cases considered by Williams J. in *Flintroy*. I see no error in the analysis engaged in by Williams J. and so based on the principles from *Re Hansard Spruce Mills* I am obliged to follow his decision unless one of the exceptions that permit me to depart from the decision of a colleague has been established.
- [147] Third, the defence argues that because Williams J. did not consider the Court of Appeal's decision of *Reddy*, the principles in *Re Hansard Spruce Mills* are inapplicable as binding authority was not considered in reaching the decision that he did.

[148] In another ruling on a joint hearing in respect of all three Project Territory indictments I reviewed the principles of judicial comity and the application of *Re Hansard Spruce Mills: R. v. Kang*, 2019 BCSC 2109 at paras. 47-59. I do not intend to repeat all of what I wrote in that decision but do incorporate that entire passage into these reasons by reference to it here. It informs my assessment of whether I should depart from the principles of *Re Hansard Spruce Mills* as the defence now urges.

[149] In *Re Hansard Spruce Mills*, Wilson J. outlined the duty of a trial judge to follow the decision of another judge of the same court except in certain limited circumstances, stating (at D.L.R. 592):

I think the power, or rather the proper discretionary duty, of a trial judge is more limited. But I have no power to overrule a brother judge, I can only differ from him, and the effect of my doing so is not to settle but rather to unsettle the law, because, following such a difference of opinion, the unhappy litigant is confronted with conflicting opinions emanating from the same Court and therefore of the same legal weight. This is a state of affairs which cannot develop in the Court of Appeal.

Therefore, to epitomize what I have already written in the *Cairney* case, I say this: I will only go against a judgment of another judge of this Court if:

- (a) Subsequent decisions have affected the validity of the impugned judgment;
- (b) it is demonstrated that some binding authority in case law or some relevant statute was not considered;
- (c) the judgment was unconsidered, a *nisi prius* judgment given in circumstances familiar to all trial Judges, where the exigencies of the trial require an immediate decision without opportunity to fully consult authority.

[150] The exception the defence relies upon to urge me not to follow *Flintroy* is the fact that they have demonstrated that *Reddy*, binding authority from the Court of Appeal, was not considered in *Flintroy*. While it is true that *Reddy* is not mentioned in *Flintroy*, in my view that does not bring this case within the exception envisioned by Wilson J. in *Re Hansard Spruce Mills*.

[151] The decision in *Reddy*, when reviewed closely, does not address the issue of whether grounds for arrest that include steps or information subsequently judicially determined to infringe the Charter should be excised from the assessment of whether an officer had reasonable grounds for arrest at the time the arrest was effected.

[152] In *Reddy* the officer had no lawful reason to detain and search the appellant who was seated in the driver's seat of a parked vehicle. Officers were responding to a complaint about two "suspicious males" in a vehicle parked on the street and the suspicion that they were selling drugs. One officer approached the appellant and had him identify himself. The officer took the information and checked the appellant's identity on the computer in his patrol vehicle.

Upon learning that the appellant was subject to probation with a condition not to possess cellular telephones or pagers or to be in a vehicle containing such items, the officer decided to detain Mr. Reddy "for investigation." When the officer started to search the vehicle, Mr. Reddy bolted. The officer started to pursue him but soon gave up and returned to search the vehicle, assuming it might contain cellular phones. A search of Mr. Reddy's jacket revealed two handguns in the pockets.

- [153] The issue in Reddy was whether the officer had detained the appellant and, if so, whether the detention was lawful. The majority of the Court of Appeal concluded Mr. Reddy had been detained and that his detention was arbitrary as the officer was acting on, at best, a hunch or suspicion that the appellant was in possession of a cellular phone in breach of his probation conditions. The majority went on to conclude that the search of the vehicle was unlawful and unreasonable within the meaning of s. 8 of the Charter.
- [154] The defence asserts that Mr. Justice Frankel's admonition in Reddy (at para. 78) that Mr. Reddy's flight from the officer could not be considered in determining whether a reasonable suspicion existed regarding the appellant's involvement in criminal activity is an implicit incorporation of the excision rule into the assessment of the reasonableness of a suspicion or grounds for detention or arrest. With respect, I cannot agree with this thesis.
- [155] What was concerning to the majority of the Court of Appeal in Reddy was the fact that the detention in and of itself, prior to the appellant's flight, was based merely upon a hunch that did not meet the requisite grounds for an investigative detention. The flight of the appellant after he was detained and told the vehicle was going to be searched did not elevate the officer's grounds as the detention was unlawful from the outset. I do not interpret Reddy as an implicit endorsement of the importation of the automatic excision rule into the assessment of the grounds an officer has to effect a warrantless arrest.
- [156] Fourth, in so far as the decision in Pelucco BCCA is concerned, at the trial level, Mr. Justice Halfyard concluded that the search of the trunk of a co-accused's vehicle was unlawful as the officers only suspected the vehicle might contain firearms, which did not rise to the requisite reasonable suspicion that would have made the search incidental to an investigative detention. As the search of the vehicle trunk was unlawful, and therefore in violation of s. 8, Halfyard J. concluded that the police could not rely upon the results of their unlawful search to provide them with grounds to arrest the co-accused and then search his cellphone which then led them to the accused: R. v. Pelucco, 2013 BCSC 588 at paras. 67-71 ["Pelucco BCSC"].
- [157] In Pelucco BCSC Halfyard J. went on to opine that as the police had unlawfully searched the cellphone of an associate and obtained text messages sent by Mr. Pelucco to the associate, those text messages were not admissible on the issue of whether the police had grounds to arrest Pelucco. The analysis by Halfyard J. on this issue simply draws an analogy from the excision rule in respect of grounds to support the issuance of a search warrant and applies it to the circumstances of grounds for an arrest. However, the decision contains no analysis

of how the two distinct frameworks are comparable (paras. 103-108). The evidence from the searches and the arrest of Mr. Pelucco was excluded and he was acquitted at trial.

Significantly, Halfyard J's reasons contain no reference to jurisprudence supporting his opinion on this point. Notably absent from this aspect of the ruling is any reference to *R. v. Biron*, [1976] 2 S.C.R. 56.

- [158] The Crown appealed the acquittal arguing the trial judge had erred in finding that Mr. Pelucco's rights were engaged by the search of a co-accused's cellphone.
- [159] In *Pelucco BCCA*, Mr. Justice Groberman, writing for the majority, determined the trial judge had not erred in concluding that the accused's rights were violated when the police read his text messages on his associate's cellphone (at para. 6). Justice Groberman noted that the core issue on the appeal was whether Mr. Pelucco's s. 8 rights had been violated when the police read the text messages he had sent and were found on the associate's cellphone (at para. 30). The entire analysis of the majority of the Court of Appeal focuses on the issue of s. 8 of the Charter and whether the respondent had a reasonable expectation of privacy in his sent text messages. It does not contain any assessment or endorsement of importation of the automatic excision rule. The sole issue before the Court was whether the trial judge was correct in finding that Mr. Pelucco had a reasonable expectation of privacy in the text messages. The majority concluded that the trial judge did not err in concluding that Mr. Pelucco had a reasonable expectation of privacy in the text message sent to his associate and for that reason dismissed the Crown's appeal (at paras. 71-72).
- [160] In my view, nothing further should be read into the decision in *Pelucco BCCA*. Indeed, Mr. Justice Frankel reminds, both in *Cambie Surgeries v. British Columbia (Attorney General)* 2017 BCCA 287 at para. 50 and *R. v. Shevalev*, 2019 BCCA 296 at para. 53, that a case is only authority for what it actually decides, citing Lord Halsbury in *Quinn v. Leatham*, [1901] A.C. 495 (U.K. H.L.) at 506. *Pelucco BCCA* contains no analysis of the application of the automatic excision rule to grounds for arrest and nothing should be read into it as having implicitly done so as the defence has argued in this case.
- [161] Fifth, there is significant merit in keeping the two analytical frameworks - grounds for arrest and grounds in an ITO in support of a search warrant, wiretap or other prior judicial authorization investigation technique - separate and distinct. The primary reason for this is the different contexts in which the information is being assessed.
- [162] As noted above, *Golub* focuses on how the decision to arrest is often made in volatile, fluid and rapidly developing circumstances (at para. 18). Thus, the assessment of subjective and objective reasonableness is focused on the information available to the officer at the time the grounds were formulated and the arrest effected.[10] The Alberta Court of Appeal made this clear decades ago in *R. v. Musurichan*, 1990 ABCA 170.

[163] In *Musurichan*, a police officer relied on a mistaken belief as to the time of the accident which was a crucial factor in his formulation of grounds to make a breath demand. The respondent was acquitted at trial, the trial judge finding the officer's belief to be wrong and that the officer had failed to make adequate inquiries to properly inform himself as to the time of the accident (a hit and run). The Crown appealed and a new trial was ordered. Mr. Justice McClung, writing for the Court, observed that

[10] The important fact is not whether the peace officer's belief, as a predicate of the demand, was accurate or not, it is whether it was reasonable. That it was drawn from hearsay, incomplete sources, or that it contains assumptions will not result in its legal rejection by resort to facts which emerged later. What must be measured are the facts as understood by the peace officer when the belief was formed. *R. v. Hitchner* (1989), 92 A.R. 395 (C.A.); *R. v. Biron*, [1976] 2 S.C.R. 56 (S.C.C.).

[Emphasis added.]

[164] Indeed, Mr. Justice Martland, writing for the majority in *Biron* (at para. 25), makes it clear that the validity of an arrest pursuant to now s. 495(1)(a) of the Code "must be determined in relation to the circumstances which were apparent to the peace officer at the time the arrest was made." [11] [Emphasis added.]

[165] More recently, in *R. v. Shinkewski*, 2012 SKCA 63, the Saskatchewan Court of Appeal confirmed that the assessment of an officer's grounds for arrest is what the officer knew at the time of the arrest, not what became apparent or known through subsequent developments. In *Shinkewski*, the accused's arrest for possession of a controlled substance was based in part on the directing officer's recollection of tip information from a confidential informant on prior occasions about the accused's involvement in marihuana trafficking. After directing the arrest, the officer later learned that the information he had relied on was much less reliable than he had believed (at para. 5). The trial judge concluded the grounds for arrest were deficient because of the officer's lack of awareness of the deficiencies in his grounds (at para. 14).

[166] The Court of Appeal, in allowing the Crown's appeal and ordering a new trial, reiterated that the application of the *Storrey* test in assessing the lawfulness of an arrest without warrant is conducted from "the retrospective viewpoint of a reasonable person placed in the position of the arresting officer (emphasis in original):" *Shinkewski* (at para. 19). The Court went on to hold (at para. 19):

Where the circumstances of arrest do not reasonably permit the arresting officer to inquire into the veracity of the information which formed the basis of the grounds for arrest, the law similarly does not permit judicial consideration of any evidentiary shortcomings which might come to light or be discovered post-arrest. An otherwise lawful arrest is not invalidated by the ex post facto discovery of deficiencies or defects in the information upon which the police have relied to effect the arrest unless, in the circumstances at play in the arrest situation, the police could reasonably have made inquiries which would have led to the discovery of the deficiencies or

defects. [See also paras. 16-18.]

[167] To similar effect is the more recent Supreme Court of Canada decision in *R. v. Paterson*, 2017 SCC 15. Although dealing with the validity of a warrantless search in exigent circumstances, the majority addressed the issue of whether the Crown must prove the voluntariness of a statement relied upon by the police to form grounds to undertake an action - a warrantless "no charge" search of a residence. In rejecting the appellant's argument that the Crown must establish the voluntariness of a statement in the context of a Charter voir dire where the statement was relied upon as the basis for the grounds to conduct the search, Mr. Justice Brown, writing for the majority, noted that a Charter voir dire does not focus on the accused's guilt or innocence but rather on whether the accused's constitutional rights have been infringed. To that end, Brown J. wrote:

[19] A Charter voir dire therefore involves a review of the totality of the circumstances known to, and relied upon by, the state actor at the time of the impugned action. To be clear, only the state actor's contemporary state of mind and conduct is at issue, and not the truthfulness of the statement upon which he or she relied. It is for this reason that the truthfulness of a statement has no bearing upon its admissibility; rather, the inquiry is focussed upon whether it was reasonable for him or her to rely upon the statement as forming grounds for the action under scrutiny.

[Emphasis added.]

[168] Transposed to the circumstances before me, the issue to be assessed in terms of the objective reasonableness of the grounds for arrest is what DC Hyde knew at that time he directed the arrest of Mr. Szucs on June 19, 2017. The fact that one item of information that he relied upon subsequently was found to have been obtained in violation of s. 8 of the Charter is not relevant, particularly given the state of the law on reasonable expectation of privacy in images from common areas of strata corporations at the time.[12]

[169] Based on the foregoing, I conclude that the principles of judicial comity apply and I am bound to follow the decision in *Flintroy*. Like *Williams J. in Flintroy*, I consider myself bound to analyze the lawfulness of Mr. Szucs's warrantless arrest in accordance with the *Storrey* test. Moreover, the decisions in *Biron*, *Musurichan*, *Shinkewski* and *Paterson* are compelling and persuasive authorities that support the carefully reasoned conclusion reached in *Flintroy*.

Did DC Hyde have the requisite grounds to direct that Mr. Szucs be arrested such that his warrantless arrest was not contrary to the *Storrey* test and not in violation of s. 9 of the Charter?

Legal Principles

[170] Section 495 of the Code contains the powers of a peace officer to arrest an individual without warrant:

495(1) A peace officer may arrest without warrant

- (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence,
- (b) a person whom he finds committing a criminal offence, or
- (c) a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

[171] A considerable amount of judicial ink has flowed in determining the parameters of what this provision means. However, the governing test for assessing the reasonableness of an officer's grounds for arrest is found in *Storrey*. Counsel meticulously reviewed numerous cases that considered whether an accused's arrest in a particular case met the *Storrey* test. I do not propose to refer to each of those cases but I have considered them in the context of the facts as I have found them and the arguments advanced by counsel. I am also mindful of the admonition in the jurisprudence that the *Storrey* test assessment is heavily fact dependent: *R. v. Ha*, 2018 ABCA 233 at para. 30.

[172] In *R. v. McPake*, 2019 BCSC 751 Madam Justice DeWitt-Van Oosten (as she then was) succinctly summarized the principles that govern the analysis of whether a warrantless arrest is reasonable:

[232] Section 495(1)(a) of the Code authorizes a police officer to arrest someone without a warrant where the officer believes, on reasonable grounds, that the person has committed or is about to commit an indictable offence.

[233] In *R. v. Henareh*, 2017 BCCA 7, the court summarized "[a] number of uncontentious principles" that govern compliance with s. 495(1)(a):

[38] In *R. v. Storrey*, [1990] 1 S.C.R. 241 at 250-251, the Court held that there is a subjective and objective element to the test for a lawful arrest under s. 495(1)(a):

In summary then, the Criminal Code requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. On the other hand, the police need not demonstrate anything more than reasonable and probable grounds. Specifically they are not required to establish a *prima facie* case for conviction before making the arrest.

[39] The reasonable grounds standard requires something more than mere suspicion, but something less than the standard applicable in civil matters of proof on the balance of probabilities: *Mugesera v. Canada (Minister of Citizenship & Immigration)*, 2005 SCC 40 at para. 114. The appropriate standard is one of reasonable probability: *R. v. Debot*, [1989] 2 S.C.R. 1140 at 1166. Reasonable or credibly-based probability contemplates a practical, non-technical and common sense evaluation of the probability of the existence of facts and

asserted inferences: *R. v. Sanchez* (1994), 93 C.C.C. (3d) 367 at 367 (Ont. Ct. (G.D.)).

[40] Determining whether reasonable and probable grounds exist requires an assessment of the "totality of the circumstances": *R. v. Debot* at 1168.

[42] Trial judges are obliged to assess the objective reasonableness of an arresting officer's belief that he or she had reasonable grounds to arrest from the perspective of a reasonable person standing in the arresting officer's shoes. The analysis takes account of the arresting officer's knowledge and experience with respect to the matter under investigation: *R. v. Luong*, 2010 BCCA 158 at para. 24; *R. v. Wilson*, 2012 BCCA 517 at para. 26.

[234] *R. v. Lofty*, 2017 BCCA 418 makes clear, at para. 32, that when an accused challenges the grounds for a warrantless arrest, the Crown bears the burden of showing that police acted in a lawful and reasonable manner. At para. 63 of this same decision, the Court of Appeal notes:

the reasonable grounds standard -- whether in the context of suspicion or belief -- requires consideration of the totality of the circumstances, including exculpatory, neutral, or equivocal information of which the police are aware. The police are not required to speculate as to the possible existence of other facts which could provide an innocent explanation for the facts known to them.

[235] The law is clear that the officer who effects the arrest need not be the person with the subjective grounds. An arresting officer can rely on instructions or a direction to arrest provided by a colleague: *R. v. Debot*, [1989] 2 S.C.R. 1140 at pp. 1166-1167. Furthermore, when assessing whether there were reasonable grounds, the court must be careful to not apply the same level of scrutiny that one might expect within the context of assessing a warrant. "Often, the officer's decision to arrest must be made quickly in volatile and rapidly changing situations. The law does not expect the same kind of inquiry of a police officer that it demands of a justice faced with an application for a search warrant": *R. v. Golub*, [1997] O.J. No. 3097 (Ont. C.A.) at para. 18, leave to appeal ref'd, [1997] S.C.C.A. No. 571.

[Emphasis added.]

See also *R. v. Jir*, 2010 BCCA 497; *R. v. Glendinning*, 2019 BCCA 365, leave to appeal ref'd [2019] S.C.C.A. No. 460.

[173] Another succinct encapsulation of the Storrey test is found in the judgment of Madam Justice Fairburn in *R. v. Canary*, 2018 ONCA 304:

[21] Where a peace officer believes on reasonable grounds that a person has committed an indictable offence, the officer may make a warrantless arrest: s. 495(1)(a) of the Criminal Code. There is both a subjective and objective component to the reasonable grounds inquiry. To fulfill the subjective requirement, the officer must hold an honest belief that the person committed an offence. The officer "must subjectively believe that there are reasonable grounds to make the arrest": *R. v. Saciragic*, 2017 ONCA 91, leave to appeal refused, [2017]

S.C.C.A. No. 106, at para. 16. To fulfill the objective requirement, the officer's belief must be objectively reasonable in the circumstances known to the officer at the time of arrest: *R. v. Storrey*, [1990] 1 S.C.R. 241, at pp. 250-51; *R. v. Bush*, 2010 ONCA 554, 101 O.R. (3d) 641, at para. 38; *Saciragic*, at para. 16. The objective inquiry asks whether "a reasonable person, standing in the shoes of the police officer, would have believed that reasonable and probable (footnote omitted) grounds existed to make the arrest": *Storrey*, at pp. 250-51.

- [22] When considering whether an officer's subjective belief is objectively reasonable, the court looks at the objectively discernible facts through the eyes of a reasonable person with the same knowledge, training and experience as the officer: *R. v. Chehil*, 2013 SCC 49, [2013] 3 S.C.R. 220, at paras. 45-47. Determining whether sufficient grounds exist to justify an exercise of police powers is not a "scientific or metaphysical exercise", but one that calls for the application of "[c]ommon sense, flexibility, and practical everyday experience": *R. v. MacKenzie*, 2013 SCC 50, [2013] 3 S.C.R. 250, at para. 73.
- [23] The reasonable grounds standard does not require the establishment of a *prima facie* case or proof beyond a reasonable doubt. The test is met where, based on all of the circumstances known to the officer, "credibly-based probability" replaces suspicion: *R. v. Debot*, [1989] 2 S.C.R. 1140, at p. 1166; *Hunter et al. v. Southam Inc.*, [1984] 2 S.C.R. 145, at p. 167; *R. v. Dhillon*, 2016 ONCA 308, 335 C.C.C. (3d) 144, at para. 25; *R. v. Muller*, 2014 ONCA 780, 122 O.R. (3d) 721, at para. 33.[13]
- [174] In assessing whether there were reasonable grounds to arrest Mr. Szucs, I must consider the entire constellation of facts: *Ha* at para. 19; *R. v. Tran*, 2007 BCCA 491 at para. 17. Moreover, a microscopic dissection of the facts is not the appropriate way to assess an officer's grounds. The question is not whether each aspect of the grounds examined in isolation establishes reasonable grounds but whether all of the information taken in its totality satisfies the test. Indeed, as Madam Justice Bennett stated in *R. v. Luong*, 2010 BCCA 158 at para. 17:
- The cumulative effect of the evidence is taken into account when determining whether there are reasonable grounds to arrest someone. The evidence is not assessed on a piece meal basis (citations omitted).
- [175] Finally, in applying the *Storrey* test to the circumstances of the arrest, the knowledge, training and experience of the officer is not to be ignored: *Luong* at para. 19; *R. v. Juan*, 2007 BCCA 351 at para. 27. As the Alberta Court of Appeal noted in *R. v. Rajaratnam*, 2006 ABCA 333:
- [25] *Rajaratnam* attacks the trial judge's reliance on the strong odour of Bounce sheets the officers smelled on the seams and zipper of his bag, and the officer's testimony that Bounce is a common drug-camouflage agent. He points out that Bounce is not a prohibited substance, and is commonly used by the general population. However, a judge is entitled to consider a police officer's training and experience in determining objective reasonableness. See *R. v. Smith*, 1998 ABCA 418, 219 A.R. 109 at para. 30; *R. v. Sinclair*, 2005 MBCA 41, 192

Man. R. (2d) 283 at para. 14. What may appear to be innocent objects to the general public may have a very different meaning to an officer experienced in drug operations: *R. v. Kluczny*, 2005 ABQB 350, 385 A.R. 182 at para. 51. For example, the presence of tin foil balls, combined with other indicia, can provide reasonable and probable grounds. Like *Bounce*, tin foil is commonly used by the general public for lawful purposes. See *Sinclair* at para. 14; *R. v. Lo*, [1997] B.C.J. No. 1384, 35 W.C.B. (2d) 140 (B.C.S.C.) at paras. 2-3, 19, 32.

Moreover, as Bennett J.A. stated in *Luong* (at para. 19), "[b]eing 'placed in the position of the officer' does not just mean making the same observations as the officer, as to many lay people such observations would be meaningless."

Application of the Principles in this Case

- [176] As the arrest of Mr. Szucs was conducted without warrant, the burden is on the Crown to establish that the police acted in a lawful and reasonable manner.
- [177] Although Cst. Inkman was the arresting officer, he was relying upon the grounds that the VPD had - and it was DC Hyde who formed the grounds and made the decision to have the driver of the Durango arrested. This is permitted.
- [178] Accordingly, in conducting the assessment of whether there were reasonable grounds to make the arrest without a warrant, I must examine the totality of the circumstances known to DC Hyde at the time he directed that the driver of the Durango be arrested. It is important to bear in mind that it is the totality of the circumstances to be assessed and not a microscopic dissection of each particular ground as advanced by counsel for Mr. Szucs.
- [179] Although I have not endorsed the automatic excision rule, one of the grounds that DC Hyde relied upon is of no assistance to assessing the reasonableness of his grounds for arrest - the reference to source or CI information. Absolutely no details about the information from the source(s) were provided, no doubt to protect the source's identity. However, a bald conclusory assertion that source information was relied upon in forming grounds for arrest is singularly unhelpful as there is no way to assess the reasonableness or reliability of such information.
- [180] Sometimes source information may simply be too good to use and the officer cannot rely on it as part of the articulated grounds because the officer can provide no details to assist in assessing it without compromising the source's identity. In such circumstance the richness and accuracy of the information the officer has simply does not translate, however, into a piece of information to be relied upon in articulation of grounds for arrest. To be clear, this is not an instance of excising out information subsequently determined to be unlawfully obtained. Rather, it is an instance of finding that bald conclusory assertions of "source information" ought not to be relied upon as part of the grounds for arrest as there is no way to assess the impact of the information on the reasonableness assessment that must be undertaken.

- [181] In *R. v. Lofty*, 2017 BCCA 418 at para. 65, Mr. Justice Frankel had to determine whether the trial judge had erred in finding that the officer arresting the appellant had the requisite grounds to effect a warrantless arrest in the context of a roadside stop for speeding when he was confronted with circumstances that suggested the appellant was in possession of marihuana. In setting out the meaning of reasonable grounds, Frankel J.A. modified what Moldaver J. had said in *R. v. MacKenzie*, 2013 SCC 50 - a reasonable suspicion case involving a sniffer dog - to fit the more demanding standard of reasonable belief. In the end, the modification that Frankel J.A. directed is that one must determine whether the facts are objectively indicative of the reasonable probability of criminal behaviour in light of the totality of the circumstances. If so, the objective component of the test will have been met. If not, the inquiry is at an end. Moreover, assessing whether a particular constellation of facts gives rise to a reasonable belief should not -- indeed must not -- devolve into a scientific or metaphysical exercise. Common sense, flexibility, and practical everyday experience are the bywords, and they are to be applied through the eyes of a reasonable person armed with the knowledge, training and experience of the investigating officer.
- [182] Leaving the assertion that informant information formed part of the grounds for arrest out of the assessment process, I still conclude that DC Hyde had sufficient evidence and information to honestly and subjectively believe that an offence had been committed and that the driver of the Durango was arrestable. Moreover, looking at the objectively discernible facts through the eyes of a reasonable person with the same knowledge, training and experience as DC Hyde, his subjective belief was objectively reasonable.
- [183] DC Hyde based his decision to have the driver of the Durango arrested on a constellation of several interrelated facts known to him at the time he gave the direction for the arrest. I have previously enumerated DC Hyde's grounds (at para. 108). When looked at collectively through the lens of an officer with DC Hyde's experience, as they must be, they establish a web of interconnected events occurring within a brief time frame and which when reviewed as a whole establish a picture of credibly-based probability and something beyond mere coincidence:
- i. a person from one known drug trafficking group leaving a suspected stash house location with at least one weighted bag from the stash house and another lightly weighted bag from the trunk area;
 - ii. within 14 minutes the target meets with a person from another known drug trafficking group in circumstances where the second person is observed to get into the vehicle, have a brief meeting of no more than a minute, and exit the vehicle with a backpack that looked noticeably more weighted after the brief meeting concluded;

- iii. the backpack was retained by the unknown male who entered a vehicle that showed Mr. Pereira as the registered lessee; the individual, wearing the same red leather jacket as the one observed on Mr. Pereira on May 4, 2017 at the Brighthouse Way meet and bag exchange that included Mr. Braich and Mr. Latimer, kept the backpack with him while he went to an address at which Project Territory believed Mr. Latimer resided;
- iv. after only a few minutes in that location, Mr. Pereira emerged, still in possession of the backpack, in the company of another male. They entered into the other male's vehicle, which the police learned was registered to Mr. Szucs, another known associate of Mr. Latimer;
- v. The vehicle drove to a second location, Mr. Pereira exited the vehicle with the backpack and went into the second location. He then exited the second location with the backpack still weighted as clearly depicted in Ex. #4;
- vi. Mr. Pereira placed his backpack in the Durango and then relinquished custody of it to the driver of the Durango;
- vii. The Durango drove out of Vancouver and headed east on a highway that could take the vehicle to the interior of the province and beyond; and
- viii. From the time the backpack was first noticed by the SFST to the time it was on its way in the Durango less than an hour had elapsed.

[184] Counsel for Mr. Szucs has attacked each of the grounds advanced and engaged in a microscopic parsing of the circumstances. With respect, that is not how grounds are assessed. Rather it is the totality of the circumstances that must be assessed as informed by the knowledge, training and experience of the officer. The assessment is not undertaken from the perspective of what a lay person might make of the observations.

[185] When the totality of the circumstances are considered, there is ample objective support for DC Hyde's conclusion that the beige backpack in the Durango contained a controlled substance and that the driver of the Durango possessed the controlled substance for the purpose of trafficking; Those circumstances included:

- i. The extensive training, knowledge and experience in drug investigations of both officers (and in particular their knowledge as to the customs of the illegal trade and practices of higher-end drug couriers, the storage of product in stash houses, the repeated movement of bags in and out of the stash house locations, and the knowledge that transnational drug traffickers use drug couriers to transport drugs between distant locations either intra or interprovincially);
- ii. DC Hyde's overall commanding knowledge of the Project Territory investigation and the various players and their relationships and associations;

- iii. His knowledge of Mr. Randhawa's relationship and associations with Randy Kang, the Kang group, and his repeated brief attendances at Bidwell St. that included taking bags in and out of that location;
- iv. His knowledge of the overall associations and relationship between Manveer Braich and his repeated attendances at Bidwell St., taking bags in and out of Bidwell St.;
- v. His knowledge of the observations of the May 4, 2017, bag exchange between Manveer Braich, Kyle Latimer and Jacob Pereira in the underground parking lot of 5199 Brighthouse Way immediately after Mr. Braich had been at the Bidwell St. location;
- vi. His knowledge of the overall associations and relationship between Kyle Latimer, Jacob Pereira and Csongor Szucs;
- vii. His knowledge of the observations of Mr. Randhawa's brief attendance at the Bidwell St. location - a place he believed to be a stash house for the Kang group - coupled with Randhawa's placement of a weighted bag in the trunk of the vehicle and the removal of a lightly weighted bag from the trunk of the vehicle;
- viii. The brief meeting between Randhawa and Pereira shortly after Randhawa left the Bidwell St. location after placing one bag in the trunk of his vehicle and moving another bag from the trunk into the body of the vehicle;
- ix. His knowledge that Pereira's backpack was more weighted when he exited Randhawa's vehicle than when he entered the vehicle moments before;
- x. The travels of the backpack with Mr. Pereira, to the address where Mr. Latimer was believed to reside, the short stop at the Pacific Rim and then the departure with another associate of the Latimer group in a different vehicle;
- xi. The handoff of the backpack by Mr. Pereira to the driver of the Durango after he exited the Homer St. residence; and
- xii. The immediate departure of the driver of the Durango, still in possession of the backpack, from the city and the path of travel towards the interior of the province.

[186] Collectively these circumstances establish that the observations, as assessed by DC Hyde with his training, knowledge and experience in investigating the higher level aspect of the illegal drug trade in the Lower Mainland area, constitute ample objective support for DC Hyde's conclusion that there was a reasonable probability that the backpack in the Durango contained a controlled substance and that the driver of the Durango was a courier and therefore possessed the contents of the backpack for the purpose of trafficking.

[187] Considering the entire constellation of factors informing the circumstances extant at the time of this set of observations on June 19, 2017, within the overall context of the Project Territory investigation to that date, it is my view that DC Hyde had reasonable and probable grounds to direct that the driver of the Durango be arrested pursuant to s. 495(1) of the

Code. In my view, the totality of the evidence and the circumstances of that day establishes there was a reasonable common sense probability that the backpack in the Durango contained drugs that Mr. Pereira had obtained from Mr. Randhawa and that Mr. Szucs was transporting that supply of drugs out of the Lower Mainland for further distribution.

- [188] Based on all of the circumstances known to DC Hyde at the time, a reasonable person, standing in the shoes of the officer, would have believed that reasonable grounds existed to make the arrest of the driver and that credibly-based probability, in the totality of the circumstances, had replaced suspicion. I find the warrantless arrest of Mr. Szucs to be lawful.

Was the search of Mr. Szucs's vehicle incidental to a lawful arrest?

Legal Principles

- [189] The existing general framework for a valid search incident to arrest purports to authorize a broad range of searches. It requires only that (1) the individual searched has been lawfully arrested; (2) the search is truly incidental to the arrest in the sense that it is for a valid law enforcement purpose related to the reasons for the arrest; and (3) the search is conducted reasonably: *R. v. Fearon*, 2014 SCC 77 at para. 27; *R. v. Saeed*, 2016 SCC 24 at para. 37.
- [190] In *Fearon*, Mr. Justice Cromwell, writing for the majority, reviewed the jurisprudential evolution of the doctrine of the common law power to search incident to a lawful arrest (at paras. 16-26). In that case the Court was looking at the extent to which the search of a cellphone could be captured within the parameters of that power. Nevertheless, the review of the common law jurisprudence is instructive.
- [191] The leading case on searches of vehicles incident to a lawful arrest is *R. v. Caslake*, [1998] 1 S.C.R. 51. As Cromwell J. noted in *Fearon*:
- [21] That brings me to the leading case from this Court, *Caslake*. The case concerned an inventory search of a suspect's vehicle six hours after he was arrested for possession of narcotics. The Court concluded that the search did not fall within the scope of lawful search incident to arrest. Lamer C.J. articulated the justification of the common law power as being the need for law enforcement authorities to gain control of things or information, a need which outweighs the individual's interest in privacy: para. 17. Whether the search is justified depends on whether the search is truly incidental to the arrest: para. 17. This means that the police must be attempting to achieve some valid purpose connected to the arrest. That turns on what they were looking for and why. The police must have one of the purposes for a valid search incident to arrest in mind when the search is conducted, and the officer conducting the search must reasonably believe that this purpose may be served by the search.

[22] This is not a standard of reasonable and probable grounds, but simply a requirement that there be some reasonable basis for doing what the police did. For example, if the purpose of the search is to find evidence, there must be some reasonable prospect of finding evidence of the offence for which the accused is being arrested: Caslake, at paras. 19-24. Lamer C.J. summarized the law as follows:

If the law on which the Crown is relying for authorization is the common law doctrine of search incident to arrest, then the limits of this doctrine must be respected. The most important of these limits is that the search must be truly incidental to the arrest. This means that the police must be able to explain, within the purposes articulated in Cloutier, supra (protecting the police, protecting the evidence, discovering evidence), or by reference to some other valid purpose, why they searched. They do not need reasonable and probable grounds. However, they must have had some reason related to the arrest for conducting the search at the time the search was carried out, and that reason must be objectively reasonable. Delay and distance do not automatically preclude a search from being incidental to arrest, but they may cause the court to draw a negative inference. However, that inference may be rebutted by a proper explanation. [Emphasis added; para. 25.]

[25] I turn finally to R. v. Nolet, 2010 SCC 24, [2010] 1 S.C.R. 851. One of the issues was whether the search of a vehicle some two hours after the driver's arrest for possession of the proceeds of crime was lawful. The Court unanimously upheld the legality of the search as being incidental to the accused's lawful arrest. Binnie J. reiterated the important point made in Caslake and Golden that a search is properly incidental to arrest when "the police attempt to 'achieve some valid purpose connected to the arrest' including 'ensuring the safety of the police and the public, the protection of evidence from destruction at the hands of the arrestee or others, and the discovery of evidence ...': para. 49 (emphasis deleted), quoting Caslake, at para. 19. As Binnie J. put it, "[t]he important consideration is the link between the location and purpose of the search and the grounds for the arrest": para. 49. He repeated the propositions, settled in other cases, that, first, reasonable and probable grounds are not required, and second, the basis of the warrantless search is not exigent circumstances, but connection or relatedness to the crime for which the suspect has been arrested: paras. 51-52.

Application of the Principles in this Case

[192] Little in the way of argument was advanced on whether the search of the Durango was or was not improper and a violation of Mr. Szucs's s. 8 Charter rights. The argument that there was an unreasonable search and seizure of his vehicle and the backpack in the vehicle rests on the assertion that the arrest of Mr. Szucs was unlawful. Obviously, if DC Hyde did not have reasonable grounds to have the driver of the Durango arrested, any search of his vehicle would not have been incidental to a lawful arrest. However, I have found that the arrest of Mr. Szucs was lawful; it complied the requirements of s. 495(1) of the Code and the Storrey test.

[193] As I have found that the arrest of Mr. Szucs was lawful, it follows that Cst. Inkman's immediate search of the Durango and the backpack were authorized searches pursuant to the common law power to search incident to arrest. The search was done for two purposes: safety of the lone officer at the scene as well as the discovery and preservation of evidence connected with the offence for which Mr. Szucs had been arrested. Finally, the search was conducted reasonably in all the circumstances. Accordingly, Mr. Szucs's right to be free from unreasonable search and seizure as protected by s. 8 of the Charter was not breached when Cst. Inkman, after arresting Mr. Szucs, searched the Durango and located cocaine and fentanyl in the backpack Mr. Pereira had placed in the rear passenger seat of the vehicle outside 1001 Homer St.

Did Cst. Inkman breach Mr. Szucs's s. 9 Charter right to be free from arbitrary detention when he initiated his roadside stop?

Legal Principles

[194] There can be little doubt that once Mr. Szucs was stopped by Cst. Inkman at 17:20 hrs, he was detained. Cst. Inkman had pulled the Durango over and not advised the driver that he was free to leave. In fact, Mr. Szucs was not free to leave. He had been stopped by the RCMP acting on behalf of a request by the VPD. The roadside stop was a detention as that concept is understood in the jurisprudence: *R. v. Grant*, 2009 SCC 32; *R. v. Dhillon*, 2012 BCCA 254 at para. 30.

[195] If a detention is found to have occurred, it is necessary to determine whether that detention was arbitrary contrary to s. 9 of the Charter. A detention will not be arbitrary if it is authorized by law, either by way of statute or common law. Conversely, if the detention is not authorized by law, it will be arbitrary.

[196] In *R. v. Terezakis*, 2005 BCSC 1052, Madam Justice Holmes (as she then was) found that the stop of a vehicle for the purposes of identifying the driver as part of an ongoing criminal investigation was an arbitrary detention.

Application of the Principles in this Case

[197] Counsel for Mr. Szucs relies upon *Terezakis* and argues that since Cst. Inkman did not know why he was stopping Mr. Szucs and believed that the purpose of the stop was to identify the driver and relay that information to the VPD investigators, the initial detention at roadside by Cst. Inkman was arbitrary. He asserts that as Cst. Inkman was not yet imbued with the VPD's grounds for arrest of the driver, then the reason for the initial detention must be assessed through the eyes of Cst. Inkman at the time and before he spoke to DC Hill.

[198] With respect, I cannot agree with the contention of the defence. The argument unduly compartmentalizes the steps taken in an inter-jurisdictional arrest scenario where one police department tries to coordinate with another police department to have a target in a moving vehicle arrested. More significantly, it ignores the reality of the rapidly evolving

circumstances at play in the stop of the Durango. If the purpose of the stop of the Durango was to identify the driver to advance Project Territory's investigation, then that might make the detention arbitrary. However, that is not how I interpret the totality of the evidence in respect of Cst. Inkman stopping the Durango and it is not what I found occurred here.

- [199] It is clear from the evidence that this was a rapidly evolving set of circumstances. The Durango had just passed Chilliwack and appeared to be continuing on the highway towards the interior of the province. A decision was made at 16:57 hrs. by DC Hyde, after consultation with DC Hill, that the driver of the Durango was arrestable. A direction was made to contact the Hope RCMP. DC Hill conveyed that communication to DC Gill who in turn contacted the Hope RCMP and spoke to the dispatcher. By 17:08 hrs., the dispatcher was relaying the request to Cst. Inkman. That some of the information may have been lost in the translation of the communications is clear from the content of the dispatcher's communications with Cst. Inkman.
- [200] What is clear from the dispatcher's call to Cst. Inkman is that the vehicle stop was not for an investigative purpose, i.e. to determine the identity of the driver - that was not what the dispatcher communicated to Cst. Inkman. What is also clear from the evidence is that the VPD wanted the vehicle stopped and the patrol officer to contact VPD, ostensibly for further and more complete instructions.
- [201] Within 11 minutes of DC Hyde's decision to seek to have the Durango pulled over and the driver arrested, the Hope RCMP had been contacted, the request for assistance had been conveyed to the dispatcher who then contacted Cst. Inkman and conveyed the request, and Cst. Inkman had started to mobilize and head towards the highway to intercept the Durango. A further 12 minutes elapsed between the dispatcher assigning the task and Cst. Inkman intercepting the Durango and pulling it over. During that time Cst. Inkman was unable to make contact with the VPD and the VPD had not called him on the cellphone numbers he had provided to the dispatcher to pass on to the VPD.
- [202] The content of the radio communications between the dispatcher and Cst. Inkman make it equally clear that there were difficulties in the communication capabilities and the ability of Cst. Inkman to directly contact the VPD to obtain further instructions before he stopped the Durango and engaged with the driver. These difficulties continued in the moments immediately after the Durango was stopped.
- [203] I accept Cst. Inkman's evidence that it was for safety reasons and to keep control of the situation that he approached the vehicle and asked for the driver's name and identification - a BC driver's licence and valid insurance for the vehicle - a procedure he always employed when stopping a vehicle at the side of the highway. What cannot be forgotten, however, is the fact that the vehicle was stopped at the request and direction of the VPD. Accordingly, it is that purpose that must govern the assessment of whether the detention was arbitrary or not.

[204] The VPD's purpose in having the vehicle stopped was so the driver could be arrested for PPT based on DC Hyde's reasonable belief that there were drugs in the backpack. The stop of the Durango was initiated and effected at the direction of the VPD. It was not undertaken for the investigative purpose of identifying the driver of the vehicle. Cst. Inkman's belief that the VPD wanted the driver identified was simply erroneous, based in part on the lack of complete information that he had directly from the VPD until after the stop had been initiated.

[205] This was a rapidly unfolding situation. Once Cst. Inkman was finally able to reach DC Hill and confirm that there were grounds to arrest the driver of the vehicle, he immediately acceded to that request. The totality of these circumstances clearly establishes that Cst. Inkman was not stopping the vehicle for the purposes of identifying the driver as part of a larger criminal investigation. Rather, he was stopping the vehicle at the request and direction of another police agency that had grounds for the arrest of the driver. That Cst. Inkman, of his own initiative, obtained the driver's identification and passed that information along to the VPD does not turn the purpose of the stop and detention into something other than what it was - a stop done at the request and direction of another police agency that wanted the driver arrested. It follows that I would not accede to the defence argument that Cst. Inkman's initial detention of Mr. Szucs was arbitrary. Accordingly, the defence has failed to discharge its burden of establishing that Mr. Szucs's s. 9 Charter rights were breached during Cst. Inkman's initial detention of Mr. Szucs at the side of Hwy. #1 outside Hope, B.C.

Did Cst. Inkman breach Mr. Szucs's s. 8 Charter right to be free from unreasonable search and seizure when he obtained Mr. Szucs's BC driver's licence and vehicle insurance documents before he initiated the arrest?

[206] Counsel for Mr. Szucs argues that because Mr. Szucs was not stopped pursuant to provisions of the Motor Vehicle Act he was under no duty to provide his identification to Cst. Inkman. Accordingly, argues the defence, in complying with the request to provide his BC driver's licence and vehicle insurance papers, Cst. Inkman elicited evidence from Mr. Szucs in violation of his s. 8 Charter right to be secure from unreasonable search and seizure.

[207] The defence relies upon the decision in *R. v. Harris*, 2007 ONCA 574 to advance its argument that the request for Mr. Szucs's identification constituted an unreasonable search and seizure that infringed his s. 8 Charter rights.

[208] In my view, the circumstances in *Harris* are completely distinguishable to what was occurring in the case at bar.

[209] In *Harris*, the driver of a vehicle was stopped by the police after he failed to signal a left turn. All the occupants of the vehicle were asked to identify themselves and complied with that request. The officer checked the names of all the occupants on CPIC and determined that the accused in that case was the subject of a bail order that included a curfew

condition. The accused was out well past his curfew. The accused was arrested, handcuffed, and searched before being placed in the patrol vehicle. A quantity of cocaine was found in the waistband of the accused's underwear. The accused was acquitted at trial. On an appeal by the Crown, a new trial was ordered. Mr. Justice Doherty found that the accused was not arbitrarily detained when asked for his identification but that in the circumstances the officer's request that Harris identify himself constituted an unreasonable search and seizure. However, the cocaine ought not to have been excluded under s. 24(2) of the Charter.

- [210] Counsel for Mr. Szucs argues that Cst. Inkman's request for Mr. Szucs identification documents was akin to the circumstances in Harris. I cannot agree.
- [211] Critical to the defence argument here is the premise that Cst. Inkman was obtaining the identification to advance the VPD's investigation. I have already concluded that that was not what the VPD had requested that the Hope RCMP do. Cst. Inkman's belief that the VPD wanted the information was erroneous and is not supported by the dispatch call. The only other reason for obtaining the information was to keep control of the interaction while he awaited instructions from the VPD. It was in keeping with his usual practice when conducting a roadside stop in order to ensure the driver was properly licensed and the vehicle ensured.
- [212] While Cst. Inkman's explanation to Mr. Szucs as to why he had been stopped was not the clearest, it was not a deliberate or intentional misinforming as the defence asserts. Rather, Cst. Inkman, who had not yet been able to speak to the VPD, had to walk a very fine line of providing an explanation that was not untruthful but that also did not compromise the integrity of the VPD investigation. He did so when he told Mr. Szucs he had been stopped because the Hope RCMP was looking for a vehicle similar to the vehicle he was driving.
- [213] Unlike the circumstances in Harris, Cst. Inkman was not using the identification of Mr. Szucs to access further personal information about the accused and use it to obtain incriminating information in relation to unrelated criminal conduct: Harris at para. 38. He obtained the identification in part to retain control over the interaction and in part because he thought, erroneously, that it was part of the request being made by the VPD. In my view, Cst. Inkman's request for Mr. Szucs's driver's licence and vehicle insurance papers does not fall within the parameters of conduct that Doherty J.A. disapproved in Harris and found to be a breach of s. 8 of the Charter.
- [214] As the Crown noted in its submissions, while the stop of Mr. Szucs was not initiated pursuant to the Motor Vehicle Act or for a traffic violation, that does not mean the provisions of the Motor Vehicle Act ceased to operate. Cst. Inkman was entitled to obtain Mr. Szucs's BC driver's licence and vehicle insurance to confirm that Mr. Szucs was licensed to operate a motor vehicle and that the vehicle was properly insured. The information was not used for any self-incriminatory or other purpose and was not relied upon as part of the grounds for the arrest of Mr. Szucs. Accordingly, there was no breach of Mr. Szucs's s. 8

Charter right to be free from unreasonable search and seizure when Cst. Inkman obtained his driver's licence and vehicle insurance papers from him.

Did Cst. Inkman breach Mr. Szucs's s. 7 Charter right to silence when he required Mr. Szucs to identify himself?

- [215] Counsel for Mr. Szucs has summarily argued that as Mr. Szucs was not detained pursuant to highway safety concerns or otherwise lawfully detained, there was no requirement for him to identify himself and he was under no legal duty to do so. Counsel further asserts that once detained, Mr. Szucs retained the choice to speak with the police and that by not being provided with his s. 10(a) and (b) Charter rights immediately, he was denied an informed and effective choice as to whether to speak to Cst. Inkman and was thereby denied his s. 7 right to silence and to be free from self-incrimination.
- [216] The argument was not developed any further than what is outlined above. With respect, I would not accede to this argument for three reasons.
- [217] First, Mr. Szucs was lawfully detained as Cst. Inkman was conducting the stop of the vehicle at the request and on behalf of the VPD. The VPD had reasonable grounds to arrest the driver of the vehicle.
- [218] Second, the argument advanced in respect of this issue is more properly dealt with under the s. 8 Charter analysis above.
- [219] Third, the information obtained from Mr. Szucs was not used for any self-incriminatory purposes or to advance an investigation into other criminal activity. It was obtained to ensure he was properly licensed and insured and to control the interaction while Cst. Inkman awaited direct contact with the VPD for specific instructions as to what they wanted the Hope RCMP to do.
- [220] Accordingly, there was no breach of Mr. Szucs's s. 7 Charter right to silence and to be free from compelled self-incrimination when Cst. Inkman asked for and obtained Mr. Szucs's driver's license and vehicle insurance papers from him.

What are the facts that underlie the conceded breaches of Mr. Szucs's ss. 10(a) and (b) Charter rights?

- [221] Every suspect has the right to be immediately advised of the reason for their arrest or detention and also to be advised of their right to counsel as enshrined in ss. 10(a) and (b) of the Charter.
- [222] The Crown has properly conceded that the time between Cst. Inkman's stop of the Durango at 17:20 hrs. and when he formally arrested Mr. Szucs at 17:32 hrs. for PPT and advised him of his right to counsel represents a breach of Mr. Szucs's Charter rights as guaranteed by s. 10 of the Charter. He was not advised promptly at 17:20 hrs. of the reasons for his detention nor was he advised of his right to retain and instruct counsel. At least 12 minutes elapsed before Mr. Szucs was formally arrested, told of the reason for his detention and arrest and

provided with his right to counsel at 17:32 hrs.

[223] It is clear from the evidence adduced on this voir dire that Cst. Inkman conducted the stop of Mr. Szucs's vehicle at the request of the VPD. However, at the time he stopped the Durango he did not have the key piece of information that he needed in order to properly advise Mr. Szucs why he had been detained. At 17:20 hrs., Cst. Inkman had not spoken to DC Hill and so, as he candidly admitted, he did not know why he had stopped the vehicle, apart from the general request from the VPD that the stop be undertaken.

[224] Although Cst. Inkman did obtain Mr. Szucs's BC driver's licence and his vehicle insurance from him before Mr. Szucs was advised of his right to counsel, the breach of Mr. Szucs's s. 10(b) rights and the obtaining of that identification information was not undertaken for any incriminatory or investigative purpose. It was done in part to control the situation while Cst. Inkman awaited instructions from the VPD. The identity of the driver was immaterial to the grounds for arrest in the circumstances. Accordingly, it was not obtained as a further investigative step to elicit evidence. Nevertheless, the 12-minute delay in advising Mr. Szucs of the reason for his detention (and arrest) and his right to counsel do constitute breaches of his s. 10 Charter rights.

Conclusion

[225] Based on the foregoing reasons, I have concluded Mr. Szucs's arrest was lawful as it was based on reasonable grounds, satisfying the Storrey test. The defence has not established breaches of Mr. Szucs's ss. 7, 8 or 9 Charter rights in the circumstances of his June 19, 2017, stop, arrest and search of his vehicle. The Crown has conceded two breaches of Mr. Szucs's s. 10 Charter rights, being a breach of s. 10(a) when the Mr. Szucs was not promptly advised of the reasons for his detention at 17:20 hrs. and a breach of his s. 10(b) rights in not being immediately advised of his right to counsel at 17:20 hrs. when the detention commenced. The time frame of the delay in satisfying the requirements of s. 10 of the Charter was the 12 minutes that elapsed between the stop at 17:20 hrs. and 17:32 hrs. when Cst. Inkman formally arrested Mr. Szucs and advised him of his right to counsel. No incriminating evidence was obtained from Mr. Szucs in that time period.

[226] The impact of the breaches of Mr. Szucs's s. 10 rights will be determined in a later voir dire addressing the s. 24(2) Charter analysis.

"Ker J."

APPENDIX "A"

PURSUANT to section 655 of the Criminal Code of Canada, counsel for the accused, Csongor Szucs (the "Accused"), admits the following facts for the purpose of dispensing with proof thereof on his warrantless arrest challenge, application 27798-21:

1. On June 19, 2017, members of the Vancouver Police Department conducted surveillance of an individual by the name of Gurvinder Randhawa. A surveillance report was prepared in relation to that surveillance. The following observations were included in the surveillance report prepared by the surveillance team on that date:

Time

Location

Observation

Name of Officer

11:56

5612 Stamford Street

Randhawa walked out the area of the front of 5612 Stamford Street and walked around toward the rear of the house.

Staples

11:57

5612 Stamford Street

Randhawa walked across the rear yard and into the detached garage.

Staples

11:58

5612 Stamford Street

BCLP: AL9 99C, a grey ford fusion (the "Ford Fusion") reversed out of the detached garage and drove south in the rear lane. Randhawa was the driver and lone occupant of the vehicle.

Registered Owner of the Ford Fusion: RANDHAWA Mehar Singh.

Fisher

13:01

1221 Bidwell Street

The Ford Fusion drove into the secure underground parkade for 1221 Bidwell Street.

Srigley

13:22

1221 Bidwell Street

Randhawa walked to the trunk of the Ford Fusion. He opened it and placed a white plastic bag in the trunk. Before closing the trunk, Randhawa retrieved a black bag from the trunk and placed it in the back seat of the Ford Fusion.

Randhawa got in the driver side of the Ford Fusion and drove toward the underground parkade exit.

The white plastic bag was a standard size plastic grocery bag, with a square (approximately 4 inches by 4 inches) weighted object in it. Randhawa was holding it at the top of the gathered plastic.

The black bag was a cloth reusable bag often used by restaurants to give out left over food. Randhawa was holding the black bag by the handles and the bag appeared lightly weighted.

Srigley

13:23

1221 Bidwell Street

The Ford Fusion drove out of the underground parkade and north on Bidwell Street.

Staples

13:33

Nelson Street/Richards Street

The Ford Fusion parked on the North side of Nelson Street, west of Richards Street. Visual Continuity Broken.

Brownlee

13:34

Nelson Street/Richards Street

Visual Continuity of the Ford Fusion re-established. The Ford Fusion was parked in the same spot.

Randhawa was still sitting in the driver's seat.

Fisher

13:48

Nelson Street/Richards Street

An unknown male (U/M #1) got in the front passenger seat of the Ford Fusion.

U/M #1 was an Asian male in his late 20s, 5'9, and 170 lbs. He had dark hair that was shaved short on the sides and styled longer on the top. He wore a red leather jacket, blue jeans and carried a beige backpack.

Fisher

13:48

Nelson Street/Richards Street

U/M #1 got out of the front passenger side of the Ford Fusion and walked east on Richard Street. He was still carrying the beige backpack, which now looked distinctly heavier.

The Ford Fusion drove away east on Nelson Street. He was the lone occupant of the vehicle.

Fisher

13:51

900 block Richards Street

U/M #1 got in the driver's side of BCLP EJ2 40M, a black Mercedes Benz (the "Mercedes") and drove south on Richards Street.

The backpack U/M #1 was carrying was very heavy. He was carrying it slung over his right shoulder and had to bend his knees and push up to adjust the bag further up his shoulder. The bag was also being pushed out by the contents and was close to full by volume of the contents.

Registered Owner of the Mercedes: PEREIRA Jacob Angelo.

*Surveillance switched to U/M #1 and the Mercedes.

Bridges

14:01

1011 West Cordova Street

The Mercedes parked in the open breezeway lot for 1011 West Cordova Street - the Fairmont Pacific Rim (the "Pacific Rim").

Breckenridge

14:02

1011 West Cordova Street

U/M #1 got out of the driver's side of the Mercedes. He was carrying the beige backpack. He walked in the front doors of the Pacific Rim.

Staples

14:05

1011 West Cordova Street

U/M #1 took the elevator to the 42nd floor of the Private Residence at the Pacific Rim.

Mazloun

14:13

1011 West Cordova Street

U/M #1 walked out of the front doors of the Pacific Rim with a second unknown male ("U/M #2").

U/M #2 got in the driver's side of the BCLP: ER3 78N, a black Dodge Durango (the "Dodge Durango").

U/M #1 got in the front passenger side of the Dodge Durango. He was still carrying the beige backpack.

The Dodge Durango drove east on Canada Place.

U/M #2 is an olive skinned male in his 30s, 6' and 220 lbs. He had short dark hair and was wearing blue t shirt, blue jeans and black shoes.

Registered Owner of the Dodge Durango: SZUCS Csongor.

Staples

14:26

1001 Homer Street

The Dodge Durango parked in front of 1001 Homer Street.

U/M #1 got out of the front passenger side. He was still carrying the beige backpack. He walked toward the front of 1001 Homer Street.

Staples

14:27

1001 Homer Street

U/M #1 used a key FOB to enter the front doors of 1001 Homer Street.

Bridges

14:40

1001 Homer Street

U/M #1 walked out the front doors of 1001 Homer Street. He walked south on Homer Street. He was still carrying the beige backpack.

Mazloun

14:43

1001 Homer Street

U/M #1 approached the passenger side of the Dodge Durango. He put the beige backpack inside and continued walking south on Richards Street.

Mazloun

14:45

1001 Homer Street

The Dodge Durango drove south on Richards Street and west on Helmcken Street.

Mazloun

14:48

Seymour Street/Smithe Street

The Dodge Durango drove north on Seymour Street, through Smithe Street.

*Surveillance switched to U/M #2 and the Dodge Durango.

Fisher

15:01

1896 East Hastings Street

The Dodge Durango parked in the lot at pump number 3 of the Shell Station at 1896 East Hastings Street. Visual continuity broken.

Srigley

15:03

1896 East Hastings Street

Visual continuity of the Dodge Durango re-established. The Dodge Durango was parked at the same pump. U/M #2 started to pump gas.

Staples

15:10

1896 East Hastings Street

U/M #2 got in the driver's side of the Dodge Durango. He drove east on East Hastings Street.

Staples

2. The accuracy of the observations in the surveillance report as set out above are admitted.

DATED at the City of Vancouver, in the Province of British Columbia, this __ day of ____, 2020.

[original signed by Crown counsel and defence counsel]

- [1] Ex. #1 is included as Appendix A to this Ruling.
- [2] Resort to and use of rental vehicles or vehicles not belonging to the driver was described as a frequent way of conducting drug trafficking enterprises in order to make it harder for the police to trace the individuals believed to be involved in the activities and operations of various drug trafficking enterprises.
- [3] The man identified as Mr. Pereira in these surveillance observations was dressed in the same manner as captured in the May 4, 2017 CCTV footage of him in the underground parkade at 5199 Brighouse Way, including the same red leather jacket.
- [4] Pipeline stops are conducted by officers trained in specific drug investigation techniques related to the intra and interprovincial transportation and distribution of controlled substances. Through their training, knowledge and experience it is suggested they are able to form their own grounds to arrest a subject. Although Cst. Inkman had experience in using the Pipeline technique from a decade earlier, he was not familiar with it at the time of Mr. Szucs's arrest and so the Pipeline technique was not used in this case. Accordingly, it is not necessary to address the limited evidence provided on this technique.
- [5] The Hope-Flood Road exit.
- [6] The Hope exit, 170 km. east of Horseshoe Bay, where connections to Hwy #3 (Crowsnest Hwy) and Hwy #5 (Coquihalla Hwy) are accessed.
- [7] The May 11, 2017, chart was not the chart marked Ex #5 on this voir dire.
- [8] Craig Latimer is Kyle Latimer's father.
- [9] Robert W. Hubbard, Peter M. Brauti & Scott K. Fenton, *Wiretapping and Other Electronic Surveillance: Law and Procedure* (Thompson Reuters) (loose-leaf release No. 60, September 2018). Chapter 8.5.3.2 - The Excision of Illegally or Unconstitutionally Obtained Evidence from an ITO.
- [10] See also *R. v. Canary*, 2018 ONCA 304 at para. 21 citing *Storrey*, *R. v. Bush*, 2010 ONCA 554 at para. 38, and *R. v. Saciragic*, 2017 ONCA 91 at para. 16.
- [11] See also *R. v. Klassen*, 2019 BCSC 2376 at para. 11.
- [12] Significantly the decision of the Supreme Court of Canada in *R. v. Marakah*, 2017 SCC 59 was not released until December 18, 2017. As noted in *R. v. Latimer*, 2020 BCSC 488, that decision represented a shift in thinking on the reasonable expectation of privacy in materials in the hands of third parties.

[13] In para. 21 of *Canary*, Fairburn J.A. includes a footnote that points out "Storrey was decided under the former s. 450(1)(a) of the Criminal Code, when the provision read as "reasonable and probable grounds to believe". Section 495(1)(a) of the Criminal Code, R.S.C. 1985, c. C-46, removed the reference to "probable grounds", changing the wording to: "believes on reasonable grounds". As noted in *Baron v. R.*, [1993] 1 S.C.R. 416, at p. 446, the word "probable" adds nothing to the requirement of reasonableness.

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Prepared on 27 October 2026 · Esheria