

CANADA / JUDGMENT

R. v. Manuel

2024 BCSC 2275

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 2275 R. v. Manuel

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Manuel,

2024 BCSC 2275

Date: 20241113

Docket: 108882

Registry: Kamloops

Rex

v.

Jennifer Lindsay Manuel and Alina May Ortloff

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Before: The Honourable Justice Doyle

Oral Reasons for Judgment re Voir Dires #1 and #2

Counsel for the Crown:

J. Rutherford

Counsel for the Accused, Jennifer Lindsay Manuel:

L.J. Helps

E. Wyllie

Counsel for the Accused, Alina May Ortloff:

C.E. Johnson

Place and Dates of Hearing:

Kamloops, B.C.

July 10-12, 2023

January 15, February 1, July 26 & September 9, 2024

Place and Date of Decision:

Kamloops, B.C.

September 24, 2024

Place and Date of Judgment:

Kamloops, B.C.

November 13, 2024

INTRODUCTION

- [1] On March 14, 2020, Cst. Lapierre of the Kamloops RCMP Targeted Enforcement Unit (TEU) determined that he had grounds to arrest the two accused, Ms. Manuel and Ms. Ortloff, as well as a third person, for the offence of possession of a controlled substance for the purpose of trafficking contrary to the Controlled Drugs and Substances Act, S.C. 1996, c. 19.
- [2] The decision followed a months-long investigation into Ms. Manuel that commenced in early August 2019. Ms. Ortloff was not a person known to the investigation prior to the arrest date.
- [3] The arrests were followed by a search of the vehicle occupied by those three persons when it was stopped travelling south from Clearwater towards Kamloops. Items were seized which constitute the evidence underlying the charges set out in the indictment.
- [4] Two separate voir dres were held into allegations by each of Ms. Manuel and Ms. Ortloff that their rights pursuant to the Canadian Charter of Rights and Freedoms [Charter] had been infringed or denied, in particular that:
 - 1. The arrests contravened their respective rights to be free from arbitrary detention pursuant to section 9 of the Charter;
 - 2. The search and seizure consequent upon their arrests contravened their respective rights to be free from unreasonable search and seizure pursuant to section 8 of the Charter.

- [5] A third voir dire was held with respect to police video recording of the physical surveillance conducted by Cst. Friesen which preceded the arrests. That voir dire was determined by reasons issued September 12, 2024.
- [6] Crown counsel fairly and appropriately conceded at the hearing that if the arrests were unlawful, the search of the vehicle incident to those arrests was also unlawful.
- [7] On September 24, 2024, I provided my decision on the ss. 9 and 8 issues. I found that the arrests of each accused were unlawful, and consistent with the Crown's submissions, that the subsequent search and seizure was also unlawful, with reasons to follow. These are those reasons for finding that the arrests were unlawful, edited for grammar and clarity.
- [8] Given my finding that the arrests were unlawful, and the Crown's concession, these reasons will not further address s. 8.
- [9] Crown counsel does not concede that the evidence be excluded pursuant to s. 24(2) of the Charter, and that application is for another day.

CHARTER - SECTION 9

- [10] The accused each contend that there were not reasonable and probable grounds for their arrests, that their respective rights to be free from arbitrary detention were infringed or denied, and that the arrests were unlawful.
- [11] The Crown acknowledges that the arrests were warrantless, and that it bears the burden of proving the lawfulness of the arrests. The Crown submits it has met that burden.
- [12] The application of the law to the facts is in dispute, though there is substantial agreement among the parties about what that law is.
- [13] Cst. Lapierre was the officer who concluded that he had grounds for the arrests. He was the main witness on this s. 9 voir dire. His primary testimony was on July 10 and 11, 2023. He provided additional testimony on February 1, 2024 and September 9, 2024. This arose due to additional disclosure. There is no issue that the additional testimony was appropriate in the circumstances.
- [14] Cst. Friesen, the officer making key observations at a residence associated to Ms. Manuel on March 14, 2020, also testified on September 9, 2024. That residence is at 183 Jenkins Road, near Clearwater, BC. Ms. Manuel was not living there at the time. Again, there is no issue that Cst. Friesen's testimony on the arrest voir dire was appropriate in the circumstances.
- [15] The additional testimony on the last two days related to a late disclosure issue. Counsel cooperatively addressed the issue, and adapted in the best traditions of the profession to deal with the newly disclosed evidence so as to ensure overall trial fairness. All counsel made their best efforts to mutually address and resolve these issues mid-hearing. The result was a somewhat disjointed hearing, but one which provided the evidence and consequent submissions for this matter to proceed for determination. I commend counsel for their

efforts in this regard.

- [16] The late disclosure of most significance to this application was Cst. Friesen's handwritten scribe notes from his March 14, 2020 surveillance, when he was both the eye and the scribe for his observations at the Jenkins Road residence.
- [17] Those notes, ultimately marked Exhibit 3, varied from the typed surveillance report (Exhibit 2). Exhibit 3 was not disclosed at the time Cst. Lapierre first testified on July 10 and 11, 2023. It was the subject of Cst. Lapierre's testimony on February 1, 2024 and September 9, 2024, as well as Cst. Friesen's testimony on September 9, 2024.
- [18] Ms. Manuel was a long-term target of the investigation, whereas Ms. Ortloff only came to the attention of the police for this investigation on the day of the arrest.
- [19] I will first provide some overall background leading up to March 14, 2020.

Background

- [20] Cst. Lapierre commenced an investigation regarding Ms. Manuel's activities after communication with the Combined Forces Special Enforcement Unit (CFSEU), which was investigating drug trafficking by the Brothers Keepers in the Lower Mainland. This was in early August 2019.
- [21] Over the next several months, save for a period when Ms. Manuel was in custody between October 11, 2019 and December 17, 2019, various observations were made regarding her activities.
- [22] Ultimately, the TEU decided to set up observations on a residence at 183 Jenkins Road on March 14, 2020. The residence was associated to Ms. Manuel, though she was residing at a recovery house in Salmon Arm on March 14, 2020 following her release from custody.

Decision to Arrest

- [23] Cst. Lapierre had been an RCMP officer for over ten years as of March 14, 2020. As of that date, he had been a TEU member for approximately one year, had experience with just under ten "mid-level" drug trafficking investigations, and had over 100 cases of surveillance experience. He had been an "eye", "scribe" and "Road Boss". He defined what all of those roles are and the duties associated to them.
- [24] In particular, the eye observes and relays by radio their observations to the other surveillance team members. A scribe's task is to make accurate notes of what the eye relates over the radio. The audio observations relayed by the eye to the other team members are not recorded.
- [25] Following his testimony in direct examination reviewing the investigation from August 1, 2019 to March 14, 2020, in reply to Crown counsel asking him to summarize his grounds for arrest, Cst Lapierre testified on July 11, 2023 (at page 3 of the transcript):

Well, my grounds for arrest on that day was a combination of everything that I presented yesterday in my testimony, all the intercepts from CFSEU, the surveillance on the team which what we believed was -- were drug drops, the drug orders intercepted over the lines, the identification of Ms. Manuel through the voice sample that CFSEU told us about, and then the combination to March 12th where we -- we -- I believe we observed a concealing device which was the propane tank, and March 14 which we observed quite a bit of evidence to me which led me to believe that they were mixing drugs in the residence. These were my grounds.

[26] Cst. Lapierre initially testified on July 10, 2023 without reference to the transcribed surveillance report from March 14, 2020 (Exhibit 2) (July 10, 2023 transcript, p. 71, l. 28 to p. 74, l. 4). He then refreshed his memory from Exhibit 2 during the balance of direct examination with respect to March 14, 2020.

[27] Cst. Lapierre was cross-examined by both defence counsel, and a few more things emerged, either directly related to some of the grounds about which he testified in direct examination, or about matters which he did not mention in direct examination. These will be discussed in greater detail below. On July 11, 2023, Cst. Lapierre was excused on the s. 9 voir dire.

[28] The next day, July 12, 2023, evidence was heard from other police officers on the separate s. 8 voir dire.

[29] On July 13, 2023, the matter was adjourned due to the inability of Crown counsel to attend due to a personal matter unknown at the time. It turned out that Crown counsel had been appointed a Judge of the Provincial Court of BC.

[30] The matter resumed in early 2024.

[31] At that time, the further disclosure had been made. As mentioned, those notes, now Exhibit 3 on this voir dire, differed from the typed Exhibit 2.

[32] For the observations of Cst. Friesen at 12:08 p.m., the typed Exhibit 2 states:

MANUEL was at the window wearing blue latex gloves. MANUEL was seen maneuvering several plastic sandwich ziplock bags with an unknown white substance inside. A quarter of the bag was full of the white substance. MANUEL appeared to be pouring substance from one baggy to others. (Video Obtained)

(The video obtained on March 14, 2020 was not in evidence on this voir dire.)

[33] For the same 12:08 p.m. observation, the original handwritten scribe notes said:

T1 [Manuel] at window, wearing blue latex gloves, fumbling [with] white paper or plastic, pulling out 3 small sandwich ziploc baggies [with] unknown white substance in bottom 1/4 - 1/8 of bag.
*white is a plastic type shopping bag, appears to be pouring stuff from baggies into other bag.

[34] The introduction of a paper bag, as opposed to a plastic one, was of considerable interest to all counsel, particularly defence counsel.

[35] Ultimately, the parties agreed to recall Cst. Lapierre, and he was further cross-examined on February 1, 2024.

[36] His cross-examination that day included the following exchange with counsel for Ms. Manuel, after some initial, somewhat needless and evasive responses regarding Ziplock bags:

Q And when we talk about Ziploc bags, we're talking about something that's plastic, that has a closure at the top, correct?

A Yes.

Q And that closure is built into the bag?

A Pretty much, yes.

Q Yes. So leaving aside the brand Ziploc for a minute and talking about --

A Okay.

Q -- Ziploc bags as kind of a category --

A All right. I follow you, yes.

Q -- that category of bag is something that you see frequently in drug investigations.

A That is correct. I would agree.

Q And that category of bag is something that, to your mind, as an experienced drug investigator, has a meaning within drug investigations, correct?

A It does, yes.

Q What is that meaning?

A To contain -- well, in my experience, it's to contain some drugs or a buffer or that sort of stuff.

Q Right. So a Ziploc bag, I would suggest, as a category, is the bag that you see the most often when you're dealing with drug investigations.

A And the Ziploc bag still has the meaning of any bags that has this --

Q Yes, any plastic bag that has this closure at the top.

A Yes. I would say yes.

Q You would agree with me that that is the most common type or category of bag that you see when you're dealing with a drug investigation?

A It is frequent. The most common, I'm not sure if I would go -- I'd be -- like I said, statistically speaking, I'm not entirely sure, but it does have -- it is common, yes.

Q Yes. It's not like a paper bag, which I assume has no meaning to a drug investigation.

A It would probably have a meaning in certain circumstances, but depends on the circumstances surrounding the paper bag, obviously, right? Like, it's specifically just a paper bag. If it has circumstances surrounding it with other actions, I would say it does have a meaning, but the Ziploc bag does have a meaning also with circumstances around it.

Q Right. And it's fair to say that the Ziploc bag -- as an experienced drug investigator, when we're talking Ziploc bags as a category --

A Yes, I get it.

Q -- Ziploc bags mean that there is a likelihood that those are associated to drug production in those circumstances.

A Yes.

Q And you know what I mean when I say "in those circumstances"; I mean in a drug production facility, for example.

A Yes.

Q In trafficking, for example.

A Yes.

Q In multi-level trafficking, for example.

A Yes.

Q And certainly at the street level.

A Certainly at the street level, yes.

Q So when you hear a Ziploc bag in circumstances where there is other grounds for arrest, for example, it may indicate to you drug production, correct?

A Not necessarily production, but yes, an [indiscernible] to drug, yes.

Q Yes. And certainly, drug trafficking.

A Yes.

Q And if you were in that circumstance where there were other suspicious activities, a Ziploc bag -- again, this category of Ziploc -- makes you more suspicious. Would you agree with me?

A Yes.

Q Yes. And certainly, a Ziploc bag, to an experienced drug investigator, when it's seen, could indicate someone packaging drugs.

A Yes.

Q Certainly, it's fair to say that when we look at Ziploc bags, you have not routinely seen paper bags used in drug packaging.

A That is correct.

Q Is there any specific reason for that officer, do you think?

A I never really put any thoughts into that, but do you want me to just think about it a little bit and

Q Sure. Let's have you think about it, Officer.

A I don't know. Maybe there's -- paper, I guess, is not as sturdy or strong. Maybe it's not - water would go through if there's any moisture. Off my head, that's what I can think about.

Q Yes. You were -- if it's some sort of powdered drug, of course, you know, there's going to be some loss, possibly even.

A Maybe.

Q If it gets into the folds of the bag, for example.

A Maybe. Yes.

Q Yes. All of those things. A Ziploc bag is the more likely bag that you're going to see during drug trafficking, certainly than a paper bag, correct?

A Correct.

Q If you had received word over the radio that there were paper bags involved on the day of Ms. Manuel's arrest March 14th, that would have caused you to reassess your grounds for arrest, correct?

A It would have caused me to think differently, yes.

Q Yes, of course, because you don't generally see paper bags as a result of drug investigations, as we've just said, correct?

A Yes.

Q And certainly, it's fair to say that you relied on everything that Constable Friesen said as reliable, correct?

A I did.

Q And certainly, if he had made different observations than those that were relayed to you, as an experienced officer, it would have caused you to re-evaluate your grounds.

A I'd probably think differently if they were different, yes.

Q Yes, if they were different, and if they altered some of your thinking towards the arrest that day, correct?

A Possibly.

Q And of course, one of the circumstances that was part of your grounds for arrest was a transfer of white substances from one bag to another, correct?

A Correct.

Q And it meant something to you that those were Ziploc bags, correct?

A Yes.

Q Yes. If --

A I would have to review my notes specifically, but I think they were. Yes, I think there was --

Q Sure.

A It was some sort of plastic bag.

[37] With reference to Ex. 2 (the typed surveillance report), Cst. Lapierre testified:

Q And it's fair to say that this is the report that you reviewed prior to coming to court?

A Correct.

Q Okay. So going to page 4 of 9. And that's 12:08.

A Yes.

Q So Manuel was at the window wearing blue latex gloves. Do you see that notation there?

A I do.

Q You see that that is from Friesen, correct?

A Correct.

Q And my understanding is, of course, that he's calling this over the radio.

A That's correct.

Q And so, this is something that you are aware of in real time.

A That's right.

Q And this was part of what formed your grounds, was the 12:08 notation, correct?

A Some of them, yes.

Q Okay. So Manuel was maneuvering several plastic sandwich Ziploc bags into an unknown white - with an unknown white substance inside. You see that there?

A I do.

Q It's fair to say that if these were not sandwich Ziploc bags, if they were, for example, paper bags, you may have reassessed your grounds, correct?

A May have reassessed my grounds?

Q Yes.

A Because they were not plastic bags?

Q That's right.

A Well, since it didn't happen and -- I'm going to have to think about it, but with the totality of everything we discussed seven months ago, I'd say I would have -- I'm not entirely sure.

Q Okay. This would not have been as important an observation if it was paper bags, correct?

A It would have been more difficult to determine what's inside, and that's one of the elements that would have definitely played in one way or another, yes.

[38] Shortly thereafter:

Q And it's also fair to say that this matrix of all of your observations, if you take one thing out, it would cause you to reassess the whole matrix.

A That's correct.

[39] Cst. Lapierre was further cross-examined on September 9, 2024. At that time, he agreed that much of the March 14, 2020 surveillance at the residence informed his grounds for arrest. He agreed that he was listening carefully and took into account all of what Cst. Friesen broadcast, including exculpatory information.

[40] He agreed that a Ziplock bag is of significance in a drug investigation. He agreed that they are more durable than paper bags.

[41] He testified that he did not remember if Cst. Friesen said paper or plastic. He was shown the passage at 12:08 p.m. of Exhibit 3. When asked if Cst. Friesen said paper or plastic, he agreed that it was possible Cst. Friesen said paper or plastic "really fast".

[42] He was again shown Exhibit 2, pages 4 and 5. He agreed with the discrepancy between Exhibit 2 and Exhibit 3.

[43] When it was suggested that he would not have considered this part of his grounds if the bag was paper, he said he would have assessed it in the context of a 9-month investigation.

[44] His testimony from July 10, 2023 (p. 74, ll. 4-35) and February 1, 2024 was put to him.

[45] The following was put to him from the February transcript (some of which was also referred to earlier), and he agreed it was still true:

Q So Manuel was at the window wearing blue latex gloves. Do you see that notation there?

A I do.

Q You see that that is from Friesen, correct?

A Correct.

Q And my understanding is, of course, that he's calling this over the radio.

A That's correct.

Q And so, this is something that you are aware of in real time.

A That's right.

Q And this was part of what formed your grounds, was the 12:08 notation, correct?

A Some of them, yes.

Q Okay. So Manuel was maneuvering several plastic sandwich Ziploc bags into an unknown white - with an unknown white substance inside. You see that there?

A I do.

Q It's fair to say that if these were not sandwich Ziploc bags, if they were, for example, paper bags, you may have reassessed your grounds, correct?

A May have reassessed my grounds?

Q Yes.

A Because they were not plastic bags?

Q That's right.

A Well, since it didn't happen and -- I'm going to have to think about it, but with the totality of everything we discussed seven months ago, I'd say I would have -- I'm not entirely sure.

[46] He then testified that if one bag was paper, he would have to reassess his analysis of his grounds for arrest, and the grounds would be assessed differently.

[47] A further passage at p. 10 of his February 1, 2024 testimony, also referred to above, was put to him:

Q Okay. This would not have been as important an observation if it was paper bags, correct?

A It would have been more difficult to determine what's inside, and that's one of the elements that would have definitely played in one way or another, yes.

[48] He agreed that was still true.

- [49] He agreed that presence of a paper bag in the mix would have made it "less definitive" that this was drug trafficking. He further agreed that a plastic grocery shopping bag would be similar--that is something not seen as often. He agreed all Ziplock bags meant something to him in this investigation.
- [50] In re-direct, he was asked if he would alter his assessment if he had heard the 12:08 p.m. transmission of Cst. Friesen up to the asterisk (which included the reference to "white paper or plastic"). He said it would not have affected his grounds. He testified that he would have continued listening to surveillance that led to other observations on Exhibit 2 and come to the same conclusion.
- [51] Cst. Friesen testified in cross-examination on September 9, 2024. He explained his role as the eye and the scribe observing the residence on March 14, 2020. This included relaying his observations to the team over the police radio as he made them, and the importance of fulsome information.
- [52] He read in what he wrote for 12:08 p.m. on Exhibit 3, as set out above. The note after the asterisk was an addition he made sometime during the surveillance, but he does not know when.
- [53] He agreed that he sees Ziplock bags frequently in his work with the TEU, which includes targeting street level drug dealers and suppliers. Ziplock bags are easily sealed, maintain their seal, are cheap and easy to transport. They are also clear--a benefit to both dealers and buyers. This is generally what they see on seizures.
- [54] Conversely, he had not often seen drugs scattered loosely in white plastic shopping bags. He did not recall ever seeing drugs packaged in paper bags. He said drugs would not be packaged in a paper bag because one could not see what was inside. He agreed that the paper bag could get wet or tear. He testified that he does not usually see drug sales using paper bags.
- [55] With regard to the addition to his notes after the asterisk (Exhibit 3), he said he could not tell if the stuff from the baggies was being poured into, or just near, the white shopping bag. At 12:08 p.m., he felt that the shopping bag was either plastic or paper. He testified that when the bag was picked up (the note at 12:29 p.m.), he determined it was plastic based on how it "crumbled".
- [56] He was asked several times about whether he broadcast the note at 12:08 p.m. up to the asterisk. He was sure that he read the note at 12:08 p.m. up to the asterisk. This is where he broadcast paper or plastic.
- [57] He is also sure that he broadcast his note at 12:29 p.m. of Exhibit 3.
- [58] He is not sure that his 12:29 p.m. broadcast included the portion of the 12:08 p.m. entry which appears after the asterisk.

[59] I will note at this stage that Cst. Friesen was a candid, reliable, credible witness. I accept his evidence, in particular his certainty about his 12:08 p.m. broadcast to the team on March 14, 2020 that included "white paper or plastic" bags.

SUBMISSIONS

[60] All parties made submissions on this voir dire after the testimony of Cst. Lapierre on February 1, 2024. Ultimately, as noted above, Cst. Lapierre and Cst. Friesen provided further testimony on September 9, 2024, followed by brief supplemental submissions.

[61] The Crown's submissions relied upon the substantial experience of Cst. Lapierre, and various grounds summarized at para. 66 of the Crown's written submissions. These included:

- Ms. Manuel's criminal history involving large amounts of drugs;
- A statement of a Mr. Bonnell, detailing how Ms. Manuel historically used her trailer as a place to mix drugs. This was elicited in cross-examination;
- Frequent association during surveillance with people known to the police to be active in the drug subculture, including people at the mid-to-high level;
- A phone number associated to Ms. Manuel ordering drugs from a known drug courier (Ms. Nadeem) attached to the Brothers Keepers in the Lower Mainland;
- That drug courier referring to "Jen" and "Jen's girls" (Ms. Manuel's first name is Jennifer) when attending at a residence associated to Ms. Manuel;
- Direction communication between Amandeep Kang (a high-level member of the Brothers Keepers) and Ms. Manuel's phone discussing a "zap" (encrypted phone);
- The attendance of the courier at a residence where Ms. Manuel was inside and the subsequent next-day curfew breach arrest confirming Ms. Manuel was in possession of 150 grams of drugs and \$50,000 cash;
- Multiple attendances at 637 Brandon Avenue in Kamloops per the directions given from Ms. Manuel's phone, and on one occasion, confirmation from the courier of her attendance;
- Ms. Manuel herself at 637 Brandon Avenue with other members of the drug subculture (Mr. Patrick and Ms. Tinsdale) putting a "lighter than usual" propane tank in her black Avalanche in February;
- On March 14, 2020, the date of arrest, police actually see Ms. Manuel in the process of mixing drugs at 183 Jenkins Road in the company of two other women; and

· Ms. Manuel was observed manipulating various Ziploc bags with a white substance in the window, pouring substances from one bag to another, chopping a yellowish substance in a glass bowl, moving a Ziplock bag with white powder from the trailer to the residence, and various items were seen being loaded into the black Avalanche.

[62] With regard to Ms. Ortloff, the Crown summarized Cst. Lapierre's grounds as:

- Her association with Ms. Manuel, a known member of the Kamloops subculture believed to be currently active;
- Her presence at 183 Jenkins Road on March 14, 2020, at Ms. Manuel's residence which was known to have an historic association with drug mixing;
- Her presence on the property while Ms. Manuel is openly mixing crack cocaine with no effort to conceal what she is doing;
- Her activities in and around the residence (emptying an unknown substance into the snow, refilling a silver basin with snow/water) suggesting she is participating; and
- Her transporting items from the residence and the trailer into Ms. Manuel's black Avalanche (a bag and a tote).

[63] In her submissions for Ms. Manuel, counsel reviewed the evidence, and made important qualifying points in regard to it. With reference to matters prior to March 14, 2020, her submissions include:

1. Though police established a link between Rebecca Day's residence at 388 Poplar Street in Kamloops and Ms. Nadeem, and though Cst. Lapierre says Ms. Day and Ms. Manuel were often seen together, the nature of their relationship is not clear. Ms. Manuel was only seen at that residence on August 1, 2019;
2. The October 10 "drop off" occurred when police were engaged in surveillance at 183 Jenkins Road in Clearwater. Police had obtained Ms. Manuel's address from her probation officer. Ms. Manuel and David Tremblay were seen at that address. Ms. Nadeem's vehicle, a red Chevrolet Cruze on which police had installed a tracking device, arrived. They saw an unknown female get out of the vehicle with a medium sized bag, and she went inside the house for two to three minutes. She returned, got back into the vehicle and left with a different bag. Counsel notes that:
 - a. Ms. Manuel is never observed to have dealings with the driver;
 - b. Police knew that was Ms. Manuel's primary residence; and
 - c. Police chose to overlook the fact that Mr. Tremblay was more "police involved" than Ms. Manuel, and also overlooked that it was Mr. Tremblay, not Ms. Manuel, who afterwards left the residence to hand another bag off to an occupant of a second vehicle;

3. Ms. Manuel was arrested on October 11, 2019 for breach of her curfew. 150 grams of assorted drugs and \$2,000 (not \$50,000) was seized from her purse. Cst. Lapierre only knows what the investigating officer's report says. Counsel notes that Ms. Manuel was then incarcerated until December 17, 2019, creating a significant break in the investigation into her;
 4. Ms. Manuel is nowhere to be seen on December 22, 2019 when Ms. Nadeem goes inside 637 Brandon Avenue with a bag, returning minutes later with the same bag "less full than before";
 5. On January 22, 2020, CFSEU advised Cst. Lapierre that the police had identified Ms. Manuel as the voice linked to the so-called unknown, or "236", number with which Ms. Nadeem had corresponded. Counsel for Ms. Manuel notes that most of the correspondence was by text message, and further notes the vague, indirect evidence that led CFSEU to conclude that it was Ms. Manuel's voice emanating from the "236" phone number. Further, the police used a "dropped call" strategy with that "236" phone number, calling the number while Ms. Manuel was under surveillance to see what she would do. She did not answer any phone, and on the second attempt, they observed her not motioning to or looking at her phone;
 6. Counsel notes that despite active police surveillance of her, when Ms. Manuel travelled to the Lower Mainland for medical reasons in late January 2020, they observed her for several days but saw nothing of note, despite the theory that she was connected with associates of the Brothers Keepers in the Lower Mainland; and
 7. Surveillance of 637 Brandon Avenue in December 2019 showed Ms. Nadeem taking a bag into the residence, returning with the same bag that appeared less full or perhaps empty. Counsel notes, as the Crown concedes, that Ms. Manuel was not observed at the Brandon Avenue address between her release from custody on December 17 until the end of that month. Ms. Nadeem is seen there on other dates. Ms. Manuel is only seen "in the vicinity" on February 14, 2020, but is seen at that address on March 12, 2020. This is the occasion that she puts a propane tank in another person's car.
- [64] In his submissions for Ms. Ortloff, Mr. Johnson reviewed the evidence, and made some additional, sometimes qualifying points:
1. Cst. Lapierre had no previous interaction with Ms. Ortloff before August 1, 2019;
 2. Ms. Ortloff was never a target of the investigation; and
 3. Ms. Ortloff was unknown to the investigation until March 14, 2020.

LAW

[65] All counsel are well versed in--and there is essential agreement on--the applicable law. The key issue in dispute is the application of the law to the facts.

[66] To state matters generally:

1. This was a warrantless arrest, and as such is prima facie unreasonable. The burden is on the Crown to prove on a balance of probabilities that the arrest was lawful;
 2. In *R. v. Beaver*, 2022 SCC 54, Justice Jamal for the majority wrote:
 - (1) Legal Principles Governing a Warrantless Arrest
- [71] The police have statutory authority to arrest a person without a warrant under s. 495 of the Criminal Code, R.S.C. 1985, c. C-46. The applicable part of s. 495 in this appeal, s. 495(1)(a), allows a peace officer to arrest a person without a warrant if, on reasonable grounds, they believe the person has committed or is about to commit an indictable offence.
- [72] The essential legal principles governing a warrantless arrest are settled:
1. A warrantless arrest requires subjective and objective grounds to arrest. The arresting officer must subjectively have reasonable and probable grounds for the arrest, and those grounds must be justifiable from an objective viewpoint (*R. v. Storrey*, 1990 CanLII 125 (SCC), [1990] 1 S.C.R. 241, at pp. 250-51; *R. v. Latimer*, 1997 CanLII 405 (SCC), [1997] 1 S.C.R. 217, at para. 26; *R. v. Tim*, 2022 SCC 12, at para. 24).
 2. In assessing the subjective grounds for arrest, the question is whether the arresting officer honestly believed that the suspect committed the offence (*R. v. Shepherd*, 2009 SCC 35, [2009] 2 S.C.R. 527, at para. 17). Subjective grounds for arrest are often established through the police officer's testimony (see, for example, *Storrey*, at p. 251; *Latimer*, at para. 27; *Tim*, at para. 38). This requires the trial judge to evaluate the officer's credibility, a finding that attracts particular deference on appeal (*R. v. G.F.*, 2021 SCC 20, at para. 81; *R. v. Beaudry*, 2007 SCC 5, [2007] 1 S.C.R. 190, at para. 4).
 3. The arresting officer's subjective grounds for arrest must be justifiable from an objective viewpoint. This objective assessment is based on the totality of the circumstances known to the officer at the time of the arrest, including the dynamics of the situation, as seen from the perspective of a reasonable person with comparable knowledge, training, and experience as the arresting officer (*Storrey*, at pp. 250-51; *Latimer*, at para. 26; *Tim*, at para. 24).
 4. Evidence based on the arresting officer's training and experience should not be uncritically accepted, but neither should it be approached with "undue scepticism" (*R. v. MacKenzie*, 2013 SCC 50, [2013] 3 S.C.R. 250, at paras. 64-65). Although the analysis is conducted from the perspective of a reasonable person "standing in the shoes of the [arresting] officer", deference is not necessarily owed to their view of the circumstances because of their training or experience (*R. v. Chehil*, 2013 SCC 49, [2013] 3 S.C.R. 220, at paras. 45 and 47; *MacKenzie*, at para. 63). The arresting officer's grounds for arrest must be more than a "hunc[h] or intuition" (*Chehil*, at para. 47).
 5. In evaluating the objective grounds to arrest, courts must recognize that, "[o]ften, 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" (R. v. Golub (1997), 1997 CanLII 6316 (ON CA), 34 O.R. (3d) 743 (C.A.), at p. 750, per Doherty J.A.). Courts must also remember that "[d]etermining 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. Canary, 2018 ONCA 304, 361 C.C.C. (3d) 63, at para. 22, per Fairburn J.A. (as she then was), citing MacKenzie, at para. 73).

6. "Reasonable and probable grounds" is a higher standard than "reasonable suspicion". Reasonable suspicion requires a reasonable possibility of crime, while reasonable and probable grounds requires a reasonable probability of crime (Chehil, at para. 27; R. v. Debot, 1989 CanLII 13 (SCC), [1989] 2 S.C.R. 1140, at p. 1166). At the same time, police do not require a prima facie case for conviction before making an arrest (Storrey, at p. 251; Shepherd, at para. 23; Tim, at para. 24). Nor do the police need to establish that the offence was committed on a balance of probabilities (Mugesera v. Canada (Minister of Citizenship and Immigration), 2005 SCC 40, [2005] 2 S.C.R. 100, at para. 114; see also R. v. Henareh, 2017 BCCA 7, at para. 39 (CanLII); R. v. Loewen, 2010 ABCA 255, 490 A.R. 72, at para. 18). Instead, the reasonable and probable grounds standard requires "a reasonable belief that an individual is connected to the offence" (MacKenzie, at para. 74 (emphasis deleted); Debot, at p. 1166). A reasonable belief exists when "there is an objective basis for the belief which is based on compelling and credible information" (Mugesera, at para. 114; see also R. v. Al Askari, 2021 ABCA 204, 28 Alta. L.R. (7th) 129, at para. 25; R. v. Omeasoo, 2019 MBCA 43, [2019] 6 W.W.R. 280, at para. 30; R. v. Summers, 2019 NLCA 11, 4 C.A.N.L.R. 156, at para. 21). The police are also not required to undertake further investigation to seek exculpatory facts or to rule out possible innocent explanations for the events before making an arrest (Chehil, at para. 34; Shepherd, at para. 23; R. v. Ha, 2018 ABCA 233, 71 Alta. L.R. (6th) 46, at para. 34; R. v. MacCannell, 2014 BCCA 254, 359 B.C.A.C. 1, at paras. 44-45; R. v. Rezansoff, 2014 SKCA 80, 442 Sask. R. 1, at para. 28; E. G. Ewaschuk, Criminal Pleadings & Practice in Canada (3rd ed. (loose-leaf)), at § 5:40).
7. The police cannot rely on evidence discovered after the arrest to justify the subjective or objective grounds for arrest (R. v. Biron, 1975 CanLII 13 (SCC), [1976] 2 S.C.R. 56, at p. 72; R. v. Brayton, 2021 ABCA 316, 33 Alta. L.R. (7th) 241, at para. 43; Ha, at paras. 20-23; R. v. Montgomery, 2009 BCCA 41, 265 B.C.A.C. 284, at para. 27; Ewaschuk, at § 5:40).
8. When a police officer orders another officer to make an arrest, the police officer who directed the arrest must have had reasonable and probable grounds. It is immaterial whether the officer who makes the arrest personally had reasonable and probable grounds (Debot, at pp. 1166-67).

[Emphasis in original.]

3. An unlawful arrest is an arbitrary detention (R. v. Grant, 2009 SCC 32 at paras. 55 to 57).

- [67] In assessing the objective reasonableness of the grounds, I can include observations made after Cst. Lapierre says he formed his own subjective grounds of belief, prior to the actual arrest (*R. v. Cornwell*, 2017 BCSC 1340 at para. 29(f)).

DISCUSSION

- [68] It is clear from the ongoing surveillance conducted on March 14, 2020 at the residence at 183 Jenkins Road, and the reasonable and probable grounds Cst. Lapierre says he did reach later that day, that as of sunrise on March 14, 2020, Cst. Lapierre did not subjectively believe he had grounds to arrest Ms. Manuel for anything.
- [69] Ms. Ortloff was completely unknown to this investigation until that same morning.
- [70] That there was no plan to arrest anyone on March 14, 2020 is further exemplified by Cst. Lapierre contacting Cpl. Woon to determine if they had sufficient resources to deal with the arrests and anticipated searches, including maintaining surveillance of the residence on Jenkins Road pending a search warrant.
- [71] Cst. Friesen's evidence on September 9, 2024 also made clear that an arrest was not planned at the commencement of the team's investigation on March 14, 2020.
- [72] The constellation of matters in relation to Ms. Manuel prior to March 14, 2020 could be described as suspicious. Aside from the allegation that the "236" phone number was Ms. Manuel's, which runs contrary to failed attempts to set her up to answer it in the January 2020 "scenarios", the police arguably had less by the morning of March 14, 2020 than they had before Ms. Manuel was arrested for a curfew breach on October 11, 2019 and incarcerated until December 17, 2019.
- [73] Reasonable grounds aside, I find that Cst. Lapierre truly held a theory about Ms. Manuel long before March 14, 2020. As early as December 22, 2019, his theory was that Ms. Manuel was engaged in drug trafficking. He held his theory throughout the balance of 2019 and up to the events of March 14, 2020.
- [74] I find that, subjectively, Cst. Lapierre knew he did not have grounds for a lawful arrest prior to March 14, 2020. Accordingly, police continued surveillance up to and including that day. There was no arrest planned for that day.
- [75] Leaving aside for a moment the events of March 14, 2020, I am very troubled that Cst. Lapierre omitted to mention important exculpatory, neutral or equivocal information when testifying in direct examination.
- [76] Absent cross-examination, this Court would have been completely unaware of that information.

The "236" Phone Number

- [77] The lack of candour from Cst. Lapierre until cross-examination included Cst. Lapierre's evidence regarding the "236" phone number. To say the least, his evidence was less than disclosive until pressed in cross examination.
- [78] The CFSEU had placed a listening device inside Ms. Nadeem's car. CFSEU felt that Ms. Nadeem was a courier. They had intercepted texts and one actual conversation between Ms. Nadeem and a person with a "236" prefix. The communication was consistent with Ms. Nadeem delivering cocaine and methamphetamine to Kamloops. The text was "I will not be there but Holly will". According to Cst. Lapierre, Holly lived at 637 Brandon Avenue, the outside of which he was videotaping on December 22, 2019 (those videos were in evidence on this voir dire).
- [79] The next day, on December 23, Cst. Lapierre spoke with Cst. Emerson of CFSEU, who told him that the audio intercepted from Ms. Nadeem's Cruze vehicle the day prior captured a question to the effect of "do you know Jen or Holly" and then "one of Jen's girls should be there, her name is Holly".
- [80] This occurred at roughly noon, and suggested arrival at about 2 p.m., approximately the same time that Cst. Lapierre had observed Ms. Nadeem at the Brandon Avenue address on December 22.
- [81] A text just after 3 p.m. from Ms. Nadeem to the "236" prefix said "I met her, all good".
- [82] A month later, CFSEU advised Cst. Lapierre (January 22, 2020) that the "236" phone number "was identified" as Ms. Manuel's and that cocaine was mentioned in one communication.
- [83] To Cst. Lapierre, as of that date and via CFSEU, Ms. Manuel was identified as the person using the "236" phone number and this "put a lot of context into previous information and evidence that we gathered. But not only that, she made what I believe was another drug order for high purity cocaine and a zap phone" (July 10, 2023 transcript, p. 54, ll. 6-14). A zap phone is technology that he says is used by drug dealers to avoid detection."
- [84] With regard to CFSEU and the identification of the "236" phone number as associated to Ms. Manuel, he testified that CFSEU used an audio clip of an interview of her that his unit had sent them and did "some voice comparison". He had no detail, he was just advised.
- [85] On February 3, 2020, the "236" phone number was intercepted communicating with a "leader" of the Brothers Keepers faction in the Lower Mainland. At that time, he testified that he "believed" the communication was between that person and Ms. Manuel regarding whether she had obtained the "zap".
- [86] In direct examination, Cst. Lapierre did not mention critically important evidence with regard to his alleged belief that the "236" phone number was connected to Ms. Manuel.

- [87] In fact, as he testified in cross-examination, on January 21, 2020, the police conducted surveillance and, in particular, took strategic steps to connect Ms. Manuel with the "236" phone number.
- [88] On that date, Cst. Lapierre was part of the team observing Ms. Manuel in Salmon Arm when she reported to her probation officer. The police employed a "dropped call" scenario. This involved a police officer calling the "236" phone number, with another police officer observing Ms. Manuel undercover, at close quarters to her, to see if she responded to the call.
- [89] The first attempt was made just before 1:30 p.m. at a mall. The surveillance officer reported to Cst. Lapierre, who was the scribe, that the phone rang five to six times and went to voicemail. A second attempt was made shortly after 1:30 p.m. the same day, with the same negative result. In each case, the surveillance officer noted that Ms. Manuel did not motion to or look at her phone.
- [90] Cst. Lapierre confirmed in cross-examination that no successful "dropped call" was completed during the investigation. Though he was speaking in the passage above about the "236" phone number and how it put "a lot of context" into previous information the police had gathered, the fact of the failed "dropped call" scenario went unmentioned by him in direct examination.
- [91] This was evidence about which the Court should have been advised without cross-examination. It was exculpatory with respect to Ms. Manuel's connection with that "236" phone number.

Lower Mainland Trip

- [92] Cst. Lapierre also failed to mention, until asked in cross-examination, that active surveillance was conducted on Ms. Manuel for her trip to the Lower Mainland for medical reasons from January 31 to February 2, 2020.
- [93] The surveillance yielded nothing consistent with Ms. Manuel's alleged association with the Brothers Keepers in the Lower Mainland. A fair recounting of this exculpatory, neutral or equivocal evidence by a highly trained, highly experienced police officer was completely absent until cross-examination revealed it.
- [94] The Court should not have to rely upon matters only revealed by skilled preparation and cross-examination. The Court is entitled to candid, fair evidence at first instance from highly experienced investigators purporting to exercise the warrantless arrest of individuals.
- [95] The overt failure to mention the above matters falls squarely within the ambit of the warning of the Supreme Court of Canada in *R. v. Chehill*, 2013 SCC 49. In my view, this case is as applicable to reasonable grounds to believe as it is to reasonable suspicion. The Court stated at para. 33:

- [33] Exculpatory, neutral, or equivocal information cannot be disregarded when assessing a constellation of factors. The totality of the circumstances, including favourable and unfavourable factors, must be weighed in the course of arriving at any conclusion regarding reasonable suspicion. As Doherty J.A. found in *R. v. Golub* (1997), 1997 CanLII 6316 (ON CA), 34 O.R. (3d) 743 (C.A.), at p. 751, "[t]he officer must take into account all information available to him and is entitled to disregard only information which he has good reason to believe is unreliable". This is self-evident.
- [96] The issue that spawned the discussion at that portion of *R. v. Golub* (1997), 34 O.R. (3d) 743, 1997 CanLII 6316 (Ont. C.A.) was reasonable and probable grounds for arrest.
- [97] Paragraph 34 of Chehill goes on to clarify:
- [34] However, the obligation of the police to take all factors into account does not impose a duty to undertake further investigation to seek out exculpatory factors or rule out possible innocent explanations.
- [98] With regard to the "236" phone number and Ms. Manuel's Lower Mainland trip, this was exculpatory, neutral or equivocal evidence that the police had as a result of their investigation of Ms. Manuel. Cst. Lapierre ignored it when elucidating his grounds to this Court in direct examination.
- [99] I have further concerns about Cst. Lapierre's reliability on this matter.
- [100] Cst. Lapierre gave evidence regarding videos he took on December 22, 2019 (Exhibit 1 on this voir dire).
- [101] His evidence was that Ms. Nadeem: "reached really deep into the trunk, appeared to be lifting some sort of cover looked like she was almost reaching into the spare tire area, almost lifting that little cover" and then pulling out a reusable shopping bag (July 10, 2023 transcript, p. 41, ll. 15-19).
- [102] He elaborates shortly afterward when asked in direct examination what it meant to him at the time, and says it meant "quite a bit of effort to conceal" the shopping bag: "some effort to conceal it, in my opinion. This type of behaviour is to avoid police detection, maybe on traffic stop, especially coming from a drug courier. So, it's well hidden. There didn't seem to be a whole lot of items in the trunk". From his "vantage point, [the trunk] seemed to be fairly empty", and "with that much effort to conceal this bag" which he said was "full, bulgy on the side", "to me it was drugs" that was being transported to the residence (July 10, 2023 transcript, p. 42, ll. 1-15).

- [103] In my view, his evidence was overstated. Ms. Nadeem does reach well into the trunk on the left side, but the contents of the trunk other than the bag cannot be discerned from the video surreptitiously taken by the video camera while Cst. Lapierre remained out of sight. The suggestion that Ms. Nadeem was lifting the cover for the spare tire is not borne out by the video. Cst. Lapierre's evidence in this regard is purely speculative, designed to fit his theory of drug trafficking.
- [104] Moreover, my view of the video does not depict the bag being materially more "bulgy", or more full, when carried to or from the residence. On both occasions, there appears to be something in the bag, contrary to Cst. Lapierre's alleged belief that it was empty when Ms. Nadeem returned to put it in the front seat of the car (July 10, 2023 transcript, p. 43, ll. 14 to 21). In the video, Ms. Nadeem is swinging the bag back and forth going to and from the house, indicating no burdensome weight going either direction.
- [105] In my view, Cst. Lapierre's tilted version of the matters portrayed in the video is proffered to bolster his theory that this was a drug transaction.
- [106] It is very concerning that despite the contents of the video, Cst. Lapierre is willing to testify, and seek that this Court accept, his evidence about what the video reveals. I note Mr. Justice Baird's analysis of persistence in a state of affairs in the light of objectively contrary video observations in *R. v. Gallant*, 2023 BCSC 1786.
- [107] It must be noted that Ms. Manuel was not seen at or around 637 Brandon Avenue between her release from custody on December 17, 2019 and December 31, 2019 (July 11, 2023 transcript, p. 38, ll. 25 - 37). That included December 22 and 28. Ms. Manuel was not seen at or around that residence on January 28, 2020 when Ms. Nadeem arrived at the address with another bag.
- [108] There is no indication that Cst. Lapierre considered the absence of Ms. Manuel at the residence on the days he saw Ms. Nadeem there.
- [109] Regarding the other grounds relied upon by Cst. Lapierre, prior to March 14, 2020, as set out by the Crown:
1. There is no context to the report of Mr. Bonnell, in 2019, of Ms. Manuel producing drugs in her trailer. Cst. Lapierre acknowledged in cross-examination by Mr. Johnson that he "put very little importance on this statement (July 11, 2023 transcript, p. 100, ll. 33 to 47);
 2. The October 10, 2019 events at 183 Jenkins Road primarily involved David Tremblay, not Ms. Manuel; and
 3. The propane tank evidence was very vague, as was the source of Cst. Lapierre's knowledge of propane tanks being used as vessels to conceal drugs. The apparent weight of a propane tank was cited, but that evidence indicates little. A propane tank used for a regular purpose, like a barbeque, weighs more or less depending on how much propane is in it.

[110] All of this leads back to my conclusion that Cst. Lapierre knew he did not have grounds to arrest Ms. Manuel for anything prior to March 14, 2020. As noted, he did not even know about Ms. Ortloff until March 14, 2020.

Reliability Generally

[111] In addition to the above concerns about Cst. Lapierre's reliability, I have some additional ones.

[112] In direct examination, as far back as July 10, 2023, Cst. Lapierre spoke freely and easily about Ziplock bags. He seemed quite clear about what they were.

[113] On February 1, 2024, when he was cross-examined after the disclosure of Exhibit 3 and mention of paper bags, there was an evasive and somewhat ridiculous to-and-fro while counsel for Ms. Manuel had to tie down what a Ziploc bag was, as opposed to other brands of bags with a top that sealed (see pages 3 to 4 of the February 1, 2024 transcript).

[114] In my view, there was no need for this other than Cst. Lapierre choosing to be obstructive to the point pressed by counsel.

[115] This disposition was further revealed in Cst. Lapierre's response to a question at page 81 of the July 11, 2023 transcript (note that the "Adolf" mentioned is Cst. Friesen):

Q You detailed your grounds for arrest between 1421 and 1456, correct?

A No. I -- I can see the confusion, but, no.

Q Well, Officer, it's not confusion. You've written grounds for arrest?

A I did.

Q Going all the way back to the beginning of my cross-examination, we talked about the importance of notes and timing, correct?

A I would agree.

Q And you'd agree with me that this grounds for arrest is detailed after 1421, but before 1456?

A I see where you're going with this. I'm telling you this was taken after to display what Adolf told me, and that's the time that he was -- that's the time that I -- that he was saying --

[116] With respect, my firm impression is that this was not the only instance where Cst. Lapierre was considering "where you're going with this" in cross-examination before answering. His role, as an experienced, trained police officer, is not to seek to divine where counsel is "going" and tailor his answers to support his alleged grounds.

March 14, 2020

[117] I earlier reviewed the evidence of both Cst. Lapierre and Cst. Friesen. Cst. Friesen was a reliable, straightforward witness.

- [118] Cst. Friesen was confident that he relayed over the radio the paper or plastic entry at 12:08 p.m. in Exhibit 3, his handwritten surveillance notes.
- [119] That would have necessarily been heard by the TEU team, including Cst. Lapierre. At no time did Cst. Lapierre mention anything he overheard about paper bags in his earlier testimony.
- [120] In his September 9, 2024 testimony, Cst. Lapierre could not recall if he heard what is in Cst. Friesen's notes at 12:08 p.m. He explained that maybe Cst. Friesen said it "very fast", which is unconvincing.
- [121] Both Csts. Friesen and Lapierre discounted the role of paper bags in the trafficking and distribution of drugs. Among other reasons, paper bags do not seal, they are not transparent such that a buyer can see the product, and they are subject to moisture. The inability to seal them could result in loss of product, the inability to see through them affects the buyer and seller from seeing the product, and moisture is harmful to controlled substances.
- [122] As mentioned earlier, I accept Cst. Friesen's evidence that he conveyed observations of paper or plastic bags.
- [123] Cst. Lapierre did not hear paper. He only heard plastic. When initially asked if paper bags, as opposed to plastic bags, may matter, on February 1, 2024, he admitted that he would have had to re-evaluate his grounds (qualifying this by noting "Well, since it didn't happen " (February 1, 2024 transcript, p. 10, l. 7)).
- [124] In cross examination on September 9, 2024, he backed off a wholesale re-evaluation. He actually never really gave any particularized answer to the effect of paper, not plastic, on his subjective belief, even in re-direct examination.
- [125] When asked in re-direct examination whether, had he heard the 12:08 p.m. broadcast of Cst. Friesen from Exhibit 3 up to the point of the asterisk, it would have changed his assessment, Cst. Lapierre simply said that it would not and gave a brief explanation lacking any particulars. This is despite his testimony moments before about paper bags and drug investigations.
- [126] Quite frankly, I cannot rely upon Cst. Lapierre's evidence of his grounds from March 14, 2020.
- [127] The police do not have to investigate exculpatory explanations for their observations. But that does not exempt the police from fair consideration of what is right before their eyes before taking the important constitutional step of arresting a person without a warrant.
- [128] The constellation of events in this case demonstrate to me that, at best, Cst. Lapierre heard what he wanted to hear, saw what he wanted to see and considered only those matters that were consistent with his theory, from early in the investigation, that Ms. Manuel was a drug trafficker.

- [129] Exculpatory, neutral and equivocal information about which Cst. Lapierre was well aware was all irrelevant to his consideration of his grounds. He ignored it and failed to advise this Court about it until cross-examined.
- [130] On the constellation of Cst. Lapierre's evidence, I lack confidence in his stated belief that he had grounds for the arrest of both accused. I am suspicious of his evidence, and overall, cannot rely upon it.
- [131] I appreciate the caution that a warrantless arrest must not be subject to the rigours of the analysis required for assessing the material tendered in support of a search warrant, as discussed at para. 18 of Golub. In this case, I am also mindful that much of the exculpatory, neutral or equivocal information at hand arose well prior to March 14, 2020, and was not breaking news in the heat of the moment.
- [132] On the circumstances of this case, I am not prepared to accept that there were lawful grounds for the arrest of either accused.
- [133] Cst. Friesen did make that broadcast at 12:08 p.m. I find on all the evidence that Cst. Lapierre ignored it, since like so many other instances in this investigation, it did not fit his theory. It was more evidence that was exculpable, neutral or equivocal.
- [134] I do not accept that the grounds Cst. Lapierre alleges he had are reliable or accurate. His evidence was tailored to support his alleged grounds.
- [135] I also do not accept that any objective consideration of such unreliable, tailored evidence could constitute reasonable grounds for the warrantless arrests.
- [136] Accordingly, the arrests were arbitrary and infringed or denied the s. 9 rights of Ms. Manuel and Ms. Ortloff.

CONCLUSION

- [137] The arrests of each of Ms. Manuel and Ms. Ortloff were unlawful.

"Doyle J."

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