Date: 20260623
Docket: CR 24-01-40126
(Winnipeg Centre)
Indexed as: R. v. Okedara
Cited as: 2026 MBKB 84

# COURT OF KING'S BENCH OF MANITOBA

**B E T W E E N:**

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| HIS MAJESTY THE KING | ) | Alana Parashin<br>Kayleigh Robertson<br>for the Crown |
| - and - | ) | |
| JESSICA LYNNE INEZ GILES AND MORINKORE OLUWA ABEL OKEDARA, accused. | ) | Saul B. Simmonds, K.C.<br>Laura M. Nagy<br>Seth Greenslade Lozinski<br>for the accused,<br>Morinkore Okedara |
| | ) | Judgment Delivered:<br>June 23, 2026 |

## MONNIN J.

### INTRODUCTION

[1] The Indictment in this matter originally contained nine counts against Morinkore Oluwa Abel Okedara ("Mr. Okedara") and Jessica Lynne Inez Giles ("Ms. Giles"). On the first day of trial, the Crown stayed six of those counts, with the three remaining counts particularized in the Indictment as follows:

- Possession for the Purpose of Trafficking a Controlled Substance pursuant to s. 5(2) of the ***Controlled Drugs and Substances Act***, S.C. 1996 c. 19 ("***CDSA***") ("**Count 1**").

- Possession of Proceeds Obtained by Crime, as a result of the ***CDSA***, and pursuant to s. 354 of the ***Criminal Code***, R.S.C. 1985, c. C-46 ("***Code***") ("**Count 2**").
- Possession of a Weapon for a Purpose Dangerous to the Public Peace contrary to s. 88 of the ***Code*** ("**Count 3**").

[2] During the trial, the Crown stayed all of the remaining counts against Ms. Giles, such that the trial proceeded solely against Mr. Okedara on **Counts 1-3**.

## OVERVIEW

[3] This matter arises from events that occurred on December 19 and 20, 2021, at a residence located at 20 Drew Street in Winnipeg, Manitoba ("Drew Street").

[4] On December 19, 2021, a neighbour made a 911 call reporting a break and enter in progress at Drew Street. Without obtaining a warrant, Winnipeg Police Service ("WPS") officers attended and entered Drew Street in response to the 911 call. The WPS officers proceeded to conduct a sweep search and observed items indicative of, *inter alia*, drugs, drug-trafficking paraphernalia, and what appeared to be a firearm.

[5] The WPS officers subsequently conducted an expanded warrantless search of closed kitchen cupboards, drawers and a walk-in kitchen pantry. As a result of the expanded search, the WPS officers located additional items indicative of, *inter alia*, drugs, drug-trafficking paraphernalia, and a substantial amount of Canadian currency.

[6] Ultimately, the WPS officers seized various items located during the sweep search and the expanded search. Mr. Okedara and Ms. Giles were not present. They were later

arrested and charged. The Crown alleges that Mr. Okedara was a tenant of Drew Street and had possession of its contents.

[7] The defence challenges both the legitimacy of the 911 call reporting the break and enter and the adequacy of the WPS investigation. In that connection, the defence argues that at the time the WPS officers were responding to the break and enter call, Drew Street was the subject of an ongoing drug investigation. The Crown maintains that the WPS officers who attended Drew Street in response to the 911 call reporting the break and enter had no knowledge of the ongoing drug investigation.

### MR. OKEDARA'S *CHARTER* APPLICATION

[8] The defence submits that all of the items seized at Drew Street were obtained in violation of Mr. Okedara's right to be free from unreasonable search and seizure under s. 8 of the ***Canadian Charter of Rights and Freedoms*** ("***Charter***"). The defence further argues that all of the items seized at Drew Street should be excluded from the evidence under s. 24(2) of the ***Charter***.

[9] The Crown disputes that there was a breach of Mr. Okedara's s. 8 ***Charter*** rights. In the alternative, they submit that even if a breach occurred, all of the items seized at Drew Street should be admitted into evidence under s. 24(2) of the ***Charter***.

[10] The parties agreed that these issues should be addressed by way of a "blended" *voir dire* and a trial.

## BRIEF CONCLUSION

[11] For the reasons described in more detail below, I find that:

- Mr. Okedara's ***Charter*** application is granted, in part. In that regard, all of the items seized at Drew Street as a result of the sweep search are admitted into evidence. Conversely, all of the items seized at Drew Street as a result of the expanded search are excluded from the evidence.
- the Crown has proven beyond a reasonable doubt all the elements of an offence under **Count 1**; and,
- the Crown has not proven beyond a reasonable doubt all the elements of an offence under **Count 2** and **Count 3**.

## *THE CHARTER*, *CDSA* AND *CRIMINAL CODE* PROVISIONS

[12] The following sections of the ***Charter***, the ***CDSA*** and the ***Code*** are relevant to the issues before the court:

### *Charter*

**Search or seizure**
**8** Everyone has the right to be secure against unreasonable search or seizure.

**Exclusion of evidence bringing administration of justice into disrepute**
**24.(2)** Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

### *CDSA*

**Possession for purpose of trafficking**
**5(2)** No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III, IV or V.

### *Code*

**Possession of weapon for dangerous purpose**
**88(1)** Every person commits an offence who carries or possesses a weapon, an imitation of a weapon, a prohibited device or any ammunition or prohibited ammunition for a purpose dangerous to the public peace or for the purpose of committing an offence.

**(2)** Every person who commits an offence under subsection (1)

**(a)** is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or

**(b)** is guilty of an offence punishable on summary conviction.

. . . . .

**Possession of property obtained by crime**

**354(1)** Everyone commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from

**(a)** the commission in Canada of an offence punishable by indictment; or

**(b)** an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

## THE EVIDENCE

[13] The parties submitted on consent a Statement of Admitted Facts (Ex. No. 1), which is summarized as follows:

Continuity of Exhibits

i. Continuity of exhibits seized from Drew Street, Winnipeg, Manitoba is admitted.

Nature and Quantity of Controlled Substances

ii. The nature and quantity of the controlled substances seized from Drew Street is admitted.

iii. The drug weights contained in this statement of admitted facts are of the drugs alone, without packaging. …

iv. It is admitted that the WPS seized a total of 134.63 grams (4.8 ounces) of fentanyl and 12.35 grams (0.44 ounces) of carfentanil, mixed with various adulterants.

. . .

vi. All controlled substances were seized from the kitchen of Drew Street in the following quantities:

On the Kitchen island

i. 9.21g of purple fentanyl on a black lid used as a dish. The fentanyl was mixed with various [adulterants].

On the kitchen counter to the left of stove

i. A total of 14.22 grams in 14 clear sandwich bags each with the bottom two corners tied in knot containing purple fentanyl mixed with various [adulterants].

ii. A total of 1.82 grams in 10 clear sandwich bags each with the bottom two corners tied in knot containing purple fentanyl mixed with various [adulterants]. Each bag contained approximately 0.2 grams, or 0.1 gram in each corner knot.

In the drawer to the right of the stove

i. Two plastic sandwich bags with a total of 12.35 grams of light purple carfentanil mixed with caffeine. Each bag weighed just over 6 grams.

In the upper cupboards left of the stove

ii. Four (4) clear plastic sandwich bags with a total of 109.38g (almost 4 ounces) of dark purple fentanyl mixed with various [adulterants].

[14] While not contained in the Statement of Admitted Facts, the parties also agreed that no DNA testing or fingerprinting was conducted by the WPS with respect to any of the items seized at Drew Street.

[15] The Crown filed an additional five exhibits:

i. A DVD audio and transcript of three 911 Calls (Ex. No. 2 and No. 2A);

ii. Crown's photobook (Ex. No. 3);

iii. A photograph of Drew Street (Ex. No. 4);

iv. Lease Agreement for Drew Street ("Lease Agreement") (Ex. No. 5); and,

v. Screenshots of E-Transfers for rent payments (Ex. No. 6).

[16] The Crown also called the following five witnesses:

- **Constable Roderick Smith (''Cst. Smith'')**: A WPS officer who was the first to arrive at Drew Street on December 19, 2021. Cst. Smith attended the scene with Constable Kawa ("Cst. Kawa"). They were the primary WPS unit on scene. Cst. Smith took the photographs contained in the Crown's photobook.
- **Constable Cortney Olson (''Cst. Olson'')**: A WPS officer who attended the scene in the early morning hours of December 20, 2021. Cst. Olson attended alone and assisted the primary WPS unit.
- **Constable Andrew Sullivan (''Cst. Sullivan'')**: A WPS officer who, along with his partner Constable Whitney ("Cst. Whitney"), attended the scene in the early morning hours of December 20, 2021. Cst. Sullivan assisted the primary WPS unit in identifying suspected fentanyl and provided guidance regarding its safe handling.
- **Scott T.J. Kurz (''Mr. Kurz'')**: A civilian witness who was at all material times the owner and the landlord of Drew Street.
- **Sergeant Jeff Hunter (''Sgt. Hunter'')**: A Sergeant in the WPS Drug Enforcement Unit, who was called as an expert witness regarding, *inter alia*, trafficking fentanyl and carfentanil in Winnipeg at the street and mid-level.

[17] While subjecting the Crown's witnesses to cross-examination, the defence elected not to call any witnesses. Mr. Okedara did not testify. He is presumed innocent, and that presumption remains in effect throughout this matter. The Crown has the onus to establish Mr. Okedara's guilt beyond a reasonable doubt, in relation to **Counts 1 - 3**.

[18] Regarding Mr. Okedara's ***Charter*** application, the Crown acknowledged the following: (i) that Mr. Okedara has standing to bring the ***Charter*** application; and, (ii) that the WPS officers' entry into Drew Street and the search and the seizure were done without a warrant. Therefore, the entry, search and seizure are presumptively unreasonable, and the onus is on the Crown to rebut this presumption on a balance of probabilities.

## EVIDENCE - GENERAL OVERVIEW

[19] I pause here to comment on the issues of credibility and reliability. Credibility relates to whether a witness is telling the truth, and reliability concerns a witness's accuracy and the ability to observe and recall events. A credible witness may give unreliable evidence (see ***R. v. H.C.***, 2009 ONCA 56 at para. 41 and ***R. v. Gold***, 2021 MBQB 5, at para. 38). In that regard, the court can accept all, some, or none of a witness's testimony (see ***R. v. W.H.***, 2013 SCC 22, at para. 32 and ***Gold*** at para. 41). Included in this consideration is whether the witness's evidence harmonizes with any independent evidence that has been accepted by the court (see ***Persaud v. Manitoba***, 2022 MBKB 209, at para. 66).

[20] I found all the witnesses to be credible. As it relates to reliability, I will have more to say about certain aspects of their evidence later in my reasons. The following are my findings concerning their testimony.

### EVIDENCE OF CONSTABLE SMITH

[21] Cst. Smith has been a member of the WPS for approximately 18 years and was assigned to General Patrol at the time. His duties included, *inter alia*, responding to calls

for service and investigating crimes in progress. He was partnered with Cst. Kawa, who was a probationary officer at that time.

[22] At approximately 11:17 p.m. on December 19, 2021, a 911 call was received reporting a break and enter at Drew Street. Cst. Smith and Cst. Kawa were dispatched at approximately 11:45 p.m. and arrived at 11:57 p.m. Dispatch advised them that a person dressed entirely in black was seen entering the residence and that the occupants were believed to be away.

[23] Cst. Smith testified that based on his training and experience, WPS officers responding to break and enter calls must assume that occupants, injured persons, or suspects may still be inside. He further testified that concerns are heightened when responding to calls at night and when visibility is down.

[24] Upon his arrival at Drew Street, Cst. Smith observed a broken basement window, large enough to gain entry, with broken glass on the inside. Cst. Smith and Cst. Kawa entered Drew Street through an unlocked front door with their firearms drawn and announced their presence. Hearing no response, Cst. Smith conducted a sweep search of areas where a person could be hiding or in need of assistance. Cst. Kawa stayed inside at the front entrance area.

[25] Cst. Smith checked the bedrooms, the bathroom, behind the shower curtain, the kitchen, the living room, closets, beneath the beds, the garage and the unfinished basement. While a black Mercedes vehicle was found in the garage, Drew Street was otherwise sparsely furnished and appeared unoccupied. There was little furniture or food and there was no mail or identifying documents. No one was found inside Drew Street.

[26] During the sweep search, Cst. Smith located what he initially believed to be a firearm on the floor of the master bedroom closet (Ex. No. 3, photograph No. 1). It was later determined to be an Airsoft rifle. On the kitchen island, he observed sandwich baggies ("baggies"), a digital scale, a spoon, a hammer, playing cards, a bag of marijuana, empty beverage containers, and a gravel-like substance both in a dish and packaged in knot-tied baggies (Ex. No. 1 and Ex. No. 3, photograph Nos. 2 and 3). On a nearby kitchen counter, he observed a money counter, five cellphones, a .22 calibre cartridge, an alarm console, additional knot-tied baggies containing the same gravel-like substance, and vitamin and prescription bottles (Ex. No. 1 and Ex. No. 3, photograph Nos. 4 and 5).

[27] Based on his limited experience with drug investigations dating back to 2012, Cst. Smith believed he had located drugs and drug-trafficking paraphernalia. However, being unfamiliar with the gravel-like substance, he contacted Cst. Sullivan for assistance. Cst. Sullivan attended Drew Street and advised Cst. Smith that the gravel-like substance appeared to be "down", a potentially toxic fentanyl-related substance. Cst. Sullivan also provided guidance regarding its safe handling. Cst. Smith testified that following that discussion with Cst. Sullivan, the investigation transitioned to a drug investigation.

[28] Cst. Olson was also at the scene. Cst. Smith testified that he was directed by Cst. Olson to locate and seize all the gravel-like substance at Drew Street due to officer and public safety concerns. During cross-examination, Cst. Smith acknowledged that the scene was secured and could have been held while obtaining a warrant or telewarrant.

However, he testified that obtaining a warrant was not presented as an option and that he was not the "Boss" at the scene.

[29] Cst. Smith then conducted an expanded search of the closed kitchen cupboards, drawers, and walk-in pantry. He acknowledged that he had not looked inside the walk-in pantry during the sweep search, which he described as an oversight. During this expanded search, he located, *inter alia*, additional quantities of the gravel-like substance (Ex. No. 1) and substantial amounts of bundled and loose Canadian currency (approximately $53,000), which he believed was bundled in a manner consistent with drug trafficking (Ex. No. 3, photograph Nos. 6-11). Cst. Smith testified that he wore gloves, goggles, and a mask when he handled the suspected fentanyl. He also testified that his gloves were cracking on account of being frozen in his WPS cruiser car. Some of the items located during both the sweep search and the expanded search were seized at approximately 1:20 a.m. on December 20, 2021 (Ex. Nos. 1 and 3). Cst Smith testified that before leaving Drew Street, the WPS officers boarded up the broken basement window. No meaningful steps were taken by the WPS officers to clean or sanitize Drew Street.

[30] While on scene, Cst. Smith learned that the registered owner of the black Mercedes was Alysia [phonetic] Wiebe and that its insurance had been cancelled. In that connection, while sitting in his WPS cruiser car conducting a search on the black Mercedes, Cst. Smith was approached by Adam Malanchuk, who identified himself as a friend of the homeowner and who had asked him to do a walk-thru of Drew Street. Mr. Malanchuk handed Cst. Smith a cellphone connected to a male caller identifying

himself as "Kyro/Cairo [phonetic] Okedara." The caller questioned why the WPS officers were inside Drew Street. Cst. Smith explained that the WPS officers were responding to a reported break and enter and invited the caller to attend and identify any missing property. The caller declined to do so. Cst. Smith testified that the caller provided his date of birth as February 23, 2000, and stated that he lived at Drew Street with his girlfriend, Jessica Giles. According to Cst. Smith, the caller eventually became evasive and ceased answering questions.

[31] Cst. Smith later learned that Drew Street was owned and rented by Mr. Kurz, who provided a copy of the Lease Agreement. Mr. Kurz advised that one of his tenants was named "Okedara" and was in Calgary, Alberta for the holidays.

[32] During cross-examination, Cst. Smith acknowledged, *inter alia*, the following:

- He did not verify the identity of the caller on Mr. Malanchuk's phone or record the conversation;
- He did not inquire how long the caller had resided at Drew Street or whether he had any connection to the items seized;
- He did not photograph, *inter alia*, the broken window, broken glass, or the black Mercedes;
- He did not conduct a neighbourhood canvass, obtain surveillance footage, conduct photo line-ups, contact the registered owner of the black Mercedes, or obtain a statement from the neighbour who reported the break and enter; and,

- Several items were not seized, including the digital scale, the spoon, the hammer, the money counter, the five cellphones, the alarm console, the playing cards, the prescription and vitamin bottles, clothing near the Airsoft rifle, and various baggies.

[33] Cst. Smith stated that he was not responsible for the investigative steps at Drew Street relating to identification.

## 911 CALLS

[34] The Crown tendered into evidence three audio recordings of 911 calls (Ex. No. 2 - 2A).

### FIRST 911 CALL

[35] The first 911 call was received at 11:14:32 p.m. on December 19, 2021, and lasted approximately 4 minutes and 58 seconds. The male caller can be heard saying the following:

- He was reporting a break and enter at Drew Street. He lived at 24 Drew Street and his son had heard noises coming from the neighbouring residence.
- He and his son observed an individual dressed entirely in black, break a basement window and enter Drew Street approximately five minutes before making the 911 call.
- He did not know whether anyone was home at Drew Street, although some lights were on.

- He provided his name, address and phone number. He also confirmed that he did not go over to Drew Street because he did not want to "put himself into that."

**SECOND 911 CALL**

[36] The second 911 call was received at 1:00:07 a.m. on December 20, 2021, and lasted approximately two minutes and seven seconds. The male caller can be heard saying the following:

- That there were "cops at my house," and that they did not want to talk to him about what was going on.
- That there is a break and enter at Drew Street and they (the WPS) were "seizing some stuff in my house."
- While he lived at Drew Street, he was not there at that moment, but he saw the WPS officers on his camera and asked his friend to attend to see what was going on.
- He identified himself as "Kore Okedara," spelled his name, and provided his phone number of 587-433-3415.

**THIRD 911 CALL**

[37] The third 911 call was received at 1:03:51 a.m. on December 20, 2021, and lasted approximately 55 seconds. The male caller can be heard saying the following:

- He saw on his camera that "cops" were at Drew Street.

- That his friend attended Drew Street and was told that the WPS officers were responding to a break and enter and that the WPS officers were seizing a "bunch of my stuff."
- He had attempted to obtain information from the WPS officers regarding what was going on and that they would not speak with him.
- He stated and spelled his name as being "Kore Okedara".
- The 911 operator tells the caller that a person with the same name had called approximately one minute earlier, which the caller confirmed. The 911 operator tells the caller that the WPS officers would contact him when they had the opportunity, after which the call ended.

## **EVIDENCE OF CONSTABLE OLSON**

[38] Cst. Olson has been a member of the WPS for approximately 21 years. Although assigned to General Patrol, he was serving as Acting Street Supervisor on December 20, 2021.

[39] Cst. Olson arrived alone at Drew Street at approximately 12:05 a.m. after being dispatched to assist with a reported break and enter involving a suspect described as dressed entirely in black. He recalled that the entry to the residence appeared to have been gained through a basement window.

[40] Cst. Olson's role was limited to providing backup and assistance as required, including assisting with clearing the residence and addressing safety concerns. He recalled that Drew Street was sparsely furnished. He also recalled that Cst. Smith and Cst. Kawa had located what was believed to be a firearm in a bedroom closet, along with

suspected drugs and drug-trafficking paraphernalia on the kitchen island and counter. Cst. Olson recalled that at that point the investigation evolved into a drug investigation.

[41] Cst. Olson testified that Cst. Smith and Cst. Kawa were the primary WPS unit on scene. As a result, he neither seized any items, nor did he prepare contemporaneous notes. Also, although Cst. Olson was the Acting Street Supervisor, he testified that he had limited experience with drug investigations and therefore contacted a supervising officer. However, he could not recall the details of that discussion and had no notes relating to it.

[42] During cross-examination, Cst. Olson confirmed that he prepared a narrative report in 2024 at the Crown's request. He agreed that his narrative report contained no reference to drugs, money, fingerprinting, DNA testing, discussions regarding a warrant, or seizure decisions made for safety reasons. Cst. Olson further testified that he did not believe he had the authority to direct that a warrant be obtained. He also did not recall directing Cst. Smith or Cst. Kawa to procced with the expanded search, and he could not recall who, if anyone, gave that direction. Cst. Olson also acknowledged that, based on his prior experience as a detective, he was familiar with the warrant process and that the WPS officers could have maintained control of Drew Street while a warrant was sought. However, he testified that he neither sought a warrant, nor could he recall any discussions about obtaining one.

## **EVIDENCE OF CONSTABLE SULLIVAN**

[43] Cst. Sullivan has approximately 15 years of service with the WPS and experience in more than 100 drug investigations, including approximately 20 involving fentanyl. At

approximately 12:17 a.m. on December 20, 2021, Cst. Smith contacted him for assistance after locating the gravel-like substance. Cst. Sullivan attended Drew Street with Cst. Whitney at approximately 12:34 a.m. Upon observing the gravel-like substance on the kitchen island and counter, Cst. Sullivan believed that it was "down" and could contain fentanyl. He advised Cst. Smith and Cst. Kawa to avoid direct contact, wear protective equipment, and triple-bag any of the seized gravel-like substance due to the risks associated with fentanyl exposure. Cst. Sullivan further testified that Cst. Smith and Cst. Kawa where the primary WPS unit in charge of the scene and his role was limited to providing advice regarding the gravel-like substance and safe handling procedures. Therefore, he did not seize any items, make investigative decisions or make any contemporaneous notes.

[44] During cross-examination, Cst. Sullivan confirmed that when observing the gravel-like substance, none of the WPS officers were wearing protective equipment. He also confirmed that he prepared a narrative report in 2023 at the Crown's request. Cst. Sullivan further confirmed that no WPS officer sought a warrant while he was at Drew Street and that he was unaware of any discussions regarding obtaining one. Although he testified that WPS officers may sometimes continue searching other areas of a residence in similar circumstances, he acknowledged that the normal course would be to obtain a warrant.

## **EVIDENCE OF MR. KURZ**

[45] Mr. Kurz has owned Drew Street as a rental property for approximately eight to nine years. In 2021, he rented Drew Street to individuals he understood to be "Kore

Okedara" and "Jess Giles" pursuant to a fixed-term lease running from October 1, 2021, to September 30, 2022, at a monthly rent of $2,300. Mr. Kurz testified that he had advertised Drew Street on Kijiji and Facebook Marketplace and was contacted by a person he understood to be Mr. Okedara who expressed an interest in renting it. Mr. Kurz subsequently received landlord references, which he stated were positive.

[46] According to Mr. Kurz, he met the individuals who he understood to be Mr. Okedara and Ms. Giles on three occasions at Drew Street. The first meeting occurred approximately one week before the Lease Agreement was signed. During this first meeting Mr. Kurz showed them the residence and they discussed lease terms. Mr. Kurz recalled that this meeting lasted about 10 minutes.

[47] Mr. Kurz met with them a second time on or about September 18, 2021. They arrived in a black Mercedes and proceeded to sign the Lease Agreement on the kitchen island. Mr. Kurz understood Ms. Giles to be Mr. Okedara's girlfriend and recalled Mr. Okedara stating that he worked in online sales. Mr. Kurz recalled that this second meeting lasted about the same amount of time as the first one.

[48] The third time that Mr. Kurz met with Mr. Okedara and Ms. Giles was when they moved into Drew Street on October 1, 2021, and he provided them with the keys to the residence. Mr. Kurz testified that at that time Drew Street was essentially empty. It only had appliances, and no alarm system was installed. Mr. Kurz further testified that while he observed a U-Haul truck and saw furniture, boxes, and a television being moved into Drew Street, he acknowledged that he was not too focused on its contents. Mr. Kurz recalled that this third meeting was shorter than the two previous meetings.

[49] Mr. Kurz testified that he received an E-Transfer payment of $3,000 from Ms. Giles on November 3, 2021. He could not recall why the E-Transfer payment was greater than the monthly rent amount. On December 2, 2021, he received a further E-Transfer payment of $2,300 identified as coming from "Enzo Gotti". Although he did not know who Enzo Gotti was, he recalled that he received the E-Transfer payment shortly after communicating with Mr. Okedara regarding rent.

[50] Mr. Kurz described Mr. Okedara as a Black male, about the same height as himself, with neck tattoos, short hair, and a well-dressed appearance. He identified Mr. Okedara in court as the individual he rented Drew Street to in 2021 and added that Mr. Okedara's hair was now longer. During cross-examination, Mr. Kurz acknowledged that Mr. Okedara was the only Black male in the courtroom and that his identification was based on three brief meetings. Mr. Kurz was unable to identify Ms. Giles in the courtroom.

[51] Following the reported break and enter, Mr. Kurz was contacted by the WPS, and he provided them with a copy of the Lease Agreement. During cross-examination, Mr. Kurz confirmed that the WPS did not obtain a formal statement from him, conduct a photo line-up, or ask him to provide a detailed description of his tenants. Mr. Kurz acknowledged that he did not know whether another individual may have moved into Drew Street or whether Mr. Okedara had moved out before the break and enter. However, Mr. Kurz noted that this was not permitted under the Lease Agreement.

[52] Mr. Kurz testified that he primarily communicated by text message with the person he understood to be Mr. Okedara and he always used the same phone number: 587-433-3415. Mr. Kurz testified that shortly after the break and enter at Drew Street, he received

a text message from Mr. Okedara using that phone number. In that text message, Mr. Okedara advised Mr. Kurz that he had been in Calgary at the time and that his cousin had been staying at Drew Street. The text message further denied involvement in any illegal activity at Drew Street and apologized to Mr. Kurz for what had occured. Mr. Kurz testified that after this text exchange, he went to Drew Street to take steps to evict Mr. Okedara and Ms. Giles.

[53] During cross-examination, Mr. Kurz acknowledged that it was theoretically possible that someone else could have been using that phone number. He also testified that he did not retain the text messages or maintain notes of his dealings with Mr. Okedara and Ms. Giles. However, Mr. Kurz noted that this was never his practice as a landlord.

[54] After regaining possession of Drew Street, Mr. Kurz subsequently changed the locks, replaced the broken basement window, cleaned the residence, and took steps to put it back on the rental market. He described Drew Street as being largely vacant, with little furniture or food remaining inside. Mr. Kurz testified that the WPS advised him that they believed Drew Street had been used for drug trafficking and that any remaining property or contents could be discarded as they had already seized what they required. Mr. Kurz could not recall the WPS providing any instructions or warnings regarding cleaning or sanitizing Drew Street in relation to safety concerns associated with fentanyl.

## **EVIDENCE OF SERGEANT HUNTER**

[55] Sgt. Hunter's qualifications were not challenged. He was qualified as an expert in fentanyl and carfentanil trafficking at the street and mid-levels in Winnipeg, as well as an expert regarding inter-provincial drug-trafficking networks. Sgt. Hunter's evidence

addressed, *inter alia*, drug-trafficking practices, organizational structures, isolation methods, handling of proceeds, and the use of "tools of the trade".

[56] Sgt. Hunter has approximately 23 years of experience with the WPS. He was not involved in the investigation at Drew Street and never attended the residence. His opinions were based upon the Statement of Admitted Facts, the Crown's photobook, reports he prepared in 2023 and 2025, and the evidence he heard at trial. He testified that fentanyl and carfentanil have become the dominant substances in Winnipeg's illicit opioid market and described both as being highly toxic due to their potency and potential absorption through the skin and mucous membranes.

[57] Sgt. Hunter further testified that drug-trafficking organizations commonly employ layers of insulation and compartmentalization to shield participants from one another and from law enforcement. He described "stash houses" as locations used to store, process, and safeguard drugs, cash, and other valuables. Such locations are often rental properties containing minimal furnishings and may be equipped with alarm systems or surveillance equipment. He testified that scales, baggies, money counters, elastics, multiple cellphones, are all "tools of the trade" for drug-traffickers and drug-trafficking operations. He also testified that firearms and imitation firearms are increasingly used by drug traffickers for protection and deterrence.

[58] With respect to Drew Street, Sgt. Hunter opined that:

- The fentanyl and carfentanil packaging, including the knot-tied baggies, were consistent with street-level trafficking. The larger baggies containing

bulk quantities were consistent with mid-level trafficking and intended for redistribution rather than personal consumption.

- The money counter, the bundled cash, the five cellphones, the alarm system, the digital scale, packaging materials, and bulk quantities of drugs were consistent with a stash house supporting street to mid-level trafficking.
- As well, the drug-trafficking operation at Drew Street displayed a degree of sophistication, given the use of a rental property, the substantial quantity of Canadian currency, and the presence of "tools of the trade" commonly associated with drug trafficking. In his opinion, Drew Street was being used to facilitate a street to mid-level trafficking operation, and the bundled Canadian currency was consistent with proceeds generated by that activity.

[59] During cross-examination, defence counsel did not significantly challenge these opinions. Instead, the focus was on the suggested deficiencies with the WPS investigation, including:

- The WPS officers' decision to transition from investigating the reported break and enter to a drug investigation;
- The failure to identify or pursue any break and enter suspects;
- The failure to inventory missing or damaged property; and,
- The failure to undertake various investigative steps regarding identification of the residents at Drew Street.

### MR. OKEDARA'S *CHARTER* APPLICATION

[60] Mr. Okedara's ***Charter*** application must be addressed first, because it will affect the evidentiary record available for the trial. I will first address s. 8 of the ***Charter*** and I will then address s. 24(2) of the ***Charter***. Following which, I will then turn to **Counts 1 - 3** and determine whether the Crown has proven all of the essential elements of each offence beyond a reasonable doubt.

## POSITION OF THE PARTIES

### POSITION OF THE CROWN REGARDING S. 8 AND S. 24(2)

[61] The Crown submits that the WPS officers were lawfully responding to a break and enter at Drew Street and they were authorized and obligated to enter and conduct the sweep search. Further, while conducting the lawful sweep search, the WPS officers observed, *inter alia*, the drugs, drug-trafficking paraphernalia, and the Airsoft rifle in plain view. The Crown submits that these items were lawfully observed and seized pursuant to the plain view doctrine and/or s. 489(2) of the ***Code***.

[62] With respect to the expanded search of the closed kitchen cupboards, drawers, and walk-in pantry, the Crown submits that the WPS officers were facing an evolving and fluid situation presenting exigent circumstances. That is, the WPS officers reasonably believed that immediate action was required because of the risks associated with fentanyl exposure and that the pressing concerns of officer and public safety rendered it impracticable to obtain a warrant.

[63] In the alternative, the Crown submits that if there was a breach of s. 8 of the ***Charter***, all of the items seized at Drew Street should nevertheless be admitted into

evidence under s. 24(2) of the ***Charter***. The Crown argues that the WPS officers acted in good faith while responding to a break and enter call and facing exigent circumstances. Further, while the Crown acknowledges that Mr. Okedara had a reasonable expectation of privacy in Drew Street, it submits that his expectation was diminished. In particular, the Crown contends that Drew Street was functioning as a stash house rather than as a private dwelling, and this factor informs the analysis under s. 24(2) of the ***Charter***.

[64] Finally, the Crown submits that all of the items seized at Drew Street are real, reliable, and necessary evidence for the prosecution of serious criminal offences. Given the quantity and nature of the drugs involved, society's interest in adjudicating the matter on its merits strongly favours admission.

**POSITION OF THE DEFENCE REGARDING S. 8 AND S. 24(2)**

[65] The defence submits that the warrantless entry, search and seizure at Drew Street constituted a clear breach of s. 8 of the ***Charter*** and that the Crown has failed to rebut the presumption that they were unreasonable.

[66] The defence argues that upon arriving at Drew Street, the WPS officers observed no objective signs of urgency or an ongoing emergency requiring immediate entry. Alternatively, even if the court concludes that the WPS officers were lawfully entitled to enter Drew Street and to conduct the sweep search, any lawful authority ended once the residence had been cleared and the items in plain view had been observed. At that point, it became a drug investigation conducted without lawful authority. The defence characterizes the investigation as incomplete and selective, noting that the WPS officers failed to pursue several obvious investigative avenues. It also advances the suggestion

that the 911 call reporting the break and enter may have been connected to the broader drug investigation.

[67] The defence submits that the WPS officers merely suspected that the gravel-like substance was drugs and that such a suspicion did not justify the expanded search. In that connection, the defence disputes the presence of exigent circumstances. It submits that those concerns are unsupported by the evidence and inconsistent with the conduct of the WPS officers following the entry and the sweep search at Drew Street. Rather, Drew Street should have been secured while a warrant or telewarrant was obtained. According to the defence, there was ample time and opportunity to do so, and the failure to obtain a warrant reflects a serious disregard for constitutional requirements.

[68] Ultimately, the defence argues that the WPS officers deliberately proceeded without obtaining a warrant despite the availability of less intrusive and constitutionally compliant alternatives. The breaches were serious intrusions into a private dwelling and admitting the items seized at Drew Street into evidence would undermine public confidence in the administration of justice. Accordingly, all of the items seized at Drew Street should be excluded under s. 24(2) of the ***Charter***.

## THE LAW - S. 8 OF THE *CHARTER*

[69] The decision of ***R. v. Melo***, 2014 ONSC 1364 (CanLII), at para. 39, provides a good overview of the general principles applicable when considering s. 8 of the ***Charter*** in the context of a warrantless search:

> - Section 8 of the Charter guarantees a broad and general right to be secure from unreasonable searches and seizures, which extends at least so far as to protect the right of privacy from unjustified state intrusion. Its purpose requires that unjustified searches be prevented. It may not be reasonable in every instance

> to insist on a prior authorization order to validate governmental intrusions upon individuals' expectations of privacy. For example, exigent circumstances may require immediate action for the safety of police and/or to secure and protect evidence. However, prior authorization, where feasible, is a precondition for a valid search and seizure, and it follows that warrantless searches are ordinarily inconsistent with s.8 of the Charter, and *prima facie* unreasonable under s.8. A party seeking to justify a warrantless search bears the onus of rebutting the presumption of unreasonableness. See *Hunter et al. v. Southam Inc.*, 1984 CanLII 33 (SCC), [1984] 2 S.C.R. 145; *R. v. Feeney*, 1997 CanLII 342 (SCC), [1997] 2 S.C.R. 13, at para.52.
>
> - A warrantless search will respect s.8 if the search is authorized by law, and both the law and the manner in which the search is conducted are reasonable. See *R. v. Feeney*, *supra*, at paragraphs 46 and 5, reiterating principles from *R. v. Collins*, 1987 CanLII 84 (SCC), [1987] 1 S.C.R. 265.
>
> - There may be exigent circumstances where a warrantless entry is reasonable, (and therefore not inconsistent with s.8 of the Charter), including reasonable grounds to believe that entry is necessary to prevent the imminent loss or destruction of evidence. See *R. v. Feeney*, *supra*, at para. 52, and *R. v. Duong* (2002), 2002 BCCA 43 (CanLII), 162 C.C.C. (3d) 242, leave to appeal to S.C.C. refused, [2002] 3 S.C.R. vii.

[70] There is a strong presumption that warrantless searches of private dwellings are unreasonable and contrary to s. 8 of the ***Charter***. The Crown must demonstrate that a search or seizure was justified and lawful (***Hunter et al. v. Southam Inc.***, [1984] 2 S.C.R. 145 (S.C.C.), at pages 160-61).

[71] In that regard, a search or seizure will be reasonable where it is: (i) authorized by law; (ii) the law itself is reasonable; and (iii) the way it is conducted is reasonable (***R. v. Collins***, [1987] 1 S.C.R. 265, at para. 23). To demonstrate that the search was authorized by law, the Crown must show common law or legislative authorization (***R. v. Gomboc***, [2010] 3 S.C.R. 211, at para. 144).

[72] The parties have filed a considerable number of authorities in support of their respective positions regarding s. 8 of the ***Charter***. While I have considered all these

authorities, I will only refer to some of them when warranted. The same applies to the authorities provided by the parties regarding s. 24(2) of the ***Charter***.

## ANALYSIS AND DECISION REGARDING S. 8 OF THE *CHARTER*

[73] I will address s. 8 of the ***Charter*** along the lines of the Crown's arguments.

### THE INITIAL WARRANTLESS ENTRY INTO DREW STREET AND SWEEP SEARCH

[74] The Crown submits that the WPS officers had the legislative and common law authority to enter Drew Street and conduct the sweep search. In support of its argument that the WPS officers had legislative authority, the Crown relies on ***The Police Services Act***, C.C.S.M. c. P94.5.

[75] To determine whether the WPS officers' entry and sweep search amounted to a lawful exercise of their common law powers, the following two-pronged test that must be met ("*Waterfield/Dedman Test*"). In ***R. v. Farrah (D.)***, 2011 MBCA 49 (CanLII), states at para. 33:

> The Crown attempts to show common law authorization by relying upon the ancillary police powers doctrine in *R. v. Waterfield*, [1963] 3 All E.R. 659 (C.C.A.). To succeed, the Crown must show that (1) the search "fell within the general scope of the duties of a police officer under statute or common law", and (2) the "interference with liberty [was] necessary for the carrying out of the particular duty and [was] reasonable, having regard to the nature of the liberty interfered with and the importance of the public purpose served by the interference": *Dedman v. The Queen*, [1985] 2 S.C.R. 2, at p. 35.

[76] On the first part of the *Waterfield/Dedman Test* (whether the search fell within the general scope of police duties), the Supreme Court of Canada has recognized that the common law powers of the police include the protection of life and property. This has also been determined to include common law duties tied to safety concerns (***R. v. Godoy***, [1999] 1 S.C.R. 311 (CanLII), at para. 23).

[77] On the second part of the test (whether it was a justifiable use of powers associated with the duty), the Supreme Court of Canada in ***Godoy***, at para. 18, provides the following guidance for assessing whether police interference with individual liberties is justified:

> … the justifiability of an officer's conduct depends on a number of factors including the duty being performed, the extent to which some interference with individual liberty is necessitated in order to perform that duty, the importance of the performance of that duty to the public good, the liberty interfered with, and the nature and extent of the interference.

[78] Finally, on the issue of the sweep search, in ***Farrah***, the Manitoba Court of Appeal (in the context of a 911 call involving a gun) stated the following at para. 46:

> 46 Furthermore, this court has previously concluded, where extraordinary circumstances exist (such as a legitimate cause for concern with respect to the safety of those at the scene or of the public generally), that the police are permitted to enter the dwelling without a warrant to conduct a "sweep search" for other persons (see *Tereck* at paras. 3, 12). As was stated by Monnin J.A. in *Tereck*, to do otherwise "would have been a dereliction of their duty" (at para. 12). In *Tereck*, as in this case, the principal reason for entry into the dwelling was not to effect an arrest (although one did ultimately occur), it was to address a real and urgent concern surrounding public and police safety.

(Also see ***R. v. Dreysko***, 1990 ABCA 309, at paras. 4-5)

[79] ***Godoy*** is the touchstone case regarding warrantless police entry when responding to 911 calls. While the facts are different than in the present matter, it is useful to review it. In ***Godoy***, police responded to a 911 hang-up call from a potential female victim. Upon arrival, police were met by a male at the door who refused them entry and informed the police that there was no problem. The police then forced their way in and located the injured complainant inside. The Supreme Court of Canada cautioned that warrantless intrusion in response to a 911 call is not unfettered. However, applying the

*Waterfield/Dedman Test*, the Supreme Court of Canada found that in the circumstances, the warrantless entry was justified and lawful, relying first upon the common law doctrine (see ***R. v. Buors***, 2004 MBQB 249 and ***R. v. Alexson (T.L.)***, 2015 MBCA 5). Further, the Supreme Court of Canada in ***Godoy*** also relied on legislative authority that was enshrined in ***The Police Services Act***, R.S.O. 1990, c. P.15 (Ontario), as it relates to the duty to preserve the peace, preventing crime and assisting victims. I note that s. 25 of ***The Police Services Act***, C.C.S.M. c. P94.5, contains the same or similar duties.

[80] In my view, the rationale articulated in ***Godoy*** and ***Farrah*** applies to the present matter. I accept Cst. Smith's evidence that WPS officers responding to break and enter calls must assume that suspects, injured persons, or occupants may still be inside, and concerns are heightened during calls at night when visibility is reduced. I further accept his evidence that WPS officers are trained in such circumstances to enter a place or residence, announce their presence, and clear areas where a person could be hiding or in need of assistance.

[81] I also accept that Cst. Smith and Cst. Kawa were dispatched in response to a 911 call reporting that a person dressed entirely in black had broken into Drew Street and that the residents were believed to be away. This is consistent with the unfolding of events as set out in the 911 call reporting the break and enter and the evidence of Cst. Olson.

[82] I further accept Cst. Smith's evidence that upon arrival at Drew Street, he observed a broken basement window, which was large enough to gain entry, with broken glass inside. There is no basis to reject this evidence. Nor is there any basis to reject

Cst. Smith's evidence that he and Cst. Kawa then entered Drew Street through the unlocked front door, announced their presence, and conducted the sweep search in accordance with their training. I also accept Cst. Smith's evidence that it is not uncommon for suspects to exit through a door after gaining entry, leaving a residence or place unsecured.

[83] I do not accept the defence's suggestion that the 911 call was orchestrated or otherwise illegitimate. There is no evidence to support that theory. Nor do I accept that the WPS officers should have concluded, prior to entering, that no ongoing risk or emergency existed and therefore should not have entered Drew Street and proceed with the sweep search. In the circumstances, the WPS officers could not have reasonably discharged their duties to protect life, preserve property, and ensure public safety without first satisfying themselves that no suspect, victim, or other person remained inside Drew Street. Indeed, there is no basis to suggest that the entry and the sweep search at Drew Street was motivated for any purpose other than a justified response to a call reporting the break and enter.

[84] Considering the totality of the evidence, I am satisfied that the WPS officers' warrantless entry into Drew Street, and the subsequent sweep search, were justified and lawful. Accordingly, I find no breach of s. 8 of the ***Charter*** arising from the entry or the sweep search at Drew Street.

**THE PLAIN VIEW DOCTRINE**

[85] The plain view doctrine applies where police officers are lawfully present in a location and evidence of an offence becomes immediately apparent. However, while the

plain view doctrine confers seizure power, it does not grant a search power, nor does it permit an exploratory search to find other evidence of other crimes (see ***R. v. Jones***, 2011 ONCA 632, at para. 56 and ***R. v. Frieburg***, 2013 MBCA 40, at para. 63).

[86] In the present matter, the uncontroverted evidence is that the items on the floor in the bedroom closet, on the kitchen island and counter were plainly visible and were observed without any intrusion into concealed areas. Among the items observed were, *inter alia*, the Airsoft rifle, a money counter, five cellphones, a digital scale, a spoon, a hammer, a .22 cartridge, an alarm console and numerous knot-tied baggies and a black dish (both containing the gravel-like substance). I also accept Cst. Smith's evidence that when he first located the Airsoft rifle, he believed it to be a firearm.

[87] Although Cst. Smith had not previously encountered the gravel-like substance, I accept his evidence that he had some prior experience with drug investigations and, that based on that prior experience, he recognized the items in plain view as drugs and drug-trafficking paraphernalia.

[88] Therefore, I find that while justifiably and lawfully inside Drew Street and conducting the sweep search, the WPS officers observed items in plain view and seized some of those items, namely:

- The Airsoft rifle located on the closet floor of the master bedroom (Ex. No. 3, photograph 1);
- The 9.21 grams of purple fentanyl on a black lid used as a dish (Ex. No. 1 and Ex. No. 3, photograph 2);

- The 14.22 grams of purple fentanyl in 14 baggies located on the kitchen counter to the left of the stove (Ex. No. 1 and Ex. No. 3, photograph 4); and,
- The 1.82 grams of purple fentanyl in 10 baggies also located on the kitchen counter to the left of the stove (Ex. No. 1 and Ex. No. 3, photograph 4).

[89] Alternatively, if I am wrong about my conclusion regarding the plain view doctrine, the seizure of these items was also authorized pursuant to s. 489(2) of the ***Code***. In fear of belabouring the point, I find that Cst. Smith and Cst. Kawa were justifiably and lawfully inside Drew Street and conducting the sweep search. I also accept Cst. Smith's evidence that he had some experience in drug investigations and that when he observed these items in plain view, he had reasonable grounds to believe that they would provide evidence with respect to an offence (see ***R. v. Warren***, 2017 MBCA 106 and ***Frieburg***, at para. 67).

[90] Accordingly, I find that the location and seizure of the items as a result of the sweep search did not violate Mr. Okedara's rights under s. 8 of the ***Charter***.

**EXIGENT CIRCUMSTANCES JUSTIFYING THE EXPANDED SEARCH**

[91] In support of its position, the Crown relies on both the common law and s. 11(7) of the ***CDSA***.

[92] In that regard, exigent circumstances require true urgency, making it impracticable to obtain judicial authorization. Further, exigent circumstances denote urgency, not merely convenience, propitiousness or economy. In addition, generalized or speculative concerns are insufficient (see ***R. v. Campbell***, 2024 SCC 42, at paras. 112-14 and

***R. v. Stairs***, 2022 SCC 11, at paras. 85 and 114, and ***R. v. Paterson***, 2017 SCC 15 (CanLII), at para. 33).

[93] Conversely, Canadian courts have recognized the realities confronting police officers responding to unfolding and unpredictable situations requiring quick decisions (see ***Godoy***, at para. 22; ***R. v. Cornell***, 2010 SCC 31, at paras. 23–24 and ***Alexson (T.L.)***, at para. 20).

[94] The leading decision with respect to the exigent circumstances provisions of s. 11(7) of the ***CDSA*** is ***Paterson***. Beginning at paragraph 33, the Supreme Court of Canada stated that exigent circumstances must be more than " … merely convenience, propitiousness or economy, but rather *urgency*, arising from circumstances calling for immediate police action to preserve evidence, officer safety or public safety." The court went on to say at para. 34:

> [34] Even where exigent circumstances are present, however, they are not, on their own, sufficient to justify a warrantless search of a residence under s. 11(7). Those circumstances must render it "impracticable" to obtain a warrant. …

[95] And at paras. 36 and 37:

> [36] … "impracticability" suggests on balance a more stringent standard, requiring that it be impossible in practice or unmanageable to obtain a warrant. … "impracticable" within the meaning of s. 11(7) contemplates that the exigent nature of the circumstances are such that taking time to obtain a warrant would seriously undermine the objective of police action — whether it be preserving evidence, officer safety or public safety.
>
> [37] In sum, I conclude that, in order for a warrantless entry to satisfy s. 11(7), the Crown must show that the entry was compelled by urgency, calling for immediate police action to preserve evidence, officer safety or public safety. Further, this urgency must be shown to have been such that taking the time to obtain a warrant would pose serious risk to those imperatives.

[96] Here, the Crown bears the burden of establishing objectively probable and reasonable grounds demonstrating both an immediate need to act in order to ensure officer or public safety and that obtaining a warrant was impracticable to the point of undermining those stated objectives. In my view, the authorities relied upon by the Crown and the evidence does not support that position.

[97] This matter is distinguishable from the situation in the ***Stairs*** decision. In that matter, a woman with fresh facial injuries emerged from the basement as the accused barricaded himself in a laundry room. The police arrested and handcuffed the accused in the basement laundry room and then conducted a sweep search of the adjacent basement living room and saw methamphetamine in plain view.

[98] I also draw the same conclusion with the ***Campbell*** decision. There, the police accessed a cellphone without a warrant in order to intercept a fentanyl transaction. The harm to the public was imminent as there was a narrow window of opportunity for police to prevent what they reasonably believed was the sale of a significant quantity of drugs containing fentanyl. If the police failed, they believed it could well lead to deaths in the community. It was deemed to be a "now-or-never situation".

[99] Finally, I find that the Crown's reliance on ***Alexson (T.L.)*** is also distinguishable. In ***Alexson (T.L.)***, the police responded to a 911 hang-up call and encountered the accused, who appeared intoxicated and was yelling at a woman and a child. The accused resisted police efforts to remove him from the residence for the safety of the woman and child and he ultimately kicked an officer with a steel-toed boot.

[100] I do not dispute that fentanyl and carfentanil can present a potential health and safety risk or that WPS officers encountering such substances must exercise caution. However, the existence of a potential hazard does not, in itself, create exigent circumstances or render obtaining a warrant impracticable.

[101] As it relates to Drew Street, by the time the expanded search was undertaken, the circumstances that initially justified the WPS officers' entry and the sweep search had all but ceased. Drew Street had been cleared and secured. There were no suspects, residents, or injured persons inside. There was no active pursuit underway, and at some point, there were at least five WPS officers present at the scene. This is further supported by Cst. Smith's evidence where he testified that he had spoken to someone who he believed to be the homeowner and who had declined to attend to Drew Street. In these circumstances, there was no realistic risk that a third party would enter Drew Street and be exposed to the suspected fentanyl before a warrant could be obtained.

[102] In sum, this was not a rapidly evolving or fluid situation requiring the WPS officers to make split-second decisions in uncertain circumstances. Rather, there is little evidence to suggest that the WPS officers could not have preserved the *status quo* while seeking a warrant. At most, the evidence establishes that doing so would have caused some delay. The question, however, is not convenience but whether the circumstances were sufficiently urgent so that a warrant could not reasonably be obtained as it would be impossible or unmanageable to do so. On the evidence before me, they were not.

[103] I find it significant that the safety rationale advanced at trial finds little support in the WPS officers' contemporaneous notes. Indeed, none of their notes, to the extent

there are any, contain any meaningful reference to concerns about imminent fentanyl exposure, contamination risks, or urgent officer or public safety concerns requiring immediate action without a warrant. While not determinative, that omission is notable given the central role that those concerns now play as the justification for the expanded search.

[104] In addition, Cst. Sullivan's evidence was that when he attended the scene and determined that the gravel-like substance was likely fentanyl, none of the WPS officers were wearing protective equipment. In that regard, Cst. Smith's evidence was that the protective equipment that he eventually did use was limited to goggles, a covid mask and plastic gloves (which were breaking). I also note that there was no evidence as to whether Cst. Kawa used protective equipment. Overall, this is inconsistent with the asserted level of risk and the argument that the scene presented immediate danger to the WPS officers.

[105] I also find it significant that Cst. Olson acknowledged that the residence could have been secured while a warrant was sought. Moreover, Cst. Sullivan agreed that the normal course in circumstances such as this would be to obtain a warrant before conducting further searches. As well, while Cst. Smith testified that Cst. Olson directed him to proceed with the expanded search, Cst. Olson testified that he did not recall doing so. I find it equally significant that on the one hand, Cst. Smith testified that obtaining a warrant was not presented as an option and that he was not the "Boss" at the scene. While on the other hand, Cst. Sullivan and Cst. Olson testified that Cst. Smith and Cst. Kawa were the primary WPS unit in charge of the scene. Not only are these

concessions difficult to reconcile with the Crown's submission that obtaining a warrant was impracticable, but they also strongly suggest that obtaining a warrant received little, if any, consideration.

[106] The Crown's reliance on public safety concerns is further undermined by the way the scene was ultimately handled. After the items were seized, the WPS officers boarded up the broken window and departed. No meaningful steps were taken by the WPS officers to otherwise clean or sanitize Drew Street. Although Mr. Kurz was advised that the WPS believed that Drew Street had been used for drug trafficking, he received no instructions or warnings regarding contamination, cleanup, or any ongoing danger associated with fentanyl. If the circumstances truly presented the immediate and pressing public safety concerns being advanced, one would reasonably expect some evidence of corresponding precautionary measures. There was none.

[107] Accordingly, I find that the expanded search and seizure of the following items were unreasonable and violated Mr. Okedara's rights under s. 8 of the ***Charter***:

- The bundled and loose Canadian currency located in the walk-in pantry and closed cupboards and drawers (Ex. No. 3, photographs 8-11);
- The 12.35 grams of light purple carfentanil in two baggies located in the drawer to the right of the stove (Ex. No. 1); and,
- The 109.38 grams of dark purple fentanyl in four clear bags located in the upper cupboards to the left of the stove (Ex. No. 1).

**REQUEST TO EXCLUDE EVIDENCE - S. 24(2) OF THE *CHARTER***

[108] I must now determine whether, pursuant to s. 24(2) of the ***Charter***, the items seized as a result of the expanded search should be excluded from the evidence.

## THE LAW: S. 24(2) OF THE *CHARTER*

[109] The decision in ***Melo*** also provides, at para. 40, a good overview of the general principles applicable when addressing s. 24(2) of the ***Charter***:

. . .

> • … more than a violation of a Charter right is necessary before such evidence will be excluded. The evidence must not only have been obtained in a manner that infringed or denied a right or freedom guaranteed by the Charter, but it also must be established that the admission of the evidence "would bring the administration of justice into disrepute". See R. *v. Genest* (1989), 1989 CanLII 109 (SCC), 45 C.C.C. (3d) 385 (S.C.C.), at p.401.
>
> • The person seeking to exclude the evidence bears the burden of persuading the court, on a balance of probabilities, that admission of the evidence could bring the administration of justice into disrepute in the eyes of a reasonable person, "dispassionate and fully appraised of the circumstances of the case". See *R v. Simmons* (1988), 1988 CanLII 12 (SCC), 45 C.C.C. (3d) 296 (S.C.C.), at p.323.
>
> • When faced with an application for exclusion of evidence under s.24(2) of the Charter, a court must assess and balance the effect of admitting the evidence on society's confidence in the justice system. The subsection is not aimed at punishing the police or providing compensation to the accused. Rather, its focus is on the "broad impact of admission of the evidence on the long-term repute of the justice system". See *R. v. Grant*, 2009 SCC 32 (CanLII), [2009] 2 S.C.R. 353.
>
> • Whether the admission of evidence obtained in breach of the *Charter* would bring the administration of justice into disrepute engages three avenues of inquiry, each rooted in the public interests engaged by s.24(2), viewed in a long-term, forward-looking and societal perspective. In particular, when faced with an application for exclusion pursuant to s.24(2) of the Charter, a court must assess and balance the effect of admitting the evidence on society's confidence in the justice system having regard to the following:
>
> - First, the seriousness of the Charter-infringing state conduct that led to the discovery of evidence, …
> - Second, the extent to which the Charter breach undermined the protected interests of the accused, …
> - Third, society's interest in the adjudication of the case on its merits. …

> The three-pronged inquiry is intended to flexible, and there is no precise rule as to how the balance of these factors is to be struck.
>
> See *R. v. Collins*, *supra*, at para.31; *R v. Genest, supra*, at p.87; *R v. Askov*, 1990 CanLII 45 (SCC), [1990] 2 S.C.R. 1199, at pp. 1219-1220; *R v. Kokesch*, 1990 CanLII 55 (SCC), [1990] 3 S.C.R. 3, at pp.32-33; *R. v. Silveira*, *supra*; and *R. v. Grant, supra*, at para. 71.

(Also See ***R. v. Tim***, 2022 SCC 12).

**FIRST LINE OF INQUIRY: SERIOUSNESS OF THE *CHARTER*-INFRINGING STATE CONDUCT**

[110] The first line of inquiry examines the seriousness of the ***Charter***-infringing state conduct and asks whether the conduct is of the nature which the court should dissociate itself to preserve public confidence in the rule of law and its processes. This analysis is not directed at punishing the police, but rather at assessing the degree of culpability reflected in the breach. Conduct that is willful, reckless, or represents a significant departure from ***Charter*** standards weighs strongly in favour of exclusion. Conversely, technical, inadvertent, or understandable errors weigh less strongly in favour of exclusion (see ***R. v. Grant***, [2009] 2 S.C.R., at para. 72 and ***Tim***, at para. 82).

[111] I will first address the Crown's argument that the WPS officers acted in good faith while responding to what it characterizes as a fluid and evolving situation engaging exigent circumstances. I will then address the Crown's submission that the expanded search was relatively confined and limited to areas immediately adjacent to where the other items were found in plain view.

**GOOD FAITH**

[112] The Supreme Court of Canada has emphasized that the absence of bad faith does not itself establish good faith for the purposes of s. 24(2) of the ***Charter***. Further, good faith cannot excuse clear departures from well-established constitutional standards (see ***Tim***, at para. 85). In the present matter, the seriousness of the ***Charter***-infringing conduct is aggravated by the fact that no exigent circumstances existed. Nor does the present matter involve inexperienced WPS officers unfamiliar with the warrant process. Here, save for Cst. Kawa, who did not testify, the other WPS officers involved had between 15 and 21 years of policing experience and were all, or should be, well informed regarding the need to obtain a warrant.

[113] In addition, I find that the evidence establishes that a warrant or telewarrant could have been sought by the WPS officers without undermining the stated objectives of officer and public safety. However, no warrant was obtained, and the evidence suggests that obtaining a warrant was never meaningfully considered. Therefore, I find that the decision to proceed with the expanded search without obtaining a warrant reflects a reckless and marked disregard of a ***Charter*** requirement.

**THE EXPANDED SEARCH WAS CONFINED AND LIMITED**

[114] I am not persuaded by the Crown's submission that the limited scope of the expanded search materially reduces the seriousness of the breach. It bears repeating that by that stage, the WPS officers had already completed the sweep search and had secured and assumed control of the scene. The WPS officers had both the time and practical ability to seek a warrant but proceeded with the expanded search. In these

circumstances, the breach cannot be characterized as technical, fleeting, or inadvertent. Rather, it represents a significant departure from the well-established constitutional requirement that searches of a private dwelling be authorized by a warrant absent lawful justification, which did not exist here.

[115] Accordingly, the first line of inquiry weighs strongly in favour of exclusion.

### SECOND LINE OF INQUIRY: THE IMPACT OF THE BREACH ON MR. OKEDARA'S *CHARTER* RIGHTS

[116] The second line of inquiry examines the impact of the breach on the ***Charter***-protected rights. The more serious the intrusion, the greater the risk that admission of the evidence would undermine public confidence in the meaningful protection of ***Charter*** rights (see ***Grant***, at para. 76 and ***Tim***, at para. 90).

[117] The Crown advances two principal arguments. First, that Mr. Okedara had a diminished expectation of privacy because Drew Street was being used as a stash house. Second, despite this diminished expectation of privacy, the expanded search was conducted in a limited and focused manner that was consistent with the search of a private dwelling therefore rendering the intrusion less serious. I will address these in turn.

#### DIMINISHED EXPECTATIONS OF PRIVACY

[118] It has been consistently recognized that a private dwelling attracts the highest expectation of privacy under s. 8 of the ***Charter***. In the present matter, the impugned search and seizure involved opening closed cupboards, drawers, and a walk-in pantry within a private dwelling. These were concealed areas requiring deliberate physical

intrusion by the WPS officers (see ***R. v. Feeney***, [1997] 2 S.C.R. 13, at paras. 43 and 77 and ***R. v. Silveira***, [1995] 2 S.C.R. 297, at paras. 41 and 46).

[119] The Crown relies on ***R. v. Nguyen***, 2011 ONCA 465 and ***R. v. Shin***, 2015 ONCA 189 at para. 68, in support of its position that a private dwelling used as a stash house attracts a reduced expectation of privacy.

[120] In ***Nguyen***, the trial judge struck down a search warrant obtained by the police on the basis that it violated the respondent's s. 8 ***Charter*** rights. The evidence was excluded under s. 24(2) of the ***Charter***. The Court of Appeal set aside the lower court's decision on the basis that the trial judge misapplied the legal principles for reviewing a search warrant and concluded that there was no violation of s. 8 of the ***Charter***. The Court of Appeal went on to say that even if it had found a violation of s. 8 of the ***Charter***, it would have admitted the evidence under s. 24(2). In that regard, the impugned police conduct was on the lower end of the scale and coupled with the accused's reduced expectation of privacy, the exclusion of the evidence would have severely impacted society's interest in having the matter heard on the merits.

[121] In ***Shin***, the matter dealt with the police staying inside an apartment for a short while longer than authorized. The Court of Appeal affirmed the lower court's decision on all three of the ***Grant*** lines of inquiry. Under the second line of inquiry, the Court of Appeal determined that the breach had a reduced impact on the accused's ***Charter*** rights on the basis that the apartment was used as a stash house.

[122] The Supreme Court of Canada has adopted a liberal approach to the protection of privacy and stressed that s. 8 of the ***Charter*** still protects those who possess a diminished

or qualified expectation of privacy (see ***R. v. Buhay***, 2003 SCC 30, at para. 22). In the present matter, I accept that Drew Street appeared largely uninhabited and that the evidence supports the conclusion that it was being used as a stash house. This finding is supported by the testimony of the WPS officers, the Crown's photobook (Ex. No. 3) and the evidence of Sgt. Hunter, which I accept. I also note that Sgt. Hunter's opinions in that regard were essentially unchallenged by the defence.

[123] However, ***Nguyen*** and ***Shin*** carry some points of distinction. First, in both of those cases, the police obtained prior judicial authorization, and the ***Charter*** concerns arose from the way the warrant was obtained (***Nguyen***) or how it was executed (***Shin***). Further, in ***Nguyen***, the Court of Appeal determined that there was no breach of s. 8 of the ***Charter***. In ***Shin***, the Court of Appeal found that the police had lawfully been inside the apartment and had simply stayed a short while longer than authorized by the warrant. Significantly, the Court of Appeal also found that during this overstay by the police, they gained no special or private information. The facts in this matter are far different.

**THE EXPANDED SEARCH WAS LIMITED**

[124] I am unpersuaded by the Crown's submission that the limited focus or scope of the expanded search reduces the seriousness of the intrusion. The intrusion was not lessened by the fact that the expanded search was confined to specific locations. Rather, it was directed at, essentially, the remaining areas of the residence that had not already been searched during the sweep search. In that sense, the expanded search chiefly targeted the very spaces where Mr. Okedara's remaining privacy interests were at their highest.

**DISCOVERABILITY**

[125] Finally, while not contained in its brief, the Crown submitted that the items seized during the expanded search would inevitably have been discovered because the WPS officers had sufficient grounds to obtain a warrant. While discoverability may, in some circumstances, lessen the impact of a ***Charter*** breach, it may also highlight the availability of lawful investigative alternatives and thereby aggravate the state conduct (see ***R. v. Bains***, 2014 BCCA 43, at para. 51 and ***R. v. Côté***, 2011 SCC 46, at paras. 70-72). Having regard to my findings under the first line of inquiry, I find that the present matter falls into the latter category.

[126] Taking the foregoing into account, I find that the second line of inquiry moderately favours exclusion.

**THIRD LINE OF INQUIRY: SOCIETY'S INTEREST IN THE ADJUDICATION OF THE CASE ON THE MERITS**

[127] The third line of inquiry examines society's interest in the adjudication of the case on its merits. This inquiry focuses primarily on the reliability of the evidence and its importance to the prosecution (see ***Grant***, at para. 79 and ***Tim***, at para. 96).

[128] The Crown argues that the items seized as a result of the expanded search are real, reliable, and necessary evidence. In that connection, the fentanyl, carfentanil and Canadian currency, existed independent of any compelled participation by Mr. Okedara (see ***Feeney***, at paras. 62-64).

[129] Further, the Crown submits that the items seized on account of the expanded search are highly probative evidence and central to its prosecution of serious offences. It also highlights that the Supreme Court of Canada has held that fentanyl has had

devastating consequences for Canadian communities and has properly been described as "public enemy number one" (see ***R. v. Parranto***, 2021 SCC 46, at paras. 93-95). Therefore, society has a strong interest in adjudicating allegations of fentanyl trafficking on their merits.

[130] In conclusion, given the reliability of the items seized during the expanded search and the seriousness of the offences, the third line of inquiry strongly favours admission.

**THE FINAL BALANCING**

[131] The final stage of the analysis requires balancing the three ***Grant*** lines of inquiry to determine whether admitting or excluding the evidence would better protect the long-term repute of the administration of justice. This balancing involves a qualitative exercise that is not capable of mathematical precision (see ***Grant***, at paras. 86 and 140 and ***Tim***, at para. 98).

[132] The first line of inquiry weighs strongly in favour of exclusion. These were experienced WPS officers who expanded the lawful entry and sweep search into a warrantless search of concealed areas in the absence of exigent circumstances and despite having both the time and practical ability to obtain a warrant. This conduct reflects a reckless and marked disregard for a constitutional requirement.

[133] The second line of inquiry also favours exclusion, although less strongly than under the first line. Drew Street bore many of the hallmarks of a stash house and therefore attracted a reduced expectation of privacy. However, the expanded search was nevertheless conducted in the absence of exigent circumstances and in the absence of any evidence to support the suggestion that obtaining a warrant would have undermined

the stated objectives of officer and public safety. Also, unlike the authorities relied upon by the Crown, no prior judicial authorization was obtained and there is little evidence that obtaining a warrant was meaningfully considered. Considering all of the circumstances, I would characterize the breaches here as having a moderate impact on Mr. Okedara's ***Charter***-protected interests.

[134] The third line of inquiry strongly favours admission. The items seized during the expanded search are reliable, highly probative evidence regarding serious drug-trafficking offences. Society's interest in adjudicating the case on its merits therefore strongly weighs in favour of admission.

[135] Taking all of the foregoing into account, I find that admitting the items seized as a result of the expanded search into evidence would risk signaling that police may dispense with the constitutional requirement to obtain a warrant based on speculative or unsupported claims of exigency, or on the belief that a warrant would likely have been obtained after the fact. Accepting such conduct would, in my view, undermine the purpose of s. 8 of the ***Charter*** and diminish the importance of the constitutional safeguards it enshrines. In such circumstances, it would send a message that compliance with ***Charter*** requirements is a matter of convenience rather than a fundamental obligation.

[136] Such a result would be contrary to the long-term repute of the administration of justice. Accordingly, after balancing all three ***Grant*** lines of inquiry, I conclude that the admission of the evidence obtained as a result of the expanded search should be excluded under s. 24(2) of the ***Charter***.

## THE CHARGES AGAINST MR. OKEDARA

[137] I will first address **Count 2**. I will then address **Count 1** and **Count 3**.

### COUNT NO. 2 - POSSESSION OF PROCEEDS OBTAINED BY CRIME

[138] As noted above, I have determined that the items seized as a result of the expanded search are excluded from the evidence under s. 24(2) of the ***Charter***. Consequently, the Canadian currency seized at Drew Street is excluded. While the Crown submits in its brief that a large stack of Canadian currency was found in plain view during the sweep search, that is not supported by Cst. Smith's testimony or the Crown's photobook. Therefore, I find that the Crown has not proven all the elements of this offence beyond a reasonable doubt. Mr. Okedara is therefore acquitted on **Count 2**.

[139] I will now deal with the charges contained in **Count 1** and **Count 3**. Both counts share two common and essential elements (identity and possession). The Crown must establish beyond a reasonable doubt that Mr. Okedara is the individual connected to Drew Street and that he possessed the contents observed inside the residence. Notably, the items seized as a result of the sweep search (the fentanyl in knot-tied baggies and the fentanyl found in the black dish), the drug-trafficking paraphernalia and the Airsoft rifle. I will first address the elements of identity and possession. I will proceed to consider the remaining elements of **Count 1** and **Count 3**.

### POSITION OF THE CROWN - IDENTIFICATION AND POSSESSION

[140] The Crown submits that the evidence establishes that Mr. Okedara was the occupant of Drew Street and that he was in possession of its contents. In support of that

position, it relies on the Lease Agreement, Mr. Kunz's evidence that he rented Drew Street to Mr. Okedara and his in-court identification of Mr. Okedara.

[141] The Crown also relies on the 911 calls made while police were inside the residence and it submits that the timing and content of those 911 calls support the inference that the caller was Mr. Okedara and that he exercised knowledge of and control over Drew Street and its contents at the material time.

[142] It further submits that there is no evidentiary foundation for the suggestion that another person had assumed control of Drew Street or possession of its contents. Although Mr. Okedara was not present when the items were located and seized, the Crown submits that possession has been established through circumstantial evidence supporting a finding of constructive or joint possession.

[143] In that connection, the Crown relies on Sgt. Hunter's evidence concerning the condition and contents of Drew Street, including the quantity of fentanyl, the packaging materials, the digital scale, the money counter, the cellular telephones, the alarm console and the Airsoft rifle. The Crown submits that this evidence is consistent with a stash house used in a drug-trafficking operation and it supports the inference that anyone residing at and exercising control over Drew Street would have been aware of its contents and their purpose.

[144] With respect to **Count 3**, the Crown submits that the Airsoft rifle constituted a "weapon" within the meaning of s. 88 of the ***Code***. It relies, in part, on Sgt. Hunter's evidence that imitation firearms are commonly used in drug-trafficking operations for protection and deterrence.

[145] Finally, the Crown acknowledges that Mr. Okedara was under no obligation to testify and that no adverse inference may be drawn from his decision not to do so. It submits, however, that its circumstantial case remains uncontradicted by any other evidence before the court.

**POSITION OF THE DEFENCE - IDENTIFICATION AND POSSESSION**

[146] The defence argues that the Crown's case rests on weak identification evidence, speculative inferences, and an inadequate investigation that failed to establish who was residing at Drew Street, and who possessed its contents at the material time.

[147] Also, the defence takes issue with Mr. Kurz's in-court identification of Mr. Okedara. It submits that Mr. Kurz's interactions with his tenant were brief and that his description amounted to little more than a Black male with neck tattoos and similar physical characteristics. Given that Mr. Okedara was the only Black male in the courtroom, the defence submits that Mr. Kurz's identification is inherently unreliable and should be afforded no weight.

[148] The defence also submits that the WPS officers conducted no meaningful identification investigation and that no meaningful effort was made to determine who was residing at Drew Street. The defence notes that two individuals were named in the Lease Agreement and argues that the Crown failed to adequately investigate or address the possible involvement of Ms. Giles or other people with access to Drew Street and were otherwise responsible for the residence and its contents.

[149] The defence argues that the Crown has failed to establish possession beyond a reasonable doubt. It emphasized that Mr. Okedara was never observed at Drew Street,

that no fingerprint or DNA evidence linked him to the drugs, drug-trafficking paraphernalia or the Airsoft rifle, and that there is no direct evidence that he exercised control over Drew Street or had possession of its contents.

[150] The defence further submits that tenancy or occupancy alone cannot establish possession. Therefore, even if Mr. Okedara was connected to Drew Street, it does not establish beyond a reasonable doubt that he knew of or exercised control over Drew Street and its contents. In sum, the defence submits that alternative inferences consistent with innocence remain available on the evidence.

[151] Alternatively, the defence also relies on what it suggests is additional evidence that is inconsistent with guilt. Namely, Mr. Malanchuk's attendance at Drew Street seeking a walk-thru and Mr. Okedara's speaking with Cst. Smith and his two calls the 911 operator while the WPS officers were inside Drew Street.

[152] With respect to **Count 3**, the defence submits that the Airsoft rifle does not constitute a "weapon" for the purposes of s. 88 of the ***Code*** and emphasizes that there is no evidence that it was used, possessed, or intended to be used for a purpose dangerous to the public peace.

## ANALYSIS AND DECISION REGARDING IDENTIFICATION

## THE LAW

### CIRCUMSTANTIAL EVIDENCE: GENERAL PRINCIPLES

[153] The Crown bears the burden of proving all elements of possession beyond a reasonable doubt, whether through direct or circumstantial evidence. The Supreme Court of Canada addressed the proper assessment of circumstantial evidence and reasonable

doubt. It emphasized that alternative inferences consistent with innocence need not arise from proven facts and that the Crown is not relieved of its burden simply because there is no direct evidence supporting another explanation. The key question is whether circumstantial evidence, viewed logically and considering human experience and common sense, is reasonably capable of supporting an inference other than guilt. While the Crown must address other reasonable possibilities inconsistent with guilt, it is not required to negate every speculative or fanciful theory. Alternative explanations must be grounded in logic and evidence, rather than speculation (see ***R. v. Villaroman***, [2016] 1 S.C.R. 1000 (S.C.C.), at paras. 26, 35-38 and 55).

[154] Moreover, when dealing with circumstantial evidence, the court must look at the totality of the evidence. In that connection, rarely will a circumstantial case turn on a single piece of evidence. The court must look at the totality of the evidence, rather than examining each piece of evidence individually (see ***R. v. Meier***, 2025 MBCA 74, at para. 31).

[155] In other words, I must consider the range of reasonable inferences that can be drawn from the circumstantial evidence before me. The principles set out in ***Villaroman*** are not confined to any single element of the offences. Rather, they govern the assessment of each essential element of the offences.

**IDENTIFICATION**

[156] The Ontario Superior Court of Justice decision of ***R. v. Omar***, 2017 ONSC 5451 (CanLII), at paras. 11-15, provides a comprehensive overview of the applicable legal principles as it relates to identification evidence:

[11] Identification evidence is inherently unreliable. Many wrongful convictions result from the frailties of eyewitness identification evidence. Even well-meaning witnesses may misidentify individuals: [*R. v. Miaponoose*, (1996), 3 O.R. (3d), 419 at paras. 16-18, (Ont. C.A.); *R. v. F.A.* 2004 CanLII 10491, at para. 39, (Ont. C.A.); and *R. v. Quercia* 1990 CanLII 2595, at p. 389, (Ont. C.A.)]. Certain factors are useful measures for the strengths and weaknesses of this type of evidence:

- the presence or absence of distinctive features or appearance of the suspect;
- the witness's previous acquaintance with the suspect;
- the witness's opportunity to observe the suspect;
- the distance of the witness from the suspect; and
- evidence of focussed attention or any distraction by the witness.

[*R. v. Miaponoose*, at para. 16]

[12] There are different forms of identification evidence.

[13] Recognition involves a witness who knows or is familiar with the accused and recognizes them. Recognition evidence is merely a form of identification evidence. The same concerns that apply to other types of identification evidence and the same cautions must be considered with recognition evidence. The Court held: "[t]he level of familiarity between the accused and the witness may serve to enhance the reliability of the evidence": [*R. v. Olliffe*, 2015 ONCA 242 (CanLII), at para. 39, (Ont. C.A.); *R. v. Campbell* 2017 ONCA 65 (CanLII), 2017 ONCA65 (CanLII), at para. 10, (Ont. C.A.)].

[14] The difference between recognition cases and cases involving identification by a witness of a complete stranger is affected by "the timeline of the identification narrative": [*R. v. Charles*, 2016 ONCA 892 (CanLII), at paras. 50-51 (Ont. C.A.)]. This refers to the immediacy of the recognition in relation to the commission of the offence. Certain indicia of familiarity can serve as measures of the strength of recognition evidence:

- the length of the prior relationship between the witness and the suspect;
- the circumstances of the prior relationship between the witness and the suspect; and,
- the timing of the contact between the witness and the suspect prior to the event where the witness recognized the accused.

[*R. v. Brown* 2006 CanLII 42683 (Ont. C.A.)]

[15] In-dock or in-court identification is another form of identification evidence.

[157] I also note that our courts have held that cross-racial identification is always a significant factor and reason for caution (see ***R. v. Sampson***, 2024 MBKB 178, at para. 44).

[158] Similarly to Mr. Okedara's ***Charter*** application, the parties have provided me with a considerable number of authorities in support of their respective positions. Again, while I have considered all of them, I will only refer to some of them when warranted. The same applies to the authorities provided by the parties regarding the issue of possession.

## ANALYSIS AND DECISION: IDENTIFICATION

[159] The Crown's only eyewitness evidence comes from Mr. Kurz. I accept that over a period of several weeks in September and October 2021, Mr. Kurz had three brief in-person meetings with the individual who he understood to be Mr. Okedara. Accordingly, this is a recognition case. While it may not be the strongest recognition case, it is not simply an in-dock identification of a complete stranger.

[160] Mr. Kurz's meetings occurred while showing Drew Street to prospective tenants, discussing lease terms, signing the Lease Agreement and ultimately providing them with the keys to the residence. Although the meetings were brief, their context and proximity provide some support to Mr. Kurz's ability to recognize Mr. Okedara. Mr. Kurz recalled some identifying features, including that his tenant was of similar height to him and had neck tattoos. At the same time, there are features of Mr. Kurz's evidence that require caution. He could not provide a detailed description of the neck tattoos, and he was unable to identify Ms. Giles in court. Moreover, Mr. Okedara was the only Black male in the courtroom. These factors greatly diminish the strength of Mr. Kurz's recognition

evidence. However, Mr. Kurz's recognition of Mr. Okedara is only one component of the Crown's identification case and must be considered in the context of broader circumstantial evidence.

**CALLS, LEASE AGREEMENT AND PHONE NUMBER**

[161] During the second and third 911 calls, the male caller identified himself as "Kore Okedara," spelled his name, and provided the telephone number 587-433-3415. The caller referred to Drew Street as "my house" and "his home." The caller also stated that the "cops" were seizing "a bunch of my stuff" and that he could see them inside on "his camera". Also, the timing of those calls (approximately 1:00 a.m. and 1:03 a.m. on December 20, 2021) was consistent with the unfolding of events as it relates to the WPS officers' presence at Drew Street and the seizure of the items. I am also mindful of Cst. Smith's evidence, which I accept, that he spoke to a male caller on Mr. Malanchuk's phone who stated he was the homeowner and provided the name "Okedara".

[162] I accept Mr. Kurz's evidence that the telephone number he used to communicate with his tenant "Kore Okedara" was the same which the caller identifying himself as "Kore Okedara" provided to the 911 operators. Also, the 911 operator on the third 911 call confirmed that a person with the same name had called moments earlier, which was confirmed by the caller.

**SIMILARITY OF NAMES**

[163] The Crown further relies on the similarity between Mr. Okedara's name with the name appearing on the Lease Agreement and the one provided during the 911 calls. I agree that this is a relevant consideration.

[164] The Manitoba Court of Appeal addressed the issue of identification through similarity of names in ***R. v. Eckstein (S.M.)***, 2012 MBCA 96 (QL), at paras. 28-32:

. . .

> It has been held that some evidence of identity is provided simply by a similarity of name and address. …
>
> The seminal case in Canada regarding similarity of name as identification evidence is *R. v. Chandra* (1975), 1975 CanLII 1294 (BC CA), 29 C.C.C. (2d) 570 (B.C.C.A.). … McIntyre J.A. (as he then was), for the court, made the following remarks regarding similarity of name as identification evidence (at p. 573):
>
> In my opinion mere identity of name affords some evidence of identity of a person. When accompanied by other factors such as the relative distinctiveness of the name, or the fact that it is coupled with an address, or appears upon a licence or other document of significance, its weight is strengthened. The trier of fact when such evidence is before it, whether Judge alone or jury, must consider it, weigh it and reach its determination. When such evidence is adduced to the trier of fact it cannot be said there is no evidence.

[165] Importantly, the references to "Kore Okedara" do not arise in isolation. The same name appears in the Lease Agreement, and it was twice provided to the 911 operators by the caller while the WPS officers were inside Drew Street. Again, the caller referred to Drew Street as "my house," and that WPS officers were seizing "my stuff", demonstrating contemporaneous knowledge of the WPS officers' presence inside. The caller also provided the same telephone number to the 911 operator that Mr. Kurz used to communicate with his tenant, Kore Okedara.

[166] The surname "Okedara" is not a common surname. In addition, "Kore" forms a substantial and distinctive component of Mr. Okedara's given name, "Morinkore". There is no evidence of another individual bearing the same distinctive surname and a highly

similar given name. Applying common sense and ordinary human experience, the more reasonable inference is that "Kore" is a shortened form of "Morinkore".

[167] While I give little weight to Mr. Kurz's in-court recognition, I find that the totality of the evidence forms a coherent and mutually reinforcing body of circumstantial evidence: (i) the Lease Agreement naming Kore Okedara; (ii) Mr. Kurz's evidence concerning his communication with his tenant; (iii) the telephone number used to communicate with his tenant; (iv) the identical telephone number provided during the 911 calls; (v) the caller identifying himself as "Kore Okedara" to the 911 operators; (vi) his references to Drew Street as "my house" and the "cops" seizing "his stuff"; and, (vi) Cst. Smith's evidence regarding speaking to the homeowner who provided the name "Okedara". Each of these point in the same direction.

[168] In contrast, the alternative explanations advanced by the defence are speculative and unsupported by the evidence. There is no evidentiary foundation for the suggestion that another individual named Kore Okedara was associated with Drew Street. Nor is there any evidence that a third party was using the same telephone number, communicating with Mr. Kurz, identifying himself to the 911 operators as "Kore Okedara", and simultaneously asserting a possessory interest in Drew Street and its contents at the material time.

[169] I am satisfied that the Crown has proven Mr. Okedara's identity beyond a reasonable doubt. The totality of the evidence, viewed through the lens of common sense and human experience, is the only reasonable inference. I am therefore satisfied

beyond a reasonable doubt that the individual identified throughout the evidence as "Kore Okedara" and the accused, Morinkore Okedara, are one and the same person.

## POSSESSION

### THE LAW: CONSTRUCTIVE POSSESSION

[170] A summary of the applicable principles regarding constructive possession can be found in the decision of ***R. v. Choudhury***, 2021 ONCA 560 (CanLII), at para. 19:

> [19] The relevant legal principles on constructive possession are not in dispute:
>
> - Constructive possession is established when an accused does not have physical custody of an object but knowingly has it in the actual possession or custody of another person or has it in any place for their own or another's use or benefit: *Criminal Code*, s. 4(3)(a); *R. v. Morelli*, 2010 SCC 8, [2010] 1 S.C.R. 253, at para. 17; and *R. v. Lights*, 2020 ONCA 128, 149 O.R. (3d) 273, at para. 47.
>
> - Knowledge and control are essential elements of constructive possession, which is established when the Crown proves beyond a reasonable doubt that the accused: (i) has knowledge of the character of the object said to be possessed; (ii) knowingly puts or keeps the object in a particular place, whether or not the place belongs to or is occupied by the accused; and (iii) intends to have the object in the place for the use or benefit of the accused or another person: *Morelli*, at paras. 15, 17; *Lights*, at paras. 44, 47.
>
> - Tenancy or occupancy of a place where an object is found does not create a presumption of possession: *Lights*, at para. 50; *R. v. Watson*, 2011 ONCA 437, at para. 13; *R. v. Lincoln*, 2012 ONCA 542, at paras. 2–3; and *R. v. Bertucci* (2002), 2002 CanLII 41779 (ON CA), 169 C.C.C. (3d) 453 (Ont. C.A.), at para. 18.
>
> - When the Crown relies largely or wholly on circumstantial evidence to establish constructive possession, a conviction can be sustained only if the accused's knowledge and control of the impugned objects is the only reasonable inference on the facts. The trier of fact must determine whether any other proposed way of looking at the case as a whole is reasonable enough to raise a doubt about the accused's guilt, when assessed logically and in light of human experience and common sense: see *R. v. Villaroman*, 2016 SCC 33, [2016] 1 S.C.R. 1000, at paras. 55–56; *Lights*, at para. 39; and *R. v. Stennett*, 2021 ONCA 258, at paras. 60–61.

**JOINT POSSESSION**

[171] With respect to joint possession, our courts have stated in ***R. v. Basarowich (C.J.)***, 2010 MBQB 4 (CanLII), at para. 11, that obligation of the Crown is as follows:

> [11] Moreover, even if Mr. Basarowich did not have exclusive access to the premises that were searched, the **Criminal Code** allows the court to find him in joint possession of property found in them. Section 4(3)(b) of the **Code**, which also applies to possession charges under the **Controlled Drugs and Substances Act** as a result of s. 2 of that **Act**, provides:
>
> (3) For the purposes of this Act,
>
> . . .
>
> (b) where one of two or more persons, with the knowledge and consent of the rest, has anything in his custody or possession, it shall be deemed to be in the custody and possession of each and all of them.

## ANALYSIS AND DECISION - POSSESSION

[172] The defence argues that possession has not been proven because Mr. Okedara was not present at Drew Street, was never observed inside the residence, and was not linked to any of its contents or the items seized during the sweep search. While the Crown may not be able to present direct evidence, that is not unusual (see ***R. v. Oddleifson***, 2010 MBCA 44 at para. 6).

[173] I find that it is a reasonable inference that Mr. Okedara had the requisite element of knowledge of the character of the contents, and items seized at Drew Street during the sweep search. I accept Sgt. Hunter's opinion that Drew Street was functioning as a stash house used in connection with a drug-trafficking operation. I accept this opinion notwithstanding the exclusion of the evidence obtained through the expanded search. In that regard, in addition to the items seized through the sweep search being included in

evidence, I note that the following evidence supports Sgt. Hunter's opinion: the presence of a digital scale, a hammer, a spoon, a money counter, an alarm console, five cellular telephones and boxes of baggies. Cumulatively, it is a reasonable inference to conclude that these items are indicative of a drug-trafficking operation, and they were all plainly visible within the common living areas of Drew Street (Ex. No. 3). In sum, Mr. Okedara must have known what they were and their purpose. This is a reasonable inference considering the condition of Drew Street, the quantity and packaging of the drugs, and the presence of the drug-trafficking paraphernalia (see ***Basarowich***, at paras. 19 and 34, and ***Oddleifson***, at para. 6, and Ex. No. 1).

[174] I also find that it is a reasonable inference that Mr. Okedara knowingly had these items at Drew Street and that he intended to have them there for his benefit. In that regard, Mr. Okedra was a tenant at Drew Street, and he continued to assert a possessory interest in Drew Street and its contents at the time of the WPS officers' attendance.

[175] I place weight on the 911 calls which demonstrate detailed knowledge of the events unfolding inside Drew Street. During those 911 calls, Mr. Okedara repeatedly referred to Drew Street as "my house", that he could see the "cops" inside on "his camera" and expressed concern that the WPS officers were seizing "my stuff". There is no dispute that the WPS officers were inside Drew Street and seizing items in or around the time when those 911 calls were made. There is also Cst. Smith's evidence that he spoke to a male who he understood to be the homeowner with the name "Okedara".

[176] Those statements were consistent with those of an occupant or tenant demonstrating a proprietary interest in Drew Street and its contents. Those same

statements also demonstrate an ongoing ability to monitor and exercise control over those items and their location. Overall, this supports a reasonable inference that Mr. Okedara had knowledge of and had control of the contents at Drew Street at the material time.

[177] I am therefore satisfied that that the Crown has established beyond a reasonable doubt that Mr. Okedara had possession (knowledge and control) of the contents at Drew Street, particularly, the drugs, the drug-trafficking paraphernalia, and the Airsoft rifle.

**INFERENCES CONSISTENT WITH INNOCENCE**

[178] The defence submits that there are several inferences available on the evidence that undermine the Crown's ability to establish possession or are otherwise consistent with innocence. Notably, the defence argues that Ms. Giles, or other individuals, such as Mr. Okedara's cousin, "Enzo Gotti", or the registered owner of the Mercedes, may have taken over possession of Drew Street and its contents.

[179] I will first deal with the defence's argument regarding Ms. Giles. In sum, even if Ms. Giles was involved, that would not preclude a finding that Mr. Okedara jointly possessed the drugs, drug-trafficking paraphernalia, and the Airsoft rifle (see ***Basarowich***, at para. 11). It bears repeating, considering the condition of Drew Street and the presence of the drugs, drug-trafficking paraphernalia and the Airsoft rifle being in plain view, Mr. Okedara must have known what these were and must have consented to these being there. In any event, there is no evidence to suggest that Ms. Giles had solely taken over possession of Drew Street and its contents. I also note that Ms. Giles did not testify.

[180] As it relates to the argument regarding Mr. Okedara's cousin possibly being responsible, the defence relies on Mr. Kurz's testimony that after the break and enter, Mr. Okedara advised him via text message that his cousin was living at Drew Street and that Mr. Okedara was not involved in any illegal activity. Although Mr. Kurz acknowledged the theoretical possibility that another person could have moved into Drew Street, he was also unaware that this had occurred. In my view, this evidence falls short of supporting a reasonable inference that Mr. Okedara was no longer living at Drew Street and was not in possession of its contents. There is no evidence regarding the name or gender of this cousin. There is also no evidence to support the inference that this individual even exists, let alone that they had moved into Drew Street and assumed possession of Drew Steet and its contents.

[181] I also find that the argument regarding "Enzo Gotti" is equally unhelpful to the defence's case. While Mr. Kurz testified that he received an E-Transfer payment with the name "Enzo Gotti", he also testified that he received the payment after had communicated with Mr. Okedara regarding rent. Beyond the name "Enzo Gotti" appearing on the E-Transfer payment, there is no evidence as to who this individual is, whether they had any connection to Drew Street, or whether they even exist. Therefore, I draw the same conclusion as I came to regarding Mr. Okedara's cousin.

[182] The same can be said regarding the black Mercedes registered to someone other than Mr. Okedara. I also note that Mr. Kurz testified that when he met with Mr. Okedara and Ms. Giles at Drew Street, they arrived in a black Mercedes. In any event, the mere presence of a vehicle registered to another person at the residence provides little to

support the inference that this individual had assumed possession of Drew Street or its contents.

[183] The defence also argued that Mr. Malanchuk's attendance at Drew Street and Mr. Okedara's efforts to contact WPS officers or the 911 operators is evidence that is consistent with innocence. As for Mr. Malanchuk's attendance at Drew Street to conduct a walk-thru, the evidentiary foundation is sparse. Apart from Cst. Smith's evidence, there is nothing before the court concerning the purpose or significance of that attendance. Mr. Malanchuk did not testify. Accordingly, it would be speculative to infer that his attendance supports an inference of innocence.

[184] I also do not agree with the suggestion that speaking with Cst. Smith is consistent with innocence. Although Mr. Okedara spoke with Cst. Smith, he declined to attend Drew Street and gave no explanation. In the circumstances, this evidence is equally consistent with guilt. As for the calls with the 911 operators, I have already made my findings in that regard and need not repeat them here.

[185] Mr. Okedara chose not to testify. This decision cannot be used against him and cannot be used to infer guilt. However, as recognized by our courts, his silence leaves an absence of evidence that might otherwise have supported the proposition that he had relinquished possession of Drew Street and its contents or that he was otherwise unaware of what was occurring (see ***Basarowich***, at para. 35 and ***Oddleifson***, at paras. 25-26). The evidentiary record contains no foundation upon which I could reasonably conclude, as the defence suggests, that another individual had assumed possession of Drew Street

and its contents or that Mr. Okedara lacked knowledge of these contents and their purpose.

[186] I find that the inferences which the defence submits are consistent with innocence are unsupported by the evidence and remain speculative. Given the nature and condition of Drew Street, the location, visibility and nature of its contents, the suggestion that Mr. Okedara was unaware of what these were and what was occurring at Drew Street is not a reasonable inference arising from the totality of the evidence. As the British Columbia Court of Appeal observed in ***R. v. Twohey***, 2009 BCCA 428 (CanLII), at paras. 17-18:

> [17] It must be remembered that we are not expected to treat real life cases as a completely intellectual exercise where no conclusion can be reached if there is the slightest competing possibility. The criminal law requires a very high degree of proof, especially for inferences consistent with guilt, but it does not demand certainty.
>
> [18] Trial judges are not expected to leave their common sense at the door when they enter a courtroom. …

[187] Assessing the evidence cumulatively and in accordance with common sense and human experience, I am satisfied that the Crown has proven beyond a reasonable doubt that Mr. Okedara had possession (knowledge and control) over the contents at Drew Street, including the items seized on account of the sweep search (whether that possession was exclusive or shared with Ms. Giles).

[188] Having concluded that the Crown has established both the foundational elements of identity and possession beyond a reasonable doubt, I will now proceed to consider the remaining constituent elements of each offence and determine whether the Crown has discharged its burden with respect to **Count 1** and **Count 3**.

## ANALYSIS AND DECISION: COUNT NO. 1 - POSSESSION FOR THE PURPOSES OF TRAFFICKING

[189] The Crown submits that it has proven beyond a reasonable doubt all the essential elements of **Count 1**. I agree.

[190] Under **Count 1**, the elements with respect to the offence of possession of a controlled substance for the purpose of trafficking are as follows:

- that Mr. Okedara was in possession of a substance;
- that the substance was fentanyl;
- that Mr. Okedara knew the substance was fentanyl; and,
- that Mr. Okedara had possession of fentanyl for the purpose of trafficking it.

[191] There is no dispute that the substance at issue was fentanyl. This is acknowledged in the Statement of Admitted Facts. In addition, given my above reasons regarding identification and possession, I find that the Crown has proven beyond a reasonable doubt all of the essential elements of **Count 1**. That is, the Crown has established: (i) that Mr. Okedara was in possession (knowledge and control) of a substance; (ii) that the substance was fentanyl; (iii) that Mr. Okedara knew that the substance was fentanyl; and (iv) that Mr. Okedara had possession of the fentanyl for the purpose of trafficking.

## ANALYSIS AND DECISION: COUNT 3 - POSSESSION OF A WEAPON FOR PURPOSE DANGEROUS TO THE PUBLIC PEACE

[192] Subsection 88(1) of the ***Code*** creates two separate offences: (1) possession of a weapon for "a purpose dangerous to the public peace" and (2) possession of a weapon

for the "purpose of committing an offence". The definition of "weapon" (which also applies to an imitation) is found in s. 2 of the ***Code***:

> ***weapon*** means any thing use, designed to be used or intended for use (a) in causing death or injury to any person, or (b) for the purpose of threatening or intimidating any person.

[193] As set out in the Indictment, **Count 3** is a charge for possession for a purpose dangerous to the public peace. It is not a charge for possession of a weapon for the purpose of committing an offence. While I have determined that Mr. Okedara was in possession of the Airsoft rifle, a further subjective purpose must be established by the Crown beyond a reasonable doubt. That is, that the weapon must have been possessed for "a purpose dangerous to the public peace" (see ***R. v. Kerr***, 2004 SCC 44 and ***R. v. Culleton***, 2008 MBQB 315, at para. 47).

[194] The governing principles for offences pursuant to s. 88 of the ***Code*** are set out in decision of ***Kerr***, where the Supreme Court of Canada provided that a determination of purpose involves a hybrid subjective-objective analysis. The court must first determine that the accused's actual purpose, which may be inferred from objective circumstances, including what the accused knew, would probably result from the possession. The court must then determine whether that purpose was, viewed objectively, and in all circumstances, dangerous to the public peace. In that connection, there must be some proof of the formation of the intent to possess the weapon for that purpose. Finally, a person's purpose in possessing a weapon may change during the time that they possess the weapon (see ***Kerr***, at paras. 23-24 and ***Culleton***).

[195] I take from ***Kerr*** and ***Culleton*** that what I am required to do is determine, from the totality of the evidence, whether the Crown has proven beyond a reasonable doubt that:

- Mr. Okedara was in possession of the imitation firearm;
- The imitation firearm was a "weapon" as that term is defined in the ***Code***; and,
- That he possessed it for the purpose dangerous to the public peace.

[196] Considering my findings regarding identity and possession, I am satisfied beyond a reasonable doubt that Mr. Okedara was in possession of the Airsoft rifle, and that it meets the definition of a "weapon" under s. 2 of the ***Code***. However, I am not satisfied beyond a reasonable doubt that the Crown has established the requisite purpose.

[197] The Airsoft rifle was located on the floor of the bedroom closet and there is no evidence that it was displayed, carried, used, or intended to be used in any manner. Although Sgt. Hunter testified that imitation firearms are sometimes used by drug-trafficking operations for protection and deterrence, that evidence speaks only to a general practice. It does not establish Mr. Okedara's purpose in possessing the Airsoft rifle.

[198] Nor am I satisfied that the surrounding circumstances permit the inference that the Airsoft rifle was possessed for a purpose dangerous to the public peace. While it is possible that the Airsoft rifle could have been used to threaten or intimidate another person, that possibility remains speculative on the evidence before me. Accordingly, I find that the Crown has failed to prove beyond a reasonable doubt that Mr. Okedara

possessed the Airsoft rifle for a purpose dangerous to the public peace. Mr. Okedara is therefore acquitted on **Count 3**.

## CONCLUSION

[199] Mr. Okedara's ***Charter*** application is granted, in part.

[200] There was no breach of Mr. Okedara's rights under s. 8 of the ***Charter*** as it relates to the WPS officers entering Drew Street and conducting the sweep search. Therefore, the items seized in that regard are admitted into the evidence.

[201] There was a breach of Mr. Okedara's rights under s. 8 of the ***Charter*** as it relates to the items seized without a warrant while the WPS officers conducted the expanded search of the kitchen cupboards, drawers and walk-in pantry at Drew Street. Therefore, the items seized in that regard are excluded from the evidence under s. 24(2) of the ***Charter***.

[202] The Crown has proven beyond a reasonable doubt all the elements of the offence under **Count 1**. Mr. Okedara is therefore guilty on **Count 1**.

[203] The Crown has not proven all the elements of an offence under **Count 2** and **Count 3**. Mr. Okedara is therefore acquitted on **Count 2** and **Count 3**.

_____ J.