

Kingston Police Service Discipline Hearing
In the Matter of Ontario Regulation 268/10
Made Under the Police Services Act, R.S.O. 1990,

And Amendments thereto:
And
In The Matter Of

The Kingston Police Service

And

Constable Harvey Kolff #253

Constable Chad Parslow #245

Charge: Discreditable Conduct

Before:

Superintendent (Retired) M.P.B. Elbers
Ontario Provincial Police Adjudicator

Appearances:

Counsel for the Prosecution: Mr. Joel Dubois
Kingston Police Service

Counsel for the Defense: Mr. Joseph Markson
Kingston Police Association

Public Complainant: Ms. Mary Jane Kingston

Background:

On April 23, 2013 Constable Kolff and Constable Parslow entered an apartment located at 17 Eldon Hall Place Unit # 209 Kingston, Ontario without a warrant to locate a female party who was apparently in possession of Cocaine.

Evidence:

This Hearing commenced in Kingston, Ontario on Tuesday February 03, 2015 and continued through Thursday February 05, 2015. Witness testimony was heard by the Tribunal on Tuesday and Wednesday with Counsel presenting their submissions on Thursday.

Three (3) days of evidence was heard by this Tribunal. Four (4) witnesses testified at this Hearing and twenty eight (28) exhibits were submitted to the Tribunal.

Alicia Fleet was the first witness called by the Prosecutor, Mr. Dubois. She was a friend of Brianna Boyd and was living at 17 Eldon Hall Place Unit #209 at the time of the entry by the officers of the Kingston Police Service. She testified that she and Brianna had been roommates in the past however on the night in question Brianna was not living at the apartment. Boyd was living in Toronto. She testified that she had lived in the past with Boyd at that apartment. She testified that Boyd had left the apartment in February of 2013 and moved to Toronto. Fleet remained at the apartment with her boyfriend Jordan Norris until a few weeks after the April 23, 2013 incident. She testified she was no longer friends with Boyd and had not spoken to her until a week before this case went to the Hearing in Kingston.

Fleet testified that she has no animosity towards Constables Parslow or Kolff. She did not make a complaint about the entry to the apartment on April 23rd. She advised that she was contacted by Sergeant Robertson of the Kingston Police Service about the incident.

Fleet testified that her boyfriend Jordan Norris were sleeping and it was in the middle of the night when she heard a loud bang which woke her up. The police were standing in her apartment and advised her that they saw Boyd come into her house. She questioned them as to whether they had a warrant and she was told that they did not need one. She testified that the police looked around the apartment but they could not find Boyd and they left. She testified this was in the early morning hours of April 23, 2013.

During the examination in-chief Mr. Dubois elicited from her that she was sleeping with Norris on the couch in the living room when the police entered. She testified that when she heard the loud bang it was the door to the apartment striking the wall.

She testified she heard the police officers say "Police" as she was opening her eyes and saw them walk in and stand in the living room. She testified they were carrying flashlights. She testified that the door to the apartment was locked and that the officers must have gotten a key from the building Superintendent. The chain lock was engaged and was damaged upon entry. She testified that damage occurred to the chain lock and the wall where the door handle struck the wall and left an impression in the drywall of the door handle.

She testified they searched cupboards, closets and everywhere. She advised the officers she had not seen Boyd in a while. She told them the only persons in the apartment were Norris and herself. She testified that the officers called her a liar and that Fleet was hiding Boyd.

She identified Constables Parslow and Kolff as the officers in her apartment. She contacted Boyd that night to advise what happened in a text while the officers were still in the apartment. She testified that Boyd was in Toronto. She testified that both officers did not have their guns drawn during the search or entry. She testified that she did not hear any knocking and did not hear the police announce themselves before they actually entered.

She testified that she was surprised by the entry and was not expecting them. When question by the Prosecutor why she allowed the officers to search the apartment she responded "*Because they told me they did not need one (warrant)*".

Mr. Markson cross- examined Alicia Fleet at length. She advised Defense Counsel she had known Boyd for two and a half to three years. She testified that she and Norris stayed at the apartment until the end of May 2013 and were paying Boyd rent to stay there.

She testified that Boyd had friends stay over from time to time. He questioned her about Kim Rose and Shawn LeBlanc. Mr. Markson went through Boyd's criminal convictions of which Fleet was aware of some and not others. She testified she was unaware of Boyd's use of drugs or selling of drugs. She testified that she did not know Jamal Bobb the male person apparently with Boyd on April 3, 2013.

Fleet testified that she does not do drugs, however later testified she smokes for medical reasons however she does not have a medical note from a Doctor.

Mr. Markson during his cross learned that Fleet did not use any drugs on the night in question. There was a dog in the apartment however she did not know the breed. She initially testified she could not remember if the dog was present on that night. The dog belonged to Norris. She testified that her contact with Boyd was mainly on the phone or texting after February 2013. She had attended when she was in town for court reasons but she never stayed overnight. She stated Boyd would be their only five minutes. She paid Boyd in cash for the rent.

Mr. Markson advised Fleet that Constable Parslow attended the apartment on January 22, 2013 and Kim Rose answered the door. She was there with Shawn LeBlanc. Fleet testified that she was unaware of this news.

Mr. Markson questioned her about talking with Norris prior to the police entering the apartment and she testified that they were sleeping. Under vigorous cross examination Fleet maintained that she did not hide Boyd, was not texting Boyd while the officers were at the door and were not deliberately opening the door for the police or stop talking when they were knocking.

Mr. Markson advised her that the officers would testify that a dog was in the apartment and upon entry asked Norris to put dog in the bathroom. Fleet acknowledged that she did not have an exact recollection of the events. She admitted to live texting Boyd while the Police were in the apartment but she denied she was warning Boyd. Fleet believed Boyd to be in Toronto.

When questioned by Mr. Markson, Fleet acknowledged that she did not tell the officers on April 23, 2013 that they could not look for Boyd; however she stated they the Police made it clear that they did not need a warrant.

Breanna Boyd was the second witness called by the Prosecution. She testified to her criminal convictions. She testified that she had lived at 17 Eldon Hall Place Unit #209 with Alicia Fleet. On April 23, 2013 Alicia Fleet lived at the apartment. Boyd testified she had moved to Toronto and Fleet stayed at the apartment in Kingston. She was living at her cousins' residence in Toronto as she was out on Bail and her cousin was her surety. She testified that Fleet lived at the apartment with her boyfriend, Jordan Norris.

On April 23, 2013 she testified she had communication with Fleet for the sole purpose to make Boyd aware that the Police were at her apartment. She stated she got a phone call from Fleet around three AM. She testified that Fleet advised her that the Police had kicked the apartment door in and they were looking for Boyd. She asked Fleet if they had a warrant and she learned that they did not. Fleet advised they looked everywhere and then left. Boyd testified that the chain was intact and the door was kicked open after it was unlocked by the Superintendent.

She testified she called her Probation officer and told them they had no warrant and was told to call the Police to lodge a complaint and to contact the landlord. She testified she followed the instructions of her Probation Officer, Penny Arp and contacted the Kingston Police Service, The Property Management Company and the building Superintendent.

She testified she spoke to the building Superintendent, Bob Parslow and enquired if he unlocked the door and he said "Yes" and told her she belonged in jail and hung up on her.

She testified that she had spoken to Jody Armstrong of the Kingston Police Service. Exhibit #7 was played at the Hearing. This was the phone conversation between Armstrong and Boyd. She testified that a week after the incident she was in Kingston to

visit her son. She has to sign in daily in Toronto as part of her conditions and on this particular day she had made arrangements to sign in at Kingston Police Service. At this time she was arrested for seven breaches relating to the April 23, 2013 incident. She stated they were all withdrawn at a later date. She testified that on April 22, 2013 she signed in at the Toronto Police Service as per her conditions (Exhibit #8). On April 23, 2013 she testified she was sleeping at her cousins' house in Toronto.

In cross examination by Mr. Markson, Boyd testified she has known Alicia Fleet for a few years. They lived together on a few of occasions. She acknowledged that friends help one another through thick and thin times. Her friendship with Fleet was on and off. She testified Fleet was aware of some of her convictions however Boyd never sat down with her to explain all the charges and or convictions. She testified she does not know if Fleet uses marihuana. She testified that she got arrested on January 31, 2013 for Cocaine trafficking after arriving in Kingston by bus from Toronto. Fleet was living in her apartment from December 2012 with her boyfriend Jordan Norris. She testified no one else lived in the apartment.

When questioned by Mr. Markson as to whom else had access to the apartment she testified her ex-boyfriend Dustin Rose lived with her for a period of time. Markson and Boyd recounted the January 22, 2013 incident with Kim Rose and Sean LeBlanc being in her apartment and the perjury charge she pled guilty to in relation to a Bail Hearing procedure. Exhibit #13 was reviewed with Boyd by Mr. Markson.

She testified she has to contact Kingston Police Service when she is going to attend the city. She testified she does not know Jamal Bob and denied any knowledge of Bobb texting her on April 23, 2013 from the hallway outside unit #209.

She testified she signed into the Toronto Police Service on April 22, 2013 at 5.42 PM on the morning of April 23, 2013 she got a phone call or text from Alicia Fleet around 3.00 AM while she was in Toronto.

The Prosecution closed its case with Exhibits #15-21 entered. Exhibits #9 and #21 not to be disclosed due to the Order made at the Hearing and the In camera procedure.

Constable Harvey Kolff #253 testified he joined the Toronto Police Service in December of 2000 and transferred to Kingston Police Service in November 2001. He was in uniform duties from 2001 thru 2011. In 2011 he had a two year stint in Street Crime engaged in CDSA enforcement. He testified he was involved in hundreds of investigations. He testified his main duties were enforcement of property, firearms and CDSA investigations. He was involved in surveillance and execution of Section 11 warrants.

During his tenure in this unit he was involved with the fostering of Criminal Informants. He handled ten (10) carded informants. He was also routinely engaged with occasional sources that passed on information to him. He testified he kept separate notes on each informant and their information and the notes were detailed. He testified that he

forwarded the information received in a timely fashion in intelligence reports, to the Drug Unit and the Criminal Investigation Division of Kingston Police Service.

Kolff testified that Brianna Boyd at the end of 2011 and certainly in 2012 was a popular name in the drug world. Kolff testified to the many occasions he had contact or was aware of charges of Brianna Boyd through active investigations and CI information which led to arrests of Boyd for Trafficking or was present when parties with her were arrested. He related to February 2011 at the Peach Tree Hotel, March 09, 2012 at a residence where Cocaine was seized, attending at the Boyd apartment on January 22, 2013 where a female party was spoken to and a male party was arrested for Breach conditions. Boyd not present at the residence. Kolff testified after leaving the street crime unit he was still handling informants and was in contact with unit members who reported that Boyd was still active in cocaine trafficking from Toronto to Kingston.

On April 22, 2013 Constable Kolff testified that he was working the night shift accompanied with Constable Parslow. The night shift was 6PM to 6AM. After the evening parade Kolff was to meet a numbered informant to make a payment. As policy dictated two persons had to be present, Parslow went along in the cruiser with Kolff to make the payment. A meeting place was arranged and they drove to this location. The CI whom Kolff paid had been found to be reliable on numerous occasions. He testified as to the information provided to them by the CI.

After dropping off the CI, Kolff testified that he and Parslow discussed the prior incidents of arrests with Boyd. While on patrol at approximately 3.00 AM they were in the area of Eldon Hall Place. Kolff testified that they were not actively looking for Boyd. Kolff testified that at 3.10 AM while in the area of the apartment building Constable Kolff, who was the driver of the marked Kingston Police Service cruiser, observed three parties walking towards the front entrance of the apartment building. He testified that he turned his cruiser into the laneway of the apartment building and drove towards the front door. He testified that the three parties continued walking towards the door and when he was approximately twenty (20) feet away from them he clearly recognized Brianna Boyd as one of the parties. He testified that he had no doubt in his mind that the female party was Brianna Boyd. He testified she was accompanied by another female and a male party whom he did not recognize.

Exhibit #14 was entered as an exhibit and it is a picture of the front face of the apartment building at 17 Eldon Hall Place. He further testified that Boyd was the closet person to the cruiser at this point. He testified he said to Constable Parslow "*There is Brianna Boyd.*" He placed his vehicle in park and yelled out to Boyd. Kolff testified that Boyd looked back at him and then ran to the front door of the apartment building as he was exiting his cruiser. He described the other two persons to the Tribunal. Kolff testified the two females ran to the building and the male party stopped walking.

He testified he walked to the male party and verbally asked him his name. The male party answered "Jamal Bobb" and produced a valid passport. He testified that Bobb did not

appear nervous with the police presence. He testified that Bobb was not fidgety, appeared pretty relaxed and he believed he was not carrying any weapons.

Kolff testified that the Eldon Hall apartment building had two front doors. The first was unlocked and the second door was a security door where you gain entry through a pass code. He last saw the females entering the first door when he was getting the attention of Mr. Bobb. He returned to his cruiser and ran Bobb on CPIC. Bobb had a prior weapons conviction, carrying a concealed weapon in 2009. He testified he knew Boyd was on conditions and he checked on this to verify. He returned the passport to Bobb and saw his partner at the apartment door holding it open. He walked to Constable Parslow, entered the apartment building and proceeded to Unit #209. He testified he did not know how Parslow gained entry to the building. He testified they walked up the stairwell to the unit. He testified they knew Boyd's last known address and they were aware she was not to be in Kingston. Kolff testified they listened at unit #209 for a few seconds and they could hear voices. Jamal Bobb attends at the second floor and watches them. Kolff testified that Bobb was texting and he believes they had not knocked on the door at this point. Bobb was five (5) to ten (10) feet away. He testified he knocked and said "*Police, Brianna come to the door*". He testified the voices within the apartment stopped and he did not hear any voices again. He continued to knock and say '*Brianna, come to the door.*' He testified that Bobb seemed to be enjoying the action and no one came to the door.

Kolff testified he believed he had exigent circumstances and had grounds to arrest Boyd for Possession for the Purpose of Trafficking. He testified that it was not practicable or feasible to get a search warrant. It would take too long and it would be lost time. He testified every minute lost would lead to the loss or destruction of cocaine. He testified he believed due to the informant information and the previous cocaine related offences that Boyd was convicted or still facing, the fact the Boyd ran away when called which she usually did he believed her to be in possession of cocaine. He testified he discussed the exigent circumstance with Parslow for about a minute, Parslow agreed and Parslow left to get a key for the apartment from the building superintendent.

Kolff testified he waited at the door for Parslow to return. He testified he was aware that the superintendent was Parslows' father. He testified Parslow was absent for 3-5 minutes. He testified that Bobb remained in the hallway the entire time.

Kolff testified that Parslow returned with the key and hands it to Kolff. Kolff testifies he unlocks the deadbolt to Unit #209 and the chain lock was still fastened. He testifies while holding onto the door handle he shoulders the door to loosen the chain and enter quietly. He does not believe the door to hit the wall. He testifies he takes two steps into the apartment they encountered a dog. They were surprised by the dog. They announced themselves as police. He testified he observed two people on the couch sleeping or pretending to sleep. They walked towards the officers and Kolff did not recognize either person. He testified That Constable Parslow asked them to put the dog away and the male party put the dog in the bathroom. Kolff testified they had some discussion with Fleet and she asked them if they had a warrant. Kolff testified they were looking for Boyd and Fleet told them that Boyd was living in Toronto and that Boyd was letting Fleet and

Norris live in the apartment. He testified that both Fleet and Norris were okay with them being in the apartment. He testified he began to search in the living room and Parslow searched the bedroom area. He testified he searched the couch and cushion area and opened the cupboards in the kitchen. He testified they searched for Boyd in the apartment. He testified their weapons were not out and they did not do any damage to the apartment. He testified the purpose for the search was Brianna Boyd. He testified after being in the apartment for 2-3 minutes they were satisfied that Boyd was not in the apartment. Upon completion of the search Fleet and Norris were run on CPIC with negative results. Kolff testified that both officers were in full uniform and they were in the apartment for 5-10 minutes.

They exited Unit #209 and checked the public areas of the building, laundry room and common areas. He testified they also attended the 6th floor where Boyd had an acquaintance with no response at the unit door.

Parslow returned the key and they exited the apartment building. He testified they stayed around the area in their cruiser and then eventually returned to the station.

At the station they had the Boyd charges to deal with and the Crown Brief to complete. Kolff completed his testimony in chief stating he would have been negligent of his duty if he did not go into the apartment to search for Boyd.

In cross examination by Mr. Dubois, the Prosecutor, Constable Kolff testified that his notes were truthful and accurate for the events of April 23, 2013. He acknowledged that memories fail over time. He testified again that he observed Boyd around 3.00AM with Parslow. He testified he did not note what Boyd was wearing, but reiterated he knew Boyd from previous occurrences.

He testified he had to talk to Bobb to ascertain if he was a drug trafficker. He testified it was the first priority and took precedence over Boyd.

He testified he did not question Bobb over the identities of the two females who were accompanying him. Kolff testified he was 100 per cent sure the female was Boyd and that she had drugs on herself. He testified when Boyd fled he had no idea where she was going. He did not see it relevant to ascertain the association with Bobb and the two females. He testified he assumed Bobb was involved in the drug trade. He testified he was approximately three minutes with Bobb. Mr. Dubois questioned the notebook of Kolff in relation to the absence of the recording of hearing voices in his notebook while knocking or prior to knocking on the door. He testified he spoke with his partner for approximately one minute in regards to the destruction of evidence and that a search warrant was not an option. He testified that Parslow would get the key and he would remain at the door. While Parslow was gone he observed Bobb texting in the hallway. They entered the apartment in stealth mode. He testified he did not see Bobb after this point. He testified to Dubois that Fleet asked him if he had a warrant and he replied he did not need one. Mr. Dubois questioned Kolff about his belief that Fleet consented to a search of the apartment. Kolff testified that after speaking with Norris and Fleet they allowed them to search the apartment. He testified again he believed they had exigent

circumstances. He testified they entered in the least intrusive way; however they did not locate Boyd.

Dubois questioned Kolff after they searched the common areas why did he not enter the apartment on the 6th floor in stealth mode. Kolff testified they had no grounds at that apartment. He testified it was a last resort and that he Parslow did everything they could do to locate Boyd.

They returned to the office to complete their paperwork. He testified that he did not partake in any discussions with the Crown Attorney to withdraw all the charges that were laid against Boyd on April 23, 2013.

Constable Chad Parslow #245 testified that he joined the Niagara Regional Police Service in 1999 and transferred to Kingston Police Service in May of 2001. He testified to working in many specialized units such as Break and Enter, Street Crime, seconded to the Drug Unit and working in the Intelligence unit from 2002 thru 2013. He has worked several hundred or thousands of drug cases.

He testified that he was aware of Brianna Boyd through direct experiences, limited one on one and knowledge of her extensive drug convictions. He reiterated the same cases that Constable Kolff addressed in his evidence. As the intelligence officer for KPS and a member of CISO he was privy to numerous reports and intelligence received by officers at KPS which involved Brianna Boyd. Information he testified was regular in regards to Boyd trafficking in Cocaine.

On April 22, 2013 he was working the 6PM to 6AM shift accompanying Constable Kolff. He testified to meeting Kolff's informant and the payment made to the CI. He testified as to the information provided to them by the CI.

Parslow testified that he and Kolff spoke for twenty minutes about Boyd. He reiterated the same occurrences that Kolff testified to at the Hearing.

Parslow testified at 3.10 AM while he was seated in the passenger seat of the cruiser, Kolff drove the cruiser onto Eldon Place Hall and observed three parties walking towards the front door. Kolff parked the cruiser near the front door and the two females and one black male walked in front of the cruiser. Parslow recognized Brianna Boyd. He testified that Kolff stated "There's Boyd" and I replied "Yep". Parslow testified as he was getting out of the passenger side of the cruiser both females ran towards the front door. Parslow testified he yelled "Brianna" and the male party stopped. Parslow testified he was 100 per cent sure one of the females was Boyd. Parslow testified by the time he got out of the cruiser the two females had gotten into the apartment building by either buzzing in or with a key. Parslow testified that Constable Kolff was speaking to the black male and he stayed with Kolff as a safety concern. Parslow testified that drug traffickers carry weapons and that associates of drug traffickers are either holding the drugs or are carrying weapons. He testified Jamal Bobb identified himself with a passport and he advised the officers he was in town to enjoy the clubs and he was from Toronto. Bobb

advised the officers he met the girls in the club and he did not know who they were. He testified that Kolff was not present for the entire conversation and he believed Bobb was lying to him after he put some questions to him.

Parslow testified when a male person exited the apartment building he was able to secure access to the building for entry. He testified they immediately walked up to Unit #209. He testified that they listened outside of door and heard a male and female talking. They knocked on the door and received no response. They knocked for approximately two minutes loud enough for people to hear. Bobb was present on the floor and was texting. Parslow testified that this caused him great concern. He believed Bobb was texting Boyd to alert her of their presence.

Parslow testified that Kolff believed he had exigent circumstances and without a doubt would get a Section 11 Search Warrant. Parslow articulated the exigent circumstances as: That date received information Boyd was in possession of cocaine, believed this to be corroborated, flees from us, more believable, believed inside of unit, plan was – intention were present could destroy evidence. Parslow testified the other options were 1) Search warrant would take too long, 2) Leave, do nothing and write up the Breach charges or 3) Feeney Warrant, grounds of Breach. Parslow believed they could have obtained the warrants. Time factors for Feeney or CDSA needed to be considered. He testified he has obtained hundreds of warrants and they are all time consuming. He testified he told Kolff he would attend his father's residence to obtain a key. He testified that his experiences as a drug officer having a key had an advantage. His father told him that Boyd was not supposed to be at the apartment.

He testified that Kolff put the key in the lock quietly and they entered the apartment by shoulder shoving the door. Parslow testified they were met by a large Rottweiler like large dog. Once inside Parslow testified he observed a male and female party who were pretending to sleep. They got up and he asked them to put the dog in the bathroom.

He testified that the female party asked them what they were doing and he replied they were looking for Boyd. The female responded that she was in Toronto. He testified the female told them they needed a warrant to be in the apartment and Parslow advised her that he did not need a warrant. He testified that they identified themselves as Alicia Fleet and Jordan Norris.

He testified that he did not require the occupants consent; they did not physically search or detain the occupants. They did not find Boyd and they were in the apartment for 2-3 minutes. He testified their weapons were not drawn.

He testified they went and knocked on an apartment on the 6th floor with no response. He testified they left the building and parked their cruiser nearby but saw no one leave the building.

They returned to the police station and began their brief. Parslow testified that without a doubt they had reasonable and probable grounds for that residence.

During cross examination Parslow testified he could not recall what Boyd was wearing. Parslow testified that Kolff advised him of the CPIC check on Boyd and Bobb. He testified he was not concerned with Bobb even after he heard he had a weapons conviction. He testified he knew that Bobb was lying to him and he had no concerns.

Mr. Dubois posed the question as to why he heard voices outside the unit however this was not noted in notebook or duty report. He also raised the issue of pretending to sleep when this was not noted in notes or duty report. In response to not requiring a warrant Parslow testified that Fleet allowed them to search the apartment. After leaving the apartment and checking the common areas he believed that Boyd evaded them.

Findings:

Constable Harvey Kolff #253 and Constable Chad Parslow #245 are before the Tribunal charged with one count of Discreditable Conduct.

Submissions were heard on day three of the Hearing on the merits of the case by Mr. Joel Dubois, representing the Kingston Police Service and Mr. Joseph Markson, representing Constables Kolff and Parslow. Ms. Mary Jane Kingston did not make any submissions to the Tribunal. Mr. Markson has provided me with ten (10) cases (Exhibit #25) to assist the Tribunal in the decision making process and Mr. Dubois has provided fifteen (15) cases to assist the tribunal in the decision making process.

The Hearing generated two days of evidence and the third day was utilized for submissions by Counsel.

In summarizing Mr. Marksons' submissions he wishes the trier of fact to consider that the officers knew Brianna Boyd and there was no doubt Boyd was present at the apartment building on April 23, 2013. The duty notes of the officers are lean in respect of the night in question however they are notes to refresh the officer's memories. Ms. Boyd has no respect for the law and she has a perjury conviction. The officers at all times were acting in good faith. The position that Norris and Fleet were sleeping upon entry is a lie as there was loud knocking prior to the entry. Kolff and Parslow are seasoned officers well versed in the drug culture and actions of those involved in this type of activity. Exigent circumstances was in play on that night and the officers utilized this tactic to gain entry to prevent the destruction of evidence when all points were considered. Again as I have stated Mr. Markson has provided cases to support his position.

Mr. Dubois takes a different approach to this case. Mr. Dubois is adamant that the officers conducted an unlawful entry and search of the apartment. Unlawful entry does meet the standard under the Police Services Act to substantiate a Discreditable Conduct charge against the officers. Dubois states the officers had to testify to the reasonableness of the search and in this case they did not. Dubois argues the officers were not credible and their notes support this argument. The

position of the CI information is not accurate and does not state the drugs are in the apartment. Mr. Dubois argues that Brianna Boyd was not in Kingston that evening.

I have considered the cases supplied to me by Counsel. I have read the cases supplied to the Tribunal and while not always on point, have found them to be instructive in my deliberations.

In Ontario, Legal Aspects of Policing (pages 6-14) provides that a police officer commits an offence against discipline by acting “in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force”.

The most recent application of the test for discreditable conduct in Ontario confirms that the test is “primarily an objective one” and that the conduct must be measured against the “reasonable expectations of the community”.

The Ontario Civilian Commission on Police Services has articulated the following approach regarding the meaning of “likely” to bring discredit upon the reputation of the police force:

The measure used to determine whether conduct has been discreditable is the extent of the potential damage to the reputation and image of the service should the action become public knowledge.

The principal parties involved in this charge are Brianna Boyd, Constables Kolff and Parslow. Alicia Fleet and Jordan Norris can be seen as central in relation to the entry to their apartment which they were paying rent to Brianna Boyd.

The two main issues to address in this case are: 1) **Was Brianna Boyd observed by the officers on the morning of April 23, 2013** and 2) **Did exigent circumstances exist for the entry to Unit #209.**

There is no argument that Brianna Boyd is known to the Kingston Police Service, Constables Kolff and Parslow and that she is a known and convicted trafficker of narcotics in particular, Cocaine. I believe this fact is proven. Exhibits 9,10,11,12 and 13 confirm the criminal record and known charges and convictions in relation to Brianna Boyd.

It is also known that Alicia Fleet and Brianna Boyd are acquaintances and that they shared apartments in Kingston and Toronto. During their testimony in relation to the use of drugs and whether Fleet was aware of Boyd’s drug dealings her memory I believe was selective. This same situation related to Boyd when she was questioned in regards to Fleet. On the entirety of their testimony it was selective only when a question related to illegal activity.

It is also known that Constable Kolff had Criminal Informants which were proven reliable on cases where Boyd was charged with Cocaine possession and Trafficking. It must be noted that the information received was accurate and the Kingston Police Service acted upon it in a prompt fashion. The information was accurate and more important it was detailed.

The issue that brings us here today deals with information received from an informant and the Bail recognizance that Boyd must adhere to as part of her bail conditions. It is known that Boyd does not always adhere to those conditions and this is evident with the Breach charges that she was convicted on or was still facing. This meeting with the CI took place at approximately 7.30 and 8.00 PM. on April 22, 2013.

On April 22, 2013 Constables Kolff and Parslow after parade made arrangements to meet a Criminal Informant. They testified as to the information provided to them by the CI.

Exhibit #8 in this proceeding is the sign in sheet for Boyd from the Toronto Police Service. This document shows that Boyd signed in to the station at 5.42 PM. April 22, 2013. Boyd was 45 minutes late for her attendance.

This factor was not known to the officers at the time of the information received from the informant. It would not be possible for Boyd to be in Kingston as the Informant had relayed to the officers during the time frame he/she met with the officers.

At 3.10 AM Kolff and Parslow are at the Eldon Hall Place apartment and they observe three parties walking towards the apartment building. They travel towards the parties and park their cruiser in front of the building approximately twenty feet from the trio approaching them. It is at this time that the officers recognize Brianna Boyd. They begin to exit their cruiser and yell out her name. The two females run towards the front door of the building. Kolff and Parslow do not initiate a pursuit of Boyd; instead they speak to the male party. They obtain his particulars and while Kolff is initiating a CPIC check Parslow asks some questions of the male party identified as Jamal Bobb.

Bobb states he does not know the females and he was in Kingston from Toronto checking out the clubs. Bobb has a conviction for carrying a concealed weapon. Parslow assessment of Bobb was that he was a liar and he was not a threat to the officers.

The officers gain entry to the apartment building as their focus has returned to Brianna Boyd. From the evidence given by the officers they believed she was in possession of cocaine and they proceeded to the last known address that Boyd had in Kingston. Constable Kolff had checked Boyd on CPIC as Exhibit #23 depicts. It does give the addresses as Toronto and another address in Kingston that Boyd is to reside. They also are made aware of her conditions and the officers were aware that a number of them were in contravention of her bail recognizance.

The officers walk up to Unit #209. They testify they knock on the door and yell loudly Brianna's name in the hope she would open the door. This did not transpire. It is at this point I am of the firm belief that the two officers did observe Brianna Boyd outside of the apartment building. They both know Boyd from previous cases that she was involved in with the Kingston Police Service and more importantly they had a close, unobstructed view within a well-lighted area, at close proximity to identify Brianna Boyd. I am not sure why the Kingston Police Service Professional Standards Unit and/or these officers upon charging Boyd with Breach charges did not obtain the cell records to determine where Boyd was transmitting with her phone if they believed that either Bobb or Fleet (has admitted texting Boyd on the day in question) would assist in determining where Boyd was on the night in question. It is my belief that the two females could not have entered the

apartment building without either a key or knowing the pass code. Yes it could be true the other female may have been a resident however I do not believe they would have run away.

Mr. Bobb being a person from Toronto assists me in my decision making and together with Boyd knowing she was in Breach of her conditions in relation to her curfew and being in Kingston was a priority with her to get away from the Police. This priority may also have been the sole purpose to run away.

The best evidence would have been if the officers had taken chase of Boyd to apprehend her instead of dealing with Mr. Bobb. This would have led to fresh pursuit and also would have given them the power to search as a result of the arrest of the Breach charges which the officers both knew that she was in contravention of that morning.

To second guess the situation is only human. As we know this situation did not take place.

In regards to the first question posed whether Brianna Boyd was observed in Kingston on April 23, 2013 the answer is in the affirmative.

Now I must turn my mind to the exigent circumstances the officers believed existed to search Unit #209.

In referring to Exhibit #25, Tab 3 at page seven (7) at paragraph thirty seven (37) it states the following:

“Exigent circumstances exist if immediate action is required for the safety of the police or if there is an immediate danger of the loss, removal, destruction, or disappearance of the evidence if the search is delayed. (R.vs. Grant, Feeney, McCormack, Duong and Tran). Exigent circumstances involve the subjective belief of the police as well an objective basis for the belief (McCormack, Duong and Tran. The exigent circumstances asserted by police must be objectively reasonable. In R, vs McCormack, exigent circumstances were established because the police had a reasonable basis to believe that a female seen in an automobile was the accused’s girlfriend, that she had access to his apartment, and that there was evidence in the apartment that could be destroyed. In R.vs Feeney, however, exigent circumstances did not exist when there was no apparent jeopardy to the safety of the police and when police had no knowledge of evidence at the premises but only suspected or had a hunch that evidence may be found.”

Kolff testified he believed he had exigent circumstances and had grounds to arrest Boyd for Possession for the Purpose of Trafficking. He testified that it was not practicable or feasible to get a search warrant. It would take too long and it would be lost time. He testified every minute lost would lead to the loss or destruction of cocaine. He testified he believed due to the informant information and the previous cocaine related offences that Boyd was convicted or still facing, the fact the Boyd ran away when called which she usually did he believed her to be in possession of cocaine. He testified he discussed the exigent circumstance with Parslow for about a minute, Parslow agreed and Parslow left to get a key for the apartment from the building superintendent.

Parslow testified that Kolff believed he had exigent circumstances and without a doubt would get a Section 11 Search Warrant. Parslow articulated the exigent circumstances as: That date received

information Boyd was in possession of cocaine, believed this to be corroborated, flees from us, more believable, believed inside of unit, plan was – intention were present could destroy evidence. Parslow testified the other options were 1) Search warrant would take too long, 2) Leave, do nothing and write up the Breach charges or 3) Feeney Warrant, grounds of Breach. Parslow believed they could have obtained the warrants. Time factors for Feeney or CDSA needed to be considered. He testified he has obtained hundreds of warrants and they are all time consuming. He testified he told Kolff he would attend his father's residence to obtain a key.

The discussion took place outside of Unit #209 for approximately one minute after the officers testified they heard voices and or a male and female voice inside the apartment and stop after they continued to knock.

This was apparently discussed within five to ten feet away from Mr. Bobb who was texting to Boyd in the officer's minds in the hallway as the officers were outside of the Unit. Parslow departs for five to ten minutes to obtain the key from his father who is the building Superintendent.

The officers enter the apartment by forcing the apartment door after unlocking the deadbolt with the key. Two persons are located in the apartment. Alicia Fleet and Jordan Norris accompanied by Norris's dog. Boyd is not located in the residence after the officers conducted a search as per their testimony at this Tribunal.

Mr. Markson in his submission to this Tribunal advises the notes of the officers are lean in regards to the morning of April 23, 2013. As I peruse Exhibits #16 and #19, the notes of Constables Kolff and Parslow they both have relatively detailed notes as it relates to the time of 0310, the observation of the three parties, the identification of Boyd, the identity of the male party as Jamal Bobb, the conditions of Boyd's release as it relates to her Bail Recognizance.

The next entry is 0315 where the officer's note they knocked on door and gained entry to the apartment and find two persons identified as Alicia Fleet and Jordan Norris asleep on the couch. Boyd not in residence and they checked the public areas of the apartment building. Parslow goes further in his notes to say the occupants did not hear the knocking on the door.

As I review the testimony of Alicia Fleet given at this Tribunal I find her evidence aligns itself more with the notes of the officers then with the officer's testimony at this Tribunal. Yes, she was evasive with the use of marihuana, however on the whole of her testimony she was not shaken by the cross examination of Mr. Markson with the exception of the use of marihuana for medicinal purposes.

She testified she did not complain about the entry, harbored no ill feelings for the officers and she testified she accepted the officer's direction when they stated they did not require a warrant to look for Brianna Boyd. She did not give them permission to search the apartment. She testified she texted Boyd at the time the officers were in the apartment to advise what was happening and to tell them Boyd was in Toronto as this was Fleets belief. She articulated her testimony in an impressive manner and as I stated earlier, was evasive about the marihuana use which is not to be unexpected while in a Tribunal setting.

The Duty reports of the officers were completed on November 14, 2013 some seven months after the entry. Again, the officers added a little more information. Added was the voices heard within the apartment when the officers were knocking and the subsequent hush of these voices. Also added was the entry to prevent the destruction of evidence. The officers did not make an entry of the search of the apartment. Both officers recorded that Boyd had given permission for Fleet and Norris to be in the apartment. Missing from the duty report was the evidence of Bobb being present on the second floor while the officers were at the Unit.

I must access the evidence that the officers actually had in their possession at the time it was decided that the exigent circumstances existed for the entry.

Constable Kolff has testified that he makes detailed notes when meeting with informants.

I have reviewed the document marked as Exhibit #21. These are the notes of the meeting with the Informant. It does not say anywhere in the brief notation of the meeting that Boyd is in possession of any narcotic today.

This information is the sole information the officers had in their possession prior to seeing Boyd that morning.

We are aware the Boyd has been charged in the past for Cocaine trafficking and possession charges.

The officers state she runs when the Police are involved with her.

This is the sum total of the information the two officers had in their possession on April 23, 2013.

The information that she runs and that she has a record for Possession and Trafficking would be collateral issues for an officer or an officer of the Court to consider when obtaining a warrant or for the Justice to consider when signing a warrant.

It is my belief and I do find from the evidence received at this Hearing the officers best opportunity to arrest Boyd was at the point they observed her some twenty feet from the front of the cruiser. If this information was correct I do believe they would have had the opportunity to arrest her prior to her entering the apartment door either with a key or via buzzer. This would have given the officers the opportunity to catch up to her and make the arrest and the search incidental to the arrest.

The officers were acting on the information as they testified that she was in possession of Cocaine when this information was at the minimum eight hours old. These officers have testified they are seasoned drug officers. It is known by any officer that a trafficker would not be holding substantial quantity for that period of time if they were travelling to a location to distribute. As was the information received from the Informant when she was carrying sixty (60) grams this would have been transferred to the party ordering up as soon the trafficker arrived. In this instance at 3.10 AM the likelihood of Boyd still holding any quantity is remote.

If there was discussion by the two officers outside the door of the Unit this time factor should have been evident to them. If they discussed the exigent circumstances in front of the male party, Jamal Bobb it also should have been evident to them that once Constable Parslow left to obtain the key and if Boyd was in the Unit the evidence would have been destroyed prior to the entry.

The entry to the apartment was unwarranted and there was absolutely no information that these officers had in their possession which a Judge would have signed for them to get a warrant or a search warrant. Boyd did not even live at this location. The apartment was rented out by her.

When an arrest or an unlawful entry to a residence is unnecessary and an individual's right to freedom has been removed, however briefly, that matter is serious. The entry to the apartment of Alicia Fleet was unnecessary. Exigent circumstances were not present. Her personal freedom and that of Jordan Norris were removed. They could not leave voluntarily until the search for Brianna Boyd was completed. The officers have no notes on this important factor or of the exigent circumstance other than what they testified to at the Hearing. Fleet believed the officers when she questioned them about the warrant and believed they did not need one as the officers recounted to her. That is the reason she allowed them to stay. This is a significant action against Fleet and Norris by the Kingston Police Service.

I also believe and find that the officers rushed their decision and in no way had anything close to reasonable and probable grounds to enter the apartment unit with the observations that were made and the information they possessed on April 23, 2013. I believe the entry was a "wish and a prayer" by the officers considering what they observed and what they clearly did not have. As we know it was not Fleet or Norris that made the complaint. Unfortunately for the officers it was Brianna Boyd on the advice of her Probation Officer that the complaint was made.

I believe I can also state as a thirty three year officer with the Ontario Provincial Police, stationed thirteen years in Drug Enforcement as an Investigator, Under Cover officer, Designated at all levels of Court testifying as an Expert Officer, Deputy Director responsible for Drug Operations for the Province and lastly as the Director of Drug Enforcement for the Province I can state from my experiences that the officers did not have exigent circumstances to enter the apartment on the morning of April 23, 2013.

The information they received was hours old and it did not say she was carrying. There would be no chance for an officer to get a warrant based on this information.

It is my belief the officers are hard - working individuals and when they saw Brianna Boyd that night they over reacted to the situation. It may have been they regretted that they did not chase Boyd into the building, and instead questioned Bobb with negative results that they thought they should not let her get away. This position was the wrong position to take.

The accepted quality of the evidence that is required to be met in the prosecution of matters such as these is *clear and convincing evidence*, which has been described as:

“weighty, cogent and reliable evidence upon which a trier of fact, acting with care and caution, can come to a reasonable conclusion that the officer is guilty of misconduct.”

It is my finding that the Prosecution has met this standard in the Tribunal on this allegation against Constables Kolff and Parslow.

Decision:

Based on all the evidence brought before me in this Hearing, it is the decision of this Tribunal that Constable Harvey Kolff # 253 and Constable Chad Parslow # 245 are GUILTY of Discreditable Conduct as stated in the allegation contained in the Notice of Hearing.

**M.P.B. Elbers, Superintendent
(Retired)**

**March 09, 2015
Date**