

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING,	)	Amy Wood and Adam Gingera
	)	for the Crown
- and -	)	
	)	
JONATHAN MICHAEL KIAZYK,	)	Michael Cook
accused.	)	for the accused
	)	
	)	Judgment Delivered:
	)	June 30, 2026

GRAMMOND J.

INTRODUCTION

[1] At all material times, the accused Jonathan Michael Kiazzyk was a police officer employed by the Winnipeg Police Service ("WPS"). He is charged with being unlawfully in a dwelling-house with intent to commit the indictable offence of theft, obstructing an officer in the execution of their duty, and breach of trust by a public officer.

BACKGROUND

[2] On October 22, 2022, the WPS received a 911 call with respect to a break and enter in progress at a third-floor apartment-style condominium unit in Winnipeg. Two

officers on patrol, Constable Kirby-Peloquin ("Kirby-Peloquin") and Constable Ison¹ ("Ison"), attended the scene and were advised that an individual was locked out of the short-term rental unit in which he was staying (the "Suite"). That individual had scaled the outside of the building and was seeking to re-gain access to the Suite from a balcony. Kirby-Peloquin and Ison entered the building and opened the door to the Suite using a keyless entry code (the "Code") that the individual provided. They then opened the balcony doors from inside the Suite and the individual, identified as Handsome Raulia ("Raulia"), was able to re-enter the Suite.

[3] When they entered the Suite, Kirby-Peloquin and Ison observed drugs on the kitchen counter. They arrested Raulia and decided to apply for a search warrant for the Suite. Before leaving the scene, Kirby-Peloquin took two photographs that were admitted into evidence in this matter: one that depicts bundles of cash in a bedroom, and the other that depicts drugs and other items on the kitchen counter, including a large "Zip-Zag" bag containing what appears to be marijuana (the "Bag").

[4] When Kirby-Peloquin and Ison left the Suite, the accused and Constable Elston Bostock ("Bostock") were assigned to stand guard and hold the scene² in the hallway outside of the Suite while the search warrant was sought. Ultimately, they held the Suite for approximately three and one-half hours, from 11:57 p.m. until 3:31 a.m., when Kirby-Peloquin and Ison returned with the search warrant and supervising senior officer Patrol Sergeant Ring ("Ring"). Thereafter, all five officers participated in the

¹ At the time, Ison was a rookie officer, having graduated from the academy four months earlier, in June 2022.

² At trial, the witnesses referred to police either "holding" or "guarding" a scene, and I will also use those terms interchangeably in these reasons.

search of the Suite after Ison, who acted as the seizing officer, took photographs of the Suite, including the drugs³ and other items on the kitchen counter.

[5] Kirby-Peloquin testified that after the search, he and Ison noticed that there was a discrepancy between the photograph of the drugs that Kirby-Peloquin took prior to obtaining the search warrant and the photograph of the drugs that Ison took during the search. More particularly, and as the accused admitted, the Bag had been re-positioned on the kitchen counter, such that the opening of the Bag was facing in the opposite direction from that which it was facing previously, and other items on the counter had also been moved.

[6] The charges against the accused are based upon the allegation that while he and Bostock were holding the scene, they entered the Suite and took marijuana from the Bag. It is not contested that only the accused and Bostock had access to the Suite while the warrant was being sought, and the accused admitted that both he and Bostock entered the Suite. More particularly, the accused testified that he entered the Suite three to four times to use the washroom, and one time to take a photograph as referenced below, such that he entered the Suite four to five times in total, and that Bostock entered the Suite two to three times. As such, it is clear that one or both of them must have touched the Bag. The accused also testified, as referenced below, that after their shift that day, Bostock gave him marijuana clusters that looked similar to those which he had observed in the Bag.

³ The evidence reflects that the street value of the drugs found in the Suite was over \$95,000.00 of fentanyl and over \$10,000.00 of cocaine.

[7] Both Kirby-Peloquin and Ring testified that Kirby-Peloquin reported the discrepancy in the photographs to Ring and left it with him for further handling. Ring testified that he intended to speak to the accused and Bostock about the discrepancy shortly thereafter, thinking that he would have to educate them about proper procedure when guarding a scene, but was unable to speak to the accused promptly because shortly after the investigation in the Suite the accused was injured and away from work for a period of time. When Ring finally spoke to the accused about this incident, it was weeks or months after the fact, and on cross-examination he agreed that his conversation with the accused could have taken place in December 2022⁴.

[8] Four police officers including the accused testified at trial, and none of them took notes of their conversations with each other at the material time. That approach is not surprising, because although police officers are trained to take notes in the course of their work, they do not generally do so with respect to conversations with other officers. Having said that, the evidence reflects that written records of the conversations as between officers were first created when the Professional Standards Unit ("PSU") became involved, and interviews were conducted in the spring and early summer of 2024, approximately one and one-half years after the investigation in the Suite.

[9] A number of agreed facts were entered into the trial record, including:

- a) at the material time, the accused had been serving as a police constable for approximately 18 years;

⁴ For ease of reference, I will refer to this conversation as the "December Conversation".

- b) after his shift on October 22, 2022, the accused took sick leave due to a non-work related injury, and did not return to work until November 17, 2022, at which time he was assigned to light duties until he returned to active duty on June 3, 2023;
- c) following the investigation in the Suite, Raulia was charged with two counts of possession of drugs for the purposes of trafficking and one count of possession of property over \$5,000.00 obtained by crime relative to the cash in the Suite, which exceeded \$8,000.00;
- d) in March 2024, all charges against Raulia were stayed by the Crown due to delayed disclosure of the continuity issue in the Suite; and
- e) the voluntariness rule does not apply to the conversations as between the accused and any of Ring, Kirby-Peloquin, and Ison.

THE LAW

[10] As this case turns upon the credibility and reliability of the witnesses called by the Crown (Ring and Ison in particular) and the defence (the accused), who have given conflicting evidence, I must consider the three-step test set out in ***R. v. W.(D.)***, [1991] 1 S.C.R. 742. Those steps require a consideration of whether I believe the evidence of the accused, but it is not a matter of whether I believe the accused's evidence or that of the Crown's witnesses. I must relate the concept of reasonable doubt to my findings regarding credibility and reliability. If I do not believe the evidence of the accused, I must still consider whether his evidence leaves me with a reasonable doubt as to his

guilt. Ultimately, the burden of proof remains on the Crown to satisfy me of the guilt of the accused beyond a reasonable doubt, on the basis of the evidence that I do accept.

[11] I note also that the evidence of the witnesses should not be analyzed in a vacuum, but regard must be had to other evidence before the court (see *R. v. Menow*, 2013 MBCA 72).

[12] In addition, as stated in *R. v. Metcalfe*, 2018 ONSC 4925:

[21] . . . [T]he credibility of the evidence given by a witness turns largely on the examination of whether, amongst other things, the evidence is: 1) internally consistent; 2) inconsistent with his or her own prior statements; and 3) in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions [citations omitted].

[13] The defence submitted that this is a circumstantial evidence case, whereas the Crown argued that this a confession case. I agree with the defence that the Crown does not rely upon forensic or eyewitness evidence that the accused touched the Bag or stole marijuana from it, but I note that the Crown relies upon direct evidence in the form of the accused's alleged admissions against his interests made to Ring and Ison, which I have considered in my analysis below. As such, I need not consider whether the accused's guilt is the only rational or reasonable inference that can be drawn from the evidence before me.

POSITION OF THE PARTIES

The Crown

[14] The Crown submitted that it has proven beyond a reasonable doubt that the accused and Bostock found the Bag in the Suite, they handled and moved it, they formed a common plan to take from it, and they did so. As such, the Crown argued that

it has proven that the accused wilfully interfered with the drug investigation by tampering with the continuity of the scene, which constituted a serious and marked departure from the applicable standard expected of him.

[15] The Crown also argued that the evidence of the Crown witnesses was credible and reliable, and for the most part their evidence was not challenged. The Crown witnesses admitted when they forgot details such as dates, and each of them either declined to answer questions or qualified their answers when they were unclear on a particular point. The Crown also noted that none of its witnesses were shaken or impeached on cross-examination.

The Defence

[16] The defence submitted that the requisite intent has not been established for any of the charges before the court. Although some of the accused's actions were ill-advised and foolish (as referenced below), and had unintended consequences, they were not criminal. In addition, the accused testified that Bostock was in the Suite alone, such that if any marijuana was stolen, Bostock acted alone, without the accused's knowledge or assistance.

[17] The defence contended that the accused was a very credible witness and that his evidence should be believed, or that a doubt should be raised because of his evidence, leading to an acquittal on all counts. In addition, the defence noted that there is no direct evidence that the accused touched the Bag on his own or together with Bostock, and argued that the alleged admissions relied upon by the Crown are insufficient to convict.

CHARGES BEFORE THE COURT

Count 1: Being Unlawfully in a Dwelling House with Intent

[18] To convict the accused under s. 349(1) of the *Criminal Code of Canada*, R.S.C., 1985, c. C-46 (the "**Code**"), the Crown must establish beyond a reasonable doubt that he entered or was in the Suite with the intent to commit an indictable offence, namely theft.

[19] The accused has conceded that he entered the Suite unlawfully, and that was an appropriate concession because a police officer holding a scene does not generally have the right to enter that scene, particularly where the scene is a private residence such as the Suite. In this case, judicial authorization to enter the Suite was required and the search warrant had not yet been obtained when the accused entered the Suite.

Count 2: Obstructing an Officer in the Execution of Their Duty

[20] To convict the accused under s. 129(a) of the *Code*, the Crown must prove that the accused wilfully obstructed a peace officer, namely Ring, in the execution of his duties. The accused has conceded that Ring was a peace officer engaged in the execution of his duties at the material time. The accused has denied that the Crown has proven an obstruction, and, if there was an obstruction, that it was wilful.

[21] In *R. v. Akrofi*, [1997] O.J. No. 44 (C.A.), the court upheld the conviction of an accused who was found to have obstructed police in the course of their investigation by rendering a piece of evidence inaccessible, and ultimately irrecoverable.

[22] In *R. v. Gunn*, 1997 ABCA 35, the court stated that this offence requires a general intent and not a specific intent. In other words, the Crown is not required to

prove the formation of further ulterior motives and purposes. The court also stated that there is not, and likely cannot be, a precise legal definition of “obstructs” as the word is used in s. 129(a).

[23] In ***R. v. Alsager***, 2016 SKCA 91, the court stated:

[51] . . . [C]onsiderations of practical legal policy and justice also serve to inform an interpretation of s. 129(a) to the effect that, by way of *mens rea*, the offence must involve more than a simple intention to commit an act which, so it turns out, obstructs a peace officer. For example, imagine a situation where a bystander steps into a scuffle to assist a police officer but ends up misguidedly doing something that helps the suspect to break the officer’s grip and escape. It would be wrong if the bystander could then be convicted of obstruction simply because he or she intended to do the specific thing that had the effect of aiding the escape. Similarly, imagine a person who parks his or her car in a narrow lane in such a way that, sometime later, a police cruiser being driven in pursuit of a fugitive is blocked from proceeding down the lane. Surely that person should not be liable to a conviction pursuant to s. 129(a) merely because he or she intended to park the car in the lane and its positioning had the ultimate effect of impeding a police chase.

[52] Nonetheless, in order to give effect to the language of s. 129(a), and Parliament’s apparent intention in enacting it, it is not necessary to restrict the scope of the provision to situations where an offender has a conscious purpose to obstruct a peace officer. As pointed out by Martin J.A. in *Buzzanga* at paras 40–46, if a person who foresees that a consequence is certain or substantially certain to result from an act, the person can be taken to have intended the consequence even if the act is done to achieve some different purpose: see also Morris Manning, Q.C., and Peter Sankoff, *Manning, Mewett & Sankoff: Criminal Law*, 4th ed (Markham: LexisNexis Canada Inc, 2009) at 164.

[53] All of this leads me to conclude that the *mens rea* aspect of s. 129(a) requires the Crown to prove beyond a reasonable doubt that (a) the accused knew the individual obstructed was a peace officer or other person listed in s. 129(a), (b) the accused knew the individual obstructed was in the execution of his or her duty, and (c) the accused either had an intention to obstruct the peace officer or foresaw with certainty or substantial certainty that doing the act in question would obstruct the peace officer.

Count 3: Breach of Trust by a Public Officer

[24] To convict the accused under s. 122 of the **Code**, the Crown must prove the five elements of the offence set out below in paragraph 58 of ***R. c. Boulanger***, 2006 SCC 32, where the court stated:

[49] As the early cases make clear, the *actus reus* of the offence of breach of trust defies precise definition because of the range of conduct that it is designed to cover. In **Perreault**, Baudouin J.A. held that, subject to the benefit requirement, s. 122 of the **Criminal Code** could be triggered by any act or omission contrary to a duty imposed by law or regulation, by the accused's contract of employment or by a guideline connected with the accused's duties. This echoes the earlier decision in **Campbell** to the effect that the offence was "wide enough to cover any breach of the appropriate standard of responsibility and conduct demanded of the accused by the nature of his office as a senior civil servant of the Crown" (p. 255).

. . .

[52] The purpose of the offence of misfeasance in public office, now known as the s. 122 offence of breach of trust by a public officer, can be traced back to the early authorities that recognize that public officers are entrusted with powers and duties for the public benefit. The public is entitled to expect that public officials entrusted with these powers and responsibilities exercise them for the public benefit. Public officials are therefore made answerable to the public in a way that private actors may not be. This said, perfection has never been the standard for criminal culpability in this domain; "mistakes" and "errors in judgment" have always been excluded. To establish the criminal offence of breach of trust by a public officer, more is required. The conduct at issue, in addition to being carried out with the requisite *mens rea*, must be sufficiently serious to move it from the realm of administrative fault to that of criminal behaviour. This concern is clearly reflected in the seriousness requirement of **Shum Kwok Sher** and the **Attorney General's Reference**. What is required is "conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder" (**Attorney General's Reference**, at para. 56). As stated in **R. v. Creighton**, [1993] 3 S.C.R. 3, "[t]he law does not lightly brand a person as a criminal" (p. 59).

. . .

[54] The test to be met in the inquiry is analogous to the test for criminal negligence. As in cases of breach of trust by a public officer, it became necessary in criminal negligence cases to distinguish conduct sufficient to attract criminal sanction from less serious forms of conduct meriting civil or administrative sanction. To make this distinction, the Ontario Court of Appeal held in **R. v. Rajic (1993)**, 80 C.C.C. (3d) 533, that the conduct must represent a "marked" departure from prudent conduct. The Supreme Court of Canada confirmed this approach in cases involving dangerous driving of a motor vehicle, stating that the conduct must represent a "marked" departure from the standard of care of a reasonable person in all the circumstances of the case: **R. v. Hundal**, [1993] 1 S.C.R. 867. Similarly, the public official's conduct must represent a "marked" departure from the standards expected of an individual in the accused's position of public trust. However, unlike criminal negligence, the offence of breach of trust by a public officer also has a subjective mental element . . .

. . .

[56] . . . In principle, the *mens rea* of the offence lies in the intention to use one's public office for purposes other than the benefit of the public. In practice, this

has been associated historically with using one's public office for a dishonest, partial, corrupt or oppressive purpose, each of which embodies the non-public purpose with which the offence is concerned.

[57] As with any offence, the *mens rea* is inferred from the circumstances. An attempt by the accused to conceal his or her actions may often provide evidence of an improper intent: ***Arnoldi*** . .

[T]he offence may be made out where no personal benefit is involved.

. . .

[58] I conclude that the offence of breach of trust by a public officer will be established where the Crown proves beyond a reasonable doubt the following elements:

1. The accused is an official;
2. The accused was acting in connection with the duties of his or her office;
3. The accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office;
4. The conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust; and
5. The accused acted with the intention to use his or her public office for a purpose other than the public good, for example, for a dishonest, partial, corrupt, or oppressive purpose.

[25] In the case before the court, it is conceded that the accused is an official and was acting in connection with the duties of his office at all material times.

ANALYSIS AND FACTUAL FINDINGS

[26] Before considering the essential elements of each of the offences charged, I will consider the evidence before me and make the necessary factual findings, including with respect to the accused's intent.

[27] The accused denied that he intended to commit or did commit theft in the Suite. Rather, he stated that he entered the Suite multiple times to use the washroom, and one time to play a prank on Ring (the "Prank"). My analysis with respect to the accused's intent when he entered the Suite is as follows.

[28] The accused testified that he brought a water bottle to the scene and that he was drinking a significant amount of water at the time. Both the accused and Kirby-Peloquin testified that before Kirby-Peloquin left the building to seek the search warrant, the accused asked him for the Code so that he could use the washroom inside the Suite. The accused and Kirby-Peloquin also agreed that initially, Kirby-Peloquin resisted the request and referred the accused to the call history where he knew the Code could be found. The accused testified that ultimately, Kirby-Peloquin provided the Code to him, and on cross-examination, Kirby-Peloquin acknowledged that he may have done so. I accept that Kirby-Peloquin gave the accused the Code, and that he did so because the accused and Bostock were more senior officers than he was, and Kirby-Peloquin knew that they could access the Code in the call history in any event.

[29] Kirby-Peloquin also testified that before he left the scene, he told the accused and Bostock not to enter the Suite, that he had taken photographs to support the search warrant, and not to touch anything. The accused agreed that Kirby-Peloquin told him that he took photographs in the Suite and testified on cross-examination that while he did not recall Kirby-Peloquin telling him and Bostock not to enter the Suite, it was possible that he did so. I accept Kirby-Peloquin's evidence, which did not waver, and I find that despite having given the accused the Code, he told both the accused and Bostock not to enter the Suite, that he had taken photographs, and not to touch anything. It is clear, as the accused acknowledged, that Kirby-Peloquin did not like or trust Bostock, either as a person or as a police officer, which I accept prompted his comments to the officers.

[30] Ring testified that before the accused and Bostock left the police station to attend the scene, he told them that “nobody” was to enter the Suite, and although the accused agreed that Ring gave that direction, he testified that he did not believe it applied to him as a police officer.

[31] In other words, the accused testified that at the material time he believed that he had the right to enter to the Suite because of his position as a police officer and because he was holding the scene. More specifically, on cross-examination he testified that he believed that as police had been in the Suite already, they “owned” it while they sought a warrant to search and seize property found within it.

[32] The accused testified that in his career as a police officer he has held over two dozen scenes but had never before guarded a drug scene. Rather, he held scenes involving allegations of murder and of arson, and where sudden deaths had occurred. He agreed that he would not have entered those scenes while holding them because they would be searched for microbial DNA and he understood that he could contaminate the scene by doing so. He stated that in his view at the time, the context of a drug investigation was different. Having said that, the accused agreed on cross-examination that police did not know what else they might find in the Suite in addition to the drugs observed on the kitchen counter.

[33] As referenced above, four police officers including the accused testified at the trial in this matter, and a significant amount of evidence was elicited relative to police officers guarding scenes. All of the officers agreed that police may be tasked with holding a scene for many hours, depending on the reasons why the scene is being held

and a number of other variables. In this case, it was unclear at the outset how long the accused and Bostock would be guarding the Suite, and they brought chairs from the police station in order that they could sit in the hallway.

[34] The accused testified that he had never before guarded a scene indoors at an apartment complex. Rather, on previous occasions, he held scenes outside of a building or residence, and if he needed to use the washroom in those instances, he was able to do so by briefly attending to a private area outside to relieve himself. He testified that while guarding a scene he would not want to be away from his partner for more than five minutes, or farther than shouting distance away.

[35] Kirby-Peloquin, Ring, and the accused all gave evidence that when two officers are guarding a scene, the usual practice is that they stay together. Having said that, Kirby-Peloquin testified that one officer could leave the area to relieve themselves while the other held the scene, and Ring testified that in this case he was willing to guard the Suite alone, in his capacity as a patrol sergeant who works without a partner. The accused acknowledged on cross-examination that there are scenarios in which partners will separate while holding a scene.

[36] The accused acknowledged that while he and Bostock were holding the Suite, Ring texted to him a message that read: "I am on the road if you need anything or to break away". As such, it is clear that he and Bostock were offered an opportunity to be relieved from holding the Suite, and the accused agreed on cross-examination that on previous occasions he and former partners had requested a relief team when they were guarding scenes and needed to leave to use the washroom.

[37] I accept that in this case the washroom in the Suite was the only washroom inside the building to which the accused had access at the material time. There were no public washrooms in the building, and it would not have been appropriate to ask to use the washroom in any other apartment. The accused testified that leaving the building to relieve himself outside was not an option in this case because that would have given rise to a risk that he would become locked out of the building. If that occurred, Bostock would have to come down from the third floor to the main entrance and re-admit him, thereby leaving the hallway of the Suite completely unattended, which would have been unacceptable.

[38] On the basis of the officers' testimony, I accept that the best practice would have been for the accused and Bostock to remain together in the hallway throughout their time guarding the Suite, yet the accused testified that both he and Bostock left the hallway on multiple occasions. As referenced above, the accused testified that he entered the Suite three to four times to use the washroom and once more to take a photograph, and that Bostock entered the Suite two or three times.

[39] I have considered the accused's assertion that he believed he was permitted to enter the Suite to use the washroom.

[40] The evidence before me reflects that all police officer recruits receive training on the law of search and seizure, including permitted warrantless searches, applying for search warrants, and related ***Charter*** rights, as well as the circumstances in which police officers can enter private residences. The accused acknowledged that when he attended the police academy in 2006, he was taught about search and seizure,

including the ***Charter***. He learned when police could or could not enter a private residence, and he acknowledged that police cannot enter a private residence without a warrant except in certain circumstances.

[41] The accused agreed on cross-examination that typically, no-one should enter a scene that is being guarded, including police officers, and that if they did so they could accidentally disturb the evidence, or leave their own DNA at the scene. He also agreed that adding new exhibits to a scene or moving exhibits within a scene would disturb it and impede the police investigation.

[42] Ring testified that prior to this incident he believed it was common knowledge for police officers, and especially senior officers, that they should not enter a scene that they are holding. Having said that, on cross-examination he agreed that officers guarding a scene would likely permit a senior officer to enter that scene if a senior officer attended and sought to gain entry.

[43] I also heard evidence from all of the officers who testified, including the accused, about why police officers guard crime scenes. Those reasons included:

- a) preserving the continuity of the scene;
- b) preserving the location of the evidence and the continuity thereof until photographs are taken and seized items are catalogued;
- c) preventing the disturbance, destruction, manipulation, or removal of evidence;
- d) preventing the contamination of the scene; and
- e) keeping members of the public away from and out of the scene.

[44] The Crown submitted that the accused's alleged understanding of the law relative to drug warrants is nonsensical based upon what he has admitted that he knew at the time. More specifically, the accused had no way of knowing what evidence might be found in the Suite, and as such his explanation that forensic evidence including microbial DNA would not be relevant in a drug investigation is illogical. He asked no questions of the other officers to clarify his understanding, and his assumptions made no sense based upon what he admits he knew the law to be.

[45] I have concluded that from an objective perspective, a veteran officer such as the accused should have understood the law that applies to entering a private residence, particularly in the context of the importance of guarding a scene. More specifically, he should have known that in the absence of consent, exigent circumstances, a judicial authorization, or other lawful reason, he could not enter the Suite legally, regardless of whether it was a drug scene or a different type of crime scene.

[46] Having said that, I have considered the accused's subjective beliefs at the material time in the context of all of the evidence before me, and I am not satisfied beyond a reasonable doubt that he understood the law correctly, and knew that it was unlawful to enter the Suite to use the washroom, because of the following pieces of evidence:

- a) the accused told Kirby-Peloquin that he intended to enter the Suite to use the washroom;

- b) although Kirby-Peloquin advised the accused not to enter the Suite, he also gave him the Code and told him not to touch anything, both of which are consistent with the accused entering the Suite; and
- c) Ring testified that during the December Conversation:
 - i) the accused seemed surprised when he told the accused that he had no right to enter the Suite even to use the washroom;
 - ii) the accused offered him an explanation for why he thought he could enter the Suite to use the washroom, which Ring believed was a feasible explanation at the time; and
 - iii) although Ring could not recall the details of the explanation at trial, he agreed that there could have been a misunderstanding about whether the accused could enter the Suite to use the washroom, and he told the accused the same.

[47] In other words, despite being told not to enter the Suite by both Ring and Kirby-Peloquin, the accused made no attempt to hide either his intention to do so or the fact that he had actually done so from either Kirby-Peloquin on the night in question, or from Ring, his senior and supervising officer, during the December Conversation.

[48] I appreciate that the accused's approach was not in line with the training or directions that he had received, and to be clear, for the reasons set out below I do not believe his assertions regarding his understanding of the law, nor do I have a doubt as to his belief because of his evidence. Rather, I am not satisfied on the basis of the

evidence that I do accept, that the Crown has proven beyond a reasonable doubt that the accused knew he could not enter the Suite to use the washroom.

[49] I have also considered the accused's assertion that he believed he was permitted to enter the Suite to take a photograph to play the Prank.

[50] The accused testified that after guarding the Suite for a period of time "boredom kicked in" and he decided to play the Prank, of which Bostock was aware. The Prank was to advise Ring, through a series of text messages and two photographs, that the accused and Bostock had conducted a search of the Suite prior to the search warrant being obtained. The evidence before me reflects that the accused often sought to infuse humour into the workplace, as a means of seeking to relieve some of the pressure that arises while doing the difficult job of policing.

[51] Kirby-Peloquin testified that the accused told him via electronic message⁵ that he was going to go into the Suite to play a prank on Ring, and the accused agreed that he advised Kirby-Peloquin of his intention. Kirby-Peloquin testified that in response, he again told the accused not to enter the Suite, not to touch anything, and reminded him that he had taken pictures in the Suite. The accused testified that it was possible that Kirby-Peloquin made these statements, and I accept Kirby-Peloquin's evidence on this point.

[52] To facilitate the Prank, the accused sent Ring a message that read: "[Bostock] found a gun under mattress and I got some more drugs in the suitcase". Ring

⁵ The messages sent to Kirby-Peloquin were not available at trial and are not in evidence before me. Both Kirby-Peloquin and the accused testified as to their respective recollections of the content of the messages.

responded with “Well I know you not dumb enough to go into that suit so I doubt it” (*sic*). The accused testified that this message, even in the context of the earlier comments of Ring and Kirby-Peloquin about not entering the Suite, did not change his view that he could enter the Suite.

[53] The accused testified that he entered the Suite to take a photograph of a gun⁶ (the “Gun”) in one of the bedrooms, separate and apart from his entries to use the washroom. The accused sent the photograph to Ring, which he acknowledged on cross-examination, and in hindsight, was a breach of Raulia’s **Charter** rights and a disruption of the continuity of that bedroom, done solely for his personal amusement. He stated that at the material time he did not think through the impact of his actions upon the case against Raulia and maintained that he was not aware that he was violating Raulia’s rights by entering the Suite to take the picture.

[54] Ring’s text message response to the photograph of the Gun read: “Well I REALLY hope that’s a[n] internet photo and assuming it is” (emphasis in original). The accused then sent Ring a second photograph, of Bostock sitting in the hallway holding the Gun, and he testified that he did so to “kill” the Prank, and to show Ring that both he and Bostock were in the hallway outside the Suite.

[55] Irrespective of his stated intention to end the Prank, the accused appears to have sent additional text messages to Ring that read, *inter alia*: “Well because we are applying we can search right and incident to arrest[?]”, “Nah got it figured out got everything layed (*sic*) out so we can just scoop and go”, and “Ok we will put it back

⁶ The gun was a .177 calibre BB air handgun, exempted from licensing requirements at law.

then boss man". In other words, the Prank appears to have continued after the accused sent the second photograph, although the accused tried to downplay the additional messages at trial by stating that they were sent in quick succession.

[56] After vigorous cross-examination, the accused agreed that his texts to Ring contained lies, but he stated that he thought it would be funny to tell Ring that he and Bostock were doing something other than what Ring told them to do. He acknowledged that at the material time that he was aware that searching the Suite prior to the warrant being issued would have been a violation of Raulia's rights.

[57] The accused also testified that the Gun was not found in the Suite, but was retrieved from the police vehicle and brought up to the Suite for the specific purpose of carrying out the Prank, although the accused could not recall whether it was he or Bostock who left the scene and went down to the police vehicle. Having said that, the accused's evidence is clear that the retrieval of the Gun constituted an additional occasion on which he and Bostock separated while holding the Suite. In addition, it is clear to me that going down to the police vehicle to retrieve the Gun presented a risk of one of the officers being locked out of the building, regardless of how close the police vehicle was parked to the exterior door.

[58] The accused conceded on cross-examination that bringing an exhibit into a crime scene would interfere with that scene, yet that is exactly what he did with the Gun, apparently for the sole purpose of playing the Prank, which in my view was, at best, unprofessional, unnecessary, and foolish. For the reasons set out below, I have rejected the accused's evidence, and I do not accept that he held the subjective belief that he

could legally bring the Gun into the Suite, photograph it on the bed, and then remove it from the scene.

[59] I have also considered whether, when the accused entered or was in the Suite, he formulated an intent to commit the indictable offence of theft.

[60] The accused vehemently denied touching the Bag or taking anything from the Suite, including cannabis. He stated that "he would not risk it" after Kirby-Peloquin said that he took pictures in the Suite. The accused also testified that he did not observe Bostock steal marijuana from the Bag and did not believe that Bostock had done so. When they left the scene, he had no reason to think that Bostock had done anything wrong, or that anything wrong had happened at the Suite. The accused also testified that at no time did he and Bostock enter the Suite together.

[61] The accused testified that after he and Bostock completed their shift that day, Bostock offered to him a plastic bag containing marijuana clusters that looked similar to those which he had observed in the Bag. The accused stated that initially, he thought that Bostock had stolen marijuana from the Suite, because he believed that the clusters were the same size as the marijuana from the Bag. When the accused questioned Bostock, he responded "no, no, no, it's good", and the accused decided that Bostock could not be dumb enough to steal from the scene. The accused did not, however, specifically ask Bostock whether he took marijuana from the Bag.

[62] The accused testified that he took the bag that Bostock offered and later smoked the marijuana in it. The accused also testified that Bostock provided him with marijuana on 25 to 30 occasions during the time that they worked together between May 2022

and March 2024. They were not, however, regularly assigned partners, and on cross-examination the accused characterized their relationship as that of casual acquaintances.

[63] The defence submitted that the accused made many admissions against interest and offered evidence that was not otherwise available, which denotes that he is a credible witness. For example, *inter alia*, the accused admitted that:

- a) Ring told him and Bostock that nobody should enter the Suite, or words to that effect;
- b) it was his idea to play the Prank and he carried out the Prank;
- c) he liked the smell of marijuana;
- d) he and Bostock got along;
- e) he took marijuana from Bostock that day; and
- f) he called Bostock after the December Conversation, despite Ring's direction not to do so, as referenced below.

[64] I have concluded, however, that there are several inconsistencies and credibility problems with the accused's evidence, such that it is not in harmony with the preponderance of probabilities that a practical and informed person would find reasonable in the circumstances, including:

- a) the accused testified at least twice that the only purpose for which he entered the Suite was to use the washroom, but he later admitted that he also entered the Suite to take the picture of the Gun;

- b) the accused testified that he looked into the back bedroom where the cash was found because it was on his way to the washroom, but he later acknowledged that the back bedroom was past the washroom, and not *en route* to it;
- c) the accused testified that he was not aware that the Code was in the call history, but he later stated that Kirby-Peloquin told him that the Code was in the call history;
- d) the accused testified initially that he touched nothing in the Suite, but he later agreed that he touched the toilet seat, the flusher, and the bed on which the picture of the Gun was taken;
- e) the accused testified that partners guarding a scene should not separate from each other, yet he admitted that he and Bostock did so on multiple occasions as referenced above;
- f) the accused testified that neither he nor Bostock left the building that night, but later agreed that one of them went down to the police vehicle to retrieve the Gun for the Prank, and that Bostock may have gone down to the vehicle twice;
- g) the accused testified that he “wished” he could remember who retrieved the Gun from the police vehicle, and that he could not recall what happened to it after the Prank, despite the fact that the Prank was part of this serious incident that has affected the accused’s life in a very significant way;
- h) the accused sought to justify entering the Suite on multiple occasions to use the washroom by stating that he could not leave the building to relieve himself outside, yet Ring had offered to attend the scene and relieve the officers for a

break, and either the accused or Bostock chose to leave the building to retrieve the Gun;

- i) the accused testified that when Bostock offered him marijuana after their shift, he immediately thought that it was stolen, but just as quickly agreed to accept it after what I view as a perfunctory explanation from Bostock, without asking him any questions. This assertion strains credulity beyond reason, and I do not believe, if this conversation took place, that the accused's concerns would have been assuaged immediately after Bostock's reassurances. I reject the accused's attempt to blame "night shift brain" for taking the marijuana, particularly given his admission that he had concerns about taking it;
- j) during and after the December Conversation, including in the narrative report that the accused prepared in February 2023 relative to the investigation in the Suite, the accused did not share with Ring or anyone else the misgivings that he claims to have had about Bostock's conduct in the Suite, and in particular his suspicion that Bostock stole marijuana from the Suite after Bostock offered him the bag of marijuana when their shift ended; and
- k) after the December Conversation, the accused blatantly disregarded Ring's direction not to contact Bostock, as referenced below, which in my view reflects a further lack of respect for the chain of command and the integrity of police procedure.

[65] I have also considered the evidence of Ring that during the December Conversation, the accused told him that both he and Bostock entered the Suite to use

the washroom. When Ring asked the accused to explain the discrepancy in the photographs, the accused said that he or they (meaning the accused and Bostock) picked up the Bag to look at the marijuana. Ring testified that he treated the December Conversation as an educational exercise and to prevent this type of event from happening again. As referenced above, he did not make notes of the conversation.

[66] Ring also testified that at the end of the December Conversation, he advised the accused that he intended to speak to Bostock about the same issue, and requested that the accused not share that intention with Bostock. The accused admitted that he quickly and purposefully disregarded this direction, by calling Bostock to chastise him for causing the accused's integrity to be called into question.

[67] The accused testified that he told Ring that he did not touch anything in the Suite, and specifically that he did not touch the Bag. The defence submitted that Ring was mistaken when he testified that the accused admitted to touching the Bag because of the passage of time, and the fact that Ring had taken no notes of the December Conversation, with his version of events being recorded in writing for the first time in the spring of 2024. More specifically, the defence suggested that Ring attributed to the accused comments that may have been made by Bostock, when Ring spoke to him about the events that occurred in the Suite.

[68] I appreciate that police officers are accustomed to relying upon their notes of events, including conversations, and I accept that Ring's memory of the December Conversation would have been best at the time of or shortly after that conversation, as opposed to in the spring of 2024 when he prepared a memorandum and was later

interviewed by the PSU. Having said that, I accept that after speaking with the accused, Ring was left with the understanding that he touched the Bag based upon what the accused told him. The whole point of the December Conversation was to discuss the obvious discrepancy in the photographs, and I do not accept that Ring would have mistaken the accused's answers to him with respect to the Bag.

[69] Moreover, I do not accept that Ring conflated his conversation with the accused with a conversation with Bostock, because he was a supervisor discussing a serious performance issue with two senior officers, such that it was an important discussion. Moreover, Ring testified that the nature of the conversations with the accused and with Bostock were very different. Whereas the December Conversation did not involve yelling, Bostock was argumentative and "blurting things out" when Ring spoke to him.

[70] The Crown also pointed to the evidence of Ison, who testified about a conversation that he had with the accused when they were assigned as partners some time after their attendance at the Suite. Ison testified that the accused was driving the police vehicle and he was in the passenger seat. After the smell of marijuana entered their vehicle from an outside source, the accused told Ison that:

- a) he liked the smell of marijuana;
- b) "we" took some weed from the Suite;
- c) "we" retrieved a "Whirl-Pak" bag from the cruiser car, went back to the Suite and filled it with marijuana, and then returned the Whirl-Pak bag to the cruiser car;

- d) he was happy that the other officers did not stay to talk to him and Bostock near their police vehicle that night, because the smell of the marijuana was really strong in the vehicle and the other officers would have smelled it; and
- e) it was “really good weed”.

[71] Ison testified that he found this conversation with the accused to be shocking and overwhelming, which made it memorable for him as a junior officer. Ison did not make notes of the conversation, and no written record of it was prepared until he was interviewed by the PSU in June 2024.

[72] The accused acknowledged that he had a conversation with Ison about marijuana after his return to work on light duties, including the strong smell of marijuana in the accused’s police vehicle on the night they were at the Suite. He denied the rest of the conversation as relayed by Ison, including the alleged admission of taking marijuana from the Suite. Another inconsistency in the accused’s evidence arises from his initial testimony that he did not remember how the conversation with Ison started, and his later statement that he started the conversation by telling Ison that he heard Bostock had given marijuana to Ison in the past.

[73] The defence suggested that Ison conflated his version of the conversation with the accused with a conversation that he had with Bostock when they were partnered together. In addition, the defence noted that Ison was unable to recall when he and the accused had the conversation, including what season it was at the time, which the defence contended is odd, and weakens Ison’s credibility and reliability. The defence also accused Ison of manufacturing his version of the conversation with the accused to

divert suspicion from himself because he had also accepted stolen marijuana from Bostock, which Ison denied, and for which there is no supporting evidence.

[74] My comments with respect to Ison's evidence, including his inability to recall when he and the accused talked about the marijuana in the Suite, are as follows.

[75] I appreciate that Ison told the PSU that his conversation with the accused happened before the accused was injured in October 2022, and that this statement cannot be accurate because the night of the investigation at the Suite was the accused's last shift before a series of days off and it was on those days off that he sustained an injury.

[76] At trial, Ison's evidence was clear that he does not know when the conversation took place. I note that it is an agreed fact that Ison and the accused worked as partners on September 27, 2023 and from December 8 through 10, 2023, well after the investigation at the Suite, but before Ison was interviewed by the PSU. In my view, the conversation could have taken place on one of those dates, and I am not concerned about Ison's inability to estimate a date on which the conversation occurred, because in my view the credibility of Ison's evidence is enhanced by the fact that he did not attempt to guess at a timeframe for the conversation. I accept that he simply does not recall when the conversation took place.

[77] In addition, I note that Ison was unshaken on cross-examination with respect to the substance of the conversation with the accused as he recounted it, and whether it was the accused or Bostock who made the comments at issue. He testified that he remembers the conversation including the smile on the accused's face when he talked

about the marijuana, and that it was almost as if the accused was bragging about how good the marijuana was. Moreover, there are consistencies as between what the accused told Ison and the accused's own evidence, including that he and/or Bostock left the building to attend at the police vehicle.

[78] I accept Ison's evidence that as a junior officer, the conversation with the accused was shocking to him, that it gave him additional cause for concern about the Raulia prosecution, that it was tough to hear that a senior officer stole from a crime scene, and that it was memorable. I accept Ison's evidence with respect to the substance of the conversation with the accused and reject the submission that he conflated his conversation with the accused with a different conversation involving Bostock. Ison's evidence of what the accused told him is consistent with what the accused told Ring in the December Conversation, although the accused confessed additional details to Ison, the junior officer, that he did not share with Ring, the supervising senior officer.

[79] Ison testified that he did not report the accused's admissions because he was in shock, he was overwhelmed, and he believed that management was already looking into the accused's conduct relative to entering the Suite and the suspicion of theft of marijuana. At the time, he was a junior officer and was learning and adapting to the job.

[80] In my view, Ison should have reported the conversation with the accused to an appropriate senior officer. Having said that, I accept that his mentor Kirby-Peloquin had previously agreed to handle the reporting of the discrepancy in the photographs, and

that Ison, as a junior officer, may have been hesitant to report the accused, who was a very senior officer.

[81] Pursuant to the three-step test in ***W.(D.)***, I have considered the accused's evidence carefully. I reject his evidence, unless it was otherwise confirmed, because of the numerous inconsistencies in it, and because it is not in harmony with the preponderance of probabilities that a practical and informed person would find reasonable in the circumstances. For example, he claimed not to understand the law that governs the continuity of crime scenes after 18 years on the police force, his actions reflected cavalier breaches of protocol, and he exhibited disregard for the orders of his superior officer. I do not believe his evidence, nor do I find that it raises a reasonable doubt with respect to any elements of the offences charged.

[82] Pursuant to the third step in ***W.(D.)***, I am satisfied that the evidence establishes that both the accused and Bostock entered the Suite without lawful authority and, having accepted Ison's evidence, that they took marijuana from the Bag in the manner that the accused described to Ison. In other words, the accused and Bostock formed a common plan to steal marijuana from the Suite and they carried it out.

[83] I will add that the Bag was not weighed either before or after the warrant was obtained, and in my view it is difficult to discern from the photographs alone whether the Bag contained less marijuana in the second photograph taken by Ison than it did in the first photograph taken by Kirby-Peloquin. In other words, my conclusion that the accused and Bostock stole from the Bag is not based upon my observations of the two photographs.

[84] With respect to Count 1, and for the foregoing reasons, I am satisfied beyond a reasonable doubt, on the strength of the evidence that I accept, that the accused was in the Suite without lawful excuse and with an intent to commit an indictable offence, namely the theft of marijuana.

[85] With respect to Count 2, I have concluded that the accused obstructed Ring in the execution of his duties and, in particular the drug investigation, by deliberately and intentionally touching the Bag, taking marijuana from the Suite, and by further altering the evidentiary landscape of the Suite by bringing in and later removing the Gun from the scene. I will add that if I had not concluded that the accused participated in the theft, I would still have found that the accused obstructed the investigation by touching the Bag as he confessed to Ring, by choosing to accept stolen evidence from Bostock as he described, and by failing to report Bostock's conduct. The accused's actions were intentional, and he should have foreseen that those actions would obstruct Ring.

[86] With respect to Count 3, I have considered the third, fourth, and fifth elements of the offence as referenced in paragraph 58 of *Boulanger* set out above.

[87] Having concluded that the accused deliberately and intentionally touched the Bag, took marijuana from it, and disrupted the continuity of the Suite as a crime scene, I am satisfied that he breached the standard of responsibility and conduct demanded of him as a police officer, and that his conduct represented a serious and marked departure from the standards expected of a police officer. Again, if I had not concluded that the accused participated in the theft of marijuana, I would have found that he breached the applicable standards by entering the Suite to play the Prank, by disrupting

the continuity of a crime scene, and by accepting stolen evidence from Bostock as he described.

[88] I am also satisfied that the accused acted with the intention to use his public office for a dishonest and corrupt purpose, namely stealing evidence or, had I not made that finding, by accepting stolen evidence from Bostock. His conduct was not for the public good and constituted a clear breach of trust.

CONCLUSION

[89] I agree with the Crown that in the main, policing exists to serve our community and to seek to keep it safe. As such, it is important that the community has a basic level of trust in our police officers. In this case, the accused betrayed that trust, and his conduct undermined the integrity of the police force that honest and hard-working officers have expended great effort to build.

[90] The accused is convicted of all three counts on the indictment.

Grammond J.