

**ONTARIO CIVILIAN COMMISSION ON POLICE SERVICES**

**REASONS FOR DECISION**

GAYLE IKEMOTO (ON BEHALF OF CODY IKEMOTO)

Appellant

AND

CONSTABLE R. C. (RANDY) COTA

AND

ONTARIO PROVINCIAL POLICE

Respondents

**Presiding Members:**

Dave Edwards, Member  
Garth Goodhew, Member

**Appearances:**

Paolo Giancaterino, Counsel for the Appellant  
William R. MacKenzie, Counsel for Constable Randy Cota  
Superintendent Michael Shard, Counsel for the Ontario Provincial Police (via Factum only)

**Hearing Date:** Wednesday, April 22, 2009

This is an appeal by Gayle Ikemoto on behalf of Cody Ikemoto of a finding of not guilty made by Superintendent (retired) Alan Griffiths (the "Hearing Officer") with respect to a charge against Constable (Randy) Cota of one count of unlawful or unnecessary exercise of authority, contrary to section 2(1)(g)(i) of the Code of Conduct found at Ontario Regulation 123/98 (the "Code").

**Background:**

Constable Cota joined the Ontario Provincial Police ("OPP") in 1987 and served until 1992 in the First Nations program. In 1992 he rejoined the uniform division of the OPP. During the '90's he served in the drug enforcement unit for approximately two years. During that period he served as an undercover operator for three drug projects.

By Notice of Hearing served on January 25, 2008 Constable Cota was charged with one count of unlawful or unnecessary exercise of authority. The particulars of the allegation were as follows:

On or about September 20, 2006 you arrested Cody Ikemoto without good and sufficient cause.

The facts are mostly uncontested.

On September 20, 2006 Cody Ikemoto ("Cody"), age 17, was in attendance at Sharbot Lake High School. During the lunch hour he drove his father's truck to a local pizza place with two female friends.

Prior to Cody's departure from the school, Constable Cota had contact with a confidential informant who had proven credible and reliable in the past. The informant relayed that a drug transaction had taken place in the Sharbot Lake High School cafeteria. The informant indicated that one or two ounces of marijuana had been exchanged for money and identified Cody as being involved.

As a result of this information the Respondent officer followed the vehicle driven by Cody to the pizza place and continued to do so as the vehicle returned to the school. After checking the license plate through the Canadian Police Information Centre ("CPIC"), Constable Cota was advised by the Communications Centre that the vehicle was of special interest to the police due to its association with the Hell's Angels motorcycle gang.

With the above information the Respondent officer made the decision to stop the vehicle. After the emergency lights of Constable Cota's vehicle were activated Cody's vehicle travelled three to four hundred yards before coming to a stop.

Once Cody's vehicle came to a stop the Respondent officer approached the driver's side door and observed a sticker on the dash board reading "Support Hell's Angels, Hamilton Chapter."

There was some disagreement as to what transpired next. Constable Cota testified that he asked for identification papers and after reviewing them he placed everyone in the car under arrest. Cody testified the officer advised him that he had a suspicion that Cody possessed drugs. He was asked to exit the vehicle and was given a "pat down" search, but at no time was he told that he was under arrest. The two females' testimony was less than clear. One testified that immediately upon approaching the vehicle Constable Cota advised everyone that they were under arrest. The second female could not recall those words being used.

It is clear that in response to the officer's questions Cody denied having any narcotics. The Respondent officer told Cody to exit the vehicle, which he did, and the Respondent officer undertook a "pat down" search of Cody. During this time another OPP vehicle arrived and Cody was asked to sit in the back of that car, out of the rain, with the door left open. Subsequently, the two girls were allowed to leave and return to school.

During the time that Cody was in the second cruiser the Respondent officer engaged in a search of the vehicle in question, but found no narcotics. Constable Cota stated that

due to the inclement weather the search was cut short. Cody was unconditionally released, as was the vehicle.

### **The Hearing:**

The disciplinary hearing for Constable Cota occurred on July 17, 2008.

The witnesses at the hearing included Cody Ikemoto; Lacy Kelford and Laura-Lynn McFarland (the two females in the Appellant's vehicle); Constable Lyndon Murray (the other officer who arrived at the scene); Detective Sergeant Ashad Giwa (a member of the Professional Standards Bureau who was assigned to investigate the complaint) and, lastly, Constable Randy Cota.

On August 15, 2008 the Hearing Officer issued an eight page decision finding Constable Cota not guilty of unlawful or unnecessary exercise of authority.

The complainant, Gayle Ikemoto, on behalf of Cody Ikemoto, appeals this finding.

### **Preliminary Matter:**

The Hearing Officer's decision names both Gayle Ikemoto and Cody Ikemoto as complainants. The style of cause of this appeal also describes two Appellants.

Section 57 of the Police Services Act R.S.O. 1990, c. P. 15 as amended (the "Act") provides

- (1) A complaint may be made by a member of the public only if the complainant was directly affected by the policy, service or conduct that is the subject of the complaint.
- (1.1) If the person directly affected by the policy, service or conduct is a minor, the parent or guardian of the minor may bring a complaint on the minor's behalf and, for that purpose, the parent or guardian shall be deemed to be directly affected by the policy, service or conduct.

The original complaint was signed by both Gayle Ikemoto and Cody Ikemoto. Cody Ikemoto was 17 at the time of the incident.

During oral argument both Counsel agreed that there is only one complainant and one Appellant and that is Gayle Ikemoto on behalf of Cody Ikemoto.

### **Appellant's Position:**

Mr. Paolo Giancaterino appeared for Gayle Ikemoto.

He raised four grounds of appeal.

First, he argued that the Hearing Officer erred in determining that section 11(7) of the Controlled Drugs and Substances Act R.S.C. 1996, Chap. 19 as amended (“CDSA”) provided Constable Cota with the authority to conduct a warrantless arrest and search.

Mr. Giancaterino asserted that section 11 deals solely and specifically with the execution of search warrants in the context of drug investigations and not arrest warrants.

Second, Mr. Giancaterino argued that the Hearing Officer erred when he determined that the evidence supported the existence of exigent circumstances which would authorize the arrest and subsequent search of Cody and his vehicle under section 11(7) of the CDSA.

Relying upon R. v. Grant (1993), 84 C.C.C. (3d) 173 (S.C.C.), he described “exigent circumstances” as the imminent danger of the loss, removal, destruction or disappearance of the evidence if the search is delayed in order to obtain a warrant. He highlighted the Court’s finding that, while the nature of motor vehicles will often create a situation of exigent circumstances, there is to be no blanket assumption of the same.

In addition, Mr. Giancaterino submitted that the exercise of power allowed under each of sections 11(1), (5), (6) and (7) of CDSA require a grounding of reasonableness as a precursor to the use of the same. He argued that the requisite reasonable grounds were absent and not specifically detailed by the Respondent officer who was vague and non-specific. The Respondent officer did not acquire any corroborating evidence, instead relied on the existence of a motor vehicle as the ground for exigent circumstances.

Third, he argued that the Hearing Officer erred in his application of R. v. Debot (1989), 52 C.C.C. (3d) (S.C.C.). Reasonable grounds in Debot were defined as one of “reasonable probability”, rather than “proof beyond reasonable doubt” or a “prima facie” case. The existence of these grounds is to be determined by the “totality of the circumstances.” Suspicion alone is not sufficient.

Mr. Giancaterino contended that the only information available to support the warrantless arrest and search was the information provided by the confidential informant.

He asserted that Debot emphasized that attention must be paid to the information provided by the informant and whether it was compelling. Most importantly, there must be corroborating evidence derived from a police investigation prior to the arrest and search, especially where the suspect is not known to the officer.

He acknowledged that it is not necessary for the officer to confirm every detail provided by the informant. However, the behaviour actually observed must be such that it removes the possibility of innocent coincidence. It is submitted that this was not achieved in the present case as there was no corroborating evidence.

The Appellant argued that R. v. Garofoli (1990), 60 C.C.C (3d) 161 (S.C.C.) stands for the proposition that a hearsay statement from a confidential source is insufficient to establish reasonable and probable grounds.

Moreover he argued that in R. v. Lewis (1998), 122 C.C.C. (3d) 481 (Ont. C.A.) the Court found that corroborating evidence is required where the information provided comes from an anonymous informer, as mere suspicion will not amount to reasonable grounds for arrest.

Mr. Giancaterino submitted that the officer had nothing more than mere suspicion, uncorroborated by any further evidence in this case.

Fourth, he suggested that the lawfulness of the arrest depends upon the arrest having been authorized by the Criminal Code R.S.C. 1985, c. C-46 as amended or by another statute where the statutory grounds are met.

Based upon R. v. Charley (1993), 22 C.R. (4<sup>th</sup>) 297 (Ont. C.A.) he argued that an arrest will be unlawful if the statutory requirements for an arrest are not met, regardless of whether there was "articulable cause" to detain.

He submitted that under section 495(1) of the Criminal Code, police are authorized to affect warrantless arrests where there is both a subjective and objective reasonableness as articulated in R. v. Storrey (1990), 53 C.C.C. (3d) 316 at 324 (S.C.C.). In other words, the officer must believe that he or she has reasonable grounds to affect the arrest and a reasonable person, in the position of the officer, must also believe that reasonable and probable grounds were present.

He argued that both of these grounds were absent in this instance.

Mr. Giancaterino noted that the vehicle was of special interest, but that no information regarding Cody specifically was provided by the Communications Centre. This information, along with the sticker supporting the Hell's Angels were presented as grounds for the arrest because of Constable Cota's knowledge and experience with members of this group.

He argued that these grounds should have been substantiated with further evidence, particularly in the form of questioning Cody prior to his arrest.

He argued that the length of time it took for the vehicle to pull over was removed as an articulated ground for the arrest by Constable Cota in his testimony.

He re-asserted that the grounds were insufficient and there was no investigation to remove the possibility of coincidence as required by Debot.

In response to the argument of good faith raised by the Respondent, he acknowledged that if reasonable and probable grounds for the arrest did not exist, but the officer acted in good faith, there would be no misconduct by the officer. However, he submitted that the evidence revealed that the Respondent did not act in good faith.

He submitted that Constable Cota's comment that "the apple doesn't fall far from the tree ..." <sup>1</sup> revealed bad faith and stereotyping which was not appropriate. Further, Constable Cota professed to have a serious enough concern that he stopped and arrested Cody ... "I felt that I was obligated to effect the arrest and to go and to do what I did or I'd be found in neglect of duty if a young person was found dead the next day ... " <sup>2</sup> and yet he undertook only a cursory search of Cody and the vehicle before releasing unconditionally both Cody and the vehicle. In Mr. Giancaterino's submission that demonstrated bad faith.

Finally, Mr. Giancaterino submitted that the Respondent officer did not respect the limits of his power during the investigation and that there were no reasonable grounds to believe that Cody was involved in a criminal activity. Accordingly, he requested that the Hearing Officer's decision be set aside and replaced with a finding of misconduct.

No specific penalty was requested.

### **Respondent Officer's Position:**

Mr. William MacKenzie represented Constable Cota.

He submitted that there are three issues relevant to the case at hand.

First, what is the standard of review for the Commission to apply the finding of the Hearing Officer?

Second, did the Hearing Officer objectively and thoroughly consider all of the evidence and, did his ruling detail a complete and accurate interpretation of the relevant and requisite case law?

Last, did the Hearing Officer err in finding Constable Cota not guilty of unlawful or unnecessary exercise of authority?

With respect to the first issue, he highlighted the standard of review employed by this Commission upon review of a hearing officer's decision is reasonableness and that deference will be given to the hearing officer particularly on matters of credibility and findings of fact. Toronto (City) Police Service v. Blowes-Aybar [2004] O.J. No. 1655 (Ont. Div. Ct.), Krug and Ottawa Police Service (21 January 21, 2003, O.C.C.P.S.) and Mulholland and Halton Regional Police Service (25 March, 2003, O.C.C.P.S.)

He asserted that the Commission would commit an error of law if it failed to show the appropriate deference to the Hearing Officer's decision or applied a test of other than reasonableness.

With respect to the second issue, he asserted that the Hearing Officer engaged in a detailed review of the evidence and made appropriate findings of fact based on that

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<sup>1</sup> Transcript, page 124

<sup>2</sup> Ibid, page 126

evidence. The Hearing Officer correctly identified and applied section 11(7) of the CDSA and determined that exigent circumstances were present.

He agreed that the power to affect a warrantless arrest arises under section 495(1) of the Criminal Code, and the officer must believe that he or she has reasonable and probable grounds to affect the arrest and a reasonable person, in the position of the officer, must also believe that reasonable and probable grounds were present.

Mr. MacKenzie submitted that the evidence shows that clearly Constable Cota had the subjective belief that he had reasonable and probable grounds. Further, he asserted that there is sufficient evidence to show that a reasonable person in the officer's position would have believed that such grounds were present.

He also submitted that the Hearing Officer reviewed and correctly applied the three part test set out in Debot, as it pertains to the application of information obtained from informants in the formulation of reasonable and probable grounds.

He asserted that the information received was compelling, the source had been extremely accurate in the past, and Constable Cota corroborated it to the extent that he could. In addition, Constable Cota had received the CPIC response which had tagged the vehicle as a special interest associated with Hell's Angels, and the vehicle had a Hell's Angels sticker which was visible from the exterior of the car. These facts supported and corroborated the source's information.

He submitted that the drug transaction observed by the confidential informant had just occurred and included the observation of money changing hands for narcotics. Moreover, the confidential informant had been proven to be accurate and reliable on at least eight occasions and perhaps as many as 12 times in the past. In addition, the informant was not seeking compensation, under threat of prosecution or seeking a favour of any kind in return.

He noted that Constable Cota had significant 'street level drug enforcement' experience that included writing over 70 successful judicially authorized drug search warrants. His experience made him keenly aware that Hell's Angels are involved in the illegal distribution of drugs.

He argued that even if reasonable and probable grounds for the arrest did not exist, as Constable Cota acted in good faith he could not be held guilty of misconduct. Whitney v. Ontario (Provincial Police) [2007] O.J. No. 2668 (Ont. Div. Ct.). He also noted that the Hearing Officer found that "Constable Cota was acting in good faith"<sup>3</sup>

Mr. MacKenzie argued that even if it were found that Constable Cota is 'ipso facto' guilty of misconduct, the fact that the Hearing Officer found that he was acting in 'good faith' absolved him of professional misconduct as it was determined that he acted reasonably on both an objective and subjective basis.

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<sup>3</sup> Decision, page 8

He submitted that the Hearing Officer objectively and thoroughly considered all of the evidence and his ruling detailed a complete and accurate interpretation of the relevant and requisite case law.

Last, he asserted that the Appellant had not shown that the Hearing Officer's decision was rendered without evidentiary foundation or demonstrated a manifest error in principle such that there is no justification for intervention in the decision.

Accordingly, the appeal should be dismissed.

### **Respondent OPP's Position:**

Superintendent Michael Shard represented the OPP. He did not appear for oral argument. The Panel was advised through Mr. MacKenzie that the OPP would rely upon the position set forth in its Factum.

In that Factum Superintendent Shard submitted that the arresting officer must subjectively have reasonable and probable grounds and submitted that these grounds were present based on the information provided by the informant.

He asserted that the Hearing Officer did not rely upon section 11(7) of the CDSA, but instead found that Constable Cota 'believed' he was acting under that authority.

He argued, however, that the search was incident to the arrest and authorized under section 11(7) of the CDSA.

He asserted that the Hearing Officer correctly found that reasonable grounds for the search existed based on section 11(7) of the CDSA and that the test in Debot was applied correctly.

He submitted that the test in Debot requires a focus on the 'totality of the circumstances' and argues that the Appellant has improperly based emphasis on the individual components of the test.

Moreover, he argued that Debot, Garafoli and Lewis do not stand for the proposition that a hearsay statement from a confidential source is insufficient to establish reasonable and probable grounds.

Based on the three part test in Garafoli he submitted that the "totality of the circumstances" did provide "reasonable probability", as the informant saw the transaction and identified the Appellant, the source was known to be credible and reliable and that it was reasonable to stop the vehicle without attempting to confirm the information provided by the informant.

He argued that exigent circumstances were present given the involvement of a motor vehicle, the testimony of the Respondent officer noting his concern about the loss or destruction of evidence and because the Hearing Officer found that there was a valid concern for the student population.

Finally, he noted that the Hearing Officer found that Constable Cota acted reasonably and in good faith and this should not be overturned lightly, especially given the firsthand accounts found therein.

He submitted that based on the findings in Wilson and Ontario Provincial Police (20 November 2006, O.C.C.P.S.) there must be strong grounds to overturn the decision of the Hearing Officer to the extent that they are void of evidentiary foundation.

Accordingly, he requested that the appeal be dismissed.

**Decision:**

This is an appeal from an order of the Hearing Officer wherein he dismissed the charge of misconduct.

The Commission's role on appeal of the substantive charge has been described on page 1058 of Williams and Ontario Provincial Police (1995), 2 O.P.R. 1047 (O.C.C.P.S.):

Our role or function in such matters is not to second-guess the decision of the adjudicator. In certain limited cases, it would be open for us to reach a different conclusion from the trier of fact. However, that must be based on the strongest ground. In other words, there can be no other determination than the conclusions of the adjudicator, as to the credibility of witnesses, cannot be reasonably accepted. The question to be asked in this case is, are the conclusions of the adjudicator void of evidentiary foundation?

This test was also addressed in Wilson and Ontario Provincial Police at page 7:

This can be a difficult test for an Appellant to meet. The words "void of evidentiary foundation" clearly contemplate that appellate interference with evidentiary findings will be exercised sparingly. Norris v. Loranger (1998), 2 P.L.R. 493 (Ont. Bd. Inq.)

Commission appeals are on the record. Not only do we hear from counsel for an appellant and respondent, we have the opportunity to review all of the evidence submitted, including transcripts of sworn testimony, physical evidence such as photographs, audiotapes and police documentation. However, we do not have the benefit of seeing and hearing the witnesses.

Divisional Court in Galassi v. Hamilton (City) Police Service [2005] O.J. No. 2301 at paragraph 19 commented upon the latitude offered to a lay tribunal upon appeal:

In reviewing the reasons of a lay tribunal, the task of this Court is not to be overly critical of the language used, nor is it to focus on mistakes that do not affect the decision as a whole (Re Del Core and Ontario College of Pharmacists (1985), 51 O.R. (2<sup>nd</sup>) 1 (Ont. C.A.). This approach must be

kept in mind when the reasons of the Hearing Officer are examined, as he is not legally trained.

The Act empowers this Commission to “confirm, vary, or revoke the decision being appealed, or may substitute its own decision”<sup>4</sup>. Appeals to this Commission are “on the record”<sup>5</sup> and we may review the entire record in the course of exercising that power.

Constable Cota was charged with the disciplinary offence of making an unlawful or unnecessary arrest.

Section 495(1) of the Criminal Code provides police officers with the authority to effect warrantless arrests:

A peace officer may arrest without warrant: (a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence ...

The lawfulness of the arrest is dependent upon Constable Cota, on reasonable grounds, believing that Cody had committed an indictable offence. This test is spoken to in Storrey at paragraph 17:

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

It is clear from the record that Constable Cota had a subjective belief that he had reasonable and probable grounds.

Okay, Sir, in the totalitary (sic) of putting all of the evidence that I had, starting off with the source, being proven, reliable source that I've used between eight and twelve times and always being accurate and truthful, then coupled with the distance that the stop once the light were activated to the actual stop of the vehicle, the running of the vehicle on CPIC through MTO and coming back as a silent hit on observation and association to an outlaw motorcycle gang - not the Outlaws, but an outlaw motorcycle gang. Then also with the sticker on the dash reaffirming what had just come through this on the system, and further that at our high schools, the problems that we have in the Safe Schools Act too, I felt that I

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<sup>4</sup> Section 70(6) of the Act

<sup>5</sup> Ibid, section 70(5)

had reasonable and probable grounds to effectively arrest Cody Ikemoto for the reason to stop the offence of trafficking in narcotics.<sup>6</sup>

The second branch of that test requires that a reasonable person, placed in the position of the officer must be able to conclude that there were reasonable and probable grounds for the arrest. The record also reveals that Detective Sergeant Ashad Jiwa of the Professional Standards Bureau of the OPP spoke to that issue in his testimony:

Basically, it's what a - would a regular person believe, like, if - if I was put in Cst. Cota's position and given that information, would I believe that there was enough reasonable grounds to make that arrest and in this case, I put myself in Cst. Cota's position and I felt, yes I would have probable done the same thing too.<sup>7</sup>

Q: And in this instance you've testified that I think you said I would have done the same thing too

A: Correct

Q: And to that extent, you would have effected the arrest in the manner that Officer Cota did on September 20<sup>th</sup>, 2006

A: Correct<sup>8</sup>

Accordingly, there is evidence on the record that:

- a) Constable Cota possessed a subjective belief that reasonable and probable grounds for the arrest existed; and
- b) that a reasonable person would have reached the same conclusion.

As a result, the two part test in Storrey has been satisfied.

The Hearing Officer also stated: I believe that Constable Cota was acting in good faith.<sup>9</sup>

It was suggested that Whitney v. Ontario (Provincial Police) [2007] O.J. No.2668 (Ont. Div. Ct.) and Tomie-Gallant v. Ontario (Provincial Services Board of Inquiry) [1996] O.J. No. 2863 (Ont. Div. Ct.) stand for the proposition that even if the arrest by Constable Cota did not satisfy the two part test of Storrey, since Constable Cota acted in good faith, he would not be guilty of misconduct.

A better formulation of that principle is that good faith is an important element of the officer's conduct to consider, but in and of itself, it does not provide a blanket protection from findings of misconduct. In addition, a finding of a hearing officer of good faith is a finding which will not be lightly overturned on appeal.

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<sup>6</sup> Transcript, page 112

<sup>7</sup> Ibid, page 79

<sup>8</sup> Ibid, page 85

<sup>9</sup> Ibid

The Hearing Officer's finding of good faith is not void of an evidentiary foundation and further strengthens the conclusion as to the reasonableness of the officer's actions.

In the decision the Hearing Officer devoted considerable attention to the CDSA and the powers of warrantless search. He also noted that Constable Cota believed that he was acting under the authority of the CDSA.<sup>10</sup>

A review of the record shows that this testimony occurred in response to questions about the search. Prior to this Constable Cota had testified regarding his reasonable and probable grounds for the arrest.<sup>11</sup> It is clear from the record that Constable Cota made the arrest pursuant to the authority of section 495(1) of the Criminal Code in the belief that he had reasonable and probable grounds that an indictable offence had been committed.<sup>12</sup>

It is also clear from the record that the search of Cody and of the vehicle occurred after the arrest. The misconduct charge against Constable Cota was restricted to the question of "an unlawful or unnecessary arrest." As the search occurred after the arrest, it is not relevant to this appeal.

The case of Debot and the use of information from confidential sources figured very prominently in the hearing, the decision and the factums. Debot dealt with the issue of the use of information from confidential sources for the purpose of undertaking a warrantless search. As such it is only relevant to our situation by way of analogy in determining whether the confidential information received by Constable Cota can be relied upon in satisfying the standard set forth in Storrey for warrantless arrests.

In Debot the court questioned whether the police had reasonable and probable grounds for the warrantless search. The court commented on the use of information from confidential sources at paragraph 53 of its decision:

In my view, there are at least three concerns to be addressed in weighing evidence relied on by the police to justify a warrantless search. First, was the information predicting the commission of a criminal offence compelling? Second, where that information was based on a tip originating from a source outside the police, was that source credible? Finally, was the information corroborated by police investigation prior to making the decision to conduct the search? I do not suggest that each of these factors forms a separate test. Rather, I concur with Martin "J.A.'s" view that the totality of the circumstances must meet the standard of reasonableness. Weakness in one area may, to some extent be compensated by strengths in the other two.

The information provided by Constable Cota's source was very compelling and very specific.<sup>13</sup> The information received from the confidential source has been extremely

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<sup>10</sup> Decision, page 7

<sup>11</sup> Transcript, pages 112-113

<sup>12</sup> Ibid, page 112

<sup>13</sup> Ibid, pages 101-102

accurate in the past.<sup>14</sup> There is no doubt that the first two branches of this test have been satisfied and satisfied to a very high degree.

The record shows and the Hearing Officer's summation of the evidence confirms that he was aware that:

1. the CPIC search revealed that the vehicle which Cody was driving was associated with Hell's Angels;
2. Constable Cota was concerned about the proximity of the vehicle to the school;
3. Constable Cota observed that the vehicle took three to four hundred yards to stop after he activated the emergency lights on his vehicle; and
4. Constable Cota observed the Hell's Angels' sticker prior to making the arrest.

The Hearing Officer found that:

Constable Cota received information from a reliable confidential informant that a drug transaction had just occurred and the suspected dealer was identified to him. The officer used what investigative methods were available to him and due to the exigency of the circumstances made a decision to investigate and arrest Cody Ikemoto.<sup>15</sup>

Constable Cota subjectively believed that he had reasonable and probable grounds for the arrest and there is evidence on the record that a reasonable person in Constable Cota's position could come to the same conclusion.

Accordingly, we find that the record shows that the Hearing Officer's decision was not void of evidentiary foundation and that there is no fundamental error or error of principle.

The appeal is therefore dismissed.

DATED AT TORONTO THIS 4<sup>TH</sup> DAY OF MAY, 2009.

Dave Edwards  
Member, OCCPS

Garth Goodhew  
Member, OCCPS

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<sup>14</sup> Ibid, page 127

<sup>15</sup> Ibid