

Tournament Case 2022

R v SMALLS



OBA FOUNDATION
LA FONDATION DE L'ABO



ONTARIO BAR ASSOCIATION
L'ASSOCIATION DU BARREAU DE L'ONTARIO
A Branch of the Canadian Bar Association
Une division de l'Association du Barreau canadien

Canada,
Province of Ontario,
County of Missinaba.
In the Superior Court of Justice,

Her Majesty the Queen

against

Rory Smalls

Rory Smalls stands charged:

1. That he/she, on or about the 3rd day of February, 2021, in the City of Mariposa, did in committing an assault on Jordan Morrow cause bodily harm to him/her, contrary to section 267(b) of the Criminal Code.

Dated this 4th day of February, 2021, at Mariposa, Ontario.



Milo Pratka,
Agent for the Attorney-General of Ontario

Witness List

Crown:

- Harlow White
- Jordan Morrow

Defence:

- Rory Smalls
- Kel Leigh

Notes:

- Kel Leigh should be “qualified” as an expert witness. Qualifying a witness as an expert allows the witness to give opinions in their area of expertise. To do this, Defence counsel will enter Leigh’s CV as an exhibit and ask a few leading questions at the beginning of direct examination (which is permitted) to establish Leigh’s credentials and expertise. This is not a long process. Defence counsel will then ask the judge to accept Leigh as an expert witness and the judge will make a ruling (Leigh’s credentials are not in question, so the ruling will be positive). Leigh can then provide expert opinion testimony.
- Witnesses playing Leigh are free to do whatever research they wish to convincingly play Leigh and answer questions on cross-examination. Questions to Leigh must be material to the case; i.e. Leigh cannot be expected to answer general professional experiential questions beyond the scope of the case.

Sworn Statement of Harlow White

My name is Harlow White, and I am an inmate at the Milligan Ridge Detention Centre, which everybody calls 'The Mill'. I have been an inmate there at three different times. The first was in 2012, when I was caught with drugs on me at a house party. The second time was in 2016, when I got into a fight with my roommate's ex at a bar. The third time was in 2019, when I was brought in for an Aggravated Assault.

I have been a member of the Villiers gang since I was 14. Both of my siblings are also members. My brother is currently serving time at the Mill. In my life I have been through a lot and seen a lot of gang activity - I have had relatives die because of their connections to crime and gang life. Even still, I can't change the past, and it's a fact of life that I am deeply connected to the Villiers gang, and that is not something you can throw away easily.

Villiers' biggest and oldest rival is the Drone gang. For as long as I have known, we have always hated each other. It doesn't matter whether I know somebody from the Drone gang personally or not, as far as I am concerned if they are in the room with me or anywhere nearby, my life is in danger.

In January of 2021, I learned that Rory Smalls was going to be transferred to the Mill. I had never met Smalls personally but I knew they were a member of the Drones, and they were being transferred to the gang range. I had met their cousin before, and I knew that they both lived close by to the house where I grew up. I used to see Smalls around the neighbourhood, and I knew that they had a history of being involved in drug dealing and other gang activities. They always meet around the Mariposa community garden, which is well-known for being Drones territory. I also knew that they knew who I was. I know what being in a gang is like, and just like I was aware they were a Drone member, I am sure that they were aware I was a Villiers member. Once Smalls got into the Mill, as I saw it, it was only a matter of time until they tried to attack me. That is just what happens.

The Mill doesn't separate gangs into different parts of the prison. What they do is they make sure no more than two known members of any gang are on the same range at the same time, so they can prevent bigger fights from breaking out. On my range was one of my friends, Jordan Morrow. Jordan knows about Smalls, and when we found out Smalls was coming to the Mill we knew we had to be prepared.

On February 2nd, 2021, the second night after Smalls arrived, I came up with a plan to let Smalls know they couldn't mess with me and Jordan, and we tried to execute the plan the next morning. However, we couldn't find the right moment until later in the day. Right at the end of a block of free time, around 4:45 in the afternoon, Jordan found Smalls in the corner of the common area. I was about 3 metres away by the door, making sure things didn't get too crazy. Jordan let Smalls know that if Smalls tried anything, we weren't going to back down from a fight. The plan was for Jordan to slap Smalls around to send a message, but nothing serious enough to do any real damage or send Smalls to the hospital. So Jordan said what they needed to say, and then tried to hit Smalls. Nothing went right after that though.

Smalls was quicker than I thought, and dodged the punch. They managed to run away and I lost sight of them, so I thought we had succeeded in sending the message. But I guess another member of the Drones saw what happened, and they jumped on Jordan, so I had to join in to back up Jordan. Then suddenly out of nowhere, Smalls was back and I caught the glint of something shiny in their hand. Smalls lunged at Jordan, who was already on the ground, and went for Jordan's throat with a knife. Luckily Smalls was not very accurate, and didn't stab Jordan's neck. I am sure that if that knife had been an inch or two closer, Jordan would not be alive today. Instead, Smalls got the side of Jordan's neck. Still, Jordan was cut in a few places pretty bad, and when the guards eventually got there they took Jordan to the hospital. I feel bad for getting him involved in all of this, because Jordan doesn't know what gang life is like and wasn't prepared for Smalls to attack him like that. Even I didn't know Smalls was as violent as they turned out to be.

Howe White

Harlowe White

Sworn Statement of Jordan Morrow

When Harlow asked me to “send a message” to the new inmate at the Mill, I didn’t know exactly what they meant. I have never been in a gang - I had never been involved seriously in the legal system until last year, when I was convicted on a Robbery charge. I only know Harlow from being incarcerated. When I arrived they were really welcoming to me, helped me out and showed me around the Mill. I knew there were some pretty hardened people in there, and I was grateful to have somebody who knew their way around and could show me how to survive being in custody. All I wanted to do was keep my head down and not bother anybody, or be bothered. Unfortunately being connected with Harlow meant that that was not completely possible. I knew they were a member of the Villiers gang. They had a lot of friends and a lot of enemies at the Mill. Still, nobody seemed to bother them too much, and things for the first part of my sentence were pretty calm.

In January, 2021, Harlow got word somehow that a member of the Drones gang was being transferred to the Mill. Probably some issue with overcrowding at another prison or something. They are so disorganized with where they put inmates, and they never seem to know how to handle all the new inmates coming in. I asked Harlow why it would be a problem that a Drone was coming in, as I always assumed they kept members of certain gangs separated - that is what they did on TV anyways. Harlow, who was always letting me know how things really worked at the Mill, told me that wasn’t true. Rory Smalls would be on our range and we needed to be ready for that. I started to prepare myself for the worst.

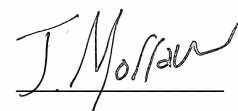
About a week before Smalls got in, I asked another inmate on our range if they knew how to get a weapon. They told me it was pretty common and if I could get my hands on anything made of a decently hard material, they could make me a makeshift knife, called a shiv. I managed to find a small piece of ceramic, and sure enough, the next day I had a shiv. To be clear, I was not planning on using this. I only went out of my way to protect

myself because of all the things I was learning from Harlow, in case I was attacked. I usually kept it in my left sock. It calmed me down just to know it was there.

When Harlow told me about the plan to send a message to Smalls, I was hesitant. I only had a few months left on my sentence, after all, and I didn't want to jeopardize my release by getting involved in something I didn't even have a stake in. However, Harlow had helped me so much, and without them I might not have had a very easy time at the Mill, so I said yes. They assured me it was not a big deal, that we weren't starting anything big and that this type of thing happens all the time.

I am a pretty fit person, and taller than average, so it made sense that I be the one to send the message to Smalls. Still, Harlow wanted to be close by to make sure nothing went wrong, so they put on a thick long-sleeved shirt with padded arms for protection. It also didn't hurt that it made Harlow look a little bigger and more intimidating. Because we didn't get our chance at Smalls until later in the day, Harlow was stuck wearing that thing around for almost 9 hours! I was worried the guards were going to notice and sense something was up, but they were pretty busy as usual.

When our opportunity finally came, Smalls was in the corner of the common room. There were a couple other inmates hanging out at the other end, but no guards. I started telling Smalls exactly what Harlow had told me to say, that if they tried to start anything, all the other Villiers would never forget it, and that Smalls better watch themselves around here. When I went to finish it with a cuff to the head, as Harlow had told me to do, Smalls managed to slip under my right arm and ran out of the room. Another Drone member came around the corner and went straight at me, kicking me in the stomach. I went down, and I must have banged my head on the ground pretty hard or something, because the next thing I knew Smalls was back and on top of me, and they had a knife raised in their right hand! My very next memory was waking up at the hospital with a searing pain in my neck. The police took a photo of the wound while I was in the hospital.

A handwritten signature in black ink, appearing to read 'J. Morrow', with a horizontal line underneath.

Jordan Morrow

Sworn Statement of Rory Smalls

What happened to me on February 3rd, 2021 is not something new to me. For nearly my whole life I have been targeted by members of the Villiers gang, and I have the scars to prove it.

From an early age I was aware of gang life. I had family members who were members of gangs. My cousin is a member of the Drone gang, I think, but I haven't spoken to them in years. When I was a teenager I had to make a lot of tough choices to avoid gang activity, and I succeeded. I chose a different path, focused on studying, and spending my time working at the Mariposa community garden that one of my teachers introduced me to. In 2008, I was accepted to the Missinauba School of Landscape Design. But I learned that even if you aren't involved in gang life, sometimes people assume things about you that aren't true. Unfortunately, about a month before I was set to start my degree, somebody from my neighbourhood recognized me and picked a fight. My friends stepped in, and in the end, three of us were arrested on Assault charges. I ended up pleading guilty to that charge on the advice of a lawyer, because the sentence was probation with community service hours, resulting in a conditional discharge if I completed the probation. While I was completing my community service, the university let me keep working on my degree. Eventually though, it was all too much to handle at one time, and I breached my probation. A warrant went out for my arrest, and eventually I ended up with the first conviction on my criminal record.

Since then, I have been in and out of custody for the past 12 years. I wasn't able to finish my degree, but I've taken on many odd jobs over the years working for landscaping companies.

During my time in and out of custody, I have been assaulted by members of the Villiers gang more times than I can count. I don't know if I am on their list, or if they think I am involved because of my cousin, but every time somebody from Villiers is on the range, I know I'm in trouble. I have a lighter build, and I often can't defend myself. Because I am not part of a gang, I have to try to look out for myself on the range. I always carry some kind of makeshift weapon on me when I am in custody. At first I was hesitant to do that, because I didn't want to get caught with it and get a separate charge on my record. After a few encounters with Villiers members though, I didn't see any other option. Whenever a fight breaks out at the Mill, the guards don't intervene quickly enough to prevent somebody getting hurt. Some of the inmates even call them the "clean-up crew". They seem like they are shorter on guards every day, while our inmate numbers just keep growing. So I know that if I have any chance of surviving an attack from a Villiers member, I have no choice but to keep myself armed.

On February 3rd, 2021, the day of the incident, I noticed something strange as soon as the first block of free time started at 6:45 in the morning: Harlow White was wearing something bulky under their prison uniform. It was pretty obvious too. I had been in this situation before, and knew that they were probably getting ready for some kind of fight. I hoped it wasn't supposed to involve me, but I had heard about White and their involvement with Villiers, and had a bad feeling that I was wrong. I noticed White and this other really tall inmate, who I now know as Jordan Morrow, giving me looks all day. Around lunchtime I was a little late making my way back from the common room to the cafeteria, and I found myself alone in the hallway. At that moment I noticed the tall inmate staring me down, get out of their seat and start to walk towards me. I started jogging to the cafeteria and Morrow sat back down, but that confirmed to me that I was going to be a target.

Sure enough, closer to the end of the day, Morrow made their move. I shouldn't have let myself get trapped alone in the common room, but I guess since they hadn't moved on me all day I was beginning to let my guard down. Morrow was running towards me, and sticking out of their right sock was something sharp which I knew was a shiv. I looked

around and didn't see a single guard in sight. Morrow started giving me the usual threats, but I could tell there was something else coming. One thing I have to my advantage is that I'm quick, and as Morrow swung at me I thought I saw that shiv in their hand. Luckily I dodged it and just got out of the way. Somebody else joined the fight that I couldn't see, and I thought it might be another Villiers member. That's when my instincts came out, and I instinctively grabbed my own shiv from my sock and held it out in front of me. I honestly don't remember stabbing anybody, but the whole event was such a blur, and I had so much adrenaline going through me that it was almost like I was acting automatically. I don't even know where the knife went, but another inmate probably picked it up before the guards arrived. I knew I was fighting for my life. It was a miracle that I didn't end up in the hospital that day, or even the morgue. I know the charge against me is that I assaulted Morrow, but I truly believe I had no other choice if I wanted to make it out of the Mill alive.

A handwritten signature in black ink that reads "Rory Smalls". The signature is written in a cursive, slightly slanted style. The "R" is large and loops around the "o". The "y" has a long, sweeping tail that extends under the "S". The "S" is also large and loops around the "m". The "a" is small and sits between the "m" and the "l". The "l" is tall and thin, with a small loop at the top. The "s" is small and sits at the end of the signature.

Rory Smalls

Sworn Statement of Kel Leigh

My name is Kel Leigh, and I was a Correctional Officer for 12 years. I currently serve as the Chair of the Corrections division of the Ontario Public Service Employees Union. I worked at the Milligan Ridge Detention Centre between 2007 and 2015. Before that I worked at the West Tecumseh Correctional Facility for four years. Prior to that I was employed as security personnel at Smith's Northern Health Resort. I have a Bachelor's degree in Criminal Justice from the University of Mariposa.

In my time at Milligan Ridge, or "the Mill", as a lot of people call it, I came to know the facility extremely thoroughly. Milligan Ridge houses all of its Security Threat Group inmates - usually inmates who are gang-affiliated - on a single range. They do this instead of separating different gang units into separate parts of the building like some other correctional facilities do. This is because, first of all, the Mill was built a long time ago and really is not designed for that kind of thing. Secondly, Milligan Ridge operates according to the principle that by evening the balance of power between the different gangs and mixing gang members together on one range, it prevents any gang from dominating one particular range. There are pros and cons to each approach, and clearly the events of February 3rd demonstrate that whatever benefits there are, this method of housing inmates also certainly has its drawbacks.

Identifying inmates affiliated with gangs is important to understanding a prison population and determining security threats. Milligan Ridge identifies inmates with potential gang affiliations by a few different methods. First, they interview inmates, and many will freely share their gang affiliation and their rank within the organization. They also identify inmates

as gang-affiliated by recording inmate phone calls, by the monitoring, recovery and documentation of inmate contraband, by the monitoring of financial records through inmate bank accounts, by family members who are known members of a gang, or even by certain tattoos on the inmate that indicate affiliation. The process is one of information-gathering, and it is not always clear-cut in the internal records why an inmate was initially identified as being gang-affiliated.

It is true that in the last five years there has been an influx of more inmates to Milligan Ridge. It is also true that there has been a considerable reduction in staffing over this period. While these trends do not make it impossible to carry out all the necessary duties of a correctional officer, they do change how those duties are accomplished. For instance, if a facility is short-staffed, they are limited in how they can respond to incidents like the one which occurred on February 3rd, 2021 at Milligan Ridge. A single Correctional Officer cannot simply charge into a volatile situation. Part of the institutional response is that the numbers of Correctional Officers should at least equal inmate numbers in the immediate area, otherwise officer safety is in jeopardy. In this case, it would have been contrary to protocol for the officers to insert themselves into a potentially deadly situation without sufficient numbers.

The vast majority of officers would like to do the best they can for the safety of the inmates, but don't have the tools, the numbers, the training or the support to execute their duty to the highest standard. That puts officers and inmates at risk, as we have seen in this instance.

A handwritten signature in black ink, appearing to read 'Kel Leigh', written over a horizontal line.

Kel Leigh

List of Exhibits

1. Inventory of Seized “Padded Shirt” with attached photo
 - To be entered by: Defence or Crown
 - Entering this exhibit is **optional**

2. Plan View of Security Threat Group Range
 - To be entered by: Defence or Crown
 - Entering this exhibit is **optional**

3. Photo of Neck wound to Jordan Morrow
 - To be entered by: Crown
 - Entering this exhibit is **optional**

4. Curriculum Vitae of Kel Leigh
 - To be entered by: Defence
 - Entering this exhibit is **required** if the Defence wishes to qualify Leigh as an expert witness

**Mariposa
Police
Service**

**Evidence/Property Collection,
Preservation and Control Report**

Occurrence and Property Information

Detachment Name:

Detachment 12

Location Code:

155276

Occurrence Number:

2443

Location where property found and/or collected:

Milligan Ridge Detention Centre

Property Classification:

Recovered and/or Found

☐

Surrendered (by public)

☐

Evidence/Seized

☒

Destroyed

☐

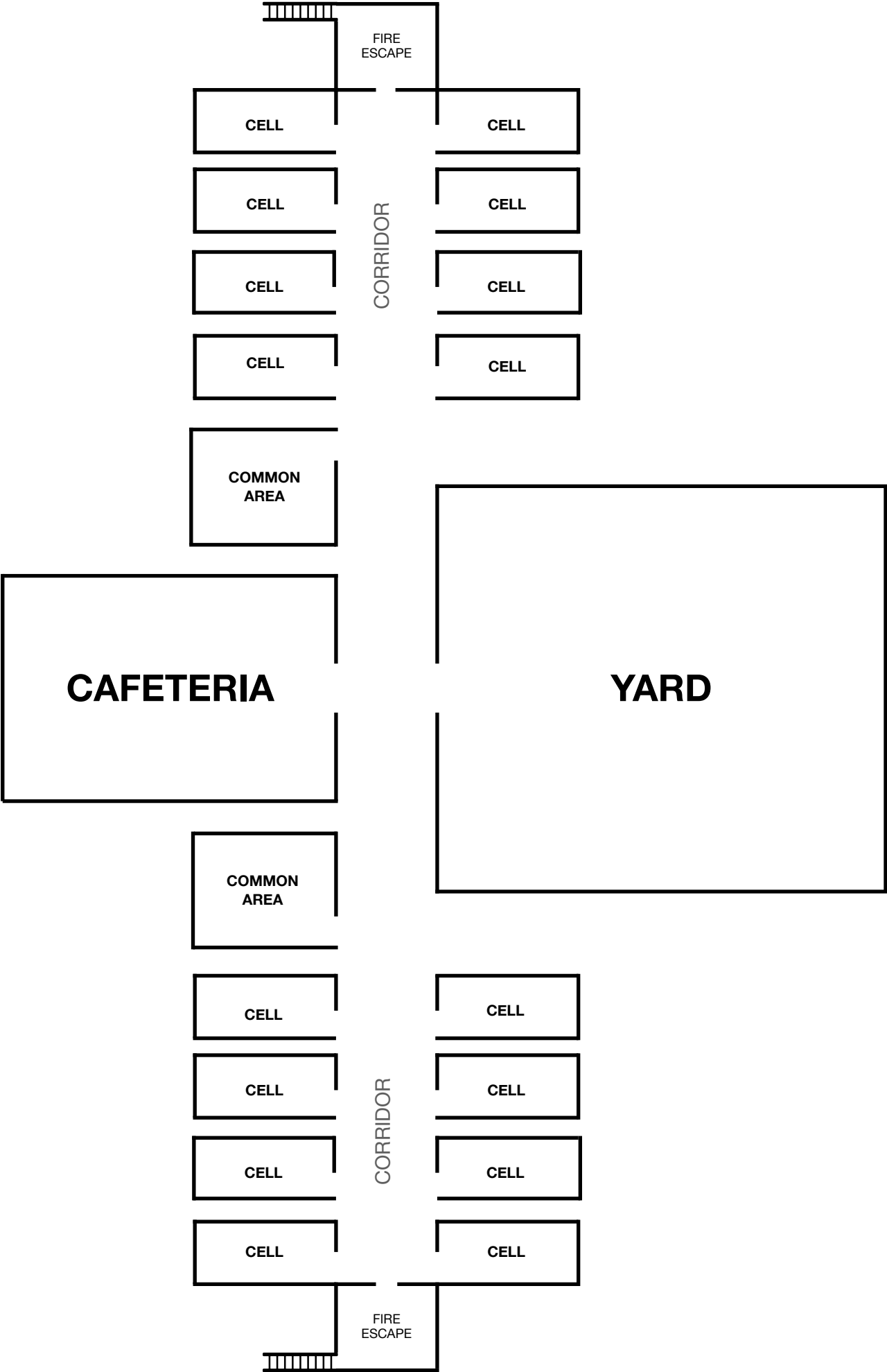
Property Chart

Item #	Quantity	Description	Photo(s) attached	Date Received
1	1	Black long sleeved tactical shirt, padded	yes	February 3, 2021

Photo(s) of property seized:



SECURITY THREAT GROUP RANGE - PLAN VIEW



Jordan Morrow neck wound, taken by Mariposa Police



CURRICULUM VITAE

Name: Kel Leigh

Date of Last Update: November 1, 2020

Date of Birth: June 19, 1978

Office: Ontario Public Service Employees Union
225-555 Varsity Avenue,
Mariposa, ON L5C 4M4

Personal Information: Phone: (647) 110-2008
Fax: (647) 102-2011
Email: kleigh@opseu.org

Degrees, Diplomas, Licensures and Certifications

2003 **Training Program Certificate for
Correctional Officer Applicants
FITCO**

2003 **B.A. in Criminal Justice**
The University of Mariposa

1997 **Emergency First Aid, Cardiopulmonary
Resuscitation (CPR) and Automated
External Defibrillator (AED)**
Ontario Blue Cross

1997 **Ontario Security Guard Exam**
Serco Canada

1996 **Security License Training Program**
Ossawippi Security Services

Professional Appointments

2015 - Present

Chair of Corrections Division

Ontario Public Service Employees Union

2007 - 2015

Correctional Officer

Milligan Ridge Detention Centre

2003 - 2007

Correctional Officer

West Tecumseh Correctional Facility

1997 - 1999

Security Personnel

Smith's Northern Health Resort