

Citation: *R. v. ex-Private A.F. Legresley, 2006 CM 39*

Docket: F200639

**STANDING COURT MARTIAL
CANADA
ONTARIO
CANADIAN FORCES BASE BORDEN**

Date: 15 December 2006

PRESIDING: COMMANDER P.J. LAMONT, M.J.

HER MAJESTY THE QUEEN

v.

**EX-PRIVATE A.F. LEGRESLEY
(Accused)**

FINDING

(Rendered orally)

[1] Stand up, please, Mr Legresley. This court finds you guilty of the first charge and guilty of the second charge. You may be seated.

[2] With respect to finding, former Private Alain Francis Legresley is charged with two offences of trafficking cocaine, contrary to section 5(1) of the *Controlled Drugs and Substances Act*, which are made service offences under section 130 of the *National Defence Act*. At his trial by Standing Court Martial, his counsel concedes that the *actus reus* elements of the offences have been established by the evidence of Sergeant MacLeod, who testified that while acting in an undercover capacity on two occasions in April of 2005, he purchased a small quantity of cocaine from the accused. The defence submits, however, that the actions of the accused were merely to assist the undercover operator to obtain the narcotics that the operator wanted, and while his actions might amount to assisting a purchaser to possess narcotics, they do not amount to trafficking.

[3] The prosecution at court martial, as in any criminal prosecution in a Canadian court, assumes the burden to prove the guilt of the accused beyond a reasonable doubt. In a legal context, this is a term of art with an accepted meaning. If the evidence fails to establish the guilt of the accused beyond a reasonable doubt, the

accused must be found not guilty of the offence. That burden of proof rests upon the prosecution and it never shifts. There is no burden upon the accused to establish his or her innocence. Indeed, the accused is presumed to be innocent at all stages of a prosecution unless and until the prosecution establishes, by evidence that the court accepts, the guilt of the accused beyond a reasonable doubt.

[4] Reasonable doubt does not mean absolute certainty, but it is not sufficient if the evidence leads only to a finding of probable guilt. If the court is only satisfied that the accused is more likely guilty than not guilty, that is insufficient to find guilt beyond a reasonable doubt and the accused must, therefore, be found not guilty. Indeed, the standard of proof beyond a reasonable doubt is much closer to absolute certainty than it is to a standard of probable guilt.

[5] But reasonable doubt is not a frivolous or imaginary doubt. It is not something based on sympathy or prejudice. It is a doubt based on reason and common sense that arises from the evidence or the lack of evidence. The burden of proof beyond a reasonable doubt applies to each of the elements of the offence charged. In other words, if the evidence fails to establish each element of the offence charged beyond a reasonable doubt, the accused is to be found not guilty.

[6] I accept the evidence of the undercover operator, Sergeant MacLeod, as to his dealings with the accused in April of 2005. Sergeant MacLeod is a military policeman who was recruited to take part in an investigation of drug activity at Canadian Forces Base Borden. He played the role of a new member of the accused's unit, the Post Recruit Education and Training Course. In his undercover capacity, he met the accused through one Taylor, who was a target of the investigation. On 8 April 2005, Sergeant MacLeod asked the accused if he could get him some stuff. The accused asked him what he wanted, and Sergeant MacLeod replied that he wanted an "8-ball" of cocaine. The accused said he would have to go and get it. Sergeant MacLeod then drove the accused into Angus, a small town near the base. During the drive, the accused made a telephone call and then stated words to the effect that the deal was to go ahead and the price would be \$200. The accused telephoned again, asking an unknown person for directions, they then drove to an apartment building. The accused left the vehicle and then returned and told Sergeant MacLeod that the price was now \$220 as it was apparently the last of "the guy's stuff." Sergeant MacLeod gave the accused another \$20. The accused left and returned a couple of minutes later and handed Sergeant MacLeod a baggie. It is not disputed that the baggie contained approximately three grams of cocaine.

[7] On 11 April 2005, Sergeant MacLeod was again in contact with the accused and told him he was looking for cocaine and Ecstasy pills. The accused stated that he could "hook him up." The next day, after work, Sergeant MacLeod drove the accused to Angus. Again, they collected Taylor and drove to the same apartment that they had visited four days earlier. The accused went into the building for a few

minutes, came back out, and gave Sergeant MacLeod two folded pieces of paper, containing a total of approximately one gram of cocaine. Sergeant MacLeod gave the accused \$80 for the cocaine.

[8] On these facts, and relying on the decision of the Supreme Court of Canada in *R. v. Greyeyes* (1997), 116 C.C.C. (3d) 334, the accused submits that his actions were merely to assist Sergeant MacLeod to obtain cocaine, and that he acted merely as an agent for the purchaser of the cocaine, and is, therefore, not guilty of trafficking.

[9] As Justice L'Heureux-Dube stated, speaking on behalf of the majority of the court in *Greyeyes*, (paragraph 8):

I agree that despite his or her crucial assistance in helping to complete the sale of narcotics, the purchaser cannot by this action alone be found guilty of the offence of aiding or abetting the offence of trafficking. Frankly, I see no reason why this reasoning should not be extended to third parties as well. In situations where the facts reveal no more than incidental assistance of the sale through rendering aid to the purchaser, it stands to reason that these persons should be treated as purchasers, and not as traffickers. The proper charge in these circumstances would be aiding or abetting the possession of a narcotic, and not trafficking.

[10] Nevertheless, Justice L'Heureux-Dube went on to uphold the judgement of the Saskatchewan Court of Appeal, which had overturned the acquittal at trial of *Greyeyes* and substituted a conviction, and found that on the facts of the case, *Greyeyes* did far more than act as a purchaser, but, (paragraph 13):

...[demonstrated] a concerted effort ... to effect the transfer of narcotics."

[11] I reach the same conclusion in the present case. Here, it was the accused who located a source of supply of the cocaine; made some unspecified arrangement with a supplier of cocaine; set the price to be paid to the accused; increased the price for the reason that he gave Sergeant MacLeod at the time; took the purchase money from Sergeant MacLeod; obtained the cocaine from somewhere in the apartment building, and transferred it to Sergeant MacLeod; and then repeated a virtually identical transaction for a smaller amount of cocaine some four days later.

[12] The submission on behalf of the defence is that the accused merely assisted the purchaser, Sergeant MacLeod, to obtain cocaine from someone else that the accused apparently knew in the apartment building. This theory is supported by the statements made by the accused, asking an unidentified individual by telephone for directions, and referring to "the guy's stuff." But it is possible, of course, that the supply of cocaine was simply stored by the accused somewhere in the apartment

building and that he was merely pretending to obtain the drugs from someone else at the time of the transactions with Sergeant MacLeod.

[13] It is difficult to determine what weight should be attached to statements made in the course of, and for the purpose of facilitating, a transaction in illegal narcotics, but even on the theory of the defence that the supplier of the cocaine was an unknown person in apartment building, the actions of the accused had the effect of maintaining the anonymity of the supplier from the ultimate purchaser, Sergeant MacLeod.

[14] As a matter of common sense, and as this case demonstrates, a seller of illegal drugs has an interest in being careful as to whom he or she deals with. By effectively helping the supplier to maintain that anonymity, the accused assisted the seller in effecting the sales by reducing the risk that he or she would be identified to the authorities as a trafficker, and he is therefore liable as a party to the offence of trafficking committed by the unknown seller under section 21(1)(b) of the *Criminal Code*. The accused is guilty on both charges.

COMMANDER P.J. LAMONT, M.J.

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