



## COURT MARTIAL

**Citation:** *R. v. Pfahl*, 2014 CM 3024

**Date:** 20141208

**Docket:** 201444

Standing Court Martial

4th Canadian Division Support Base Petawawa  
Petawawa, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Corporal F.P. Pfahl, Accused**

**Before:** Lieutenant-Colonel L.-V. d'Auteuil, M.J.

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### **REASONS FOR FINDING**

(Orally)

[1] Corporal Pfahl is charged with an offence punishable under section 130 of the *National Defence Act*; that is, attempt to commit the offence of production of a substance contrary to section 7 of the *Controlled Drugs and Substances Act*. More specifically, it is claimed that between July 2012 and February 2013, near Petawawa, Ontario, did attempt to unlawfully produce such substance.

[2] The evidence in support of this matter consists of fourteen photographs and admissions made by the accused.

[3] The presumption of innocence is a fundamental principle underlying criminal law and also military law. Essentially, it has to be reminded that the burden rests with the prosecution to prove beyond a reasonable doubt all the essential elements of an offence. It also means that an accused, such as Corporal Pfahl, does not have to prove anything. He doesn't have to defend himself. The burden is on the prosecution to prove everything. People should also be reminded that the notion of reasonable doubt is linked to this notion of presumption of innocence. It would mean, for example, that if the

Court came to the conclusion that Corporal Pfahl is likely guilty of the offence, the Court would have to acquit Corporal Pfahl of this accusation.

[4] In this matter, Corporal Pfahl is charged with attempting to commit an offence contrary to the *Controlled Drugs and Substances Act*. Section 137 of the *National Defence Act* provides for attempting to commit an offence, meaning that it is possible under the Code of Service Discipline to be charged for attempting the commission of a service offence.

[5] The essential elements, which are necessary to be proven by the prosecution beyond a reasonable doubt, of the offence of attempting to produce psilocybin are the following: the identity of the accused, meaning that Corporal Pfahl is the person, the author of the alleged offence; the date and the place of the alleged offence; the fact that the accused attempted to produce a substance.

[6] To “produce” a substance means to make the substance or mix it with some other substance. The method or process may include, but does not have to be, the manufacture, synthesis, or use of any means to alter the physical properties of the substance. To produce a substance also includes, but is not restricted to, the cultivation, propagation and harvest of the substance, or any other living thing from which the substance may be extracted or otherwise obtained. Offering to produce a substance is also sufficient to satisfy this requirement. The prosecution does not have to prove that the accused produced a substance in every way that I have described. Any one of them is sufficient. The Court does not have to find that all methods argued were used, in fact, one is enough.

[7] “Substance” has its ordinary meaning. It means any material thing, in any form. It could be a solid, a liquid, a gas or a powder. It could be pure or mixed with other things.

[8] Another essential element that has to be proved by the prosecution is the nature of the substance. A controlled substance is any substance that a person cannot legally buy, sell, or possess without government authorization. Psilocybin is listed in Schedule III of the *Controlled Drugs and Substances Act*.

[9] It is also necessary for the prosecution to prove that the accused knew the nature of the substance, meaning that the accused knew that the substance was an attempt to be psilocybin. This question has to do with the knowledge of the nature of the substance. Did the accused know that the substance was psilocybin? Knowledge is a state of mind, the accused’s state of mind. It is also necessary for the prosecution to prove beyond a reasonable doubt that the accused had the intent to produce. This question also has to do with the accused’s state of mind; what he meant to do when he attempted to produce psilocybin. In order to make such a determination, the Court should consider what he did or did not do, how he did it or did not do it, and what he said or did not say about it. A Court should look at the accused’s words and conduct before, at the time, and after he attempted to produce the substance. All these things and the circumstances in which

they happened may shed light on what the accused intended or did not intend to do when he produced psilocybin. Essentially, the Court must use its common sense.

[10] Regarding the essential elements of the offence, it is the Court's conclusion that the identity, date and place have been proven beyond a reasonable doubt by the prosecution through admissions made by Corporal Pfahl. Regarding the attempt to produce, the text messages obtained through various production orders demonstrated this essential element. Mason jars seized and specific admissions for attempting to grow "magic mushrooms" have been made and support such conclusion. The nature of the substance was admitted by the accused. Concerning the intent to produce, again, there are admissions regarding this essential element. When the Court reviews the content of the text messages, and considers the actions of the accused, what was found and seized, where it was found and seized, and the relationship of the accused with Sapper Harley, it is clear that there was involvement of Corporal Pfahl in this matter on a voluntary basis. It was not an accident. What he did, how he did it, and what he said through text messages is conclusive evidence for the Court to come to the conclusion that he intended to attempt to produce such substance.

[11] Consequently, the Court considers that the prosecution met its evidentiary burden and concludes that the prosecution has proved, beyond a reasonable doubt, all essential elements of the offence of attempting to produce psilocybin contrary to subsection 7(1) of the *Controlled Drugs and Substances Act*.

**FOR THESE REASONS, THE COURT:**

[12] **FINDS** Corporal Pfahl guilty on the first and only charge on the charge sheet.

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**Counsel:**

The Director of Military Prosecutions as represented by Major J.E. Carrier

Major C.E. Thomas, Defence Counsel Services, Counsel for Corporal F.P. Pfahl