



COURT MARTIAL

Citation: *R v McCarty*, 2014 CM 3026

Date: 20141118

Docket: 201433

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal M. G. C. McCarty, Accused

Corrected decision:	The text of the original decision was corrected on February 19, 2019
Correction made:	In paragraph 73, the second sentence should, in part, read “with the consent of the complainant” and not “without the consent of the complainant”.

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

Restriction on publication: By court order made under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could disclose the identity of the person described in this judgment as the complainant shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR FINDING

(Orally)

[1] Master Corporal McCarty is charged with two service offences, both punishable under paragraph 130(1)(a) of the *National Defence Act*, for having allegedly committed a sexual offence against a fellow soldier contrary to section 271 of the *Criminal Code*, at two different moments in November and December 2013.

[2] More specifically, the November incident would have allegedly taken place at the residence of the accused, while the December incident would have allegedly occurred at the Junior Ranks Mess on the Canadian Forces Base (CFB) Petawawa.

[3] This prosecution's case relies mainly on the testimony of the complainant. Two other prosecution witnesses testified on some issues that occurred after both alleged incidents.

[4] The accused testified on his behalf and also introduced some documents.

[5] Finally, the court took judicial notice of the matters listed at article 15 of the Military Rules of Evidence.

[6] At the time of the alleged incidents, Master Corporal McCarty and the complainant were both members of the Royal Canadian Dragoons (RCD), a unit located on CFB Petawawa. They were both members of the same squadron and the accused was the direct supervisor of the complainant at work. They had a professional relationship and they socialized on occasion. Master Corporal McCarty's sexual orientation was commonly known among the members of the unit. They knew he was homosexual and it was seen as a non issue, including for the complainant.

[7] On the Halloween night of 2013, which is the 31st of October, the complainant spent part of the evening at the Coriano Club Junior Ranks Mess where, among other things, he consumed alcohol. Master Corporal McCarty was at that place, too, and consumed alcohol but he was not with the complainant.

[8] When the Coriano's bar closed, some people decided to go to a bar in Pembroke to continue to celebrate and they took a cab to the Lasso's bar where they continued to party. Among those people, there were the complainant and the accused.

[9] During that night, both the complainant and the accused saw each other at both locations but other than greeting and recognizing each other, they did not have a real conversation.

[10] When the last call was made at the Lasso's bar, Master Corporal McCarty saw the complainant at the exit of the bar and asked him if he was going back to Petawawa. Both were residing on the base at that time, but at different locations. The complainant confirmed that it was his intent to do so, and they both decided to take a cab together to return to the base.

[11] While in the taxi, on their way back to the base, the complainant asked Master Corporal McCarty if he had beer at his home. The accused said "yes." Then, it was decided that the complainant would stop at the accused's house to have a beer. When they arrived, Master Corporal McCarty paid for the taxi.

[12] At this point, this is where the recollection of events by the complainant and the accused differ in some ways about what happened.

[13] According to the complainant, he went into Master Corporal McCarty's residence and checked in the fridge for beer. There was none. He then decided to rest there. Initially, he wanted to get a blanket and sleep on the couch but because there was no blanket available, he made the decision to take Master Corporal McCarty's bed. He took off his jeans, went to bed with his T-shirt and boxers on and literally crashed, meaning that he went to sleep right away, considering that he was heavily intoxicated by alcohol. At that point, the accused was still in his living room.

[14] According to the complainant, he took the middle or the far side of the bed and at some point, it may be possible that Master Corporal McCarty laid down beside him but he did not notice it, him being asleep.

[15] He was woken up by having Master Corporal McCarty's hand on his genitals, meaning on his testicles and penis. His penis was flaccid. His boxers were off.

[16] No word was said. He stood up, covered himself with the blanket and exited the room. He sat for a while on the couch, unhappy, thinking about what just happened. He eventually fell asleep. He was later woken up by Master Corporal McCarty who took the blanket back. He then went to the bedroom where he took back his jeans and put them on. He called a cab, took it and left the accused's residence.

[17] Prior to both alleged incidents, the complainant had gone only once to the residence of Master Corporal McCarty. He had beer and watched TV with the accused. According to him, he slept over. However, the accused told the court that, to the contrary, the complainant did not spend the night at his residence. Master Corporal McCarty told the court that the complainant came to his house after a party night. The complainant told him that he wanted to have more beer and the accused invited him to take some at his house. Further to watching TV and drinking beer, the complainant left his residence on his bike without sleeping over at it.

[18] Master Corporal McCarty stated that upon exiting the taxi, when they both arrived at his residence, the complainant and himself went into the house, had a beer and watched TV. At some point during that night, the accused told the complainant that he could take a taxi and leave his house, sleep on the couch or share his bed. Being tired because it was late in the night and because of his consumption of alcohol, he then went to his bed.

[19] The accused told the court that the complainant chose to share his bed. They both took off their pants, leaving them only with their boxers. They both went to bed and started talking. Master Corporal McCarty asked the complainant about his plans for the long weekend they had, considering that they had the Friday off. During that conversation, the complainant asked him if he had been gay his all life, to which he answered "yes." He asked him if he had ever been with a woman, and he answered he had not. The complainant then told him that he was horny and kind of curious.

[20] Master Corporal McCarty replied that he could help him out with that. Then the complainant replied "ok". The accused put his hand on the complainant's boxers and the latter pulled them down. Master Corporal McCarty put his hand on the complainant's penis and did get erect. It lasted for a maximum of a minute. The complainant told him he no longer wanted him to continue. The accused stopped and commented by saying that he should not go on with this either, considering that he was involved in a relationship with somebody else.

[21] The complainant laid in the bed for a minute after that. He then told Master Corporal McCarty that he would sleep on the couch, asked and took the blanket, put his jeans back on and went on the couch.

[22] Master Corporal McCarty stayed in the bed. At some point, he got cold. He had a furnace but he had not turned it on, previously being away for about two weeks on an exercise with the unit. He asked the complainant to give him back the blanket, which he did, and turned on the fireplace in the living room to warm it up. The accused then went back to bed while the complainant stayed on the couch.

[23] In the morning, the accused got up and saw the complainant getting ready to leave. He talked to him by the door for a few minutes. A taxi was called. The complainant took it and left.

[24] According to the complainant, around 9 November 2013, while at an event at Royal Canadian Regiment indoor parade square, Master Corporal McCarty approached him, appearing intoxicated, telling him that he would like to talk to him privately. The complainant started to yell at him, telling him to stay away from him, to go fuck himself. The accused then replied to not be mean with him and he just walked away. Master Corporal McCarty denied that such an event occurred.

[25] The complainant continued to receive standard text messages from the accused for work purposes, as before the incident. However, he clearly testified to the effect that he then became uncomfortable with such a situation, despite it not being different from the way it was before.

[26] According to the complainant, he went to the Coriano Club Junior Ranks Mess on 8 December 2013 to drink and meet people there. He saw Master Corporal McCarty who was there too. While at the bar, he felt a hand caressing his back for few seconds. He described this gesture as sexual in nature, not something as being ironic or funny. Knowing the accused from previous experiences, he understood this gesture as having this meaning. It was not something that you get from a friend.

[27] He turned around, saw the accused and told him not to touch him. He then heard the accused telling him something to the effect that they had fun before.

[28] The complainant felt pretty disgusted, bad and uncomfortable. He had some drinks and left the place with a friend. According to him, some time after he received two text messages from the accused. One telling that he looks sexy with a Winky Face and a second one asking him if he wanted to go to the Warehouse later. He did not interact again with him on that night. Later, Master Corporal McCarty also denied that such an event occurred.

[29] Later, at the men's Christmas party, the complainant spoke about what happened with Master Corporal McCarty at his residence to one of his friends, Corporal Janack. The latter told the court that the complainant looked anxious and depressed, unhappy, uncomfortable with the topic. He had never seen him before in that state. He tried to comfort him, told him to relax and maybe to consider talking to his chain of command. However, the complainant did not want anybody to find out about the incident. Corporal Janack understood that, considering that in the work environment, soldiers could be rude and harass him with that story.

[30] Finally, around mid-December 2013, the complainant went to Corporal Clermont's residence. The complainant looked in a happy mood but something was bothering him. Corporal Clermont was aware that he was coping with the fact that he had just broken up with his fiancé and he looked unhappy when he was talking about that to him.

[31] The complainant also talked to him about what happened with Master Corporal McCarty. He was shaking, crying, upset, did not know what to do about it. He wanted to leave but he insisted on him to stay, fearing that the complainant would kill himself. He spent the night at his residence.

[32] Corporal Clermont was really concerned with the situation and the day after, he talked to the complainant's leadership, with his approval. The complainant also talked to the padre.

[33] The chain of command approached the complainant. He told the court that he had no other choice than to make a complaint, considering that everybody knew about his story. He met investigators twice: first, on 10 January 2014, and a second time on 14 January 2014. The investigation was completed and charges were laid against Master Corporal McCarty.

[34] Before this court provides its legal analysis, it's appropriate to deal with the presumption of innocence and the standard of proof beyond a reasonable doubt, a standard that is inextricably intertwined with the principle fundamental to all Code of Service Discipline and criminal trials. And these principles, of course, are well known to counsel, but other people in this courtroom may well be less familiar with them.

[35] The first and most important principle of law applicable to every Code of Service Discipline and criminal case is the presumption of innocence. Master Corporal McCarty enters the proceedings presumed to be innocent, and the presumption of innocence

remains throughout the case unless the prosecution, on the evidence put before the court, satisfies it beyond a reasonable doubt that he is guilty.

[36] Two rules flow from the presumption of innocence. One is that the prosecution bears the burden of proving guilt. The other is that guilt must be proved beyond a reasonable doubt. These rules are linked with the presumption of innocence to ensure that no innocent person is convicted.

[37] The burden of proof rests with the prosecution and never shifts. There is no burden on Master Corporal McCarty to prove that he is innocent. He does not have to prove anything.

[38] Now, what does the expression "beyond a reasonable doubt" means? A reasonable doubt is not an imaginary or frivolous doubt. It is not based on sympathy for or prejudice against anyone involved in the proceedings. Rather, it is based on reason and common sense. It is a doubt that arises logically from the evidence or from an absence of evidence.

[39] It is virtually impossible to prove anything to an absolute certainty, and the prosecution is not required to do so. Such a standard would be impossibly high. However, the standard of proof beyond a reasonable doubt falls much closer to absolute certainty than to probable guilt. The court must not find Master Corporal McCarty guilty unless it is sure he is guilty. Even if it believes that he is probably guilty or likely guilty, that is not sufficient. In those circumstances, the court must give the benefit of the doubt to Master Corporal McCarty and find him not guilty because the prosecution has failed to satisfy the court of his guilt beyond a reasonable doubt.

[40] The important point for the court is that the requirement of proof beyond a reasonable doubt applies to each of those essential elements. It does not apply to individual items of evidence. The court must decide, looking at the evidence as a whole, whether the prosecution has proved Master Corporal McCarty's guilt beyond a reasonable doubt.

[41] Reasonable doubt applies to the issue of credibility. On any given point, the court may believe a witness, disbelieve a witness, or not be able to decide. The court need not fully believe or disbelieve one witness or a group of witnesses. If this court has a reasonable doubt about Master Corporal McCarty's guilt arising from the credibility of the witnesses, then it must find him not guilty.

[42] The court has heard Master Corporal McCarty testify. When a person charged with an offence testifies, the court must assess that evidence as it would assess the testimony of any other witness, keeping in mind instructions mentioned earlier about the credibility of witnesses. The court may accept all, part, or none of Master Corporal McCarty's evidence.

[43] It is one of those cases where the approach on the assessment of credibility and reliability expressed by the Supreme Court of Canada in *R. v. W. (D.)*, [1991] 1 SCR 742, must be applied, because Master Corporal McCarty testified.

[44] This test was enunciated mainly to avoid, for the trier of facts, to proceed by establishing which evidence it believes, the one adduced by the accused or the one presented by the prosecution. However, it is also clear that the Supreme Court of Canada reiterated many times that this formulation does not need to be followed word by word as some sort of incantation. The pitfall that this court must avoid is to be in a situation appearing to, or in reality to, choose between two versions in its analysis. As recently established by the Supreme Court of Canada in its decision of *R. v. Vuradin*, 2013 SCC 38, at paragraph 21:

The paramount question in a criminal case is whether, on the whole of the evidence, the trier of fact is left with a reasonable doubt about the guilt of the accused: *W.(D.)*, at p. 758. The order in which a trial judge makes credibility findings of witnesses is inconsequential as long as the principle of reasonable doubt remains the central consideration. A verdict of guilt must not be based on a choice between the accused's evidence and the Crown's evidence: *R. v. C.L.Y.*, 2008 SCC 2, [2008] 1 S.C.R. 5, at paras. 6-8. However, trial judges are not required to explain in detail the process they followed to reach a verdict: see *R. v. Boucher*, 2005 SCC 72, [2005] 3 S.C.R. 499, at para. 29.

[45] Of course, if the court believes the testimony of Master Corporal McCarty that he did not commit the offence charged, the court must find him not guilty.

[46] However, even if the court does not believe the testimony of Master Corporal McCarty, if it leaves it with a reasonable doubt about an essential element of the offence charged, the court must find him not guilty of that offence.

[47] Even if the testimony of Master Corporal McCarty does not raise a reasonable doubt about an essential element of the offence charged, if after considering all the evidence the court is not satisfied beyond a reasonable doubt of his guilt, it must acquit.

[48] About the evidence, it is important to say that the court must consider only the one presented in the courtroom. Evidence is the testimony of witnesses and things entered as exhibits. It may also consist of admissions. The evidence includes what each witness says in response to questions asked. Only the answers are evidence. The questions are not evidence unless the witness agrees that what is asked is correct.

[49] Paragraph 271.(a) of the *Criminal Code* reads, in part, as follows:

271. Everyone who commits a sexual assault is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding 10 years and, if the complainant is under the age of 16 years, to a minimum punishment of imprisonment for a term of one year;

[50] In *R. v. Chase*, [1987] 2 SCR 293, at page 302, Judge McIntyre provided the definition of a sexual assault:

Sexual assault is an assault within any one of the definitions of that concept in s. 244(1) [now section 265(1)] of the *Criminal Code* which is committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated.

[51] Paragraph 265(1)(a) of the *Criminal Code* reads, in part, as follows:

265. (1) A person commits an assault when

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

[52] In *R. v. Ewanchuk*, [1999] 1 SCR 330, it was established that a conviction for sexual assault requires proof beyond reasonable doubt of two basic elements, that the accused committed the *actus reus* and that he had the necessary *mens rea*.

[53] The *actus reus* of assault is unwanted sexual touching and is established by the proof of three elements: touching; the sexual nature of the contact; and, the absence of consent.

[54] Consent involves the complainant's state of mind. Is it the voluntary agreement of the complainant that the accused do what he did in the way in which he did it and when he did it? In other words, did the complainant want the accused to do what he did? A voluntary agreement is one made by a person, who is free to agree or disagree, of his or her own free will. It involves knowledge of what is going to happen and voluntary agreement to do it or let it be done.

[55] Just because the complainant did not resist or put up a fight does not mean that he consented to what the accused did. Consent requires knowledge on the complainant's part of what is going to happen and a decision by him, without the influence of force, threats, fear, fraud or abuse of authority, to let it occur.

[56] The *mens rea* is the intention to touch, knowing of, or being reckless of or wilfully blind to, a lack of consent, either by words or actions, from the person being touched and it contains two elements: intention to touch and knowing of, or being reckless of or wilfully blind to a lack of consent on the part of the person touched.

[57] Then, the prosecution had to prove the following essential elements beyond a reasonable doubt on both charges: the identity of the accused, the date and place as alleged in the particulars of each charge on the charge sheet.

[58] The prosecution also had to prove the following additional elements: the fact that Master Corporal McCarty used force directly or indirectly against the complainant; the fact that he used intentionally the force against the complainant; the fact that the complainant did not consent to the use of force; that Master Corporal McCarty knew, or was reckless of or wilfully blind to, a lack of consent on the part of the complainant; and the fact that the contacts made by him on the complainant were of a sexual nature.

[59] Considering the testimony of Master Corporal McCarty, the court is left with two issues to decide on the first charge. About the second charge, the clear denial by Master Corporal McCarty that such a thing did not happen leaves the court to consider the matter on all essential elements of it.

[60] Regarding the first charge, the accused made admissions during his testimony on most of its essential elements, dispensing with proof, any fact the prosecutor must prove on the identity, the date, the place, that he used force directly or indirectly against the complainant, that he used intentionally the force against the complainant, and that the contacts made by him on the complainant were of a sexual nature.

[61] Consequently, the court considers that the prosecution has discharged its burden of proof beyond a reasonable doubt in regard of those essential elements.

[62] Then, the court is left with two issues:

- (a) the fact that the complainant did not consent to the use of force; and
- (b) that Master Corporal McCarty knew, or was reckless of or wilfully blind to, a lack of consent on the part of the complainant.

[63] In order to decide, the court must make a determination about the credibility and reliability of the testimony provided by Master Corporal McCarty on this trial concerning those two essential elements of the offence. It is important to remember that his testimony must be assessed within the context of the evidence as a whole.

[64] Master Corporal McCarty testified in a clear, calm and straightforward manner. He was responsive to questions asked during his examination-in-chief and cross-examination. His story regarding the events in relation to the first charge was consistent with itself. He clearly provided a reason for each action he made. He had an excellent recollection of the incident, which was clearly a noteworthy one for him.

[65] Essentially, he told the court that the fact that he touched the complainant the way he did is the result of a normal conversation led by the complainant himself and that he did nothing that the complainant did not authorize. He stopped touching the complainant when requested and never put pressure on him to make him decide otherwise, considering that it was probably better to do so in the circumstances.

[66] It is logical that in the context where both individuals drank a lot of alcohol, where inhibitions might have been potentially lowered on both sides, combined with the fatigue, the type of conversation that innocently occurred, the context in which both ended up, which is the bedroom and wearing boxers, may have led, one step at a time, to the situation as described by the accused, where, with the consent of the complainant, touching of a sexual nature occurred.

[67] In addition, most of the accused's version of the event is supported by the complainant's evidence. There are many similarities: how they ended up at Master Corporal McCarty's residence; that the complainant is the one who made the decision to go in the accused's bed; that the complainant's boxers were lowered down; that the complainant stood up after the touching and went on the couch where he slept after; and that the complainant left only in the morning and took a cab.

[68] The testimony of the accused revealed, when considered as a whole, that he was respectful of the complainant's opinion and reaction at all times, including when an opportunity was given to him to get in a sexual relationship with the complainant. He touched the complainant when he was told he could, and stopped touching him when directed to do so.

[69] In addition, the testimony of the complainant confirmed what has been shown through the entire testimony of Master Corporal McCarty: at no time during this event, the complainant feared for his own security and sexual integrity. Clearly, the complainant confirmed after the touching, he went on the couch and slept there. If he had any concern about security and sexual integrity, especially while he was sleeping, he would have likely left the residence of the accused, which was not the case, as confirmed by the accused's version.

[70] The accused's testimony was honest, reasonable and consistent with itself. Then, for these reasons, applying the test enunciated in the Supreme Court decision of *R. v. W. (D.)*, and having considered the evidence introduced before this court as a whole, it is the opinion of the court that the accused's evidence must be believed about the fact that the complainant consented to be touched by the accused.

[71] Then, it is the conclusion of the court that the prosecution has not discharged its burden of proof beyond a reasonable doubt regarding the fact that the complainant did not consent to the use of force.

[72] In addition, the court would add that if it had not believed the testimony of Master Corporal McCarty, it would have been left with a reasonable doubt by it.

[73] There is no doubt that the accused touched the penis of the complainant with his hand while they were both laying down side by side on the bed in the accused's bedroom. However, the testimony of the accused would have left the court, when considering the evidence as a whole, with the idea that it is most likely that it was done with the consent of the complainant in the circumstances. With such conclusion, the court would have had no other choice than to acquit Master Corporal McCarty of the first charge.

[74] It has to be said that the evidence adduced by the prosecution, when considered as a whole, does lead to such conclusion. The prosecution relied mainly on the testimony of the complainant. The latter testified with some difficulty, and was in some way inconsistent.

[75] First, it has to be said that the complainant clearly established that he tried to forget about this event, that he did not want to talk about it and that he did not want it to be known to the community. He admitted that he was drinking a lot of alcohol at the time of the event and it might have impaired his ability to recollect. Reality is that he told the court many times that he was unable to remember details of any conversation he had at that time with the accused or any specific details of the event itself other than he went to the accused's residence, he took his bed, he was woken up by the accused touching his genitals with his hand, that he stood up and moved onto the couch in the living room where he slept and that he left in the morning.

[76] The complainant had some difficulties to place the event. He provided different time frames to the police and the court and initially provided specific wrong days and months to the police on a Post-it. He is still not able to place the event more than in a general two-week period. By itself, it is not a huge factor, but combined with others, it becomes a concern.

[77] The complainant modified some aspect of his testimony when challenged during cross-examination: while he said initially that he did not have a beer at the accused's residence, he mentioned later that he might have; when he mentioned that he took the middle of the bed, he then admitted it could have been the far side of the bed; he said some things differently to the police than what he said in court, such as who got first to the bed; if he was wearing jeans or not; if he said something or not when he woke up; if he put or not his jeans on when he left the room. For some of those points, he admitted that what he said at an earlier time to the police was fresher in his memory than this week, being closer to the event. However, he also said that it was not always the case when he said that he was remembering better now on some issues than when he talked to the police, some 12 months ago. As he said himself, "memory is a funny thing." Even during his cross-examination, without being prompted, he took the initiative of telling the defence counsel about one contradiction on the fact that he said earlier to the police that he went to bed with his jeans on, while in court he said that he took off his jeans before going to bed. He could not explain the reason for having a different recollection other than saying that it is what he was remembering now.

[78] Moreover, he said that he was shocked further to being touched by the accused during his sleep but he decided to sleep on the couch at the residence of the accused after. Asked about his own reaction and his logic for doing so, he answered that he was too tired and decided to sleep there. Why staying and sleeping at the accused's house, if he had been previously woken up during his sleep by an unwanted sexual touching made by the accused?

[79] Often, the complainant was unsure of what really happened and could not recollect many things. He did not have a good memory of the event and his testimony was inconsistent.

[80] The two other witnesses confirmed also mainly the approach taken by the complainant regarding his testimony: he was more concerned about what people would

think of him being involved in such event with a male than by his own sexual integrity. Trying to cope with the break up with his fiancé, this additional event did not help him to feel emotionally better, which he expressed to his friends at the time.

[81] Essentially, all those deficiencies made his testimony mainly unreliable, the complainant not being able to provide an accurate picture of what really happened.

[82] In some way, it also impacted the appreciation of the court about his sincerity to tell the truth and, from that perspective, it sees also some problems with his credibility.

[83] Considering all those comments, it is clear for the court that it would have concluded, after considering all the evidence that it was not satisfied beyond a reasonable doubt of the guilt of Master Corporal McCarty, and it would have acquitted him.

[84] Now, regarding the second charge, Master Corporal McCarty expressed a clear denial to the fact that he sexually assaulted the complainant on 8 December 2013 at the Coriano Club. Essentially, he said that he had no reason to have such behaviour in a public place.

[85] Looking at the evidence as a whole, this clear denial by the accused must be believed. The complainant said that he felt a caress by a hand on his back. However, he never saw who did that. He assumed, adding the comment he thought he heard, that it was the accused who did that.

[86] The court does not see any reason to disbelieve the accused when he said that he did not do it. Then, the court must acquit Master Corporal McCarty.

[87] In addition, the prosecution's case falls short, as a matter of evidence, on the issue of identity, that the contact was of a sexual nature, and that the use of force by the accused was intentional.

[88] Moreover, consideration given by the court to the testimony of the complainant still applies to the circumstances of this second charge, and consequently, considering that the testimony of the complainant is not reliable, and in some way not credible for the reasons previously exposed by the court, then it is the conclusion of the court that the prosecution has not discharged its burden of proof beyond a reasonable doubt regarding all essential elements on the second charge.

[89] Consequently, having regard to the evidence as a whole, the prosecution has not proved beyond a reasonable doubt all the essential elements of the offence of sexual assault on both charges.

FOR THESE REASONS, THE COURT:

[90] **FINDS** Master Corporal McCarty not guilty of the first and second charge on the charge sheet.

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