



## COURT MARTIAL

**Citation:** *R. v. A.M.*, 2014 CM 1026

**Date:** 20141128

**Docket:** 201347

Standing Court Martial

2nd Canadian Division Support Base Valcartier  
Courcellette, Quebec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Private A.M., Offender**

**Before:** Colonel M. Dutil, C.M.J.

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### OFFICIAL ENGLISH TRANSLATION

#### **REASONS FOR SENTENCE**

(Orally)

[1] Private A.M. has admitted her guilt on one charge punishable under section 130 of the *National Defence Act*, contrary to paragraph 267(b) of the *Criminal Code*, that is, having committed assault causing bodily harm.

[2] These court martial proceedings began in May 2014. The charge sheet contained seven charges. Over the last few months, the accused was represented by multiple lawyers who withdrew from the case for various reasons. On 18 November 2014, Private A.M. decided to represent herself before the Court, despite repeated warnings from the trial judge, who explained many times the inherent difficulties that arise from such a choice and gave the usual guidance regarding the prosecution's burden of proof, the various rules of evidence and procedure and the essential elements of each of the charges brought against her. Before she entered a plea before the Court, the prosecution stated that it wanted to withdraw all the charges except for the first one. Once this had been done, Private A.M. pleaded guilty to the sole remaining charge.

[3] The facts of this case unfolded during EXERCISE MAPLE RESOLVE, at Canadian Forces Base Wainwright, province of Alberta, during the night from 22 to 23 September 2012, when members of 3<sup>rd</sup> Battalion, Royal 22<sup>e</sup> Régiment, were there for this exercise. On 22 September 2012, Private A.M. and other colleagues went to the Junior Ranks Mess to socialize and watch Ultimate Fighting Championship matches on television. There were 15 members gathered there, most of them Francophones from Valcartier Garrison units.

[4] Around 2230 hours, the Mess bar manager told the duty officer that alcoholic beverage service had been cut off for Private A.M. She had been warned twice not to bring in alcoholic beverages from outside the establishment. Private A.M. appeared to be uncooperative. However, it seems that this situation arose because of a language-related miscommunication between the two individuals.

[5] It appears that earlier in the evening, a member had come up to Private A.M. and insulted her while showing her, on his cellular telephone, a video in which appeared. The content of this video was private and sexual in nature. It had been widely disseminated a few years ago without Private A.M.'s consent, and this had caused considerable harm. The member who had come up to her then left in a hurry, trying to hide himself in the crowd. Private A.M. immediately headed toward the member that she thought had done this to talk to him directly. A verbal altercation soon broke out between Private A.M. and the member in question. Wanting to calm Private A.M. down and to resolve the situation, the member that she had approached suggested to Private A.M. that she follow him outside so they could talk about it. At one point, the verbal altercation degenerated further. The victim, Private M.D., a friend of the member in question, trying to remove the member from the situation to avoid further escalating this altercation, invited him to follow him back inside. Private A.M. told Private M.D. that his friend was staying with her.

[6] Private A.M. then, without warning, punched Private M.D. right in the face. When he asked her why she hit him, she punched him in the face a second time. Private M.D. again asked her why she was doing this, since he had not done anything to her. In response, Private A.M. hit him a third time. Private M.D. did nothing and did not even respond to Private A.M. actions. After the third punch, Private M.D. told Private A.M. that he was going back inside to call the police. Private A.M. therefore followed him inside and punched him two more times in the face. Some co-workers immediately intervened to separate Private A.M. from Private M.D. Private M.D. never responded to the punches, nor did he say anything to provoke Private A.M. He had not been drinking alcohol and remained in perfect control of his faculties. The blows to Private M.D.'s gave him a bruise on his lips and cuts on his lower lip and on his upper lip on the left side. Around 0011 hours, on 23 September 2012, two military police officers were contacted and dispatched to the Junior Ranks Mess. After making some brief checks, they arrested Private A.M. around 0120 hours and took her into custody. By around 0320 hours, on 23 September 2012, Private A.M. had calmed down, and the police had the chance to talk with her. Private A.M. was released around 0830 hours, on

24 September 2012, under certain conditions set by a custody review officer.

[7] In imposing an appropriate sentence on an accused for the wrongful acts that he or she has committed in relation to the offences of which he or she is guilty, certain objectives must be aimed for in light of the principles applicable to sentencing, which vary slightly from one case to the next. The fundamental purpose of sentencing in a court martial is to maintain military discipline and build respect for the law by imposing fair punishments having one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders, in order to return them to their environment in the Canadian Forces or to civilian life; and
- (f) to promote a sense of responsibility in military members who are offenders.

[8] The sentence must also take the following principles into account. It must be proportionate to the gravity of the offence, the previous character of the offender and his or her degree of responsibility. The sentence should also take into consideration the principle of parity in sentencing, that is, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Before considering depriving an offender of liberty, the Court has a duty to consider whether less restrictive sanctions may be appropriate in the circumstances. Last, the sentence must be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender and to account for any indirect consequence of the verdict or the sentence on the offender. The sentence will therefore be the result of a balancing exercise that yields the minimum sentence that the Court considers to be adequate such that it will consist of the sanction or a combination of sanctions that the Court Martial considers to be the minimum while still contributing to the maintenance of military discipline and respect for the law. This is often the most difficult task for a trial judge, and the case of Private A.M. is an excellent example of this.

[9] The prosecution recommends that the offender be sentenced to detention for a period of 10 days and a fine of \$750. It submits that the personal circumstances of Private A.M. are sufficient for the Court to suspend the sentence of detention. The offender submits that the evidence that she filed in court favours a lesser sentence. At the sentencing hearing, Private A.M. called several witnesses who spoke of her high motivation, her good behaviour and her performance when she returned to the battalion in April 2012 from Area Support Unit St-Jean, Saint-Jean sur Richelieu, despite the unfortunate episode resulting from the theft of an intimate video that she had made of

herself. This video had spread like wildfire through her unit and even beyond. The evidence shows that said video even fell into the hands of members of foreign forces. There is no point in describing in even the slightest detail the derogatory remarks made about her by her comrades in arms or the stigmatization to which she was then subjected. The fact is that Private A.M. suffered a great deal, personally and professionally. What is more, this situation had prompted her unit's authorities to transfer her out of Valcartier Garrison. The Court also heard the testimony of the Unit Adjutant, who described how far the release process for Private A.M. had progressed and how they were waiting for the results of a board of inquiry into the facts surrounding how the military authorities had handled the incident involving the video of Private A.M. The offender also entered into evidence a considerable number of letters of appreciation from superiors, including a Personnel Development Review (PDR) for the period from August to October 2012. Finally, Private A.M. filed medical documents regarding her condition and the steps she took to better manage a severe borderline personality disorder going back to her childhood as a result of repeated sexual abuse by a family member and during several placements with foster families. The unfortunate episode regarding the theft of her video threw Private A.M. back into the state of a person abused by people whom she had trusted and who were never punished for their actions.

[10] The events in this case cannot be dissociated from the facts relating to the theft of the video and the difficulties later experienced by the offender. Moreover, the testimony of a few superiors who have observed her since her return to the unit in March-April 2012 confirms that she was in a positive state of mind at the time and was highly motivated to continue her career as an infantryman and be deployed to Afghanistan. It appears that she had tried as best she could to turn the page on the stigmatization and humiliation to which she had been subjected by her own comrades in arms and that she was looking to the future.

[11] At the sentencing hearing, Private A.M. gave solid and sincere testimony. She explained that during EXERCISE MAPLE RESOLVE, she was informed that the infamous video was circulating again and that certain individuals were watching it in one of the buildings, which was being used as a dormitory. Although she had tried to forget this unfortunate incident, the knowledge of this situation was a brutal setback. Thinking that a year later, she was better equipped to deal with the situation, she went to the building and met with an individual to calmly explain to him the situation and the hurt it was causing her. The individual apologized to her, and she then asked the occupants of the building to erase the video because she had suffered enough. This was when she learned that another individual had not only watched the video on his laptop but had tried to disseminate it. Private A.M. then went to see a superior to complain about the situation. The offender described how shortly thereafter, she had to watch this same video in front of the military police and confirm that it was her appearing in it. This added to her humiliation. This is the background to the events of 22 September 2012.

[12] The offence of having committed assault causing bodily harm under

paragraph 267(b) of the *Criminal Code* is objectively serious. Everyone who, in committing an assault, causes bodily harm to the complainant, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months. However, no such distinction is applicable when a person is tried under the Code of Service Discipline. Parliament has clearly shown that the objective seriousness of this offence is variable and that the circumstances surrounding its commission are particularly important. However, in cases of violence against other people, the courts have also recognized that the objectives of denunciation and deterrence should be paramount.

#### *Aggravating circumstances*

[13] In cases of assault causing bodily harm, the courts have found the following factors to be aggravating circumstances, among others: evidence of a pattern or history of physical or psychological violence by the offender, the fact that the offender acted in a planned and deliberate manner, the duration and severity of the attack on the victim, and the fact that the victim was young or vulnerable. Along with the characteristics of the offender that are relevant to sentencing, these same courts also took into account the existence of a criminal record for acts of violence, the prospects for rehabilitation and the demonstration of remorse toward the victim.

[14] This case is the result of Private A.M. losing control in regard to a particularly difficult situation for her. Even though the aggravating circumstances are few in number, the fact remains that she violently lost her temper with Private M.D., hitting him several times for no reason. He had done nothing to her and even asked why she was hitting him. He had only been trying to remove his friend from an altercation with the offender. As she herself said in her testimony, she snapped. The offender simply vented her own anger and frustration, as legitimate as they might be, by striking a person who wanted to help end an altercation peacefully. The repeated and gratuitous nature of the offender's violent acts toward the victim is therefore an aggravating circumstance in this case. Taking the law into one's own hands has consequences, and wrongdoers must answer for their actions. Neither anger nor frustration justifies resorting to violence. Military members know better than anyone else that using violence is appropriate only where authorized by law. This is not the offender's first brush with the military or civilian justice system, but her previous convictions are not related to acts of violence. These aggravating circumstances must, however, be interpreted in their proper context, where the offender lost control because of the actions of her own comrades in arms, who continued to psychologically abuse her by continuing to watch and distribute an intimate video that had been stolen from her and widely disseminated by members in 2010, thus humiliating and stigmatizing her in her colleague's eyes.

#### *Mitigating circumstances*

[15] This brings me to important mitigating circumstances related to the commission

of the offence or the situation of the offender. First, the offence is directly related to the offender's discovery, shortly before the incident, that the video that had been stolen from her two years earlier was still circulating in her own unit. Although she cannot use this as an excuse for her actions, her anger and exasperation were legitimate. Having to relive this humiliation once again, despite all her efforts to put it behind her, certainly contributed to her gratuitous and impulsive reaction to the victim.

[16] The documentary evidence filed in this Court and the offender's testimony reveal a particularly difficult past. Several years ago, a psychiatrist diagnosed her with severe borderline personality disorder combined with significant alcohol abuse, although she was sober for more than two years, until 2012. Her childhood was marked by numerous tragic events, including repeated sexual abuse by a member of her family and in several foster families during her childhood. It appears that her mother had a problem with drug addiction and that her sister, the mother of the young girl of which she has legal custody until October 2015, also has this problem. The episode with the video stolen from her in 2010 had painful consequences in terms of her mental health. This situation and how she experienced it caused all the traumatic events of her childhood to resurface, like the tip of the iceberg, to borrow the metaphor. This caused her to lose confidence in her chain of command, as she felt betrayed by the military institution she believed in. In a way, this feeling was reflected in, among other things, her own defence in this court martial proceeding, where she finally chose to represent herself before the Court Martial and refused the services of a lawyer provided free of charge by the Director of Defence Counsel Services.

[17] The fact is that the author of the Personnel Development Review (PDR) regarding the participation of Private A.M. in EXERCISE MAPLE RESOLVE (Exhibit 10) was not aware of the nature of his subordinate's mental health problems when he wrote the report for the period covering the incident, nor did he understand what had really happened to cause her to resort to violence on 22 September 2012. He wrote in part as follows:

[TRANSLATION]

Private A.M. must learn to control her reactions and to develop perspective on her situation. On several occasions, she allowed past events, albeit extremely unpleasant ones, to impair her judgment. These incidents led to physical confrontations with other military members and with the Military Police. She has to understand that the essential quality of being a soldier is being able to apply violence in a deliberate and measured fashion in a lawful context. She absolutely has to develop a capacity to be objective and to allow her better judgment to override her emotional reaction. Otherwise, this creates enormous doubts as to her ability to control herself in combat.

[18] These paternalistic statements, although they were made in good faith, demonstrate the author's misunderstanding of what happened that evening and of why Private A.M. acted as she did. The supervisor made comments that would be entirely

appropriate had they been directed at someone who is not living with any mental health problems. However, the medical and psychological evidence filed with the Court speaks eloquently to the fact that a person with severe borderline personality disorder does not have the necessary tools to act this way. The author also seems to ignore or trivialize that it was not unpleasant past events that impaired her judgment, as he claims. During EXERCISE MAPLE RESOLVE, Private A.M. was not affected by comments regarding the existence of her video in 2010. Moreover, Private A.M. thought she had put the incident behind her and had made the necessary efforts to move on. In reality, Private A.M. went through a Groundhog Day situation. In the Canadian Armed Forces, people come and go. On 22 September 2012 and in the days leading up to it, she discovered that the video incident was not behind her. Once again, her comrades in arms were abusing her by watching and distributing the video stolen in 2010, despite all the efforts of her chain of command to see that this did not happen again. What she was experiencing was not a bad memory. On the contrary, the humiliation and stigmatization to which she was once again being subjected by her own comrades in arms were very real and present. Private A.M. was once again the victim of psychological violence at the hands of those she wanted, once again, to trust. This has nothing to do with being able to look at things objectively.

[19] Much has changed since September 2012. Since early 2014, Private A.M. has been receiving special psychological therapy for persons with severe borderline personality disorder. The treatment began in February 2014 at the Institut universitaire en santé mentale de Québec and was recently handed over to a psychotherapist in private practice. According to her psychotherapist, she always attends her meetings and is highly motivated to make the necessary changes in her life. The Court also noted the offender's behaviour and attitude during the court martial proceeding as a good example of this progress.

[20] In addition, the Court cannot ignore the fact that the offender will in all likelihood be released from the Canadian Armed Forces. Although the release notification signed by the unit's commanding officer in November 2012, less than two months after the incident at issue in this court martial proceeding, recommended that she be released under Item 5(f), Unsuitable for Further Service, the medical evidence filed with this Court, which documents her condition since 2013, suggests that her release could be approved under a different item, including medical release. Unfortunately, this situation illustrates the day-to-day difficulties that unit commanding officers have with regard to the limited amount of information that can be forwarded to them by the Canadian Armed Forces Health Services on account of the need to maintain the confidentiality of information and to protect the privacy of military patients.

[21] It is also relevant to note that despite her personal and professional problems and the court martial proceedings, the Youth Court granted Private A.M. physical custody of her niece just a few days after the child was born in July 2014, until October 2015. Since that time, the offender and her spouse have for all intents and purposes been acting as the child's parents. Private A.M. testified about her attachment to her niece and her new role as mother. The offender is worried about the consequences of a period

in detention if she were separated from her niece for a few weeks. The evidence does not support this assertion. It appears that the child is in very good health, and there is nothing to indicate that the offender's absence for a few weeks would have a negative impact on the physical or mental health of the child. There can be no doubt that the offender and her spouse are absolutely devoted and loving parents to this child and are providing her with the necessary care.

[22] Regarding the offender's financial situation, it appears from the summary of her income and expenses that she has a shortfall of \$700 dollars a month. Clearly, she and her spouse will have to make difficult choices in very short order, but she said she would nonetheless be ready to pay a fine on terms of payment that should not exceed \$100 a month.

[23] As in any other case, the offender's guilty plea is also a mitigating circumstance. What is more, Private A.M. made a sincere apology not only to the victim, but also to the prosecution and the Court. Although these apologies were not necessary, they are an accurate reflection of the offender's remorse in the circumstances. Finally, the Court cannot ignore that the offender spent two days in pretrial custody immediately after committing the offence.

[24] It is not this Court's role to shed light on the actions of individuals and the steps taken by the chain of command with regard to events relating to the video stolen from Private A.M. in 2010 and later disseminated. A board of inquiry was convened in October 2013 to examine the circumstances surrounding the management of this case. This inquiry must surely be complex, since the evidence before this Court shows that the report is still not available. However, the Court must sentence Private A.M. for her actions toward Private M.D. in a unique context, and said sentence must be the minimum in the circumstances to contribute to the maintenance of military discipline and respect for the law.

[25] The circumstances of this case are by no means limited to the facts described in the statement of facts filed with the Court after Private A.M. admitted her guilt. Such a restrictive approach would trivialize the considerable harm done to the offender by some of her comrades in arms who profoundly humiliated and stigmatized her by watching together and distributing Private A.M.'s personal video. This sort of behaviour is not a mere off-colour joke. It is an example of harassment of gigantic proportions because it spirals out of control. The repercussions of these actions on a person with no history of mental health issues would be devastating enough. In the case of Private A.M., the fact is that she has not yet recovered and is still nursing her wounds with courage and determination. Although the sort of offence to which she has pleaded guilty deserves a sentence that emphasizes denunciation of the act and general deterrence, it must in the circumstances foster the offender's rehabilitation. The prosecution recommends that the offender be detained for a period of 10 days, but it submits that the Court could suspend this on humanitarian grounds. The Court is not satisfied that Private A.M.'s family situation warrants suspending a sentence of detention.



[26] The Court is satisfied, however, that a deprivation of liberty is not required in the circumstances of this case to meet the applicable objectives. A sentence to detention would not only have a negative effect on the offender's rehabilitation by imposing on her an excessive degree of responsibility in light of all the events, but it would also send a message to those who harassed her that they can do so with impunity, despite the warnings from the chain of command upon her return to the unit in March-April 2012.

[27] It is important to remember that this young woman chose to represent herself before the Court Martial because she has lost confidence in those who wear the uniform, in part because she has severe borderline personality disorder. All the participants in this court martial proceeding were in a privileged position to testify to the ordeal that Private A.M. had to go through to defend herself, and this despite the distress and anxiety that this caused her beyond what is normally experienced by others on trial in this Court and who are even represented by counsel. To those who would say that this was her choice, I disagree with such bravado, because it fails to take into account her mental health issues. I am persuaded that her choice to represent herself will keep her out of the courts as an accused for the rest of her life. This difficult experience could have been even worse if counsel for Her Majesty in this case had not guided her with such respect and kindness during this long proceeding by making the task easier for her within the limits imposed on him in his role as prosecutor. In short, the Court finds that the fact that she had to face charges and be judged by a court martial, despite all the sympathy that a person might have for Private A.M., shows that whatever the reasons one might have, resorting to violence will have disciplinary or criminal consequences.

#### **FOR THESE REASONS, THE COURT**

[28] **FINDS** Private A.M. guilty of the first charge, that is, assault causing bodily harm, an offence punishable under section 130 of the *National Defence Act* contrary to paragraph 267(b) of the *Criminal Code*.

[29] **SENTENCES** the offender, Private A.M., to a reprimand.

[30] **MAKES an order** under section 196.14 of the *National Defence Act* for the taking of samples of bodily substances for the purpose of forensic DNA analysis.

[31] **DOES NOT MAKE** an order under section 147.1 of the *National Defence Act* because the Court is not satisfied that it is desirable, in the interests of the safety of the person or of any other person, to make such an order.

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#### **Counsel:**

Major G. Roy, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Private A.M. represented herself.