



COURT MARTIAL

Citation: *R. v. Woolvett*, 2014 CM 1028

Date: 20141211

Docket: 201428

Standing Court Martial

Canadian Forces Base Borden
Borden, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal Woolvett J.G., Accused

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

REASONS FOR FINDING

(Orally)

[1] Master Corporal Woolvett is charged with three offences, namely: one count of fighting with a person subject to the Code of Service Discipline, contrary to paragraph 86(b) of the *National Defence Act*; one count of drunkenness, contrary to section 97 of the *Act*; and one count of failure to comply with conditions, contrary to section 101.1 of the *Act*.

THE EVIDENCE

[2] The evidence consists of the following:

- (a) The testimonies, in order of appearance before the court, of Corporal Robert McKay, Captain Julie Umpherson, Corporal Steven McDonald, Master Corporal Jonathan Woolvett and Private Andrew Scarr.
- (b) Exhibit 3, a series of defence admissions. In doing so, the defence admitted the essential elements of the first and third charges.

- (c) Exhibits 4 to 10 inclusive. The said documentary evidence covers the following matters: the extent of the injuries suffered by the victim, Corporal McKay, during the fight with Master Corporal Woolvett (Exhibits 4 and 6); the Canadian Forces Conduct Sheets of Corporal McKay and Master Corporal Woolvett (Exhibits 7 and 9); text messages between Master Corporal Woolvett and Corporal McKay exchanged shortly before the fight that took place on 20 September 2013 (Exhibit 5); the Member's Personnel Record Resume (MPRR) of Master Corporal Woolvett (Exhibit 8); and, an email dated 8 December 2014 from Dr. D. Ewing to Major Hodson, defence counsel, that confirms that Master Corporal Woolvett carries a diagnosis of PTSD, an operational stress injury, and is under medical psychiatric care at Mental Health Services (Exhibit 10). The said email also states that the member is fully compliant with treatment.
- (d) The facts and matters for which the court has taken judicial notice under section 15 of the Military Rules of Evidence.

THE FACTS

[3] The events that led to the charges before the court took place on 20 September 2013 with respect to the first charge, and on 2 March 2014 with respect to the second and third charges. During the afternoon of 20 September 2013, at approximately 1600 hours, the accused was socialising in the backyard of his very good friend Corporal Robert McKay who had just returned from work. They were in the presence of Corporal McKay's fiancée, his son and Corporal McKay's younger brother who lived with him and was completing high school. Master Corporal Woolvett was drinking beer. Corporal McKay had to return to work shortly after for approximately an hour and he returned from work between 1930 and 2000 hours. On his return, Corporal McKay changed into civilian clothes and joined these persons outside in the backyard. During the following moments, a discussion took place between the adults about the future of Corporal McKay's young brother, including his wish to join the military.

[4] According to the evidence Corporal McKay drank two cans of beer and Master Corporal Woolvett consumed approximately four beers, although throughout the extended period. The evidence heard from Master Corporal Woolvett and Corporal McKay reveal that during the said discussion, Corporal McKay did not appreciate the comments and the tone used by Master Corporal Woolvett in that regard, where the latter felt that Corporal McKay was disrespectful towards his younger brother with regard to his future employment in the Canadian Forces. Corporal McKay testified that his best friend, Woolvett, seemed more aggressive and angry towards him in comparison to his normal behaviour. He stated that Master Corporal Woolvett's behaviour was great and that he would always look at his friend for advice. According to McKay, he was upset and left the party with his fiancée and his son and went back into the house, leaving the accused and his younger brother behind.

[5] His younger brother would have entered the house at approximately 2115 hours to play video games in the living room. It is during that period that an exchange of text messages took place between Woolvett and McKay. Corporal McKay would have gone to bed with his fiancée in his bedroom on the second floor of his PMQ. According to Corporal McKay's version of events, Master Corporal Woolvett would have then entered his home and went to his bedroom located on the second floor. Master Corporal Woolvett, mumbling, would have grabbed him by his T-shirt while he was in bed. Corporal McKay got up and also grabbed the accused and pushed him down the stairs, through the living room and kitchen, until they both ended up outside through the back door. Corporal McKay described that Master Corporal Woolvett, who is taller and heavier than him, finally overpowered him outside in the backyard onto the concrete and the grass as his fiancée was coming down the stairs yelling at Master Corporal Woolvett to let him go.

[6] He stated that the accused then threw him on the ground and pinned him down, holding each of his arms beside his head. As he was trying to get away, Corporal McKay stated that the accused started to throw punches at him and yelling that he was going to kill him. Corporal McKay testified that it is at that time that Master Corporal Woolvett did headbutt him and someone removed the accused off him, while his fiancée was still yelling. He then stood up, walked in the house and collapsed on the kitchen floor in convulsions. He awoke shortly after and was brought to the hospital, where his injuries were treated. As a result of the headbutt, Corporal McKay suffered a 25 centimetre cut above his left eyebrow, which required six stitches.

[7] It is also relevant to note that since they were best friends, Corporal McKay knew that Master Corporal Woolvett suffered from PTSD further to his service in Afghanistan. He knew as well that his friend's condition was very serious, including atrocious and ongoing nightmares, severe anxiety and a long history of addiction to substances. Corporal McKay denied provoking Master Corporal Woolvett at any time during the altercation, except that he wanted to escape from his position, when he was neutralized by Master Corporal Woolvett in the backyard. Although he acknowledged having been convicted at summary trial for having fought with Master Corporal Woolvett on that occasion, he denied being convicted for anything else until confronted with his own conduct sheet that established that he was also convicted on 31 January 2014 of using provoking speeches towards Master Corporal Woolvett for this incident by stating: "If you let me up on my own, it will be bad for you" or words to that effect.

[8] I found Corporal McKay's testimony problematic in many ways. He tried to portray himself in his best way. He minimized his own role during the altercation and he also had to be pushed to the limit to finally recognize that he had been convicted of not only fighting with Master Corporal Woolvett at that time, but of having used provoking speeches towards his friend Woolvett during that same altercation. In addition, when asked by counsel for the defence about his aggressive behaviour, he agreed that he was banned from his hockey league, but he stated that his suspension was imposed on him only because he had argued with the referee. I found the witness to be

overly defensive and not forthcoming on matters that would not put him at his best. The court also found that Corporal McKay was also evasive on many occasions during his cross-examination. Finally, Corporal McKay recognized that he has difficulty in recalling much about that day. On that basis, I find that the credibility of this witness and the reliability of his evidence are problematic. All the other witnesses heard at trial raise no issue of credibility, including Master Corporal Woolvett.

[9] Master Corporal Woolvett testified that during the conversation that took place in Corporal McKay's backyard concerning his young brother's future in the Canadian Forces, he said that he did not agree with the comments made by his friend, McKay, to his younger brother with regard to the occupation he should choose. He felt that his friend should have showed more respect to his brother during the conversation. However, he felt that the situation had escalated to the point that Master Corporal Woolvett wanted to apologize to Corporal McKay. According to his testimony, shortly after sending text messages to his friend in order to talk it over, as he was still with his friend's brother in the backyard, Master Corporal Woolvett walked to his friend's door to diffuse the matter. When he arrived at the door, Corporal McKay pushed him and took two swings at him. In response to this aggression by Corporal McKay, Master Corporal Woolvett grabbed his friend by the shirt and threw Corporal McKay away from him in the backyard. Within seconds, Master Corporal Woolvett got on top of his friend to neutralize him because McKay was threatening to kill him, several times. Master Corporal Woolvett said that he took the threat seriously and that he would not let his friend McKay stand up as he was afraid of his reaction. Woolvett was on McKay's stomach and pinning him to the ground. This position lasted between 45 seconds to three minutes.

[10] Master Corporal Woolvett testified that he tried to calm him down repeatedly, but with no success. Corporal McKay was enraged and continued threatening to kill him. Master Corporal Woolvett told his friend that if he did not stop he would have to headbutt him. As he was getting tired and after having avoided two attempts from McKay to headbutt him, Master Corporal Woolvett headbutted Corporal McKay as his friend was trying to do the same. According to him, their two heads clashed. Master Corporal Woolvett testified that he truly felt he had no choice in doing so because his friend was so enraged that he feared for his own safety. He felt he could not let Corporal McKay have an advantage over him. According to his version of events, as Corporal McKay's fiancée and brother were watching during the altercation, she was yelling at her boyfriend to let it go.

[11] During that period, Private Scarr arrived in the backyard and witnessed only a part of the altercation. Although he did not hear Corporal McKay issue a threat to kill Master Corporal Woolvett, he corroborates his testimony, in particular with regard to the fact that Corporal McKay was very upset and trying to escape from his position. Private Scarr heard Corporal McKay's girlfriend yelling the words "Rob, stop! Rob, stop" and "Stop it, Rob, let it go". Private Scarr testified that Master Corporal Woolvett asked him for assistance to calm Corporal McKay and also telling Private Scarr that he felt that if he would let him stand up, McKay would do something to him. Private Scarr

tried to get his attention verbally but with no success as Corporal McKay was furious. He stated that Corporal McKay was yelling at Woolvett and that his face was red and completely focused on Master Corporal Woolvett as he was trying to get out of his position. He testified that he heard Master Corporal Woolvett tell his friend that if he did not stop, he would have to headbutt him. Private Scarr then observed Corporal McKay attempting to headbutt Master Corporal Woolvett twice immediately after Woolvett's warning. He then saw Master Corporal Woolvett avoid those attempts and headbutt Corporal McKay. From his position, he could not tell if the two heads collided or not. He stepped in and removed Master Corporal Woolvett easily from his position. Corporal McKay stood up and ran to the house. He heard Corporal McKay collapse and he ran inside to provide assistance. Private Scarr testified that Master Corporal Woolvett was not aggressive towards his friend McKay during the altercation or after. To the contrary, he observed that Master Corporal Woolvett appeared saddened by the situation. Private Scarr testified that after observing Corporal McKay, he would also have been scared and he would not have let him stand up on his own. He added that despite his size, he does not like to get involved physically and he would not have intervened physically between the two men because he did not want to get in the crossfire and be hurt.

[12] Corporal McDonald, a military police officer, testified that when he arrived at the scene, he met with Master Corporal Woolvett who readily told him that he was the person that hit Corporal McKay and that he was very cooperative. He found the victim on the kitchen floor, unconscious and bleeding from the head. Master Corporal Woolvett did not appear intoxicated at the time. He also testified that he conducted the investigation into this matter and determined that Corporal McKay was the primary aggressor. He did not explain the reasons or the basis of his opinion.

[13] With regard to the events that led to the second and third charges that took place on 2 March 2014, Master Corporal Woolvett testified that during the early hours of that day, he experienced another of those recurring terrible nightmares where he sees himself and his fellow soldiers ambushed in Afghanistan. He described the horrific images that he saw during that nightmare, including images of his wife and child being executed. Master Corporal Woolvett testified that he had no medication that night to calm himself down after this nightmare. He described his physical and emotional state after that particular nightmare, including his body shaking and sweating. Master Corporal Woolvett testified that he needed something to take the edge off and calm down. According to him, calling friends or a mental health hotline could not be of any assistance at that time based on his experience. He stated that he went to his fridge and instinctively grabbed the bottle of white wine and drank it as he watched TV. He knew that he had to report to the Base Duty Officer later that day and he also knew that he had breached the condition imposed on him not to drink alcohol.

LEGAL ANALYSIS AND DECISION

[14] Before this court provides its legal analysis, it is appropriate to deal with the presumption of innocence and the standard of proof beyond a reasonable doubt. 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.

[15] The burden of proof rests with the prosecution and never shifts. There is no burden on Master Corporal Woolvett to prove that he is innocent. He does not have to prove anything. 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. 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 First Charge: Paragraph 86(b) of the National Defence Act—Fighting with a person subject to the Code of Service Discipline

[16] The first charge is laid under paragraph 86(b) of the *National Defence Act* it reads, in part, as follows:

86. Every person who
- (a) quarrels or fights with any other a person who is subject to the Code of Service Discipline,
- ...
- is guilty of an offence ...

This offence covers a large spectrum of situations. In this case, the prosecution alleges that the accused fought with a person subject to the Code of Service Discipline. The particulars of the first charge read as follows:

Particulars: In that he, on or about 20 September 2013, at or near 67 Coriano Crescent, Canadian Forces Base Borden, Ontario, did butt-head Corporal McKay.

Beyond the elements relating to the time and place of the alleged offence as well as the identity of the accused, the other essential elements are:

- (a) the accused fought with a person;
- (b) the person involved in the fight is subject to the Code of Service Discipline; and
- (c) the blameworthy state of mind of the accused.

[17] The issues in this case are limited. As to the first charge, the only issue is whether Master Corporal Woolvett acted in self-defence when he did headbutt Corporal McKay. The burden still falls to the prosecution to prove beyond a reasonable doubt that the accused did not act in self-defence. Section 72.1 of the *National Defence Act* provides:

72.1 All rules and principles that are followed from time to time in the civil courts and that would render any circumstance a justification or excuse for any act or omission or a defence to any charge are applicable in any proceedings under the Code of Service Discipline.

The provision dealing with self-defence is found at section 34 of the *Criminal Code*. It reads in part as follows:

34. (1) A person is not guilty of an offence if
- (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
 - (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
 - (c) the act committed is reasonable in the circumstances.
- (2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:
- (a) the nature of the force or threat;
 - (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
 - (c) the person's role in the incident;
 - (d) whether any party to the incident used or threatened to use a weapon;
 - (e) the size, age, gender and physical capabilities of the parties to the incident;
 - (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
 - i any history of interaction or communication between the parties to the incident;
 - (g) the nature and proportionality of the person's response to the use or threat of force; and
 - (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.

The court is satisfied that there is an evidentiary foundation for the defence provided in section 34 of the *Criminal Code*. Section 34 of the *Code* sets out the elements of the defence that apply to any situation in which the accused acts to defend himself or another person. The criteria of reasonableness apply to both the perceptions and the response of the accused. Therefore, there will be an acquittal if there is a reasonable doubt that the accused:

- (a) had reasonable and probable grounds to believe that force or the threat of force was used against him or another person;
- (b) committed the action constituting the offence for the purpose of defending or protecting himself or another person from the use or threat of force; and
- (c) acted reasonably in the circumstances.

[18] These elements are cumulative and, therefore, the trier of fact will have to have reasonable doubt about each one of them. In assessing those factors enunciated in subsection 34(2) of the *Code*, I accept the evidence of Private Scarr to the effect that prior to the headbutt of Master Corporal Woolvett at Corporal McKay, the latter was neutralized and Master Corporal Woolvett was in control of the situation. Of course, the evidence is abundantly clear that Corporal McKay was very angry and out of control as he tried to escape from his position and that both Woolvett and Scarr were afraid to let him go because he was so furious. Accepting the version of Master Corporal Woolvett that Corporal McKay threatened to kill him, there is no evidence that he would use or threaten to use a weapon to carry on his threat. There had never been any altercation or violence used against each other as they were very close friends. Finally, Master Corporal Woolvett was bigger than his victim and he was firmly in control of the situation, but he was feeling tired of holding Corporal McKay in that position prior to the headbutt.

[19] The first element of the defence of self-defence involving reasonable apprehension of force is objective. The question to be asked is whether a reasonable person, placed in the same situation as Master Corporal Woolvett, would have concluded that force or the threat of force was being used against him. Characteristics of the accused will have to be considered, such as race and gender, for example, and the context to some extent. However, this element cannot lose its objective component even if a person suffering from PTSD, as a result of combat operations and has been psychologically harmed during them, may have reasonable grounds to believe that force, within the meaning of paragraph 34(1)(a) of the *Code* was used against him.

[20] The second element, committing the act for defence purposes, relates to Master Corporal Woolvett's state of mind. He must have committed the act solely for the purpose of defending or protecting himself as opposed to seek revenge, to discipline or to control the other person. This part of the test is a purely subjective test. It will involve

determining what drove the accused at the time of the act. Master Corporal Woolvett stated that he took the threats of Corporal McKay to kill him very seriously. Private Scarr did not hear those threats but he heard McKay yelling at Woolvett, "If you let me go on my own, it will be bad for you". These words were uttered as Master Corporal Woolvett was seeking the help of Private Scarr to calm down Corporal McKay who was totally out of control. Considering the evidence accepted by the court, I find that Master Corporal Woolvett subjectively feared for his safety.

[21] The third element involves the extent of Master Corporal Woolvett's response. This element is assessed objectively, namely, reasonable conduct, but put into context through the very wording of subsection 34(2) of the *Code*. However, it must be recognized that proportionality is not the issue here. As stated in *Criminal Pleadings and Practice in Canada (Ewaschuk)*, at paragraph 21:5180:

"In repelling an unlawful assault, an accused is *not* required to measure the force he uses in the necessitous circumstance to a nicety. For the frenzy of the occasion does *not* allow for detached reflection" ...

[22] As I have previously mentioned, prior to the headbutt of Master Corporal Woolvett at Corporal McKay, he was neutralized and Master Corporal Woolvett was in control of the situation. However, Corporal McKay was very angry and he was totally out of control as he tried to escape from his position. Private Scarr stated that he would not have stepped in between the two men because he did not want to get in the crossfire and that he did not like to fight himself. Both Woolvett and Scarr were afraid to let McKay stand up and go because he was so furious. Scarr was not to assist Woolvett physically despite his request to do so and calling the police would not assist Woolvett in the immediate. It is true that Private Scarr could have intervened to assist Master Corporal Woolvett physically or more forcefully in order to calm him down, but his testimony leaves no doubt that he would not have done so as he did not want to be caught into the crossfire. Accepting also the version of Master Corporal Woolvett that Corporal McKay threatened to kill him, there is no evidence that he would have used or threatened to use a weapon to carry out his threat but the evidence is clear that McKay was totally out of control. It is true that there had never been any altercation or violence used against each other as they were very close friends, but despite their friendship and the requests from his girlfriend for Woolvett and Scarr to stop, McKay was not responding. Despite the fact that Master Corporal Woolvett was bigger than his victim and that he was firmly in control of the situation when McKay was neutralized, Master Corporal Woolvett stated that he was feeling tired of holding Corporal McKay in that position and felt he could not resist much longer. Finally, I accept the evidence of Master Corporal Woolvett that Corporal McKay was the initial aggressor when he attacked him at the door of his house. In the circumstances, the use of force of Master Corporal Woolvett in administering a headbutt to Corporal McKay was reasonable in the circumstances. Therefore, the court is not satisfied that the prosecution has proved beyond a reasonable doubt that the accused did not act in self-defence for the purposes of section 34 of the *Code*.

Second Charge: Section 97 of the National Defence Act—Drunkenness

[23] The second charge relates to an alleged contravention of section 97 of the *National Defence Act* for the offence of drunkenness. For our purposes, the relevant portions of section 97 of the *Act* read as follows:

97. (1) Drunkenness is an offence and every person convicted thereof ...
- (2) For the purposes of subsection (1), the offence of drunkenness is committed where a person, owing to the influence of alcohol or a drug,
- (a) is unfit to be entrusted with any duty that the person is or may be required to perform; or
 - (b) behaves in a disorderly manner or in a manner likely to bring discredit on Her Majesty's service.

[24] The particulars of the second charge read as follows:

Particulars: In that he, on or about 2 March 2014, at or near the Base Duty Centre, Canadian Forces Base Borden, Ontario, while reporting to the Base Duty Officer, was drunk.

To be found guilty of the offence of drunkenness, the prosecution must prove beyond a reasonable doubt the identity of the offender as well as the date and the place described in that particulars of that charge. In addition, it must prove beyond a reasonable doubt that:

- (a) the accused was under the influence of alcohol or a drug;
- (b) the accused was unfit to be entrusted with any duty that the person was or may have been required to perform; or behaved in disorderly manner or in manner likely to bring discredit on Her Majesty's Service; and
- (c) the blameworthy state of mind of the accused.

[25] As to the second charge, the evidence is limited to the admissions of the accused to the effect that he drank a bottle of white wine at 0300 hours on 2 March 2014 at his home after a terrible nightmare and to the effect that when he reported to the Base Duty Officer, as per his release conditions, Captain Dar-Ali, at 1500 hours that day, Master Corporal Woolvett's breath smelled of alcohol. There is no other evidence that relates to a sign of impairment at the time of the alleged offence. For that reason alone, the prosecution has failed to meet its burden of proof.

Third Charge: Section 101.1 of the National Defence Act — Failure to comply with conditions

[26] Finally, the third charge alleges a contravention to section 101.1 of the *Act* for a failure to comply with a condition. This section provides, in part:

101.1 Every person who, without lawful excuse, fails to comply with a condition imposed under Division 3, or a condition of an undertaking given under Division 3 or 10, is guilty of an offence ...

[27] The particulars of the third charge read as follows:

Particulars: In that he, on or about 2 March 2014, at or near the Base Duty Centre, Canadian Forces Base Borden, Ontario, without lawful excuse, failed to abstain from the consumption of alcohol contrary to a condition of release given under Division 3 of the Code of Service Discipline on 29 October 2013.

To be found guilty of the offence of failure to comply with conditions, the prosecution must prove beyond a reasonable doubt the identity of the accused as the offender as well as the date and the place described in the particulars of that charge. In addition, it must prove beyond a reasonable doubt that:

- (a) a condition under Division 3 was imposed to the accused;
- (b) the accused failed to comply with the condition imposed on him;
and
- (c) the blameworthy state of mind of the accused.

[28] With regard to the third and final charge, the issue of lawful excuse arises only after the prosecution has proved beyond a reasonable doubt the elements of the offence. In light of the admissions and the testimony of Master Corporal Woolvett, the court is satisfied that the prosecution has met its burden of proof in the circumstances. Therefore, the only issue before the court is whether Master Corporal Woolvett had a lawful excuse for having breached a condition imposed on him on 29 October 2013, namely, to abstain from the consumption of alcohol or any intoxicating substance, when he drank a bottle of white wine to self-medicate during the early hours of 2 March 2014 after awakening as a result of an horrific and recurring nightmare, which is directly linked to his diagnosed PTSD.

[29] Master Corporal Woolvett stated that he saw no other valid option to calm himself down as he had no other medication readily available that night and that calling friends or a mental health hotline would serve no purpose in light of his previous experience with his medical condition. Master Corporal Woolvett knew that his release conditions did not allow him to consume alcohol or other intoxicating substances. He also understood his conditions. His evidence was clear on that point. He decided to self-medicate in drinking a full bottle of wine during the night of 2 March 2014 after experiencing a terrible nightmare, because he felt, using his past experience as guidance, that this was the only readily available means to control his grief and anxiety

that night. It was a conscious decision. This is not a case where the accused was careless or did not take the necessary precautions. Master Corporal Woolvett knew of all his release conditions, including not consuming alcohol.

[30] In *R. c. Dubuc*, (1989) 68 C.R. (3d) 256 (QCA), the Québec Court of Appeal examined what did amount to a lawful excuse in the context of being unlawfully at large. In that case, the accused who had been sentenced to serve an intermittent custody on weekends, failed to present himself one weekend because he turned himself in, acting in good faith, to a detoxication treatment center. Assessing the lawfulness or legitimacy of the excuse, the court stated at paragraph 11:

11. Même si, comme les auteurs le notent, il subsiste la possibilité d'invoquer des moyens particuliers en pareilles circonstances, il doit tout de même s'agir d'une véritable "excuse" dont l'appréciation ne peut être laissée à la seule discrétion de l'accusé.

[31] In the circumstances, Master Corporal Woolvett may have made the right choice to deal with his anxiety when he drank the bottle of wine that night and watched TV after experiencing a recurring and horrific nightmare during the night of 2 March 2014. However, as in *Dubuc*, the appreciation of breaching a condition in consuming alcohol as part of self-medication cannot be left to the sole discretion of the accused. The evidence that Master Corporal Woolvett suffers from severe PTSD is not sufficient to accept that the actions of Master Corporal Woolvett did amount to a lawful excuse in absence of any expert evidence that would assist the court in assessing the actions of the accused. I conclude that Master Corporal Woolvett did not establish on a balance of probabilities that he had a lawful excuse to breach his condition not to consume alcohol.

FOR THESE REASONS, THE COURT

[32] **FINDS** Master Corporal Woolvett not guilty of the first charge, namely fighting with a person subject to the Code of Service Discipline, contrary to paragraph 86*b*) of the *National Defence Act*; and not guilty of the second charge, namely drunkenness, contrary to section 97 of the *Act*.

AND

[33] **FINDS** Master Corporal Woolvett guilty of the third charge, namely failure to comply with conditions, contrary to section 101.1 of the *Act*.

Counsel:

Major A.-C. Samson, Canadian Military Prosecution Service, Counsel for Her Majesty the Queen

Major D. Hodson, Directorate of Defence Counsel Services, Counsel for Master Corporal Woolvett