



COURT MARTIAL

Citation: *R. v. Maze*, 2014 CM 4016

Date: 20141202

Docket: 201415

Standing Court Martial

Canadian Forces Base Winnipeg
Winnipeg, Manitoba, Canada

Between:

Her Majesty the Queen

- and -

Corporal M.F. Maze, Accused

Before: Commander J.B.M. Pelletier, M.J.

Decision concerning whether the prosecution has proven beyond a reasonable doubt that a statement given by Corporal Maze to Master Corporal Hall and Sergeant Delamere on 9 October 2013 was not made to "persons in authority" under the confessions rule.

(Orally)

Introduction

[1] At the opening of the prosecution's case, the prosecutor mentioned that it would seek to use statements allegedly made by Corporal Maze, the accused, to Master Corporal Hall and Sergeant Delamere on 9 October 2013 as part of its evidence or to impeach the credibility of Corporal Maze in the course of this trial.

[2] The prosecution takes the position that those statements were not made to persons in authority and therefore that no *voir dire* is required to establish whether the statements were voluntary.

[3] As the recipients of the statements were military supervisors, hence not typical persons in authority, the Court accepted a request by the defence to enter into a *voir dire* on the very limited issue of whether the defence had met its evidential burden to establish that Master Corporal Hall and Sergeant Delamere could ultimately be found to be persons in authority in relation to Corporal Maze for the purpose of the confession rule.

[4] The defence called on the accused, Corporal Maze, to testify in the *voir dire*.

[5] Considering that the defence did not have the obligation to prove or disprove anything to the criminal or civil standard, the Court concluded that the defence had met its evidentiary burden.

[6] The burden therefore shifted to the prosecution, to establish beyond a reasonable doubt that Master Corporal Hall and Sergeant Delamere were not "persons in authority".

[7] In an attempt to meet this persuasive burden, the prosecution then called on Warrant Officer Delamere and Master Corporal Hall to testify.

Defence evidence

[8] The defence evidence consisted of the testimony of Corporal Maze, as I mentioned. Corporal Maze testified that he had been sick on 8 October 2013 and had not reported to the MIR (Medical Inspection Room) despite an order from his immediate supervisor, Master Corporal Hall, by virtue of suffering from nausea, diarrhea and vomiting.

[9] He said that he was ordered to attend a meeting the next day with Master Corporal Hall and Hall's immediate superior, Sergeant Delamere, where he was called upon to explain himself.

[10] He said that he was told by Sergeant Delamere at the conclusion of the meeting that it was hoped he would be charged. Yet he admitted that he had been in similar discussions before concerning tardiness or absences and that he was not charged.

[11] Corporal Maze testified that he believed Master Corporal Hall and Sergeant Delamere to have authority over him in that they have given orders to him before, that he felt compelled to attend the meeting on 9 October and to remain present until excused and that he felt compelled to explain himself.

[12] He stated that based on observations he has made while serving in Gagetown, supervisors in the rank of master corporal and sergeant can either lay charges or cause incidents to be investigated with a view of laying charges in the Code of Service Discipline.

Prosecution evidence

[13] The prosecution evidence consisted of the testimony of Warrant Officer Delamere and Master Corporal Hall.

[14] Warrant Officer Delamere held the rank of sergeant in October 2013, and was the Mechanical Shop 2 i/c at 17 Wing Logistics and Engineering. On the morning of 8 October, he was informed that Corporal Maze had left a voice message to the effect that he would not be coming in as he was sick.

[15] For his part, Master Corporal Hall worked under the supervision of Warrant Officer Delamere and was Corporal Maze's immediate supervisor. He testified that once informed of the voicemail left by Corporal Maze in the morning of 8 October 2013, he got in contact with Corporal Maze to inquire about the situation. Given a number of previous instances when Corporal Maze had called in sick, he ordered Corporal Maze to attend the MIR and come back to the unit with a medical chit. This did not occur. Corporal Maze was ordered to report to the unit on the afternoon of 9 October, following a range practice scheduled for that morning.

[16] Both witnesses provided very similar testimony as to the meeting of 9 October, during which Corporal Maze would have made statements regarding his absence the previous day. The salient points are as follows:

- (a) Corporal Maze was ordered to attend the meeting; if he had refused, further action would have been necessary.
- (b) Corporal Maze was "pretty much marched in" the office. The door was closed, Corporal Maze was standing while Master Corporal Hall and Sergeant Delamere were sitting. Corporal Maze was stressed as he had to be told to relax. The meeting took about 10 minutes.
- (c) Corporal Maze was asked about the events of the previous day. The expectations of the two supervisors were that answers would be provided to the questions asked or once again, consequences could be expected should Corporal Maze fail to answer.
- (d) Both supervisors stated that their purpose in holding the meeting was to give Corporal Maze an "out," meaning a way to explain in a satisfactory manner, why he could not show up for work or at the MIR the previous day.
- (e) The answers provided by Corporal Maze were not deemed satisfactory. At the end of the meeting, Warrant Officer Delamere recalled having indicated that Corporal Maze was to expect further administrative or disciplinary action as a result.

[17] Following the meeting of 9 October, Warrant Officer Delamere reported the incident of 8 October and the results of the meeting of 9 October to his superior, Warrant Officer Whiting, with a recommendation that a disciplinary investigation be undertaken with a view of laying charges. He is aware that a unit disciplinary investigation was conducted by a sergeant from outside of the unit or section concerned. He does not know who ultimately laid the charges against Corporal Maze.

[18] Neither Warrant Officer Delamere nor Master Corporal Hall were authorized by their commanding officer to lay charges; they were not in contact with the police or legal officers at any point prior to the 9 October meeting.

The position of the respective parties

[19] The defence is of the view that the test to be applied is the one developed by the majority of the Supreme Court of Canada in *R. v. Hodgson* [1998] 2 S.C.R. 449, and it is a subjective-objective test to be applied from the viewpoint of the accused. The defence submits that a person in authority is a person concerned with the prosecution who, in the opinion of the accused, can influence the course of the prosecution. The defence adds that the evidence of Corporal Maze establishes his subjective belief and that the testimony of Master Corporal Hall and Sergeant Delamere did not show that this belief was objectively unreasonable. Consequently, the defence submits that the prosecution has not satisfied its burden of proving beyond a reasonable doubt that Master Corporal Hall and Sergeant Delamere were not persons in authority in relation to the accused on 9 October 2013.

[20] For its part, the prosecution also submits that the test to be applied is found in the *Hodgson* case, but adopts the view that the subjective-objective test is relevant only to determine whether the persuasive burden shifts on the prosecution of demonstrating beyond a reasonable doubt that the receiver of the statement was not a person in authority. The prosecution submits that the evidence of Warrant Officer Delamere and Master Corporal Hall, to the effect that they did not conduct the formal disciplinary investigation, that they did not have the power to lay charges and had no formal part in the decision to lay charges, establishes, beyond a reasonable doubt, that they were not persons in authority as they were not formally engaged in the arrest, detention, examination or prosecution of the accused.

Inquiry to be performed by the Court on the "person in authority"

[21] The debate between the parties is based on the proper interpretation to be given to the *Hodgson* test, in the context of the incidents and subsequent charges, which originated at the unit level.

[22] I don't agree with the prosecution's position on the *Hodgson* test for the following reasons:

- (a) As discussed during arguments, the prosecution's interpretation of the test appears to correspond to the approach favored by the two minority judges in *Hodgson*, who adopted the view that the proper test for "person in authority" should examine first the objective status of the person to whom the confession or statement was made, and only where they are identified as someone formally engaged in the arrest, detention, interrogation or prosecution of the accused is it then necessary to examine whether the accused believed that the person or persons could influence or control the proceedings against him or her.
- (b) That view did not prevail in *Hodgson* and in subsequent cases, starting with *R. v. Wells*, [1998] 2 S.C.R. 517, rendered the same day as *Hodgson*, which concluded, in essence, that the father of a young sexual interference victim, although not formally engaged in the arrest, detention, interrogation or prosecution of the accused, could nevertheless be a person in authority and that the trial judge should have held a *voir dire* on this issue. Unsurprisingly, the two dissident judges in *Hodgson* were also dissident in *Wells*, on the basis that the statements were made to a non-obvious person in authority.
- (c) Over six years later, in the case of *R. v. Grandinetti* [2005] 1 S.C.R. 27, the Supreme Court of Canada had once again the occasion to apply the *Hodgson* test. At paragraph 37, Justice Abella, this time for a unanimous Court, described the appropriate test as follows:

In *Hodgson*, the Court delineated the process for assessing whether a confession should be admitted. First, there is an evidentiary burden on the accused to show that there is a valid issue for consideration about whether, when the accused made the confession, he or she believed that the person to whom it was made was a person in authority. A "person in authority" is generally someone engaged in the arrest, detention, interrogation or prosecution of the accused. The burden then shifts to the Crown to prove, beyond a reasonable doubt, either that the accused did not reasonably believe that the person to whom the confession was made was a person in authority, or, if he or she did so believe, that the statement was made voluntarily. The question of voluntariness is not relevant unless the threshold determination has been made that the confession was made to a "person in authority". [emphasis added]

- (d) This quote shows, in my view, that once the accused has shown that he believed the recipients of his or her statements were persons in authority, the burden shifts to the prosecution to show that this belief was not reasonable. The words of Justice Abella must be read in the context of the *Hodgson* test, which she endorses fully. When she writes that a "person in authority" is generally someone engaged in the arrest, detention, interrogation or prosecution of the accused, she is not saying

that only those persons can be persons in authority. Indeed, Judge Cory in *Hodgson* said it can be enlarged to include other people (paragraph 16 and 32). This idea of a broader category was directly applied in *Wells*.

- (e) Keeping the issue of voluntariness aside, the question this Court has to determine is whether the prosecution has satisfied its burden to prove, beyond a reasonable doubt, that the accused did not reasonably believe that the person to whom the confession was made was a person in authority.

It is the Court's view that the prosecution has not met its burden.

[23] In a military environment, it is entirely reasonable for a person holding the rank of private such as the accused at the time of the alleged offences and subsequent meeting to see Master Corporal Hall and Sergeant Delamere as persons who are authorized to exercise authority over him in relation to the incidents of 8 October 2013, as they had done in the past for similar mishaps.

[24] Both superiors confirmed that Corporal Maze was ordered to attend the meeting and could have been charged if he did not. They both implied that the mood was serious, as evidenced by the fact that Corporal Maze was brought in the office formally, was standing throughout the meeting and had to be told to relax, that answers to their questions were expected as otherwise there could have been consequences.

[25] In the context of the military justice process, a person in authority is a person who the accused believes to be engaged by controlling or influencing the proceedings against him: Corporal Maze testified to the effect that he believed that Master Corporal Hall and Sergeant Delamere could influence the procedures by laying charges or cause the incident to be investigated disciplinarily, leading to charges being laid.

[26] In the course of its decision yesterday, concluding that the defence had discharged its evidentiary burden, the Court found that this belief held by Corporal Maze could not be dismissed as unreasonable, given the charges before it, which in the circumstances could be investigated at the unit level. The evidence of Master Corporal Hall and Warrant Officer Delamere could have changed this conclusion but, to the contrary, it strengthened it.

[27] Their testimony reveals that they indeed had a direct influence on the course of events. They both testified that they wanted to give Corporal Maze an "out". If they had been satisfied with the explanations that they required from Corporal Maze, the matter would have, in all likelihood, ended there, as it did on previous occasions. Instead, Warrant Officer Delamere went to his superior to recommend that a disciplinary investigation be undertaken because he was not satisfied with the answers provided. In my view, this is exactly the kind of situation that the confession rule was meant to address, as explained in detail by Judge Cory at paragraph 14 to 29 of the *Hodgson* case and by Justice Abella at paragraph 35 and 36 of the *Grandinetti* case.

[28] In addition, the evidence reveals that the unit disciplinary investigation would have been conducted by a sergeant. In the circumstances, it is the Court's view that the prosecution has not proven beyond a reasonable doubt that the beliefs of the accused were unreasonable.

[29] As stated before during arguments, the Court's decision must not be interpreted as meaning that there was something wrong with the way the superiors of Corporal Maze handled the situation once he was back to work following his absence of 8 October 2013. It is entirely appropriate for supervisors in a military environment to require from subordinates explanations as to incidents which may subsequently lead to disciplinary or administrative action. When the disciplinary route is ultimately chosen however, military tribunals must be cognisant of the rights of the accused and only admit evidence which respects those rights and, with respect to courts martial such as this one, respects sometimes complex rules of evidence, such as the confession rule discussed here.

FOR THESE REASONS:

[30] It is the Court's conclusion that the prosecution has failed to establish beyond a reasonable doubt that the statements given by Corporal Maze on 9 October 2013 were not made to "persons in authority".

Counsel:

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