



COURT MARTIAL

Citation: *R. v. Stillman*, 2013 CM 4027

Date: 20131023

Docket: 201322

Standing Court Martial

Canadian Forces Base Shilo
Shilo, Manitoba, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal C.J. Stillman, Accused

Before: Lieutenant-Colonel J-G Perron, M.J.

**APPLICATION FOR AN ORDER DECLARING THAT SUBPARAGRAPH
130(1)(A) OF THE NATIONAL DEFENCE ACT IS CONTRARY TO S. 7 OF THE
CANADIAN CHARTER OF RIGHTS AND FREEDOMS AND OF NO FORCE OR
EFFECT PURSUANT TO S. 52 OF THE CONSTITUTION ACT, 1982.**

(Orally)

[1] The applicant, Master Corporal Stillman, is charged with having discharged a firearm with intent contrary to section 244 of the *Criminal Code of Canada*; of discharging a firearm recklessly contrary to section 244.2 of the *Criminal Code*; of aggravated assault contrary to section 268 of the *Criminal Code*; of using a firearm in the commission of an offence contrary to section 85 of the *Criminal Code*; and of possession of a loaded restricted firearm contrary to section 95 of the *Criminal Code*. Every charge was laid under section 130 of the *National Defence Act*. The applicant has made an application under subparagraph 112.05(5)(e) of the *Queen's Regulations and Orders for the Canadian Forces* and is seeking an order declaring that subparagraph 130(1)(a) of the *National Defence Act* violates sections 7 and 11(f) of the *Canadian Charter of Rights and Freedoms*, and, as a remedy, an order declaring this *National Defence Act* provision to be of no force or effect pursuant to paragraph 52(1) of the *Constitution Act, 1982*.

[2] The application was heard at the beginning of the proceedings. Counsel suggested the court reserve its decision and deliver it after all the evidence had been presented. The evidence is composed essentially of the following: judicial notice, judicial confession, and exhibits. Judicial notice was taken by the court of facts and issues under Rule 15 of the Military Rules of Evidence. A judicial confession was made by the accused under Rule 37(b) of the Military Rules of Evidence and is found at Exhibit 3. The respondent also presented six other exhibits and the applicant presented seven exhibits.

[3] Firstly, I will review the facts in this application. Master Corporal Stillman had spent the night of 28/29 July 2012 at the residence of Bombardiers Trimm and Cote. This residence is located at Canadian Forces Base Shilo. They had been drinking and socializing. Master Corporal Stillman had an argument with Bombardier Trimm and Bombardier Trimm hit Master Corporal Stillman to the head numerous times. Master Corporal Stillman left the residence. At approximately 0600 hours, on 29 July 2012, he came back to the residence and shot Bombardier Trimm in the leg and, shortly later, he shot at Bombardier Cote. Master Corporal Stillman was arrested by the military police shortly thereafter while he was still on base.

[4] Counsel for the applicant has indicated this application is identical to the applications previously presented in *R. v. Moriarity*, 2012 CM 3017; *R. v. Arsenault*, 2013 CM 4006; and *R. v. Hannah*, 2013 CM 2011. He is not presenting any new substantive legal argument. Counsel for the respondent also does not present any new substantive legal argument. The only difference between this application and the previous ones are the specific facts of the case.

[5] In *Arsenault*, I quoted the following passage from Chief Justice Lamer's decision in *R. v. G  n  reux*, [1992] 1 SCR 259 at page 281 when he addressed the dual purposes of the Code of Service Discipline:

Although the Code of Service Discipline is primarily concerned with maintaining discipline and integrity in the Canadian Armed Forces, it does not serve merely to regulate conduct that undermines such discipline and integrity. The Code serves a public function as well by punishing specific conduct which threatens public order and welfare. . . . Service tribunals thus serve the purpose of the ordinary criminal courts, that is, punishing wrongful conduct, in circumstances where the offence is committed by a member of the military or other person subject to the Code of Service Discipline. Indeed, an accused who is tried by a service tribunal cannot also be tried by an ordinary criminal court (ss. 66 and 71 of the *National Defence Act*).

[6] As was the case in *Arsenault*, Master Corporal Stillman is alleged to have committed offences when he was on a military establishment. The complainants, in this case, are members of the Canadian Forces. The court finds that the facts of this case establish a clear military nexus.

[7] Having reviewed the material filed during the application, the evidence, the brief, very brief, oral submissions of counsel and the reasons found in the three previous court martial decisions, I adopt my conclusions in *Arsenault* and I find that section 130(1)(a) of the *National Defence Act* does not violate sections 7 and 11(f) of the *Charter*.

FOR THESE REASONS:

[8] The application is dismissed.

Counsel:

Lieutenant-Colonel S. Richards, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major J.L.P.L. Boutin, Directorate of Defence Counsel Services
Counsel for Master Corporal C.J. Stillman