



COURT MARTIAL

Citation: *R. v. Lefebvre*, 2016 CM 1005

Date: 20160404

Docket: 201542

Standing Court Martial

Asticou Courtroom
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Corporal M.J.G. Lefebvre, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Corporal (Retired) Lefebvre has admitted his guilt to one count under section 85 of the *National Defence Act* for behaving with contempt toward a superior officer. A person convicted of this offence is liable to dismissal with disgrace from Her Majesty's service or to less punishment. The charge reads as follows:

“First charge BEHAVED WITH CONTEMPT TOWARD A
Section 85 N.D.A. SUPERIOR OFFICER

Particulars: In that he, on or about 30 October 2014, in Ottawa, Ontario, said to PO2 Mazereeuw, “you want me to leave shift, I am fucking sick and tired of this shit” or words to that effect.”

[2] For clarity, the court reproduces the Statement of Circumstances filed during the sentencing hearing that states:

- “1. At all material times, Cpl Lefebvre was a member of the Regular Force, Canadian Armed Forces and employed as a military police officer with the Military Police Unit (Ottawa).
2. Cpl Lefebvre was on duty on 30 October 2014 and, along with his partner MCpl Smith, was required to be present at the Officers Mess at 0915 hrs for a tasking.
3. Noticing that Cpl Lefebvre was still present in the Military Police facility at 0915 hrs, PO2 Mazereeuw, his superior officer, asked Cpl Lefebvre why he had not departed yet.
4. Cpl Lefebvre responded in reference to MCpl Smith: “He is taking a piss”, or words to that effect, in the presence of other members of the military police unit: MCpl Adams, Cpl Roulston, Cpl Cruickshanks, and two commissionaires, Mr. Cyr and Mr. Pepin.
5. Perceiving this response to be unprofessional, PO2 Mazereeuw invited Cpl Lefebvre into his office to discuss the manner [*sic*].
6. While discussing this issue, Cpl Lefebvre got very agitated and yelled: “You want me to leave shift, I am fucking sick and tired of this shit”, or words to that effect.
7. Cpl Lefebvre then stormed out of the office while yelling “this is bullshit”, or words to that effect, removed his ballistic vest and threw it on the floor in the presence of the PO2 Mazereeuw, MCpl Smith, MCpl Adams, Cpl Roulston, Cpl Cruickshanks, and two commissionaires, Mr. Cyr and Mr. Pepin.
8. Cpl Lefebvre then struggled to remove his weapon’s belt with anger and lack of coordination. Safety concerns forced PO2 Mazereeuw to ask MCpl Smith to take control of Cpl Lefebvre’s belt to ensure its secure removal.”

[3] An agreed Statement of Facts, at Exhibit 7, reveals also that the offender was released from the Canadian Forces on February 29, 2016 for medical reasons and now resides in Toronto in a common law relationship. He is starting a study program at the Toronto film school and studies, as of 4th April 2016, Video Game Design and Development. He has no employment and will be receiving a pension from the Canadian Forces (CF) in the amount of \$1,054 per month and another pension from SISIP which will fill in the difference to top 75 percent of his pay in the CF, which was \$5,649 per month, at the time of release. The offender was diagnosed with post-traumatic stress disorder (PTSD) in March 2015, see Exhibit 8, related to a tour in Afghanistan and he has an alcohol problem that it is still a challenge. His therapy to treat his PTSD is currently on hold as attending therapy was exacerbating his drinking

problem. The offender has had a good behavior since the events and has not been involved in other disciplinary or criminal incidents. He had no prior disciplinary or criminal convictions. Corporal Lefebvre pays \$2,145 per month to reimburse a mortgage, including maintenance fees and insurance (home and car). He also pays \$600 a month for his car. The balance of his credit card is \$4,456 and he pays off what he can each month. His previous Personnel Evaluation Reports (PER) were good. He was described as a skilled, enthusiastic and motivated member, as well as a charismatic team player, respected by his co-workers. His former senior supervisor testified that the incident had some impact on the unit, but that it did not have a long-lasting effect. He stated that the offender had been, otherwise, a good and helpful member of the unit and that he was not aware, at the time, that the member suffered from PTSD.

[4] Based on this evidence, counsel from the prosecution recommends that the court impose a fine of \$1,200 to meet the objectives of denunciation and general deterrence. The defence recommends a fine of \$200.

[5] The fundamental purpose of sentencing at a court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishment that meets one or more of the following objectives:

- (a) the protection of the public, including the Canadian Armed Forces;
- (b) the denunciation of the unlawful conduct;
- (c) the deterrent effect of the punishment, not only on the offender, but also on others who might be tempted to commit such offences; and
- (d) the reformation and rehabilitation of the offender.

[6] The sentence must also take into consideration the following principles:

- (a) it must be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility;
- (b) the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances; and
- (c) the court must also respect the principle that an offender should not be deprived of liberty, if less restrictive punishments may be appropriate in the circumstances; however, the court must act with restraint in determining its sentence and imposing such punishment or punishments that constitute the minimum necessary intervention to maintain discipline.

[7] In this case, the predominant objectives of sentencing are general deterrence, denunciation and rehabilitation.

[8] The aggravating factors in this case are the following:

- (a) The objective seriousness of the offence. Section 85 of the *National Defence Act* provides that a person convicted of this offence is liable to dismissal with disgrace from Her Majesty's service. This is a serious offence.
- (b) The rank, the knowledge and experience of the offender. The offender knew that his behaviour was improper, and that he should not have acted with frustration and anger toward his superior officer as well as other colleagues and commissioners.

[9] The mitigating circumstances are the following:

- (a) the plea of guilty which indicates the offender's acceptance of responsibility;
- (b) the absence of any disciplinary or criminal record;
- (c) the fact that this is an isolated, very short and spontaneous incident that was related to his medical condition at the time of the offence; and
- (d) the fact that he has now been released from the Canadian Armed Forces for medical reasons and that his rehabilitation is well underway, although his financial situation is fragile at this time.

[10] In their submissions, both parties provided the court with several cases in support of their position or to distinguish them. All these sentencing decisions included the punishment of a severe reprimand or reprimand as well as an accompanying fine between \$800 and \$2,400. Obviously, this case would sit at the lower end of the range for similar offences.

[11] Counsel for the defence argues that the principles expressed in section 734 of the *Criminal Code* to the effect that a fine should be imposed on an offender only if the court is satisfied of his or her ability to pay. Here, both parties agree that a fine is the appropriate punishment. In *R. v. Topp*, 2011 SCC 43, [2011] 3 S.C.R. 119, Fish J., for the court, made the following remarks, at paragraph 20-23:

[20] An affirmative finding that an offender is able to pay is therefore required before a fine can be imposed. In the absence of evidence capable of supporting that finding, the party seeking a fine cannot succeed.

[21] Section 734(2) does not impose a formal burden of proof on the party seeking a fine. As a practical matter, however, it does so to this extent. As a matter of law, the court cannot impose a fine unless it is satisfied that the offender is able to pay. This necessarily involves an affirmative finding based on the evidence and information properly before

the court pursuant to ss. 720 to 724 of the *Criminal Code*. Absent a sufficient basis for that finding, the party seeking the fine cannot legally succeed.

[22] In this sense, s. 734(2) imposes a burden on the party seeking the fine to satisfy the court that the offender is able to pay. To discharge that burden, the proponent of the fine may rely on all the relevant material before the court on sentencing — including evidence or information provided by any other party, or otherwise properly elicited by the judge pursuant, for example, to s. 723(3) of the *Criminal Code*.

[23] The party opposing a fine — often, but not always, the offender — is entitled, of course, to present any evidence or information admissible on sentence and tending to show that the offender is unable to pay. But that party, in opposing the fine, does not assume a formal burden of proof — evidential or persuasive. He or she remains free to argue that the evidence relied on by the proponent of the fine should not satisfy the court that the offender is able to pay.

[12] Based on the evidence before the court and the circumstances of the offence, and of the offender, I find that a fair and just sentence is a fine of \$500 to meet the objectives of denunciation, general deterrence and rehabilitation.

FOR THESE REASONS, THE COURT:

[13] **FINDS** you guilty of the first charge under section 85 of the *National Defence Act*.

[14] **SENTENCES** you to a fine in the amount of \$500, payable in five equal monthly installments of \$100, commencing on 1 May 2016, payable by certified cheque to the Receiver General of Canada. Counsel for the prosecution shall provide you forthwith, through your counsel, the address and office where those payments shall be made.

Counsel:

Captain P. Germain for the Director of Military Prosecutions

Lieutenant-Commander P. Desbiens, Defence Counsel Services, Counsel for Corporal M.J.G. Lefebvre.