



COURT MARTIAL

Citation: *R. v. Caicedo*, 2015 CM 4019

Date: 20151124

Docket: 201514

Standing Court Martial

Canadian Forces Base Borden
Borden, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Second Lieutenant C.W. Caicedo, Accused

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

REASONS FOR FINDING

(Orally)

[1] This is the court's finding in relation to charges one, two, four and six.

[2] Second Lieutenant Caicedo was charged with a total of 13 offences appearing on the charge sheet introduced as Exhibit 2. At the outset of the proceedings, he made an application under the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) 112.05(5)(e) to challenge the constitutionality of section 158.6 of the *National Defence Act (NDA)* under which two different custody review officers acted in imposing release conditions to him, the subject of the first, second, fourth and sixth charges for breach of these conditions. He requested a stay of proceedings in relation to those charges. Yesterday, 23 November 2015, I dismissed the application and proceedings continued on all charges.

[3] Immediately after hearing my decision on the application, Second Lieutenant Caicedo submitted a guilty plea on eight charges, none of which had been the subject of the application. I accepted that guilty plea which relates to the two charges laid under

section 90 of the *NDA* for absence without leave and six of the eleven charges laid under section 101.1 of the *NDA*, specifically for failing to comply with a condition of an undertaking given by a military judge under Division 3. Second Lieutenant Caicedo pleaded not guilty to the remaining five charges, including the four charges under section 101.1 for failing to comply with a condition imposed by a custody review officer subject of the application. He also pleaded not guilty to the seventh charge, also under section 101.1 for failing to comply with a condition of an undertaking given by a military judge under Division 3.

[4] At the close of the prosecution's case, Second Lieutenant Caicedo presented a non prima facie motion with regard to that charge. At the end of the day yesterday, I granted the motion and, consequently, found Second Lieutenant Caicedo not guilty of charge seven. As it pertains to four remaining charges under section 101.1 of the *NDA*, charges one, two, four and six, the only evidence presented by the prosecution in support of its case are the two Direction and Release from Custody forms at Exhibits 4 and 5, as well as a Joint Statement of Facts. These documents were introduced on consent.

[5] The Joint Statement of Facts essentially constitutes an admission from defence of the facts contained therein, including at paragraph 2, the express admission from Second Lieutenant Caicedo of all essential elements of charges one, two, four and six. Defence counsel reiterated this admission in response to a question from the court and during brief submissions admitted that Second Lieutenant Caicedo should be found guilty of these charges. I agree. The content of the Joint Statement of Facts proves all of the five essential elements of the four offences beyond a reasonable doubt.

[6] As it pertains to the first four essential elements in relation to charges one, two and four, the forms at Exhibit 4 reveal that a reporting requirement was imposed on Second Lieutenant Caicedo by Major Fontaine on 10 October 2014, specifically Second Lieutenant Caicedo had to report at 1530 hours to the chain of command for duty days and to the duty officer on non-duty days. The Joint Statement of Facts reveals that on 23 October 2014, charge one; 25 October 2014, charge two; and from 4 to 9 November 2014, charge four, he failed to do so. In relation to charge six, the form at Exhibit 5 reveals that a reporting requirement was imposed on Second Lieutenant Caicedo by Captain Daviau on 10 November 2014, specifically Second Lieutenant Caicedo had to report at 1530 hours to the chain of command on work days and during silent hours to the Base Borden Duty Centre. The Joint Statement of Facts reveals that, from 11 to 18 November 2014, he failed to do so.

[7] As it pertains to the blameworthy state of mind of the accused, the fifth essential element of the offence, it requires proof that the accused knew that he was bound by a direction and that there was a term in it which will be breached by his conduct. Of course, direct evidence of intent is normally difficult to obtain and can be inferred absent any evidence to the contrary. In this case, not only is there no evidence to the contrary, but this essential element is admitted for all four charges. Consequently, the

prosecution has satisfied me beyond a reasonable doubt of each of the essential elements of charges one, two, four and six.

FOR ALL THESE REASONS, THE COURT

[8] **FINDS** the accused guilty of charges one, two, four and six on the charge sheet.

Counsel:

The Director of Military Prosecutions, as represented by Major J.S.P. Doucet and Major A.J. Van Der Linde

Lieutenant-Commander P.D. Desbiens, Defence Counsel Services, Counsel for Second Lieutenant C.W. Caicedo