



## COURT MARTIAL

**Citation:** *R. v. Golzari*, 2016 CM 1008

**Date:** 20160511

**Docket:** 201546

Standing Court Martial

Canadian Forces Base Kingston  
Kingston, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Corporal A.Z. Golzari, Accused**

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

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### **DECISION THAT NO PRIMA FACIE CASE HAS BEEN MADE OUT AGAINST THE ACCUSED ON ALL CHARGES**

(Orally)

#### ***Introduction***

[1] At the end of the case for the prosecution, the court raised on its own motion whether a prima facie case has been made out against Corporal Golzari on the charges before this Standing Court Martial, pursuant to paragraph 112.05(13) of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O).

#### ***The Facts***

[2] For the purposes of this ruling, I will provide a brief summary of the evidence. In a nutshell, the events originally took place during the evening of 26 October 2014, at the Vimy Gate of Canadian Forces Base Kingston, where a team of four persons of the Base Auxiliary Security Force (BASF), including Corporal Ingram, were controlling access during the evening to the base, as the level of security was elevated in reaction to

the tragic events that occurred in Ottawa and St-Jean-sur-Richelieu that month where two members of the Canadian Armed Forces were killed. At approximately 1955 hours, Corporal Golzari approached the Vimy Gate in his vehicle and he was welcomed by Corporal Ingram who asked him to provide identification and where he was going on the base prior to allowing access. Corporal Golzari provided his military ID card, but refused to answer the other question on the basis that he had been in the Canadian Forces 12 years and did not have to answer that question.

[3] In light of Corporal Golzari's refusal, Corporal Ingram asked one of his colleagues to notify the military police (MP) and ask for their support. While they waited for the military police to arrive, the accused remained in his car and other motor vehicles had to wait behind. Sergeant Hiscock, a military police officer, arrived within a few minutes in a patrol vehicle and was welcomed by Corporal Ingram, who informed him of the situation, including that the accused refused to answer his question and that he was belligerent. Sergeant Hiscock was the senior MP on duty that night and he was dressed in Canadian disruptive pattern (CADPAT) and wearing a military police vest. Sergeant Hiscock approached Corporal Golzari's vehicle and engaged the conversation with Corporal Golzari who reiterated that he felt he did not have to tell Corporal Ingram where he was going on the base.

[4] As the accused was uncooperative, Sergeant Hiscock stated to Corporal Golzari that, as an MP, he was telling him to pull over on the right side of the gate, pointing his arm in that direction. Corporal Golzari did not comply with that demand and Sergeant Hiscock told Corporal Golzari that he was now telling him to obey, addressing him now as a sergeant. Corporal Golzari refused again. Corporal Butler or Sergeant Hiscock then told the accused that if he did not comply with the request he could be arrested. The accused replied by stating, "Arrest me." The accused exited the vehicle and was handcuffed by Corporal Butler who took him away to the guard house.

[5] The duty officer, Lieutenant Anderson, was notified of the situation. He attended at the guard house to ascertain the situation. He found that Corporal Golzari was still handcuffed and arguing with several members of the military police to the effect that he did not have to tell them where he was going on the base in order to enter it. Shortly after, the accused was released and he proceeded on the base with Lieutenant Anderson to retrieve his vehicle and return to his hotel located outside the base.

[6] I find this summary of the evidence sufficient for the purposes of determining whether a prima facie case has been made out in respect of the charges against Corporal Golzari.

### ***Position of the parties***

#### **The Prosecution**

[7] The prosecution recognized that the evidence does not meet the prima facie threshold with regard to the first charge of behaving with contempt toward a superior

officer contrary to section 85 of the *National Defence Act*. With regard to the second charge of willfully obstructing a peace officer under paragraph 129(a) of the *Criminal Code* punishable under section 130 of the *National Defence Act*, the prosecution submits that Sergeant Hiscock was lawfully engaged in the execution of his duty as a military police officer under section 11 of the *Government Property Traffic Regulations*, C.R.C., c. 887, and that he identified himself as such to Corporal Golzari, and that the evidence is sufficient to establish that Corporal Golzari was a member of the military police. The prosecution submits that the failure to pull over twice is sufficient to meet the threshold for the second charge.

[8] As to the third charge, conduct to the prejudice of good order and discipline under section 129 of the *National Defence Act*, the prosecution submits that the omission of the accused to answer to Corporal Ingram as to his whereabouts was such that it caused the BASF team to be suspicious in the circumstances further to the events that lead to measures taken by the Canadian Forces Base Kingston commanding officer to tighten security. By not providing a response, the accused caused the BASF to divert their task and involve the military police. The situation also caused an accumulation of traffic. Overall, it caused prejudice to good order and discipline and the accused had the requisite state of mind.

#### The Defence

[9] With regard to the second charge, the defence submits that there is no evidence that Sergeant Hiscock was in the lawful execution of his police duties when he ordered Corporal Golzari to pull over in the circumstances. The defence submits that Sergeant Hiscock had no authority to demand Corporal Golzari where he was going in the first place, therefore, his demand to pull over was simply to continue his investigation as to Corporal Golzari whereabouts. The defence also submits that the accused's refusal does not amount to obstruction in the context of this offence.

[10] As to the third charge, the defence submits that there is no evidence to establish that Corporal Golzari had a duty to positively state where he was going as the prosecution did not establish that such a standard of conduct existed at the time, beyond the requirement of proper identification. In addition, the defence submits that there is no evidence of harm resulting from the refusal of the accused. The events that followed the refusal would be attributable to the BASF team and the military police in light of their own actions.

#### *Analysis*

[11] Paragraph 112.05(13) of the *Queen's Regulations and Orders for the Canadian Forces* serves to determine whether there is evidence in the record, direct or circumstantial, upon which a properly instructed judge sitting alone or a military panel, as would a jury in a criminal case, could rationally conclude that the accused is guilty beyond a reasonable doubt. At this stage, the judge is not concerned with whether there is evidence beyond a reasonable doubt and it is not the judge's role to weigh evidence

or to weigh the quality of the evidence, assess the credibility of the witnesses or the reliability of the evidence. Although the judge must not weigh the evidence as to the guilt of the accused, he or she is allowed to do it in a fairly limited matter in order to determine whether there is sufficient evidence to permit a properly instructed jury to reasonably convict.

[12] For the purposes of this ruling, I have assumed that all of the evidence heard is true and I have assessed the reasonableness of the inferences to be drawn from the circumstantial evidence.

[13] In order to pass the threshold of no prima facie with regard to the charges, the prosecution has the evidential burden of bringing evidence on the record upon which a properly instructed court martial panel could rationally conclude that Corporal Golzari is guilty beyond a reasonable doubt. The evidence must be considered as a whole.

[14] As to the first charge, the court agrees with the prosecution that the prima facie threshold has not been met and that the accused ought to be acquitted of that charge. With regard to the second charge, paragraph 129(a) of the *Criminal Code* reads, in part, as follows:

129 Every one who

(a) resists or wilfully obstructs a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer,

...

is guilty of

...

[15] The essential elements of this offence are the following:

- (a) date and time;
- (b) identity of accused;
- (c) jurisdiction;
- (d) that accused knew other person was a peace officer;
- (e) that officer was in the lawful execution of his duty when he was obstructed; and
- (f) that obstruction was wilful.

[16] There is no issue as to the identity of the accused as well as the date and place of the offence. The evidence clearly indicates that Sergeant Hiscock is a member of the

military police and that Corporal Golzari knew that he was such a person. Despite the fact that both parties argued on the issues as to the existence of a prima facie case as to whether Sergeant Hiscock was in the lawful execution of a peace officer duty and as to whether Corporal Golzari's omission to state his whereabouts and move his vehicle over would amount to obstruction in the context of this offence, the court must be satisfied that there is some evidence to show that the accused had the requisite *mens rea*.

[17] There is no evidence that Sergeant Hiscock identified himself as a peace officer to Corporal Golzari or any evidence that would support that he was such a peace officer. The fact that Sergeant Hiscock was a peace officer under section 2 of the *Criminal Code* and section 156 of the *National Defence Act* and its regulations (see Chapter 22 of the QR&O) is not related to the existence of whether there is evidence that the accused had the requisite *mens rea* for the purposes of the offence under section 129 of the *Criminal Code*. The problem in this case lies with the absence of evidence that the accused, at the time of the alleged offence, knew that Sergeant Hiscock was a peace officer, beyond the fact that he was a member of the military police. The fact that he identified himself as a military police does not provide evidence that Corporal Golzari knew or was willfully blind to the fact that Sergeant Hiscock enjoyed the peace officer status under section 2 of the *Criminal Code*.

[18] As to the third charge, the particulars allege that Corporal Golzari, while entering a defence establishment, refused to provide the details of his destination when requested to do so by Corporal Ingram. As with any offence under section 129 of the *National Defence Act*, the prosecution must establish that the accused's act, conduct, disorder, neglect, alleged in the charge, did prejudice good order and discipline. In order to do so, the prosecution must lead evidence that there was a standard of conduct required of the accused in the circumstances. The evidence establishes that the accused was expected to identify himself at the gate and that he did comply with that requirement. There is no evidence that would assist the court to infer the existence of a standard of conduct imposed on the accused and other persons who wished to enter at Canadian Forces Base Kingston on 26 October 2014, that they had a duty to provide the details of their destination while entering on base. That is not to say that this standard of conduct did not exist. It simply means that the court finds that there is no evidence to make such an inference. Consequently, the prosecution did not lead any evidence that the accused knew or ought to have known of the standard of conduct, nor that he breached it. This absence of evidence is fatal to the third charge in the circumstances.

**FOR THESE REASONS, THE COURT:**

[19] **DECIDES** that a prima facie case has not been made out in respect of all charges.

[20] **FINDS** the accused not guilty on all charges.

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**Counsel:**

Major E. Carrier and Captain M.L.P.P. Germain for the Director of Military Prosecutions

Major C.E. Thomas and Captain P. Cloutier, Defence Counsel Services, Counsel for Corporal A.Z. Golzari