



COURT MARTIAL

Citation: *R. v. Williams*, 2011 CM 2025

Date: 20110420

Docket: 201171

Standing Court Martial

Canadian Forces Base Stadacona
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal D.J.G. Williams, Accused

Before: Commander P.J. Lamont, MJ

**DECISION RESPECTING A MOTION BY THE DEFENCE THAT
NO PRIMA FACIE CASE HAS BEEN MADE OUT AGAINST THE ACCUSED
ON ALL CHARGES**

(Orally)

[1] Counsel for the accused has presented a motion that no prima facie case has been made out against him on all charges before this Standing Court Martial. Master Corporal Williams, as it appears on the charge sheet at Exhibit 2, was charged with having committed two offences, charged in the alternative, namely, one offence under section 130 of the *National Defence Act* and one offence under section 86 of the *National Defence Act*.

[2] In my view, at this stage of the trial, and in accordance with Note B of article 112.05 of the *Queen's Regulations and Orders for the Canadian Forces* that was referred to by counsel, I am satisfied that, on the evidence of Corporal Amiro, there is a prima facie case with respect to the alleged offence of assault in the first charge.

[3] The no prima facie case application also made with respect to the second charge, a charge that the accused fought with a person subject to the Code of Service Discipline. In my view, fighting has an element of mutuality to it or reciprocity. There is nothing in the evidence that the court heard to this point to suggest that Corporal Amiro was engaged in any kind of mutual or reciprocal behaviour with Master Corporal Williams. The evidence is that she was apparently entirely passive throughout this very brief event; therefore, that element of mutuality or reciprocity is missing in this case, and I consider that there is no evidence that the accused fought with Corporal Amiro.

[4] The prosecution argues, in the alternative, that the evidence would support a reasonable inference that the accused attempted to fight with Corporal Amiro, who simply declined. The offence of attempt, of course, would require the trier of fact to find a mental element on the part of the accused.

[5] In my view, it would be unreasonable for any properly instructed jury to find, on the evidence of Corporal Amiro to this point, that the accused was attempting to engage Corporal Amiro in a fight. Accordingly, I am satisfied that there is no evidence with respect to an essential element of the offence charged in the second charge.

FOR THESE REASONS, THE COURT:

[6] **DENIES** the no prima facie application on the first charge and finds a prima facie case with respect to the charge of assault.

[7] **GRANTS** the no prima facie application on the second charge and finds a no prima facie case on the fighting charge and, therefore, finds Master Corporal Williams not guilty on the second charge.

Counsel:

Lieutenant-Commander D.T. Reeves, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Lieutenant-Colonel T. Sweet, Directorate of Defence Counsel Services
Counsel for Master Corporal Williams