



COURT MARTIAL

Citation: *R. v. Ledoux*, 2016 CM 1019

Date: 20161026

Docket: 2016-07

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Sergeant J.-S. J. Ledoux, Offender

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

REASONS FOR SENTENCE

(Orally)

[1] Sergeant Ledoux admitted his guilt to one count of drunkenness under section 97 of the *National Defence Act*. The charge reads as follows:

THIRD CHARGE DRUNKENNESS

Section 97 (*NDA*) *Particulars:* In that he, on or about 24 December 2015, at or near Lviv, Ukraine, was drunk.

[2] Counsel have made a joint submission on sentence seeking a reprimand and a fine in the amount of \$1500. In *R. v. Anthony-Cook*, 2016 SCC 43, 21 October 2016, the Supreme Court of Canada exposed the legal test trial judges should apply in deciding whether it is appropriate in a particular case to depart from a joint submission. The Court affirmed that the public interest test is the proper legal test that trial judges should apply, which means a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

[3] The Supreme Court of Canada recognized that “[i]t is an accepted and entirely desirable practice for Crown and defence counsel to agree to a joint submission on sentence in exchange for a plea of guilty. Agreements of this nature are commonplace and vitally important to the well-being of our criminal justice system, as well as our justice system at large”, which includes the military justice system.

[4] With regard to the rejection of a joint submission by a trial judge and counsel obligations in the process of making such joint submission, Moldaver J., for the Court, stated the following at paragraphs 34, 40 and 54:

[34] Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the . . . circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.

...

[40] In addition to the many benefits that joint submissions offer to participants in the criminal justice system, they play a vital role in contributing to the administration of justice at large. The prospect of a joint submission that carries with . . . a high degree of certainty encourages accused persons to enter a plea of guilty. And guilty pleas save the justice system precious time, resources, and expenses, which can be channeled into other matters. This is no small benefit. To the extent that they avoid trials, joint submissions on sentence permit our justice system to function more efficiently. Indeed, I would argue that they permit it to function. Without them, our justice system would be brought to its knees, and eventually collapse under its own weight.

...

[54] Counsel should, of course, provide the court with a full account of the circumstances of the offender, the offence, and the joint submission without waiting for a specific request from the trial judge. As trial judges are obliged to depart only rarely from joint submissions, there is a “corollary obligation upon counsel” to ensure that they “amply justify their position on the facts of the case as presented in open court” (Martin Committee Report, at p. 329). Sentencing — including sentencing based on a joint submission — cannot be done in the dark. The Crown and . . . defence must “provide the trial judge not only with the proposed sentence, but with a full description of the facts relevant to the offender and the offence”, in order to give the judge “a proper basis upon which to determine whether [the joint submission] should be accepted” (*DeSousa*, at para. 15; see also *Sinclair*, at para. 14).

[5] This Court is informed that Sergeant Ledoux is 35 years old and enrolled in the Canadian Armed Forces in 2002. He has been promoted to his current rank in 2015. Sergeant Ledoux has had a very good performance throughout his career. He has no prior criminal or disciplinary record. He has a spouse but no children. The Court was also informed of the circumstances surrounding the commission of the offence and of other relevant facts as they appear in the Statement of Circumstances (Exhibit 6) as well as an Agreed Statement of Facts (Exhibit 7). They read as follows:

“STATEMENT OF CIRCUMSTANCES

1. At all material times, Sergeant Ledoux was a member of the Regular Force, Canadian Armed Forces (CAF), 2nd Regiment, Royal Canadian Horse Artillery and deployed on Operation (Op) UNIFIER in Yavoriv, Ukraine.
2. While in theater, Sergeant Ledoux was employed as the Surveillance and Target Acquisition (STA) expert whose role was to train Ukrainian soldiers in artillery related skills.
3. During the deployment, a number of Theater Standing Orders had been issued by Joint Task Force Commander (JTF Comd) which applied to all deployed CAF members on Op UNIFIER in the Joint Operating Area (JOA). On 8 October 2015, Sergeant Ledoux signed a statement acknowledging that he had “fully read and understood all Task Force Standing Orders (TFSOs)” including JTF-U-Theatre Standing Order-01 “Force Protection” and JTF-U-Theatre Standing Order-02 “Alcohol Consumption”.
4. On 24 December 2015, Sergeant Ledoux participated in a cultural excursion to Lviv, Ukraine. Throughout the trip, participating members were subject to, and had been notified that they remained under the authority of all Theatre Standing Orders.
5. According to JTF-U-Theatre Standing Order-01 “Force Protection”, when traveling by vehicle or on foot when outside the training centre all personnel were required to travel in groups of at least three persons.
6. Prior to departing on the excursion, Captain Halstead provided a pre-departure brief to all members participating in the excursion, including Sergeant Ledoux. During her briefing Captain Halstead re-iterated the “Force Protection” policy and explicitly stated that all personnel were to be in groups of no less than three with some form of communication within their group.
7. According to JTF-U-Theatre Standing Order-02 “Alcohol Consumption”, there was to be no consumption of alcohol by any CAF person while deployed, unless authorized by the Commander.
8. The JTF-U-TSO-02 states in part:

“The operational requirements placed on all CAF personnel requires a high level of operational readiness for prolonged periods of time and be required to react promptly to changes without notice”.

“As ambassadors of Canada, all CAF personnel shall represent Canada in the highest regard, which includes maintaining appropriate order and discipline at all times. The Op UNIFIER Joint Area of Operations is designated as a dry theatre. There is to be no consumption of alcohol by any CAF person deployed to the JOA unless authorized by Comd JTF-U.

9. On 24 December 2015 there was no authorization given to consume alcohol while on the excursion.

10. During the excursion Sergeant Ledoux separated himself from his assigned group. Sergeant Ledoux stated that he did so because he “wanted to eat something different” and as no one wanted to accompany him, he decided to break from the group and venture off alone.

11. While in Lviv, and during the excursion, Sergeant Ledoux consumed alcohol including vodka and beer, in an unknown quantity.

12. Upon rejoining the excursion group and re-embarking the bus in Lviv for the return to camp, Sergeant Ledoux was observed by a number of other group members as having difficulty maintaining his balance and eating without spilling on himself. He vomited several times on the bus and publicly called out an insult to a Captain on the bus. Sergeant Ledoux was immediately reproached by a Warrant Officer on the bus and ordered to remain quiet for the remainder of the ride. Several members of the excursion group, including CAF senior non-commissioned members (NCMs) and officers, noted that he appeared obviously intoxicated.

13. On disembarking the bus at camp, Sergeant Ledoux was escorted to the Company office. He was unable to walk without assistance, had slurred speech, continued vomiting, and had difficulty sitting up straight. He was medically assessed with a re-evaluation recommended for the following morning.

14. Due to his level of intoxication, a senior non-commissioned officer (NCO) was assigned to monitor Sergeant Ledoux overnight in his quarters due to concerns related to his lack of motor skills, slurred speech, and vomiting.

15. As a result of this incident, Sergeant Ledoux was repatriated from theater prior to the end of his scheduled tour.

16. On 28 December 2015, three charges were laid against Sergeant Ledoux in relation to his conduct during the excursion. The Charges were referred to the Director of Military Prosecutions on 15 January 2016. Following discussion between Defence counsel of record and the Prosecution in early February 2016, the Prosecution was made aware that

Sergeant Ledoux wished to explore withdrawing his election to Court Marital. Shortly after being informed that Sergeant Ledoux wished to maintain his election to Court Martial, three charges were preferred by the Director of Military Prosecutions on 26 May 2016. A negotiated resolution of this file was accepted by Sergeant Ledoux on 2 August 2016.”

“AGREED STATEMENT OF FACTS

BACKGROUND ON OPERATION UNIFIER

1. Operation UNIFIER is Canada’s military contribution to the multinational effort to build the professionalism and capacity of the Ukrainian Armed Forces.

ADMINISTRATIVE MEASURES

2. Prior to the incident that forms the subject matter of these charges, Sergeant Ledoux had previously received a Remedial Measure, pursuant to DAOD 5019-4, in the form of an Initial Counselling in relation to the Misuse of Alcohol. On 8 November 2005 the following deficiency was noted:

“While in Quantico, VA on 26 October 2005, he exceeded the alcohol limit that was imposed on the visiting unit by the OPCON unit 3 RCR. This led to the member being involved unprofessional drunken behavior”.

3. As a result of the conduct of Sergeant Ledoux in relation to these charges, and due to his previous administrative measure in relation Alcohol Misconduct, Sergeant Ledoux was placed on the highest level of Remedial Measure, being, Counselling and Probation for the period of 9 Feb 2016 to 9 August 2016 by Lieutenant-Colonel Hatton. The conduct noted was described as follows:

“On 24 Dec 2015 you demonstrated a conduct deficiency involving alcohol. During a cultural excursion to Lviv during your deployment on Op UNIFIER you became extremely intoxicated. Not only did your actions pose a force Protection risk to the mission, but you also put yourself at a personal risk by becoming so intoxicated that you had to be seen by the Task Force medics upon your return.

Your actions also destroyed your credibility amongst the remainder of the Task Force as you were observed slurring your words, vomiting, drooling and speaking nonsense by multiple members of your Chain of Command, your peers and subordinates”.

4. On a separate remedial measure dated 7 Feb 2016, in relation to the same incident, Sergeant Ledoux was also given Counselling and Probation by Lieutenant-Colonel Hatton for the following conduct:

“On 24 Dec 2015, while on a cultural excursion, during your deployment on OP UNIFIER you disobeyed multiple Task Force Standing Orders, despite your acknowledgement that you understood them and being briefed on them prior to departing on the excursion.

During the excursion, you broke away from your group on your own, despite force protection orders to maintain a three person minimum for travel by vehicle or on foot outside of camp IAW JTF-U Theatre Standing Order 01. You also disobeyed JTF-U Theatre Standing Order 02 which specifies that Op UNIFIER Joint Operating Area as a Dry Theatre. Contrary to this order, you consumed alcohol at an establishment in Lviv and became intoxicated.

Your behaviour was completely unacceptable for a Sr NCO in the CAF and set an extremely poor example for your peers and subordinates. Further, your actions reflected discredit on the CAF as this incident occurred while deployed on operations”.

5. Sergeant Ledoux successfully completed the prescribed monitoring period for both Remedial Measures with no further conduct deficiencies.”

[6] Applying the public interest test, the Court accepts this joint submission made by counsel.

FOR THESE REASONS, THE COURT:

[7] **FINDS** you guilty of one count of drunkenness under section 97 of the *National Defence Act*.

[8] **SENTENCES** you to a reprimand and a fine in the amount of \$1500.

Counsel:

Major C. Walsh for the Director of Military Prosecutions

Major E. Thomas, Defence Counsel Services, Counsel for Sergeant J.-S. J. Ledoux