



## COURT MARTIAL

**Citation:** *R. v. Stuart*, 2017 CM 2004

**Date:** 20170705

**Docket:** 201724

Standing Court Martial

Canadian Forces Base Cold Lake  
Cold Lake, Alberta, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Corporal R.B. Stuart, Offender**

**Before:** Commander S.M. Sukstorf, M.J.

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NOTE: Personal data identifiers have been redacted in accordance with the Canadian Judicial Council's " <i>Use of Personal Information in Judgments and Recommended Protocol</i> ".
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### **REASONS FOR SENTENCE**

(Orally)

[1] Corporal Stuart, today you have admitted your guilt to two charges on the charge sheet; the second count, under section 129 of the *National Defence Act*, conduct to the prejudice of good order and discipline;

“*Particulars:* In that he, between January 2016 and March 2016, at Canadian Forces Base Cold Lake, Alberta, did mislead Military Police members regarding the theft of his military kit.”

and the third count, under section 90 of the *National Defence Act*, absented himself without leave.

*“Particulars:* In that he, at 0800 hours, 5 February 2016, without authority was absent from 409 Tactical Fighter Squadron, Canadian Forces Base Cold Lake, Alberta and remained absent until 1609 hours, 14 February 2016.”

**Statements of circumstances and agreed facts**

[2] The Statement of Circumstances and the Agreed Statement of Fact filed in court are reproduced to provide a full account of the circumstances of both the offence and the offender:

**“STATEMENT OF CIRCUMSTANCES**

1. At all relevant times, Corporal Stuart was a member of the Canadian Armed Forces, Regular Force. He was posted to 409 Tactical Fighter Squadron, 4 Wing Cold Lake, Alberta, as an Aviation Systems Technician.
2. For the period of 11 January to 26 September 2015, Corporal Stuart was authorized to be on away from his unit on parental leave.
3. Upon his return from parental leave in September 2015, Corporal Stuart stated to his chain of command that he had no uniforms or other personal military kit. He indicated that it had been stolen during his leave. He further indicated that he had reported the theft to the Royal Canadian Mounted Police (RCMP). He was issued with new uniforms.
4. At various times between September 2015 and January 2016, Corporal Stuart’s chain of command requested and directed that he provide them with further information regarding the RCMP report. Corporal Stuart was evasive and did not provide the information.
5. On 18 January 2016, Corporal Stuart was interviewed by the Acting Squadron Chief Warrant Officer, Master Warrant Officer Windley. Master Warrant Officer Windley asked for information relating to the report of Corporal Stuart’s allegedly stolen uniforms. Corporal Stuart refused to provide a copy of the report, stating he did not want to incriminate himself. He did offer the name of a RCMP constable to whom he had allegedly made the report.

6. Master Warrant Officer Windley determined that Corporal Stuart had made no report and directed that Corporal Stuart report his kit stolen to either the RCMP or the Military Police that day. He left it to Corporal Stuart to choose which.

7. At approximately 1100 hours on 18 January 2016, Corporal Stuart's supervisor, Warrant Officer Best asked Corporal Stuart for his decision. Corporal Stuart indicated to Warrant Officer Best that he would report to the Military Police. Warrant Officer Best accompanied Corporal Stuart to the Military Police building at Canadian Forces Base Cold Lake.

8. Corporal Stuart made a verbal complaint to Corporal McTavish of the Military Police, advising him that his kit and a trailer had been stolen in September 2015. He stated that the RCMP had conducted an investigation and recovered his kit. He was directed to provide the RCMP report number. He did not provide the number.

9. After taking Corporal Stuart's statement, Corporal McTavish explained the substance and consequence of public mischief, contrary to the *Criminal Code*, to wit, making a false complaint to the police. Corporal Stuart stated that he understood Corporal McTavish's warning and that his kit had been stolen as reported.

10. Following the interview, Corporal McTavish spoke with Constable Yagminas of the Cold Lake RCMP, who advised that they had no knowledge of the incident. Corporal McTavish also spoke with the RCMP in St Paul and Bonnyville, who also had no record of the incident. Corporal McTavish then contacted Corporal Stuart and told him he needed the RCMP file number. Corporal Stuart told him that he would bring the file in the following day, and be accompanied by his lawyer.

11. On 19 January 2016 at 1330 hours, Corporal McTavish contacted Corporal Stuart, who advised he could not make it that day, but that his lawyer was supposed to contact Corporal McTavish. Corporal Stuart said he would call the lawyer and get back to him. At 1356 hours, Corporal Stuart's girlfriend, Ms Emily Burke contacted Corporal McTavish and advised that their lawyer, Mr Munday, would collect the kit from the RCMP and drop it

off at their residence along with a copy of the report. Additionally, she advised that Corporal Stuart would attend 11 Military Police Flight at 1830 hours, 20 January 2016, with everything.

12. On 20 January 2016, Corporal Stuart called Warrant Officer Best from the cellphone of his girlfriend. He stated that Ms Burke was ill due to a medical condition and that he was taking her to the hospital in Bonnyville. Corporal Stuart advised Warrant Officer Best via a text message that Ms Burke was required to go to hospital in Edmonton. Warrant Officer Best acknowledged and asked for further updates and that Corporal Stuart collect documentation to confirm his travels. Corporal Stuart provided several updates throughout the day. He also emailed Corporal McTavish to advise that he had an “unexpected medical” in Edmonton with his spouse and could not come in.

13. On 21 January 2016, Corporal Stuart sent Warrant Officer Best further text messages indicating that Ms Burke remained in hospital. Warrant Officer Best acknowledged and asked for Corporal Stuart to provide further updates.

14. On 22 January 2016, Corporal Stuart again texted Warrant Officer Best, indicating that Ms Burke was still in hospital. Warrant Officer Best requested details regarding the hospital and contact information, but received nothing further.

15. On 24 January 2016, Corporal Stuart sent Warrant Officer Best a text message indicating that Ms Burke would remain in Edmonton for another week and that they were staying with family. He confirmed that he had obtained some record of the events. Warrant Officer Best acknowledged via text and advised that he would work on obtaining compassionate leave for Corporal Stuart.

16. On 25 January 2016, Warrant Officer Best sent a text message to Corporal Stuart directing that Corporal Stuart call him back before noon that day. Corporal Stuart sent a text message in reply, stating that the phone could not make calls but could text. Warrant Officer Best requested the details of Corporal Stuart’s vehicle for the forthcoming leave pass and the name of Ms Burke’s hospital. Corporal Stuart provided these details by text message. The Commanding Officer of 409 Tactical Fighter

Squadron approved 5 days compassionate leave, dated 25-29 January 2016.

17. On 26 January 2016, Warrant Officer Best advised Corporal Stuart by text message of the compassionate leave. Corporal Stuart indicated that he hoped to be home by 29 January 2016. He did not respond to Warrant Officer Best's subsequent question regarding Ms Burke's hospitalization.

18. On 27 January 2016, Corporal Stuart sent a text message to Warrant Officer Best updating him on Ms Burke's condition. Warrant Officer Best acknowledged and offered support via text message.

19. On 28 January 2016, Corporal Stuart sent a text message to Warrant Officer Best advising that he and Ms Burke would return to the Cold Lake area on the afternoon of 29 January 2016. He indicated that Ms Burke had a medical appointment on 1 February 2016.

20. During the period of 25-29 January 2016, Corporal Stuart visited his mother at her residence south of Calgary, Alberta, contrary to the intent and authority of his compassionate leave.

21. On 1 February 2016, Corporal Stuart sent a text message to Warrant Officer Best advising that he and Ms Burke would return that afternoon. He did not indicate where he was. He did not answer Warrant Officer Best's subsequent text messages asking about Ms Burke's condition, his whereabouts, or for an update.

22. On 2 February 2016, Corporal Stuart sent a text message to Warrant Officer Best advising that Ms Burke had been flown to Edmonton and that he would be driving to Edmonton that morning. He did not answer any of Warrant Officer Best's questions regarding his location, or an attempted call.

23. On 3 February 2016, Corporal Stuart sent a text message to Warrant Officer Best advising that Ms Burke would be remaining in Edmonton, but that he was returning for their children and would provide an update. Warrant Officer Best requested that Corporal Stuart call him at a specified time. Corporal Stuart did not call at the specified

time. Warrant Officer Best, via text message, ordered Corporal Stuart to report in or the chain of command would take action.

24. On 4 February 2016, Corporal Stuart sent a text message to Warrant Officer Best advising that he was driving home and leaving Ms Burke behind. Warrant Officer Best ordered him to report to his office 0650 hours, 5 February 2016.

25. Corporal Stuart did not report to the office as directed. Warrant Officer Best then sent a text message to Corporal Stuart at 0834 hours ordering him to report by 1000 hours that day, in uniform, at his office. Corporal Stuart did not report.

26. At 1245 hours, 5 February 2016, Master Warrant Officer Bevington contacted the Military Police in Cold Lake and requested that a welfare check be conducted.

27. On the afternoon of 5 February 2016, Military Police Corporal Cugliari contacted the Royal Alexandra Hospital in Edmonton, as well as the Cold Lake and Bonnyville hospitals to determine if anyone with the surname Burke or Stuart had been admitted in the relevant time frame. He learned that nobody had been so admitted. Military Police Corporal Downey also contacted Corporal Stuart's lawyer, who advised that neither Ms Burke nor Corporal Stuart had had any contact with him. Corporals Downey and Cugliari then attended Corporal Stuart's residence on base and found nobody present. From the recent snowfalls, it was apparent that no one had been present for several days. Master Corporal Kent contacted Ms Burke's cell phone provider. The cell phone was 'pinged' to determine its location. It was determined that the phone was located on the south west side of Edmonton, Alberta.

28. On 8 February 2016, the Commanding Officer of 409 Tactical Fighter Squadron issued a warrant for Corporal Stuart's arrest, based on his continuing absence without leave.

29. On 9 February 2016, Warrant Officer Best, on behalf of the Squadron Chief Warrant Officer, Chief Warrant Officer Falardeau, sent a text message to Corporal

Stuart advising that a warrant has been issued for his arrest, and that he should return to Cold Lake and turn himself in. He asked that Corporal Stuart contact him.

30. On 10 February 2016, members of the Military Police and Child & Family Services conducted a welfare check at Corporal Stuart's residence in Cold Lake. There was no response.

31. On 11 February 2016, Master Corporal Kent, of the Military Police, contacted Ms Burke's cell phone provider who again 'pinged' Ms Burke's cell phone. It was determined that the phone was located at a gas station approximately one kilometer away from the Edmonton International Airport. He then contacted both WestJet and Air Canada, both of which confirmed that neither Ms Burke nor Corporal Stuart had booked a flight with either company.

32. On 12 February 2016, Master Corporal Kent again contacted Ms Burke's cell phone provider who 'pinged' Ms Burke's cell phone, and determined that it was located on the north east side of Edmonton, Alberta.

33. On 12 February 2016 at 1845 hours, the Military Police again conducted a welfare check at Corporal Stuart's Cold Lake residence. There was no answer.

34. On 14 February 2016 at 1609 hours, Corporal Stuart turned himself in to the Military Police at Cold Lake. He was released with conditions at 1810 hours on 15 February 2016.

35. On 16 February 2016, Corporal Stuart advised his Squadron Chief Warrant Officer of the following:

- a. The stolen trailer was parked on the property of a Mr Brody Longshier;
- b. Corporal Stuart's lawyer, Leighton Grey, had obtained his missing kit from the RCMP; and
- c. Mr Grey had given it to an Aviator with the first name David, who had subsequently returned it to Wing Supply.

36. This information was passed to Corporal McTavish of the Military Police. Corporal McTavish contacted Grey Munday Wowk LLP and spoke with Mr Grey's receptionist, who advised that the only work the firm had done with Corporal Stuart or Ms Burke was a real estate transaction for Corporal Stuart in 2012. Corporal McTavish also contacted 4 Wing Supply and learned that there had been no recent transactions on Corporal Stuart's clothing documents, and that it is not a common practice to accept the return of personal kit on someone else's behalf.

37. On 25 February 2016, Corporal Stuart contacted Corporal McTavish and advised that he could not obtain Brody Longshier's contact information, and that his lawyer, Mr Grey, would not call. However, Brody's wife Sandra and Mr Grey would attend the Military Police detachment the following day to provide information.

38. On 26 February 2016 a female identifying herself as Sandra Harris contacted 11 Military Police Flight, asking to speak with the lead investigator regarding Corporal Stuart. She advised that she could not attend that day but left a contact number and stated that the theft happened on her grandfather's property. Corporal Stuart also contacted 11 Military Police Flight, asking if Sandra had contacted them. Corporal McTavish attempted to contact Sandra Harris, but the number provided was a wrong number, and neither Ms Harris nor Corporal Stuart contacted Corporal McTavish that evening.

39. On 4 March 2016, Master Corporal Sanders and Corporal McTavish of the Military Police, met with Corporal Stuart. Corporal Stuart advised them that the police report was with his lawyers, and provided the contact name "Lexi" and a telephone number. They confirmed the name of the law firm as the firm that denied working with Corporal Stuart. Corporal Stuart advised that this was because of a confidentiality clause he had requested, and that the police report had actually been made by Sandra Harris, presumably to the Cold Lake RCMP.

40. Following the meeting with Corporal Stuart on 4 March 2016, Master Corporal Sanders contacted Ms Burke, who advised that Ms Harris would email a copy of the report to him. He also contacted the law firm Corporal



Stuart claimed represented him – they advised that no “Lexi” worked at the firm, that the staff do not sign confidentiality clauses, and that the firm had had no recent dealings with Corporal Stuart, confirming this by email. Master Corporal Sanders also noted that the phone number provided for Lexi was the same as the number provided previously for Ms Harris: a wrong number.

41. On 5 March 2016, Corporal Stuart and Ms Burke attended 11 Military Police Flight to discuss his release conditions. When asked why Mr Grey’s firm had no employee named “Lexi”, and why they stated that they did not represent him or sign confidentiality agreements, Corporal Stuart had no response. When asked why the same number was given for Lexi and Ms Harris, Ms Burke stated she may have given a wrong number. Corporal Stuart could not name the RCMP detachment at which a complaint was filed, and when asked about the missing kit, would not answer. Corporal Stuart did admit that the story regarding Aviator “David” was untrue. During the meeting, Ms Burke stated “Let’s just go get the kit” several times.

42. Corporal Stuart was released from the Canadian Armed Forces on 10 June 2016 under release item 3B, to wit, on medical grounds, being disabled and unfit to perform his duties in his present trade or employment, and not otherwise advantageously employable under existing service policy.”

“Agreed Statement of Fact

1. Cpl STUART, R.B. (Ret) resides at XXXX, Airdrie Alberta with his partner and three children.
2. Cpl STUART, R.B. (Ret) relies on a monthly military disability pension and this is the only household income.
3. Cpl STUART, R.B. (Ret) graduated high school and attended some college.
4. Cpl STUART, R.B. (Ret) plans to work in civilian aviation maintenance in the future.”

### **Joint submission**

[3] In a joint submission, both the prosecution and defence counsel recommend that I impose a sentence of a severe reprimand and a reduction in rank from corporal to aviator.

[4] The joint submission before the court is reviewed in the context of the current Supreme Court of Canada (SCC) guidance in *R. v. Anthony-Cook*, 2016 SCC 43. In that decision, the SCC clarified that a trial judge must impose the sentence proposed in a joint submission “unless the proposed sentence would bring the administration of justice into disrepute or is otherwise not in the public interest.”

[5] A plea bargain occurs when counsel come together, outside the court, to discuss their respective positions in a quid pro quo manner. There is give and take required to come to a joint recommendation. The prosecution agrees to recommend a sentence that the accused is prepared to accept, avoiding the stress of a trial and providing an opportunity for offenders, such as Corporal Stuart, who are clearly remorseful to begin making amends. By encouraging plea deals, the burden on the court is reduced and the prosecution benefits directly by not needing to take every matter to a full court martial.

[6] Logistically, coming to a meaningful resolution in a discipline matter, victims and witnesses are not required to travel and appear before the court martial. It also assists the defence in that the accused can assess his or her options for resolution earlier rather than later.

[7] In the case of the military justice system, the systemic benefits of joint submissions also extend to the unit. The accused's unit is responsible for providing the administrative support to both the member and the court martial. When the matters can be dealt with quickly, the unit benefits directly.

[8] The most important gain to all participants is the certainty that a joint submission brings to the process. The accused person has a lot to lose. As you heard when I did the verification of the guilty pleas earlier, by entering into a plea bargain, the constitutional right to be presumed innocent is given up and this should never be done lightly. Thus, in exchange for making a plea, the accused must be assured of a high level of certainty that the Court will accept the joint submission.

### **Assessing the joint submission**

[9] In rendering its decision, the SCC highlighted the professional responsibility of both the prosecutor and defence counsel. They are key players in the administration of our military justice system. Prosecution and defence counsel are well placed to arrive at a joint submission that reflects the interests of the public, the Canadian Armed Forces (CAF) and the accused. Counsel are highly knowledgeable about the circumstances of the offender and the offences, as well as with the strengths and weaknesses of their respective positions.

[10] The prosecutor who proposes the sentence has been in contact with the chain of command. He is aware of the needs of the military and its surrounding community and is responsible for representing those interests.

[11] Defence counsel is required to act in the accused's best interest, including ensuring that the accused's plea is a voluntary and informed choice and unequivocally acknowledges his guilt.

[12] As members of the legal profession and accountable to their respective law societies, the prosecution and defence counsel have a duty not to mislead the court in their submissions. In short, it is my expectation that they are committed to recommending a sentence that is fair and consistent with the public interest.

[13] In this case, the prosecutor read the Statement of Circumstances and provided the documents required at the *Queen's Regulations and Orders for the Canadian Forces* article 112.51 that were supplied by the chain of command. The Agreed Statement of Fact was also introduced on consent to inform the Court as to the facts pertaining to way forward for Corporal Stuart.

[14] Furthermore, the Court benefitted from submissions from counsel to support their joint position on sentence highlighting the facts and considerations relevant to Cpl Stuart. The prosecution also provided the Court with a number of judicial precedents for comparison.

[15] Counsel's submissions and the evidence before the Court have enabled me to be sufficiently informed allowing me to consider any indirect consequence of the sentence, so I may impose a punishment adapted specifically to Corporal Stuart's circumstances and the offences committed.

### ***The offender***

[16] Corporal Stuart is 31 years old. He enrolled in December 2007 and appears to have served his country well, up until the events in question started to unfold. He has a young family, including a partner and three young children. He is currently released and is the sole income provider, supporting his family on a monthly military disability pension. He graduated high school and attended some college. He plans to work in civilian aviation maintenance in the future.

[17] I note that he has a conduct sheet that includes one incident from late 2015, where Corporal Stuart was charged with being absent without authority, for failing to show up for a scheduled Service Income Security Insurance Plan (SISIP) counselling session. Although the Court was not provided details on the facts flowing from that case, the charge and conviction, in and of itself informs the Court that you were struggling from at least October 2015 which I note coincided closely with your return

from paternity leave. By pursuing this charge, it appears that the chain of command was doing everything possible to help you “help yourself.”

[18] As noted in the Statement of Circumstances, Corporal Stuart showed a continual pattern of dishonest conduct, constantly misleading, making false claims and taking advantage of the support he was receiving from his chain of command. What seems apparent on the face of the facts, is that he was struggling personally on a number of levels. Yet, although his supervisors appeared to have been entirely supportive, he never sought help to resolve any of the issues confronting him. Rather, he continued to mislead them and design new excuses for covering up his original misrepresentations.

***Objectives of sentencing to be emphasized in this case***

[19] The prosecution has emphasized that the objectives of sentencing considered by both he and defence counsel are those of general deterrence and denunciation which, on the facts before the Court, I agree with.

[20] In making the joint submission, counsel advised the Court that they have taken into account all relevant aggravating and mitigating factors. However, prosecution did include some aggravating factors for the record:

- (a) Time – on two levels.
  - i. The length of time of deliberate absence without authority and continual misleading of the chain of command as to the reason for his absence. His chain of command requested several ‘welfare calls,’ authorized compassionate leave and offered continual support to him during this time. This activity diverted resources that the chain of command could have used in other areas; and
  - ii. Length of time invested by the military police in investigating the false claims and information being provided by Corporal Stuart. He could have been honest or at least informed them at any stage of the process of the truth of the situation, but he didn’t. Rather, he continued to spin a larger web of lies to keep them distracted and working on his case;
- (b) Dishonest nature of his conduct. Corporal Stuart’s conduct was a steady pattern of deceit where he lied about his whereabouts, thereby garnering support from his unit on compassionate grounds. Despite the caution provided by the military police regarding liability for mischief charges under the *Criminal Code*, in the event of making a false claim, he proceeded to make a false claim anyway. Within the web of lies that he created, he dropped the names of two different lawyers to the military police and his chain of command. These lawyers were not involved, nor had they been retained by Corporal Stuart on this matter. He lied about

his kit being turned in and about the circumstances under which it was allegedly stolen; and

- (c) Unit. It appears from the facts that your unit did everything possible to assist you. Yet, you showed complete disregard for their concern, their offers of help and seemed oblivious to the protracted draw you had on the unit's resources. Yet, you continued to embellish your web of lies to create further distraction and to continue to have them divert further resources on you. Also, while absent from your place of work, I suspect your peers and colleagues were responsible for assuming the extra work associated with your absence.

[21] With respect to mitigating factors, your pleas of guilty and the rationale behind them, as described in the Statement of Circumstances, must be given their full weight. You genuinely show remorse and you are now retired and a civilian.

[22] Corporal Stuart, you violated some of the most important obligations of members of the CAF on a number of levels. The military ethos is clear and transparent. It demands the ultimate in honesty and integrity in everything we do. It means being forthright with your chain of command and with your peers. With your conduct, you failed in this regard. Further, as Gibson M.J. described in the case of *R. v. Squires*, 2013 CM 2016, referred to by the prosecution, it is imperative that the members of the CAF be reliable and be present where they need to be, and on time.

### **Conclusion**

[23] In the circumstances, the Court considers that Corporal Stuart fully recognizes his responsibility and that his admissions of guilt are a sincere expression of remorse for his past conduct.

[24] After considering counsel's submissions in their entirety and considering all the evidence before the Court, I must ask myself whether the proposed sentence would be viewed by the reasonable and informed CAF member, as well as the public at large, as a breakdown in the proper functioning of the military justice system. In other words, would the acceptance of the proposed sentence cause the CAF community and its members to lose confidence in the military justice system?

[25] In considering this, the prosecution has referred me to two cases, *Squires* and *R. v. Smith*, 2010 CM 2018 where the Court considered the consequences of reduction in rank.

[26] The punishment of reduction in rank to aviator sends a message that you have demonstrated that you are unsuitable to hold your present rank.

[27] Further, counsel have recommended a severe reprimand which will send a message to the larger community that any conduct such as yours is unacceptable and

will be severely punished. You have clearly demonstrated complete disrespect for and failure to abide by the fundamental tenets of military discipline.

[28] Corporal Stuart, you are a young man, with a young family who is dependent on you. You must now turn the page on these matters, but learn from them. I can assure you that a civilian employer will be no less accepting of your conduct. In fact, you will find that they will not be anywhere as accommodating as your chain of command has been. They trusted what you told them and in return they offered help, several times. You betrayed that trust. You must ensure that you seek the appropriate help so that incidents like this do not cripple your future.

[29] Considering all of the factors, the circumstances of the offence and of the offender, the indirect consequence of the finding or the sentence, the gravity of the offence and the previous character of the offender, I am satisfied that this joint submission is in the public interest and does not bring the administration of justice into disrepute. The Court is amply satisfied that counsel have discharged their obligation in making their joint submission, today, on sentence.

**FOR THESE REASONS, THE COURT:**

[30] **FINDS** you guilty on the second and third charges, and

[31] **SENTENCES** you to a severe reprimand and a reduction in rank to aviator.

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**Counsel:**

The Director of Military Prosecutions as represented by Captain G.J. Moorehead

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Corporal R.B. Stuart