



COURT MARTIAL

Citation: *R. v. Newton*, 2018 CM 2001

Date: 20180109

Docket: 201742

Standing Court Martial

Canadian Forces Base Cold Lake
Cold Lake, Alberta, Canada

Between:

Her Majesty the Queen

- and -

Corporal G.J.M. Newton, Offender

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

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> ".

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Today, Corporal Newton admitted his guilt to one charge contrary to section 129 of the *National Defence Act (NDA)*, conduct to the prejudice of good order and discipline.

“Particulars: In that he, on or about 15 November 2016, at or near Cold Lake, Alberta, did, with the intent to mislead, cause Corporal Marsolais, a Military Police Officer, to enter upon an investigation by reporting that the offence of mischief had been committed when it had not been committed.”

[2] The Statement of Circumstances considered by the court reads as follows:

“STATEMENT OF CIRCUMSTANCES

1. At all relevant times, Corporal Newton was a member of the Canadian Armed Forces, Regular Force. He was posted to the 410 Tactical Fighter (Operations Training) Squadron, 4 Wing Cold Lake, Cold Lake, Alberta, as an Aviation Systems Technician.

2. At all relevant times, Corporal Marsolais was a member of the Canadian Armed Forces, Regular Force, serving with the Military Police 11 Flight, 4 Wing Cold Lake, Cold Lake, Alberta, as a Military Police Officer.

3. On 15 November 2016, at approximately 1534 hours, Cpl Newton called Selena Stepniak, a representative of Alberta Motor Association Insurance Company (AMA), and reported that, after having lunch at his home on 15 November 2016, he returned to his vehicle and found that the rear panel window on the right-hand side of his truck had been smashed. Cpl Newton reported that he did not see anyone smash the window and that he had asked others and no one else reported seeing anything. Cpl Newton confirmed he had not reported the damage to the police so Selena Stepniak advised Cpl Newton to report the incident to police. Cpl Newton was provided a claim number from AMA #XXXX.

4. On 15 Nov 2016, at approximately 1625 hours, Cpl Newton attended 11 Military Police Flight, 785 Hangar Lane, 4 Wing Cold Lake, Cold Lake, Alberta, and made a report to Cpl Marsolais. The report was in relation to the rear panel window of Cpl Newton's black Dodge Ram 1500 pick-up truck, Alberta licence plate XXXX, being smashed earlier that day.

5. Cpl Newton reported that on 15 November 2016 he left his place of work at 410 Squadron and drove to Tempo Gas Station located at 167 Kingsway Rd, 4 Wing Cold Lake, to purchase a sub for lunch and then proceed to his residence to eat his lunch. Cpl Newton reported that he returned home, parked his vehicle in the driveway of his Residential Housing Unit (RHU), located at 4 Wing Cold Lake, and proceeded to the basement of his RHU to eat his lunch. He reported that between the hours of 1145 and 1230, while he was eating his lunch in the basement of his RHU unknown person(s) broke the rear panel window panel of his black Dodge Ram 1500 pick-up truck.

6. At approximately 1710 hours on 15 November 2016, Cpl Newton took Cpl Marsolais to his vehicle and Cpl Marsolais took several pictures

of the vehicle and rear panel window area reported to be damaged. While taking pictures, Cpl Marsolais observed a large garbage bin in the bed of Cpl Newton's truck and asked Cpl Newton about the large garbage bin. Cpl Newton advised that the garbage bin was full and that he had several other items in the bed of his truck when he went to the dump earlier in the day.

7. On 16 November 2016, at approximately 1107 hours, Cpl Newton spoke with Scott Sage, an AMA insurance agent, about the deductible that he was required to pay for the vandalism to his vehicle's rear panel window reported on 15 November 2016.

8. On 17 November 2016 at 0929 hours Cpl Marsolais attended Tempo Gas Station and, through watching surveillance video from 15 November 2016, was able to confirm that Cpl Newton did attend that location driving his black pick-up vehicle on 15 November 2016 at 1143 hours. However, the video confirmed that Cpl Newton was accompanied by an unknown male as a passenger in Cpl Newton's vehicle.

9. On 17 November 2016, at approximately 1126 hours, Cpl Marsolais contacted Cpl Newton in an attempt to have Cpl Newton attend the 11 MP Flight detachment for the purposes of conducting a second interview. When Cpl Marsolais was advised that Cpl Newton could not attend the military police detachment as he was home with his sick child, arrangements were made for Cpl Marsolais to attend Cpl Newton's residence.

10. On 17 November 2016 at 1206 hours, Cpl Marsolais attended the residence of Cpl Newton and explained that his versions of events was not adding up. After further discussion, Cpl Newton confirmed his intention to cancel his insurance claim and asked if there was a way to similarly cancel his report to military police. He then confirmed that his original report on 15 November 2016, to Cpl Marsolais regarding the circumstances of his vehicle's rear panel window being broken was false and that his vehicle window had actually be damaged when the garbage bin in the back of his truck bed tipped over and hit the rear panel window. Cpl Newton then provided Cpl Marsolais a detailed description of the actual circumstances resulting his vehicle rear panel window being smashed. Cpl Newton accepted this description as being an accurate and honest account of how the window was actually broken.

11. On 17 November 2016 at approximately 1341 hours, Cpl Newton contacted AMA and spoke with Selena Stepniak. He asked questions regarding insurance coverage if his window had been broken by a falling object and then went on to confirm that, in fact, his window had been broken by something falling out of the back of his truck. Selena Stepniak

had taken the initial report from Cpl Newton and noted the Cpl Newton had originally reported that he did not know what happened to his window and that someone must have broken it. Cpl Newton then confirmed that he was able to find a replacement window for an amount under his \$1000 deductible and that he wanted to withdraw his claim. Selena Stepniak then confirmed with Cpl Newton that AMA would close his claim at his request. Cpl Newton did not receive any benefits from AMA as a result of his original claim made to AMA.

12. On 23 November 2016, Cpl Marsolais obtained a production order for AMA records relating to Cpl Newton's 15 November 2016 report of his vehicle's rear panel window being broken. On 8 December 2016, in accordance with the production order, Cpl Marsolais received various written and phone conversation summaries from AMA detailing the report and related communications Cpl Newton had with the AMA regarding the damage to his vehicle's rear panel window."

[3] The Statement of Facts considered by the court reads as follows:

“STATEMENT OF FACTS

1. Corporal Newton is financially responsible for his son and step daughter who are both under the age of eight. In part, owing to his being financially responsible for his two young children and having a personal debt, not related to home ownership, of \$55,000, Corporal Newton's financial situation is presently strained. Thus, a significant fine would represent a financial hardship for him and his family;

2. Corporal Newton's acceptance of full responsibility for this actions is a more appropriate reflection of his character and sense of responsibility to his position within the CAF. As such, the necessary circumstances associated with his being subjected to the disciplinary process, admittedly because of his own temporary lapse of judgement, has caused him significant stress and anxiety.

3. While Corporal Marsolais expended personal effort investigating this matter, such effort was, in advance of Cpl Newton's full admission to Cpl Marsolais on 17 November 2016, very limited in scope. Such investigation was limited to taking the initial damage report at the MP detachment on 15 November 2016, attending the Tempo Gas Station on 17 November 2016 to view surveillance video and then attending Cpl Newton's residence at which time Cpl Newton provided a full admission to Corporal Marsolais.

4. In the circumstances of Corporal Marsolais' attendance at Corporal Newton's residence on 17 November 2016 to discuss the

circumstances of his making the damage report to the military police, there are triable *Charter* issues regarding Corporal Newton's right to counsel and right to be informed promptly of the reasons for detention.

5. In accepting full responsibility for his actions, the requirement to call both Military Police witnesses and civilian witnesses from Alberta Motor Association Insurance was spared. Such actions on the part Corporal Newton contribute to the efficient operation of both the local MP detachment and AMA Insurance.”

Joint submission

[4] In a joint submission, both the prosecution and defence counsel recommend that the court impose a sentence of a reprimand and a \$500 fine.

[5] 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.”

[6] As background, a plea bargain occurs when counsel come together, outside the court, to discuss their respective positions in a quid pro quo manner which, in this case, resulted in a joint recommendation to this Court. In essence, 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 Newton, to begin making amends. Such joint submissions also take into account any *Charter* violations that may have happened during the investigative process, as occurred in this case. 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.

[7] 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 plea 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

[8] The prosecutor who proposes the joint sentence will have been in contact with Corporal Newton's chain of command and, in this case, Corporal Marsolais of the military police. The prosecutor is aware of the needs of the military and its surrounding community and is responsible for representing those interests. Conversely, defence counsel acts exclusively in the accused's best interest, which, in this case, ensures that

the accused's plea is a voluntary and informed choice and unequivocally acknowledges his guilt.

[9] As members of the legal profession and accountable to their respective law societies, the Court relies heavily on the professionalism and judgement of both counsel.

Evidence

[10] 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 Corporal Newton's chain of command. On consent, defence counsel also presented a Statement of Facts, outlining Corporal Newton's personal circumstances that the Court considered.

[11] In addition, the Court benefitted from oral submissions by counsel supporting their joint position on sentence where they provided helpful precedents and highlighted the facts and considerations relevant to Corporal Newton.

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

The offender

[13] Corporal Newton is 31 years old. He enrolled in the Canadian Armed Forces (CAF) in October 2008 and, by all accounts, he appears to have served his country well and has no previous conduct or criminal record for the Court to consider.

Objectives of sentencing to be emphasized in this case

[14] Defence counsel emphasized that in his negotiations with the prosecution, they closely considered the objectives of sentencing. They submitted that sentencing should focus on the objectives of denunciation and general deterrence. General deterrence means that the sentence should deter not only Corporal Newton from reoffending, but also deter any other CAF members who might be tempted to commit similar or comparable offences.

[15] In making the joint submission, counsel advised the Court that they have taken into account all relevant aggravating and mitigating factors. After hearing the submissions of both counsel, the Court highlights the following factors for the record:

- (a) The offence committed was serious and could not go unpunished;

- (b) Guilty Plea. Corporal Newton's plea of guilty must be given its full weight. Although he had a lapse of judgement in making the claim to the insurer, the Court notes that he very quickly assumed responsibility for his conduct and cooperated fully with the military police;
- (c) Previous good conduct. The Court recognizes that Corporal Newton has no previous record and, in general, he has made a positive contribution to the CAF, in his career to date; and
- (d) Age. Corporal Newton is a young man with a great deal of potential ahead of him. I hope he sees this event as a reminder of the importance of addressing the underlying factors that might interfere with one's judgement.

Conclusion

[16] 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 the community at large to lose confidence in the military justice system?

[17] The fine recommended by counsel and the reprimand will stand out as a blemish on the career record of Corporal Newton, thereby serving as a personal reminder of his failing.

[18] Corporal Newton, it is imperative that you make a concerted effort to seek assistance from a financial counsellor and from your chain of command to help remedy your personal circumstances. Your chain of command is a primary resource, experienced in dealing with many issues, personal and professional. They are there for you. The expertise and the institutional support that can be provided are significant and pride must not stand in the way of you seeking such assistance.

[19] Considering all of the factors, the gravity and circumstances of the offence as well as the personal circumstances and previous character of the offender and the indirect consequences of the sentence, I am satisfied that counsel have discharged their obligation in making their joint submission.

FOR THESE REASONS, THE COURT:

[20] **FINDS** you guilty of the charge of conduct to the prejudice of good order and discipline contrary to section 129 of the *NDA*.

[21] **SENTENCES** you to a reprimand and a fine of \$500 payable in five instalments of \$100 per month beginning 1 March, 2018 pay period. In the event you are released

from the CAF for any reason before the fine is paid in full, any outstanding unpaid balance will be due the day prior to your release.

Counsel:

The Director of Military Prosecutions as represented by Major R.J. Gauvin

Major A. Gélinas-Proulx, Defence Counsel Services, Counsel for Corporal G.J.M.
Newton