



COURT MARTIAL

Citation: *R. v. Truelove*, 2018 CM 3004

Date : 20180306

Docket : 201810

Standing Court Martial

Canadian Forces Base Kingston
Kingston, Ontario, Canada

Between :

Her Majesty the Queen

- and -

Signaller M.H.T. Truelove, Offender

Before : Lieutenant-Colonel L.-V. d'Auteuil, M.J.

NOTE: Personal data identifiers have been redacted in accordance with the Canadian Judicial Council's "*Use of Personal Information in Judgments and Recommended Protocol*".

REASONS FOR SENTENCE

(Orally)

[1] Signaller Truelove pleaded guilty to the first and second charge on the charge sheet. The Court, having accepted and recorded the plea in respect of these charges, now finds you guilty of both charges. They read as follows:

FIRST CHARGE
Section 130 of the
National Defence
Act

**AN OFFENCE PUNISHABLE UNDER
SECTION 130 OF THE NATIONAL
DEFENCE ACT, THAT IS TO SAY,
ASSAULT CONTRARY TO SECTION 266
OF THE CRIMINAL CODE**

Particulars: In that he, on 27 October 2017, at Canadian Forces Base Kingston, Ontario, did commit an assault upon Cpl N. Heffernan.

SECOND CHARGE
Section 101.1 of the
National Defence
Act

**FAILED TO COMPLY WITH A
CONDITION IMPOSED UNDER DIVISION
3**

Particulars: In that he, on 27 October 2017, at or near Canadian Forces Base Kingston, Ontario, did consume alcohol, contrary to a condition of release imposed under Division 3 of the Code of Service Discipline.

[2] In this case, both the prosecutor and the offender's defence counsel made a joint submission on the sentence to be imposed by this Court. They recommended that this Court sentence you to a one-day detention and to suspend the execution of this sentence.

[3] In the particular context of an armed force, the military justice system constitutes the ultimate means of enforcing discipline, which is a fundamental element of military activity in the Canadian Armed Forces (CAF). The purpose of this system is to prevent misconduct, or in a more positive way, promote good conduct. It is through discipline that an armed force ensures that its members will accomplish, in a trusting and reliable manner, successful missions. The military justice system also ensures that public order is maintained and that those subject to the Code of Service Discipline are punished in the same way as any other person living in Canada.

[4] Circumstances surrounding the offences were explained through the Statement of Circumstances, and the offender's more specific personal circumstances were also put to this Court through the Agreed Statement of Facts. Both documents are reproduced here in their entirety.

STATEMENT OF CIRCUMSTANCES

1. At all material times to this case, XXXX, Signaller M.H.T. Truelove was a member of the Regular Force, Canadian Forces posted to the Canadian Forces School of Communications and Electronics (CFSCE), in Kingston, Ontario.

2. Signaller Truelove was posted to CFSCE on 13 November 2015, after completing a component transfer from the Primary Reserve, where he had been employed as a reservist since 19 June 2013.

3. On 21 July 2017, due to past incidents relating to the abuse of drugs (cocaine), Signaller Truelove was placed on Counselling and Probation by CFSCE.
4. On 25 July 2017, Signaller Truelove was arrested following an incident in which Military Police were called and for which Signaller Truelove was engaging in self-harm behavior and uttering threats to his roommate, Aviator Belko-Bayaro.
5. On 25 July 2017, Signaller Truelove was released by the Custody Review Officer (CRO) and was subsequently referred to Base Mental Health Services.
6. The conditions imposed by the CRO on 25 July 2017 included that he keep the peace and be of good behavior; that he not use, possess or consume any non-medically prescribed drugs or prohibited drugs; and that he abstain from the consumption or possession of alcohol or any intoxicating substances.
7. On 19 October 2017, Signaller Truelove was scheduled to attend a Summary Trial for his outstanding charges, however, due to a medical incident in which he inflicted injuries upon himself, he was referred to Base Mental Health Services and the incident was tracked by CFSCE as a suicide attempt. Subsequent to an assessment by CF Health Services, Signaller Truelove was released from care.
8. On 27 October 2017, Military Police were called by Private Evans, the CFSCE Duty Private, as Signaller Truelove had allegedly discharged a fire extinguisher in the face of OS Tadeson and appeared intoxicated.
9. When the MPs arrived, they noted that Signaller Truelove was intoxicated, and they requested the assistance of someone from Signaller Truelove's chain of command. Petty Officer Second Class Carroll attended and informed the MPs of Signaller Truelove's conditions of release, which included that he abstain from intoxicants.
10. Upon the MPs informing Signaller Truelove that he was under arrest for breaching the conditions of his release, he became aggressive and resisted the arrest by struggling and refusing to move his legs. Due to the level of violent resistance demonstrated by Signaller Truelove, MP Corporal Heffernan deployed OS spray to subdue Signaller Truelove. During that incident, Signaller Truelove stated to Corporal Heffernan "grab my wrist one more time and I will knock you the fuck out" and attempted a closed fist strike at Corporal Heffernan.

11. On 27 October 2017, Signaller Truelove did consume intoxicants contrary to his release conditions and did apply force to Corporal Heffernan during his arrest. Corporal Heffernan did not sustain any injury as a result of the actions of Signaller Truelove.

Custody Review

12. On 28 October 2017, Signaller Truelove was remanded into custody by Military Police and a decision was made by the Custody Review Officer to not release him on 29 October 2017.

13. On 30 October 17 Signaller Truelove was charged with the following offenses:

- (1) Assault contrary to s. 266 of the Criminal Code under s. 130 NDA;
- (2) Failed to comply with a condition imposed under division 3 contrary to s. 101.1 NDA;
- (3) Drunkenness contrary to s. 97 NDA; and
- (4) Resisting arrest contrary to s. 87 NDA.

14. Further to a number of adjournments requested by counsel for Signaller Truelove, a Custody Review Hearing presided by Military Judge Lieutenant-Colonel L.-V. d'Auteuil was held on 15 November 2017.

15. During the Custody Review Hearing, evidence was adduced which established that Signaller Truelove was suffering from a substance abuse disorder. Dr. Pepin, Base Surgeon at CFB Kingston provide a medical recommendation that Signaller Truelove be immediately admitted to a 7 week treatment program for inpatient treatment at the Edgewood Treatment Centre in Nanaimo, BC.

16. On 15 November 2017, Signaller Truelove was released from custody by Military Judge Lieutenant-Colonel L.-V. d'Auteuil and subject to a number of release conditions. A copy of the release conditions imposed upon Signaller Truelove are attached as **Annex A.**

17. On 20 November 2017, Signaller Truelove attended the Edgewood Treatment Facility and successfully completed the inpatient program on 18 January 2018.

18. On 30 January 2018 the Director of Military Prosecutions Preferred two charges against Signaller Truelove.

[Annex A omitted.]

“AGREED STATEMENT OF FACTS AND ADMISSIONS

1. Since being injured on his QL3 Signaller course, Signaller Truelove has been struggling with alcohol addiction as well as with other illicit drugs. These addictions challenges are linked to unresolved issues resulting from personal trauma in Signaller Truelove’s youth. His actions on the date on which he committed the offences before this court correlate to his substance abuse disorder.

2. After being released from pre-trial custody on strict conditions on 15 November 2017, Canadian Armed Forces medical authorities arranged for Signaller Truelove to attend the Edgewood Clinic in Nanaimo, BC for addictions treatment from 20 November 2017 to 18 January 2018. Signaller Truelove successfully completed the program with staff approval (see attached letter).

3. Release proceedings have been initiated with regard to Signaller Truelove by his unit (CFSC). Although the precise release article has not yet been determined, his administrative release from the Canadian Armed Forces is likely to occur in the near future.

4. Since his release from pre-trial custody on 15 November 2017, Signaller Truelove has been subject to very restrictive release conditions (see attached conditions).

5. Signaller Truelove is aware that his treatment at the Edgewood Clinic is the beginning, and not the end, of overcoming his addictions challenges. To this end, Signaller Truelove attends AA meetings approximately three times per week and benefits from weekly contact and encouragement of his mother, who lives in Kingston. He spends much of his free time at the gym and follows a strict physical fitness regime.

6. Signaller Truelove has applied to, and been accepted in, the St. Lawrence College Fitness and Health Promotion programme with a scheduled start date of September 2018. Following graduation from this 2-year programme, Signaller Truelove intends to embark on a career as a personal trainer.”

[Letter from Edgewood dated 18 January 2018 omitted.]

[Release conditions dated 15 November 2017 omitted.]

[5] Although this Court is not bound by the joint recommendation made by counsel, it is generally accepted that the sentencing judge should depart from the joint submission only when it is contrary to the public interest, as stated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, at paragraph 32. The only situation where the court would depart from the recommendation is “where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system.”

[6] This approach relies heavily on the work of the prosecution as representing the community’s interest, which would include CAF members and the chain of command at the unit of the offender, and also of the defence counsel as acting in the offender’s best interests.

[7] It is the duty of counsel to provide the court with the full circumstances in relation to the offender and the circumstances surrounding the commission of the offences. It must be done without the judge presiding at the trial requesting the information. In the actual context of this court martial, this Court is more than satisfied that the information necessary for its understanding was provided in full.

[8] In this case, objectives related to the denunciation and the general deterrence of the offender were used to frame the discussion among counsel. Rehabilitation has also been an important consideration.

[9] Signaller Truelove, you initially enrolled with the CAF in 2013 and, further to a component transfer, joined the Regular Forces in late 2015. According to the conduct sheet, early in 2016 you started having problems with discipline, which led to a number of incidents. The most important one happened in October 2017, the incident for which you are before this Court today.

[10] It was determined that behind this incapacity to respect people and respect yourself, there was a problem with alcohol and drug addictions. Further to the custody review hearing I presided in November 2017, I understand that you made the decision for yourself to start a new life and get rid of this problem, no matter the consequences. I do understand that it has been part of the discussions among counsel; the decision you made and the fact that you were successful with your in-patient treatment. This led counsel to suggest that, further to your pre-trial incarceration, there was no need for further long incarceration in that case.

[11] I would say that with all the circumstances, including the apology you made before the court to the people who supported you, I will accept the joint submission made by counsel to sentence you to one day detention because the administration of justice is not in disrepute.

[12] Having said that, it was also suggested to the court to suspend the sentence of detention by means of its power under section 215 of the *National Defence Act (NDA)*

because it is warranted on account of the exceptional circumstances demonstrated in this case. Section 215 of the *NDA* reads as follows:

Where an offender has been sentenced to imprisonment or detention, the carrying into effect of the punishment may be suspended by the service tribunal that imposed the punishment.

This section is in Division 8 of the Code of Service Discipline in the *NDA*, which contains the provisions applicable to imprisonment and detention. The suspension of a punishment of imprisonment or of detention is a discretionary and exceptional power that may be exercised by a service tribunal including a court martial.

[13] I would say that this power is different from the power provided by section 731 of the *Criminal Code*, which allows a civilian court of criminal jurisdiction to suspend the passing of the sentence while subjecting an offender to a probation order or the power provided by section 742.1 of the *Criminal Code* on imprisonment with conditional sentencing, which allows a civilian court of criminal jurisdiction to sentence an offender to serve a punishment of imprisonment into the community. So this power of suspension is different from those two powers exercised by civilian courts.

[14] The *NDA* does not contain any particular criteria for the application of section 215. To this day, the courts martial's interpretation of its application is quite clear and has been established by various military judges in other cases. Essentially, if the offender demonstrates, on the balance of probabilities, that his particular circumstances or the operational requirements of the CAF justify the necessity of suspending the sentence of imprisonment or detention, the court will make such an order. However, before doing so, the court must consider, once it has found that such an order is appropriate, whether or not the suspension of that sentence would undermine the public's trust in the military justice system as part of the Canadian justice system in general. If the court finds that it would not, the court will make the order. Here in this case, particular circumstances have been demonstrated to the court.

[15] Factors considered by the court are, firstly, the fact that there is pre-trial incarceration. Secondly, the fact that you successfully underwent a therapy which helped you to have a new beginning. Despite the fact that you will potentially be released from the CAF, you still have plans for the future. You intend to contribute to society by having a job and I think all those factors are sufficient enough to be considered as exceptional circumstances in this case.

[16] I also understand that the prosecution joins your counsel in that suggestion, which means to me that the prosecution is of the opinion that it would not undermine the public's trust in the military justice system. I would agree with the prosecution and your counsel in that regard. Therefore, I will accept that suggestion to suspend the execution of the sentence of detention of one day, because of the particular circumstances of this case.

FOR THESE REASONS, THE COURT:

[17] **FINDS** Signaller Truelove guilty of the charge of assault and the charge of failing to comply with conditions imposed under Division 3.

[18] **SENTENCES** Signaller Truelove to detention for a period of one day.

[19] **SUSPENDS** the carrying into effect of the detention of one day.

Counsel:

The Director of Military Prosecutions as represented by Major C. Walsh

Major A.H. Bolik, Defence Counsel Services, Counsel for Signaller M.H.T. Truelove