



COURT MARTIAL

Citation: *R. v. Baycroft*, 2018 CM 2020

Date: 20180613

Docket: 201835

General Court Martial

Canadian Forces Base Esquimalt
Esquimalt, British Columbia, Canada

Between:

Her Majesty the Queen

- and -

Master Seaman H.A. Baycroft, Offender

Before: Commander S.M. Sukstorf, 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)

Introduction

[1] Today, Master Seaman Baycroft, admitted his guilt to one charge contrary to section 129 of the *National Defence Act (NDA)*.

FIRST CHARGE AN ACT TO THE PREJUDICE OF GOOD
Section 129 NDA ORDER AND DISCIPLINE

Particulars: In that he, on or about 12 November

2017, onboard Her Majesty's Canadian Ship EDMONTON, at Esquimalt, British Columbia, did use a personal electronic device while on watch, contrary to Ship Standing Order Amendment List 10 paragraph 3.1(3).

[2] The Statement of Circumstances reads as follows:

“STATEMENT OF CIRCUMSTANCES

1. At all relevant times, Master Seaman Baycroft was a member of the Canadian Armed Forces, Regular Forces. He was posted to Her Majesty's Canadian Ship EDMONTON, Canadian Forces Base Esquimalt, as a Naval Combat Information Operator (NCI Op). He was the senior NCI Op onboard.

2. Sea Training Group promulgated updated Ship's Standing Orders AL 10 on 19 September 2017. Section 3.1 – Alongside Organizations states at paragraph 3:

During the course of a normal duty alongside or at sea, personnel on watches shall remain vigilant at all times. Personnel on watch shall be alert and aware of their surroundings at all times, and remain in position until properly relieved. The use of personal head phones and other personal computing devices (PCDs) are distracting and personnel on watch shall refrain from using these devices.

3. HMCS EDMONTON holds a briefing for the ship's company once alongside in any foreign port. The Senior Hands of each department report to the Coxswain that their department is mustered correctly prior to these briefings.

4. HMCS EDMONTON visited Sitka, Alaska in October 2017. Master Seaman Baycroft was the Senior Hand of the NCI Op department at that time, and reported his department correctly mustered. He attended the briefing himself. The Coxswain highlighted the change to Ship's Standing Orders regarding use of personal computing devices during watch. The Coxswain subsequently posted a paper version of Section 3.1 on the window of the bridge. It was later moved to the chart table.

5. On 12 November 2017, the HMCS EDMONTON was alongside at Y Jetty, Canadian Forces Base Esquimalt. Master Seaman Baycroft was on watch, standing the Quartermaster position. As part of this duty, he was responsible for monitoring the brow, and access to the ship.

6. At approximately 1400 hours, Master Seaman Baycroft was on the bridge. The Senior Watch Keeper, Petty Officer 1st Class Schlodder, as part of his own duty rounds, came on to the bridge. Master Seaman Baycroft was watching a movie or video on his personally owned laptop computer. Petty Officer 1st Class Schlodder reminded Master Seaman Baycroft of the changed Ship's Standing Order. He directed Master Seaman Baycroft to shut down his laptop and put it away.

7. The Commanding Officer of HMCS EDMONTON, Lieutenant-Commander B.P. Henwood, notes that as the Senior NCI Op on board, Master Seaman Baycroft was in a position of leadership and responsibility. The Commanding Officer maintains that personnel on watch must be focussed on maintaining the safety and security of the ship, and the use of personal computing devices on the brow certainly distracts from the responsibility.

8. The Commander of Maritime Forces Pacific, Rear-Admiral A. MacDonald, notes that in the context of the profession of arms, swift and immediate obedience of orders is expected of every member and without question. It is the Commander's opinion that should members choose not to follow an order, if left unchecked, places operational effectiveness, discipline and ship's morale at risk."

[3] The Agreed Statement of Facts reads as follows:

"AGREED STATEMENT OF FACTS

1. MS Baycroft is currently 31 years old
2. MS Baycroft is in a common law relationship with XXXX.
3. They live in a rental property in North Saanich B.C.
4. MS Baycroft is supporting XXXX while she starts to train as a Veterinary Technician.
5. Previous to this XXXX ran a dog grooming business which ended up not being successful.
6. The failed business and vehicle troubles have left MS Baycroft with considerable debt that he is paying off monthly.
7. MS Baycroft and XXXX plan to eventually marry and intend to raise a family.

8. MS Baycroft comes from a multi generational military family with both parents, grand parents and great grand parents serving in the military including both world wars.
9. MS Baycroft plans to remain in the Royal Canadian Navy and make a life time career of it.
10. MS Baycroft's grandfather who served in WWII, with whom he lived as a child and with whom he was very close, died unexpectedly last Wednesday in New Zealand.
11. MS Baycroft was not able to travel to the funeral.
12. When instructed to put away the computer on the bridge MS Baycroft complied immediately.
13. MS Baycroft was open and forthright accepting responsibility when questioned by his chain of command concerning the incident."

Joint submission

[4] In a joint submission, counsel recommend that the court impose a sentence of a fine in the amount of \$200.

[5] In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada 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 you heard when I verified 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. In fact, by virtue of the oath taken by all service members, this right is one we all stand to protect. 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.

[7] The prosecutor who proposes the sentence will have been in contact with the chain of command. He is aware of the needs of the military and its surrounding community and he is responsible for representing those interests. On the other hand, Defence counsel acts exclusively in the accused's best interest, including ensuring that the accused's plea is a voluntary and informed choice and unequivocally acknowledges his guilt.

[8] As members of the legal profession and accountable to their respective law societies, the court relies heavily on the professionalism and judgement of counsel and their duty to the court.

Evidence

[9] In this case, on consent, the prosecutor read the Agreed Statement of Facts and the Statement of Circumstances and then provided the documents required under section 111.17 of *Queen's Regulations and Orders for the Canadian Forces*.

[10] In addition, the court benefitted from submissions from counsel, including an outline of relevant case law on parity of sentence: *R. v. Booth*, 2015 CM 4015 and *R. v. Desroches*, 2016 CM 1009 to support their joint position, while highlighting the facts and considerations relevant to Master Seaman Baycroft.

[11] Counsel's submissions and the evidence before the court have enabled me to be sufficiently informed of Master Seaman Baycroft's personal circumstances, so I may consider any indirect consequence of the sentence in imposing a punishment adapted specifically to him and the offence committed.

The offender

[12] Master Seaman Baycroft is 31 years old. He enrolled in the naval reserve in the Canadian Armed Forces (CAF) on 12 September 2005, transferring to the regular forces on 24 March 2017 and has served for roughly 13 years. He has no conduct sheet or criminal record for the court to consider. He has earned the Canadian Forces Decoration as well as the Operational Service Medal – EXPEDITION. He is in a common law relationship and, at this time, he is the sole income provider.

Objectives of sentencing to be emphasized in this case

[13] The prosecution has emphasized that in their negotiations, he and defence counsel closely considered the objectives of sentencing. Based on the submissions of counsel, sentencing should focus on the objectives of denunciation and general deterrence. The Court highlights that the principle of general deterrence means that the sentence should deter not only Master Seaman Baycroft from reoffending, but also deter any other CAF members who might be tempted to commit similar or comparable offences. The prosecution argued that on a slow, long weekend, while in home port, Master Seaman Baycroft had a lapse of personal discipline and violated a newly enacted Ship Standing Order that prohibited the use of personal computing devices while members were on watch or duty.

[14] Counsel have advised the court that they had taken into account all relevant aggravating and mitigating factors.

Aggravating factors

[15] After hearing the submissions of counsel, the Court highlights the following aggravating factors for the record:

- (a) The failure of self-discipline on this particular occasion. Master Corporal Baycroft was aware of the newly instituted standing order and still chose to watch a movie from his computer.
- (b) Experience and rank. As a master seaman, he held the first rank of leadership and was expected to both adhere to orders as well as enforce them. Although, there was no evidence that any subordinates were present, word of his disregard of what might have been a controversial order, would have travelled quickly and undermined the goals of the chain of command.
- (c) Duty. In this particular case, Master Corporal Baycroft was actually on duty and responsible for access as well as the overall safety and security of the vessel.

Mitigating factors

[16] The Court also highlights the following mitigating factors for the record:

- (a) Lack of conduct sheet. Master Seaman Baycroft has no conduct sheet or criminal record for the court to consider.
- (b) The evidence before the court is that Master Seaman Baycroft did not try to hide or make excuses for his lapse of judgement, but rather, he put the computer away, was not argumentative and he did not challenge the chain of command.
- (c) Security. The incident occurred during a quiet Sunday afternoon of a long weekend, while the ship was in home port and the security risk was considered low.
- (d) Guilty plea and responsibility for his conduct. As counsel acknowledged, Master Seaman Baycroft's early guilty plea shows that he has assumed responsibility for his conduct ensuring that this matter could be dealt with quickly without consuming excessive resources.

Conclusion

[17] It is true that the offence before the court is minor, but it is the failure to address the small breaches that threatens the discipline and morale within military units. Before I pronounce sentence, I will reiterate again the words that the prosecution quoted from *R. v. Gobin*, 2018 CM 2008, the substance of which I note has been referred to by Rear Admiral MacDonald at paragraph 8 of the Statement of Circumstances.

[43] Discipline requires the willingness to put others' interests before our own, and to have respect for and compliance with the law.

and

[40] [W]hen our military members operate outside of CAF expectations, appropriate course corrections must be made and this is done with the various tools at the disposal of the military justice system. Discipline in the CAF becomes a trained reflex upon which our superiors, peers and subordinates can rely, at all times.

[41] As such, discipline is an inculcated pattern of obedience. It starts in training, in your unit, with your leaders instilling in you the values Canadians expect of us to be instinctive, when nobody is looking. . . . It is the way we act, when nobody is looking that is a testament to our character and reflects the discipline needed for Canadians to trust us in our roles.

[18] This is a public trial and it serves as a reminder to members that orders are not optional and must be followed. In this case, Master Seaman Baycroft had a lapse in judgement and as the Court has pointed out often in these proceedings, it is the way we subsequently deal with lapses in our judgement that reveals our true character; and sometimes public mistakes deliver stronger lessons than private ones.

[19] After considering counsel's submissions in their entirety and 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 general population, 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?

[20] In this case, the Court can impose a fine that is reflective of the seriousness of the offence, but also sends a message that this type of conduct will not be tolerated. Under Defence Administrative Orders and Directives 7006-1, the entry of the fine in the amount of \$200 will be removed automatically from a member's conduct sheet after a period of 12 months if there are no further convictions entered.

[21] 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 counsel have discharged their obligations in making their joint submission. The recommended sentence is in the public interest and does not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[22] **FINDS** you guilty of the first and only charge on the charge sheet under section 129 of the *NDA*.

[23] **SENTENCES** you to a fine in the amount of \$200, payable forthwith. 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 G. Moorehead

Lieutenant-Colonel D. Berntsen, Defence Counsel Services, Counsel for Master
Seaman H.A. Baycroft