



COURT MARTIAL

Citation: *R. v. Edwards*, 2018 CM 4018

Date: 20181116

Docket: 201828

Standing Court Martial

Halifax Courtroom Suite 505
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Leading Seaman C.D. Edwards, Accused

Before: Commander J.B.M. Pelletier, M.J.

REASONS FOR FINDING

(Orally)

Introduction

[1] Leading Seaman Edwards is facing one charge under section 129 of the *National Defence Act (NDA)* for using cocaine contrary to the prohibition on drug use found at the *Queen's Regulations and Orders for the Canadian Forces (QR&O)* 20.04, essentially to the effect that "[n]o officer or non-commissioned member shall use any drug".

The evidence and the facts

[2] The evidence has been introduced by two witnesses called in the main trial by the prosecution as well as exhibits offered in evidence by prosecution witnesses or consent of the parties. In addition, the Court took judicial notice of matters covered by Military Rule of Evidence 15. The defence objected to the admission of a statement

tendered by the prosecution, alleging violation of the rights of Leading Seaman Edwards under section 8 of the *Canadian Charter of Rights and Freedoms*. The Court reserved its ruling on the admissibility issue until the case for the prosecution was closed. After an adjournment, the objection was dismissed. The defence decided not to call any evidence.

[3] The first prosecution witness was Master Corporal Sabalbal, an investigator with the Canadian Forces National Investigation Service (CFNIS). He participated in the investigation of drug trafficking activities by a number of military personnel, including Leading Seaman Stow, who pleaded guilty to trafficking last August and is now serving a sentence of ten months of imprisonment. In the course of its investigation of Leading Seaman Stow's trafficking activities, the CFNIS executed a search warrant at his residence in December 2016 and seized, amongst other things, a number of cell phones. In March 2017, details of electronic communications from one of these cell phones were obtained by means of a production order, revealing that Leading Seaman Stow had exchanged text messages with a phone number associated with Leading Seaman Edwards. In parallel, another production order had been obtained for bank records of Leading Seaman Stow which revealed details of electronic funds transfers (Interac e-Transfer) of sums of money from Leading Seaman Edwards to Leading Seaman Stow.

[4] On the basis of that electronic information, CFNIS investigators formed reasons to believe that Leading Seaman Edwards had been purchasing cocaine. They asked Leading Seaman Edwards to participate in an interview at the CFNIS Detachment on 12 June 2017. He agreed to participate and provided a statement to Master Corporal Sabalbal, which was found to have been made voluntarily despite the objections of the defence. A DVD containing audio-video footage of that interview was entered as exhibit. During the interview, Leading Seaman Edwards made incriminating statements regarding past drug involvement. Confronted with the printout of the text messages he had exchanged with Leading Seaman Stow as well as the bank records showing electronic funds transfers from him to Leading Seaman Stow, Leading Seaman Edwards made incriminating statements to the effect that he had purchased cocaine from Leading Seaman Stow. Master Corporal Sabalbal introduced as exhibit the printout from the Security and Military Police Information System (SAMPIS) of text messages exchanged between Leading Seaman Stow and Leading Seaman Edwards during a period of time in January and February 2016, which he used in the 12 June 2017 interview. Master Corporal Sabalbal described these messages as pertaining to a cocaine transaction for one gram, which he stated was admitted by Leading Seaman Edwards.

[5] The second prosecution witness was Petty Officer 1st Class Gagne, who, as chief clerk had custody of personnel files in Leading Seaman Edwards' unit. She produced a form titled "Canadian Forces Drug Control Program – Policy" which she had obtained from Leading Seaman Edwards' personnel file. She explained that the form is used at recruiting centres to inform applicants of the Canadian Armed Forces (CAF) policy on drugs. The form contains a declaration which had not been completed on the form produced, although the signature of a person named Chris Edwards appears

on the bottom of the document. The name of the person signing as a witness is illegible, although it appears to be a person holding the rank of captain.

Analysis

The charge

[6] The charge laid under section 129 of the *NDA* has been particularized as follows:

“In that he, between 25 September 2015 and 23 July 2016, all dates inclusive, at or near Halifax, Nova Scotia, did use a drug, to wit cocaine, contrary to Queen’s Regulations and Orders 20.04.”

Essential elements to be proven

[7] The essential elements of this charge are as follows:

- (a) the identity of the accused;
- (b) the time and place of the offence;
- (c) the conduct alleged that is using a drug, to wit cocaine;
- (d) the prejudice to good order and discipline resulting from the conduct and;
- (e) the accused’s blameworthy state of mind.

[8] The prosecution, in its submission stated the elements of the offence differently, overlooking the element of prejudice to good order and discipline that is essential in any charge under section 129 of the *NDA*. Upon questioning by the Court, prosecutors stated that they rely on the deeming provision found at subsection 129(2) to establish prejudice. This provision reads as follows:

129 (2) An act or omission constituting an offence under section 72 or a contravention by any person of

- (a) any of the provisions of this Act,
- (b) any regulations, orders or instructions published for the general information and guidance of the Canadian Forces or any part thereof, or
- (c) any general, garrison, unit, station, standing, local or other orders,

is an act, conduct, disorder or neglect to the prejudice of good order and discipline.

[9] The prosecution has confirmed that, by particularizing the offence under section 129 of the *NDA* as an alleged violation of a regulation at article 20.04 of the QR&O, it has elected to establish the essential element of prejudice to good order and discipline exclusively through proof of the contravention of that regulation. Such conduct is then statutorily deemed to prejudice good order and discipline. It is thus the *actus reus* and *mens rea* requirements of the underlying alleged QR&O violation which need to be considered to arrive at a finding on the guilt or innocence of an accused. (*R. v. Latouche*, [2000] CMAc-431, paragraphs 13 and 14)

[10] In the case at bar, the *actus reus* is found in the first three elements, namely that Leading Seaman Edwards did use a drug, to wit cocaine, at the dates and place particularized in the charge. The *mens rea* required is established through proof of three things. First, knowledge by the accused of the norm of conduct applicable to him, in this case, the nature of the prohibition found at article 20.04 of the QR&O. Second, knowledge by the accused that he is using a drug, specifically cocaine. Finally, the voluntary nature of the act constituting the breach of that norm of conduct, namely the voluntary consumption of cocaine.

Representations of parties and issue

[11] The prosecution alleges that it has presented sufficient evidence on each and every essential element of the offence to convince the Court beyond a reasonable doubt of the guilt of the accused. The defence disagrees, pointing out that the Court should be left with a reasonable doubt on a number of essential elements such as the time and place of the offence, the type of drug allegedly used and the actual knowledge of the prohibition found at QR&O 20.04.

[12] The only issue in this case is whether the evidence introduced by the prosecution is sufficient to prove each and every element of the offence as charged and particularized. This has caused me significant difficulties by virtue of the way this case was investigated and presented to the Court in the course of this trial.

The evidence and the burden of proof

[13] The specific submissions of defence reflect the fact that there has been no direct evidence of drug use by Leading Seaman Edwards presented in this case. By direct evidence I mean evidence such as witnesses who would have seen Leading Seaman Edwards consume a drug. In addition, no drugs were seized in Leading Seaman Edwards' possession and no test results were produced in evidence revealing the presence of drugs in his blood or urine.

[14] CFNIS investigators became interested in Leading Seaman Edwards after obtaining evidence to the effect that he had purchased what they believed to be cocaine from a person who they believe was a trafficker. They then called Leading Seaman Edwards in for an interview where he provided a number of incriminating statements as to drug use. The prosecution admits this case rests on the alleged confessions of

Leading Seaman Edwards to the investigator during that interview, conducted in the form of a conversation between a subject and a police officer posing as friendly and non-judgemental. It seemed to work to place the subject at ease and obtain confidences from him. However, what the Court needs at the end of the trial are answers covering essential issues of who, when, where, what and how as it pertains to the charge as particularized. The issue in this trial is use of cocaine by Leading Seaman Edwards at the time and place laid out in the charge, not generally whether he purchased or used cocaine on other occasions.

[15] It is, of course, not impermissible for a Court, in the absence of direct evidence, to draw inferences sought by a party from proven facts. An inference is a deduction of fact that may be logically and reasonably drawn from another fact or group of facts established in the proceedings. However, there must be an objective evidentiary basis from which to infer the facts a party seeks to establish, otherwise, no inference is available, only impermissible speculation and conjecture. An inference of guilt drawn from circumstantial evidence should be the only reasonable inference that the evidence permits.

[16] Whether or not an inference is drawn does not change the burden of proof on the prosecution, nor the standard of proof that the prosecution must meet, that is proof beyond a reasonable doubt.

[17] Indeed, a person facing criminal or penal charges is presumed to be innocent until the prosecution has proven his or her guilt beyond a reasonable doubt. This burden rests with the prosecution throughout the trial and never shifts. There is no burden on an accused to prove that he or she is innocent. That being said, a reasonable doubt is not an imaginary or frivolous doubt. It is not based on sympathy for or prejudice against anyone involved in the proceedings. Rather, it is based on reason and common sense. It is a doubt that arises logically from the evidence or from an absence of evidence. The burden of proof to establish guilt beyond a reasonable doubt does not include the added burden of negating every conjuncture to which circumstantial evidence might give rise and which might be consistent with the innocence of the accused.

[18] It is virtually impossible to prove anything to an absolute certainty, and the prosecution is not required to do so. Such a standard would be impossibly high. However, the standard of proof beyond a reasonable doubt falls much closer to absolute certainty than to probable guilt. The Court must not find Leading Seaman Edwards guilty unless it is sure he is guilty. Even if I believe that he is probably guilty or likely guilty, that is not sufficient. In those circumstances, I must give the benefit of the doubt to Leading Seaman Edwards and find him not guilty because the prosecution has failed to satisfy me of his guilt beyond a reasonable doubt.

Sufficiency of the evidence to prove the offence beyond reasonable doubt

Knowledge of the prohibition on drug use

[19] Uncharacteristically, I wish to comment first on one of the elements of *mens rea* required to find guilt, namely knowledge by the accused of the norm of conduct applicable to him. That norm is the prohibition at article 20.04 of the QR&O. In the absence of proof of publication and notification (QR&O 1.20 and 1.21 refer) of that regulation in this case, it is the actual knowledge of the expected norm by Leading Seaman Edwards that needs to be proven. This actual knowledge requirement was the reason for the testimony of Petty Officer 1st Class Gagne who produced the form found in Leading Seaman Edwards' personnel file.

[20] The defence submits that personal knowledge has not been established because the form titled "Canadian Forces Drug Control Program – Policy" obtained from Leading Seaman Edwards' personnel file is insufficient to prove that he knew of the prohibition found at QR&O 20.04. I agree. Although I can infer that Leading Seaman Edwards signed the document, as it was obtained from his personnel file, I must also be able to infer from his signature on that document that he was specifically aware of the prohibition of QR&O 20.04. Yet there are other facts relevant to this issue. Amongst them are the following:

- (a) first, the content and the wording of the form itself in which the very simple prohibition found in article 20.04 is inaccurately stated and mixed with other concepts which render it potentially difficult to comprehend;
- (b) second, the declaration part of the form, its *raison d'être*, has not been completed;
- (c) third, the form suggests that the person signing it consents to be tested at any time for improper drug use when there is no authority for such consent testing in legislation, regulations and orders applicable to the Canadian Forces Drug Control Program – this is in fact troubling; and
- (d) fourth, the completed names and dates on the form, combined with the testimony of Petty Officer 1st Class Gagne to the effect that the officer signing as a witness may not have been present when the applicant signed the form, suggests that the form may have been part of a bureaucratic process to which applicants submit to, without understanding what it fully entails.

[21] That last point is the theory of the defence. It constitutes a plausible theory or reasonable possibility arising from the evidence or lack thereof, specifically in the absence of testimony from someone present when the form was signed. In the circumstances, I must find that knowledge by the accused of the specific prohibition

found at article 20.04 of the QR&O is not the only reasonable inference that the evidence of the form produced by Petty Officer 1st Class Gagne permits. Consequently, I cannot infer knowledge of QR&O 20.04 by the fact that Leading Seaman Edwards has signed that form.

[22] That demonstration having been made, it remains in law that proof of the knowledge by the accused of the norm of conduct applicable to him does not require that the accused know specifically the source of that norm. In this case, what the prosecution needed to prove is that Leading Seaman Edwards knew that it was prohibited for him, as a member of the CAF, to use any drug.

[23] The prosecution referred to the statement of Leading Seaman Edwards to Master Corporal Sabalbal to the effect that he “Like, I knew I - - I shouldn’t be doing it, I was in the military. It’s stupid. I was - - I was in a rough spot.” (DVD time stamp 10:15:05 to 10:15:10) With respect, this statement does not prove that Leading Seaman Edwards knew of the prohibition on use of drugs. He is simply stating that it is stupid to be doing drugs while in the military. There are many reasons for that, some of which are at the core of the prohibition on drug use as explained in regulations and orders pertaining to the Canadian Forces Drug Control Program. Furthermore, any statement pertaining to the prohibition on drugs in the course of that interview may well have been tainted by the explanations provided to Leading Seaman Edwards at the beginning of his interview with the CFNIS investigator as to how the use of drugs constituted an offence under section 129 of the *NDA*. (DVD time stamp 09:52:03 to 09:52:36)

[24] However, I believe the exchange of text messages involving Leading Seaman Edwards and Leading Seaman Stow at Exhibit 4 on 10 February 2016 on tactics to avoid detection of drug use in urine are more telling as to the knowledge by Leading Seaman Edwards of the prohibition on the use of drugs and on drug testing, an important aspect of the Canadian Forces Drug Control Program.

[25] I can therefore infer from the evidence that proof of the knowledge by the accused of the norm of conduct applicable to him has been made. I find that this specific *mens rea* requirement has been met beyond a reasonable doubt. I will now turn to the *actus reus*, to analyze the contested elements of time and place of the offence, the element of identity having in fact been admitted by defence counsel in submissions.

Time of the offence

[26] The element of time of the offence is challenged by defence on the basis of an alleged dichotomy between the evidence of use, on the one hand, and purchase, on the other, by the accused and the time at which such activities would have occurred. What I retain from defence counsel’s submission is that although there are incriminating statements from the accused amounting to a confession as it pertains to the consumption of cocaine, the time frame of that consumption does not correspond to the dates mentioned in the particulars of the charge. The defence also acknowledges the evidence of text messages and other incriminating statements from the accused confronted with

electronic communication and bank transfers to Leading Seaman Stow to the effect that he purchased cocaine in the time frame and place described in the charge. However, it is submitted that this or these purchases are not what Leading Seaman Edwards is charged with, he is charged with using a drug, to wit cocaine.

[27] My careful and lengthy review of the details of the statement provided by Leading Seaman Edwards to the CFNIS investigator on 12 June 2017 reveals that use of cocaine was first brought up, unsolicited, by Leading Seaman Edwards in the course of a discussion on his use of marijuana. Leading Seaman Edwards stated that two years previously, while separated from his spouse, he was doing cocaine. (DVD time stamp 10:05:37 to 10:05:47) Two years before the interview would have been June 2015. Yet Leading Seaman Edwards was inconsistent on the timing of that period of break-up with the person he had been with since high school. He later said he got back with her at Halloween in 2014. In any event, I have to conclude that any confession of drug use by Leading Seaman Edwards at that point in his interview referred to a period of his life that is not within the timeframe of the charge he is facing in this trial.

[28] Later in the interview, in the context of exploring Leading Seaman Edwards' use of cocaine, Master Corporal Sabalbal asked him on two occasions when was the last time he had consumed. The first answer was that he had consumed cocaine about a year previously, that would have been June 2016. (DVD time stamp 10:15:39 to 10:15:47) The second answer was that he would have consumed at the time that he had exchanged the text messages with Leading Seaman Stow, that is in January 2016. (DVD time stamp 10:26:56 to 10:27:02) When first confronted with those messages in the course of the interview, Leading Seaman Edwards stated that he consumed cocaine with Leading Seaman Stow then, in what I perceive as an attempt not to implicate Stow in drug trafficking as invited by the investigator at that point in the interview. As the trier of facts, it is my duty to assess the reliability and credibility of all of the evidence, including a statement which may be considered as a confession by an accused. Considering the evidence Leading Seaman Edwards was subsequently confronted with and his admission about buying cocaine from Leading Seaman Stow, I believe he was, at that point in the interview, lying about that alleged instance of use with Leading Seaman Stow in an attempt to hide the real purpose of their interaction at the time. I cannot rely on these words as details of an instance of drug use by Leading Seaman Edwards.

[29] It remains that there is some evidence in the first answer by Leading Seaman Edwards about his use of cocaine that would place such use in the period covered by the charge namely between 25 September 2015 and 23 July 2016. The question is whether this evidence convinces me beyond a reasonable doubt of the element of time of the offence. The answer to this question is best obtained by analyzing the associated issue of the place of the offence, which the defence alleges has simply not been proven at all.

Place of the offence

[30] During the interview of Leading Seaman Edwards on 12 June 2017, the investigator asked about the means of delivery of the cocaine from Leading Seaman Stow to Leading Seaman Edwards. Cocaine would at times be delivered at Leading Seaman Edwards' place of residence. When asked where his place of residence was, Leading Seaman Edwards could not name the street, only that it was off Waverly or words to that effect (There being no transcripts made of that portion of the interview, I am left in doubt about the name of the street). There has been no evidence that this location was at or near Halifax, as particularized in the charge. I acknowledge that the answer provided appeared to satisfy the investigator: he seemed to know exactly where the deliveries had taken place. Yet I know a lot less about the location of Leading Seaman Stow's drug deliveries than the investigator does. No attempt was made to clarify the location of the offence with Master Corporal Sabalbal in his testimony before the Court.

[31] I must therefore agree with the defence that there is no evidence pointing to the location where the deliveries took place. Furthermore, the place of delivery of the cocaine by Leading Seaman Stow to Leading Seaman Edwards is not necessarily the place where the offence of use would have been committed, as indicated by defence counsel in submissions. This is especially so considering that a detailed examination of Leading Seaman Edwards' interview with the CFNIS reveals that Leading Seaman Edwards told the investigator that he had at times bought cocaine from Leading Seaman Stow for other people, to "do them a favour". (DVD time stamp 10:23:48 to 10:23:50) Conversation on that issue was cut short by the investigator, who informed Leading Seaman Edwards that this could be considered trafficking, an area of investigation that he apparently had no interest in exploring at that time.

[32] The question becomes whether I can infer from the facts established in this trial that the offence of using a drug took place at or near Halifax. There are things in evidence such as the location of the residence of Leading Seaman Stow in Dartmouth, that he was delivering drugs to Leading Seaman Edwards, who appeared then to have been posted to a unit in Halifax. Yet there is nothing in evidence on the location of the use of the drugs that Leading Seaman Stow would have been purchasing.

[33] That is the crux of the difficulties I am having with this case. As I sat in deliberation on a charge of using a drug, to wit cocaine, I find myself trying to establish what cocaine would have been used by the accused, when, where and how. This trial is about a charge of use of cocaine but it is based on an investigation focusing on the purchase of cocaine.

[34] The investigation appears to have limited its focus on a two-pronged narrative, on the basis of the recapitulation by the investigator at the end of the interview with Leading Seaman Edwards. The first of these narrative is that Leading Seaman Edwards has admitted to doing drugs, including cocaine, while going through a rough patch in his life, up to June 2016. Afterwards he stopped to ensure he is a good dad for his daughter. The problem is that this narrative is inconsistent with the evidence. Leading Seaman Edwards said his rough patch in life was in 2013-2014. His daughter would

have been born in 2015 as she was two at the time of the interview with the CFNIS in June 2017, as he stated to this investigator. Yet, I am not certain of these dates as they are related in a statement to police by someone who has just been confronted with the fact that military authorities have proof of his purchase of drugs, something that could not only end or damage his military career, hence livelihood but also, in this case, result in the breakdown of his marriage, from which he has a two-year-old daughter that he very much seems to care for. Although Leading Seaman Edwards participated voluntarily in the interview with investigators he appears confused on many things in the course of his discussion, including on dates. He was even unsure of the name of the street he lived on in 2016. He does not wish to rat on other members of the military so he lies. He is worried about what may happen to him. In relation to this narrative, while I do believe that Leading Seaman Edwards has been using cocaine in the past, there is too much confusion in Leading Seaman Edwards' statement to the CFNIS to allow me to infer beyond reasonable doubt that this use of cocaine was within the dates particularized in the charge.

[35] The second narrative is to the effect that Leading Seaman Edwards bought cocaine from Leading Seaman Stow on a number of occasions in 2015-2016, especially on one occasion detailed in the exchange of text messages in January 2016, which was specifically explored during the June 2017 interview, leading to an admission from Leading Seaman Edwards that he had purchased cocaine on that occasion, that is 22 January 2016. Yet at no point did the investigator focus on what Leading Seaman Edwards has done with this drug including when, where, how or with whom he had consumed it or any other delivery of one half gram or more of cocaine by Leading Seaman Stow. Even if the interview reveals discussion on previous use by Leading Seaman Edwards of cocaine ingested through his nostrils, that evidence related to events occurring in the 2013-2014 time frame. There are no details about consumption of the cocaine that would have been purchased from Leading Seaman Stow in 2015-2016, the period covered by the charge before me.

[36] I am asked to infer that Leading Seaman Edwards must have purchased this cocaine to use it. This is not an unreasonable inference to make. However, as mentioned previously, Leading Seaman Edwards stated during his interview that some of his purchase made from Leading Seaman Stow were for the use of other persons. The investigator chose not to pursue this area of investigation and I do not know how many purchases were for others. I do not know whether the specific purchase discussed in details in the text messages placed before him during the interview was for use by him or someone else. I cannot therefore dismiss as unreasonable the possibility that the admission of purchase that he made in relation to the 22 January 2016 transaction and/or others may have been for the use of other persons. In relation to this narrative too, there is a conclusion alternative to the guilt of the accused that I cannot dismiss and which creates a reasonable doubt in my mind.

Conclusion on the evidence

[37] I conclude that the elements of time and place of the offence have not been proven beyond a reasonable doubt. To be clear, this is not a case where a special finding under section 138 of the *NDA* can be made: enlarging the period covered by the offence to go as far back as 2013 would be prejudicial to the defence. Defence counsel elected not to call evidence on the basis of the case to meet, which included the insufficiency as to time of the offence that the defence identified in arguments shortly thereafter. As for the place of the offence, there were no facts proven that would allow for a special finding to be made.

[38] My finding on the lack of evidence on time and place also applies to the essential element of proof of use. This is not a case where an attempt has been made out, although I am not convinced that conduct to the prejudice of good order and discipline based on contravention of a regulation through the deeming provision of subsection 129(2) can lead to a finding of guilt based on an attempted contravention. That discussion is for another day however.

[39] I am unable to make the inferences requested by the prosecution to conclude that Leading Seaman Edwards is guilty of cocaine use as charged. As a judge acting judicially, I cannot fill in the blanks or bridge the gaps in the evidence to support the inferences sought to be drawn by the prosecution. The evidentiary basis from which to infer the facts the prosecution seeks to establish is not strong enough to allow me to draw inferences without relying on impermissible speculation and conjecture. An inference of guilt drawn from circumstantial evidence should be the only reasonable inference that the evidence permits. That is not the case here.

[40] The not guilty finding I am about to pronounce is not a statement approving or condoning the actions of Leading Seaman Edwards. It is a recognition that the proof beyond a reasonable doubt of an offence of drug use is extremely difficult to make. No one has contested my cursory research to the effect that there has been no contested court martial cases of drug use in the last 20 years which have resulted in a conviction. There is some evidence that Leading Seaman Edwards used and purchased drugs while serving in the CAF. That evidence may well have been deemed sufficient to take administrative action in relation to Leading Seaman Edwards in application of the Canadian Forces Drug Control Program and its accompanying Manual, tools that are designed to minimize the impact that illicit drug use may have on the morale and efficiency of the CAF. However, it is not sufficient to arrive at a finding of guilt beyond a reasonable doubt on the specific charge brought before this court martial.

[41] There is no blame intended in relation to investigators from the CFNIS in my finding. It would appear that the main purpose of the interview of Leading Seaman Edwards was to tie up the loose ends of the investigation targeting Leading Seaman Stow, namely completing investigation on purchases of cocaine from that subject who was very much deserving of the energies of investigators, as are any traffickers and those otherwise contravening the *Controlled Drugs and Substances Act (CDSA)*.

[42] In the absence of specific evidence of drug use in the timeframe specified in the charge, the prosecution was, in my view, asking the Court to use the suspicious circumstances of Leading Seaman Edwards to substitute conjecture and speculation for inferences which would have been properly drawn from established facts. (See *Drug Offences in Canada*, Fourth Edition, by Bruce A. MacFarlane, Q.C., Robert J. Frater, Q.C., Croft Michaelson, Q.C (Aurora: Canada Law Book, 2018) at para. 17:100.40.60 at page 17-64 of Volume 2 (looseleaf))

[43] In fact, considering the difficulties of proving illicit drug use as well as the availability of administrative processes in the Canadian Forces Drug Control Program that appears to operate well to help ensuring the efficiency of the CAF as well as sanction and assistance to those who have used drugs, it may be worth considering whether military prosecutors as well as unit authorities and their legal advisors would make a better use of their time focusing on other crimes instead of duplicating sanctions pertaining to the violation of the prohibition at QR&O 20.04 when the alleged offence is limited to drug use and not possession or traffic in violation of the *CDSA*. This consideration may be especially relevant given the current delays in bringing serious crimes against the person to courts martial, as evidenced by the recent Judge Advocate General Annual Report and numerous comments in the media, even earlier this week. Indeed, investigative and prosecutorial resources are limited.

[44] This concern is also valid from a military leadership point of view. Given the difficulties of proving illicit drug use which occurs typically in private, members tried for drug use by summary trial or courts martial are often those who collaborate with authorities. It may be worth reflecting on whether administrative sanctions alone are sufficient to separate those who need to be separated from the CAF community and to help the others who remain in the CAF to make a useful contribution once they have overcome the difficulties they have had with drug use.

FOR THESE REASONS, THE COURT:

[45] **FINDS** Leading Seaman Edwards not guilty of charge number one.

Counsel:

The Director of Military Prosecutions as represented by Major M.L.P.P Germain and Lieutenant (N) S.W. MacLean, Counsel for Her Majesty the Queen

Major A. Bolik and Lieutenant(N) C.J. Punshon, Defence Counsel Services, Counsel for Leading Seaman C.D. Edwards