



## COURT MARTIAL

**Citation:** *R. v. Pattullo*, 2003 CM 310

**Date:** 20030925

**Docket:** F200331

Standing Court Martial

Canadian Forces Base Edmonton  
Edmonton, Alberta, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Corporal D.A. Pattullo, Accused**

**Before:** Lieutenant-Colonel M. Dutil, M.J.

---

### **FINDING**

(Orally)

[1] Corporal Pattullo is charged with two offences under the Code of Service Discipline. The first charge alleges a contravention by Corporal Pattullo of section 83 of the *National Defence Act*; that is, disobedience of a lawful command of a superior officer. The second charge relates to paragraph 125(a) of the *National Defence Act* for wilfully making a false entry in a document required for official purposes.

[2] These charges arise from a series of events that allegedly occurred on or about 23 March 2003 at Camp Black Bear, Velika Kladusa, Bosnia and Herzegovina.

[3] Let me deal first with the presumption of innocence and the standard of proof beyond a reasonable doubt.

[4] It is fair to say that the presumption of innocence is perhaps the most fundamental principle in our criminal law. In matters dealt with under the Code of Service Discipline, as in cases dealt with under criminal law, every person charged with a criminal offence is presumed to be innocent until the prosecution proves his or her guilt beyond a reasonable doubt. An accused person does not have to prove that he or she is innocent. It is up to the prosecution to prove its case, on each element of the offence, and that, beyond a reasonable doubt.

[5] The standard of proof beyond a reasonable doubt does not apply to the individual items of evidence or to separate pieces of evidence that make up the prosecution's case, but to the total body of evidence upon which the prosecution relies to prove the guilt. The burden or onus of proving the guilt of an accused person beyond a reasonable doubt rests upon the prosecution and never shifts to the accused person.

[6] A court must find an accused person not guilty if it has a reasonable doubt about his or her guilt after having considered all of the evidence.

[7] The term "beyond a reasonable doubt" has been used for a very long time. It is part of our history and traditions of justice in Canada. In *R. v. Lifchus*, [1997] 3 S.C.R. 320, the Supreme Court proposed a model charge on reasonable doubt, and the principles laid out in *Lifchus* have been applied in a number of Supreme Court subsequent decisions.

[8] In substance, a reasonable doubt is not an imaginary or frivolous doubt. It must not be based on sympathy or prejudice. Rather, it is based on reason and common sense. It must logically come from the evidence or the lack of evidence.

[9] In *R. v. Starr*, [2000] 2 S.C.R. 144, at paragraph 242, the Supreme Court held that:

[A]n effective way to define the reasonable doubt standard for a jury is to explain that it falls much closer to absolute certainty than to proof on a balance of probabilities.

[10] On the other hand, it should be remembered that it is virtually impossible to prove anything to an absolute certainty and the prosecution is not required to do so. Such a standard of proof is impossibly high.

[11] The prosecution only has the burden of proving the guilt of an accused, in this case, Corporal Pattullo, beyond a reasonable doubt. To put it in the perspective, if the court is convinced that the accused is probably or likely guilty, then the accused shall be acquitted.

[12] As I said earlier, the proper approach to the burden of proof is to consider all of the evidence together and not to assess individual items of evidence in isolation. It is essential that the credibility and reliability of the witnesses be tested in light of all of the evidence presented.

[13] In this case, the accused has chosen to testify. It is fair to say that his version of events contradicts, in some areas, the evidence heard from the prosecution witnesses. In addition, some elements of the accused's evidence is not corroborated.

[14] As the rule of reasonable doubt also applies to the issue of credibility, the court is not required to definitely decide on the credibility of a witness or a group of witnesses, nor does the court need not fully believe or disbelieve one witness or a group of witnesses. If the court has a reasonable doubt as to the guilt of Corporal Pattullo arising from the credibility of the witnesses, then the court must find him not guilty.

[15] In a case as this one where credibility is important and where the accused testified on his own behalf, the law requires that a court find the accused person not guilty: first, if the court believes the accused; and second, even if the court does not believe accused, but the court still has a reasonable doubt as to the accused's guilt after considering the accused's evidence in the context of the evidence taken as a whole.

[16] Finally, if, after a careful consideration of all the evidence, the court is unable to decide whom to believe, then the court must find the accused not guilty.

[17] In the decision *R. v. W.(D.)*, [1991] 1 S.C.R. 742 at page 757, Cory J, as he then was, proposed a three-pronged test or instruction on the assessment of credibility as it relates to the issue of reasonable doubt. He said:

First, if you believe the evidence of the accused, obviously, you must acquit.

Secondly, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.

Thirdly, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[18] In *R. v. Mah*, (2002), 167 C.C.C. (3d) 401, at page 414, the Nova Scotia Court of Appeal illustrated how the guidance and principles listed by Cory, former J, ought to be regarded, and I quote:

[41] The *W.(D.)* principle is not a “magic incantation” which trial judges must mouth to avoid appellate intervention. Rather, *W.(D.)* describes how the assessment of credibility relates to the issue of reasonable doubt. What the judge must not do is simply choose between alternative versions and, having done so, convict if the complainant's version is preferred. *W.(D.)* reminds us that the judge at a criminal trial is not attempting to resolve the broad factual question of what happened. The judge's function is the more limited one of deciding whether the essential elements of the charge have been proved beyond reasonable doubt: see *R. v. Avetyan*, [2000] 2 S.C.R. 745 at 756, [2000] S.C.J. No. 57 (QL), 149 C.C.C. (3d) 77. As Binnie J. put it in *Sheppard*, the ultimate issue is not whether the judge believes the accused or the complainant or part or all of what they each had to say. The issue at the end of the day in a criminal trial is not credibility but reasonable doubt.

[19] Having instructed myself as to the onus and standard of proof, I will now examine the facts of this case as revealed by the evidence put before this court.

[20] The evidence before this court consists of the testimonies of Captain Frei, Captain Somerville, Petty Officer 1st Class Lamorie, Master Seaman Stevens, Corporal Lyver, Captain Indewey, Corporal Demers, and Corporal Pattullo.

[21] In addition, the evidence consists in the admissions made the defence that have been reproduced in writing and filed before the court as Exhibit 3, and the following exhibits are also in evidence:

Exhibit 4, which consists of two identical documents, described by various witnesses as both originals. These documents are entitled “Daily Occurrence Book” with a DOB number 0091/03, signed by Corporal Pattullo. In summary, this document indicates that Corporal Pattullo found a switchblade in the male washroom, gym floor, main building, at Camp Black Bear, Velika Kladusa, Bosnia and Herzegovina at 1945 hours on 23 March 2003 while conducting the DAG for departing personnel and that the item was recorded in the Found Property Register as number 32/03, and the documents show the signature of the reviewing military police (MP) officer, in this case, Master Seaman Stevens, who testified during these proceedings. Exhibit 4 would be the instrument that would contain the alleged false information according to the prosecution;

Exhibit 5 is a certified true copy of a document entitled “Articles Found Register” for ROTO 11 indicating that Corporal Pattullo filed and registered a switchblade, silver in colour, under number 32/03;

Exhibit 6 is a butterfly knife;

Exhibit 7, a Property Tag form 241 (8-90) with annotations describing that Corporal Pattullo found the tagged property, a switchblade knife, silver in colour, in the male washroom, gym floor, main building. This document describes the alleged owner of that property as an unknown person;

Exhibit 8 is an email dated 30 October 2002 from Petty Officer 1st Class Lamorie to a list of addressees that did not include Corporal Pattullo; and

Exhibit 9, another email from Petty Officer 1st Class Lamorie dated 22 March 2003, which lists this time Corporal Pattullo as an addressee.

[22] Finally, the evidence before this court is completed by the court taking judicial notice of those facts and matters contained in Military Rule of Evidence 15.

[23] Now turning to the facts. All the witnesses heard by the court, except Captain Frei, were serving in Bosnia and Herzegovina during what was referred to OP PALLADIUM, ROTO 11. Captain Frei was part of ROTO 12 as the investigation team leader for the National Investigation Service. Captain Frei arrived in theatre in early March 2003; that is, during the last month of ROTO 11.

[24] The facts leading to the incident can be summarized along this way. Military police higher authorities for ROTO 11, that is, Captain Somerville and Petty Officer 1st Class Lamorie, located at Camp Black Bear, Velika Kladusa, formed the opinion shortly after their arrival in theatre, in October 2002, that there had been a failure of the military police and the Canadian Forces (CF) authorities to deal properly and effectively with the issue of possession, discovery, and handling of prohibited weapons during ROTO 10 where personnel found in possession of those weapons enjoyed a *de facto* amnesty. The items were seized, but the matters were not properly investigated and processed through the chain of command for the purpose of laying charges where it was appropriate.

[25] As a result of that policy of tolerance, a box was found at the MP detachment that contained a significant number of prohibited weapons, including knives. Petty Officer 1st Class Lamorie had decided that things would change for ROTO 11 and that this would not be an issue anymore.

[26] The contingent chain of command and the legal advisors were consulted and it was decided that a policy would be put in place in order that persons found illegally in possession of prohibited weapons would be the subjects of police investigations, and ultimately, charges would be laid by the chain of command. This policy was meant to

address safety and security concerns as well as CF reputation and credibility, especially when CF personnel entered Canada through customs.

[27] It was determined that the military police and disciplinary authorities would implement the policy through an education programme and a rigorous enforcement. The education aspect included briefings on the topic of prohibited weapons and the consequences of being in possession of those weapons. These briefings were given as part of general briefings given to the contingent members prior to departing the area of operations on home leave travel assistance, rest and recuperation (R&R), and redeployment. In the case of redeployment, at Departure Assistance Group briefings referred to as DAGs.

[28] The policing aspect of the policy, as intended by the military police higher echelon, was to ensure that suspects would be investigated to determine facts such as where the weapon came from, what was the intended use for the weapon, and any other relevant fact or information. This information would be processed using existing police tools and methods such as DOB entries, register, MP reports, and ultimately, recommendation would be made to lay charges.

[29] Unit authorities would finally decide whether to lay or not lay charges against CF members found illegally in possession of prohibited weapons. The evidence reveals that Petty Officer 1st Class Lamorie passed information to his immediate subordinates to ascertain that this policy would be implemented by the military police serving in Bihac, although the exact nature of the information on the subject passed to the accused, by whom and where, is not that clear.

[30] Members of the military police received briefings like any other members of the contingent on this policy. Corporal Pattullo received information on the issue of prohibited weapons at a briefing in November 2002 prior to his departure on R&R as reported by Petty Officer 1st Class Lamorie who was also present at that briefing.

[31] According to the evidence, the issue of prohibited weapons was often discussed by MP authorities and staff, formally and informally. The topic was discussed at dinners and on many other occasions. As stated by Petty Officer 1st Class Lamorie, the MP personnel in Velika Kladusa formed a close family, and they were somewhat removed from the other members of the contingent because of the nature of their functions. Corporal Pattullo testified that he never discussed these issues with anyone nor was he present where that topic would have been discussed.

[32] On 22 March 2003, Petty Officer 1st Class Lamorie issued an email to the military police members under his command, including Corporal Pattullo, to make sure that there would be someone from his staff present at the DAG the next day. Attached to Petty Officer 1st Class Lamorie's email, there is a message from a Captain Bauer, TFBH-NSE HQ at Velika Kladusa, concerning the specifics of the DAG and relevant information such as a reminder of prohibited articles, such as brass knuckles, butterfly knives, empty shell casings, replica or toy weapons, war souvenirs, switchblades, oriental throwing stars, and ammunition. That email states that these items are illegal, and MPs will be at DAGs, and that an individual found in possession of such items will face disciplinary action.

[33] There is no evidence that Corporal Pattullo received or read Petty Officer 1st Class Lamorie's email, including its attachment, prior to the DAG that took place on the 23rd of March, 2003. Corporal Pattullo testified that he could not have read it prior to March 24, 2003 or the Monday after the DAG.

[34] Captain Somerville, Petty Officer 1st Class Lamorie, and Master Seaman Stevens all testified as to whether or not a patrolman had any discretion in the handling of a case dealing with the possession of a prohibited weapon. It seems that the professional standards for the military police are such that only military police in a supervisory role can conclude or suspend an investigation. MP patrol persons are not authorized, unlike investigators from the National Investigation Service or their civilian counterparts from other police forces, to lay charges.

[35] On that issue, they do not enjoy that discretionary power. It is recognized, however, that MP patrol persons enjoy a certain degree of discretion in the performance of their duties, in cases such as minor traffic offences or similar incidents of a minor degree.

[36] In other cases, they are expected to investigate and report in writing when a suspect is identified and an offence is committed. Cases dealing with possession of prohibited weapons were not considered, at least from the perspective of Captain Somerville and Petty Officer 1st Class Lamorie, as minor offences.

[37] The prosecution, through various witnesses, such as Captain Somerville, Petty Officer 1st Class Lamorie, and Master Seaman Stevens, tried to establish what is meant by an investigation. For these witnesses, it is generally understood that the complexity of the investigation and seriousness of the crime would affect the level of formality of an investigation.

[38] For example, a DOB entry may suffice in a minor incident where a formal MP report would be required in more serious situations. However, some form of written document would be generated for each incident. That is what is expected of a member of the military police when performing policing duties and is part of their professional standards.

[39] Turning now to the specifics of the events that occurred on 23 March 2003. Master Seaman Stevens testified that he was the second in command of the MP Patrol Detachment in Velika Kladusa during ROTO 11 of OP PALLADIUM. As such, Corporal Pattullo was his subordinate and the latter worked under the direct supervision of Master Corporal Street.

[40] He was aware of the issue of prohibited weapons that was highlighted by his chain of command further to the quasi-amnesty policy during ROTO 10 and stated that this was a heated topic of discussions between members of the military police, including Corporal Pattullo. He said that the subject was discussed several times amongst them and that they would investigate incidents of that nature. This last element is denied by Corporal Pattullo.

[41] Master Seaman Stevens said that on the 23rd of March 2003, he spoke to Corporal Pattullo, at his ISO, at approximately 1530 hours, in order to give him the order to attend at the DAG later that day, as a part of the battle group would arrive to complete their DAG prior to redeploying to Canada on the first flight, the next day. Military police were to provide assistance and advice to the traffic technicians conducting the inspections and investigate any incident if required.

[42] Although Master Seaman Stevens does not remember the exact words he used when he gave the order to Corporal Pattullo, he indicated that he ordered Corporal Pattullo to attend the DAG, if prohibited weapons were to be found, Corporal Pattullo was required to investigate, and as part of that investigation, Corporal Pattullo was to seize the illegal item, identify the individual and the prohibited weapon, and make a military police report. That order was never reduced in writing by Master Seaman Stevens nor did he ever make notes to that effect.

[43] On 25 March 2003, two days after the DAG, he was interviewed by Captain Frei in relation to the incident that brought us in court this week. At that time, he was not required to make any statement as to what was the exact order he gave to Corporal Pattullo on the 23rd of March, 2003 nor did he offer to provide one.

[44] The court noted, however, that Master Seaman Stevens recognized in his testimony that he had been less precise in describing the content of the order in his interview with Captain Frei on 25 March 2003 because he only answered questions that were put to him at the time and it is only in September of this year, at the request of the prosecutor, that he added details.

[45] The defence admitted that Master Seaman Stevens's order to Corporal Pattullo, to investigate any members who were found in possession of a prohibited weapon, a lawful order.

[46] The evidence reveals that the DAG held in the gym of the main building between 1800 and 1830 hours on 23 March 2003. The battle group personnel scheduled to leave on the first flight, the next day, were doing their out-routine procedures including the checks of their unaccompanied baggage by the traffic technicians working for Central Material Traffic Terminal. There was approximately six large tables where the Traffic Techs performed the inspection of unaccompanied baggage in the presence of their owners.

[47] Corporal Lyver testified that while she was inspecting the unaccompanied baggage to find dangerous items, including prohibited weapons, she found a prohibited weapon in a bag that belonged to a Corporal Demers. It was a knife and it was located under some clothes in his barrack box. She told Corporal Demers that she had to advise the military police of her discovery.

[48] She described the knife as a butterfly knife of silver colour. She testified that Exhibit 6 is a knife that looks similar to the one she found in Corporal Demers's barrack box because she had noticed the particular design of the knife at the time, especially the particular groove on the handle. She had not seen any knife with a similar design in the past although she had discovered other prohibited knives previously but none that particular day. So after her discovery, Corporal Lyver informed her superior, a sergeant. Then Corporal Pattullo arrived at her table which had on it, Corporal Demers's barrack box and the butterfly knife.

[49] She stated that while she was continuing her inspection of Corporal Demers's property, she overheard a conversation between Demers and Pattullo. According to Corporal Lyver, Corporal Pattullo asked Corporal Demers if he wanted him to throw it away. She was surprised to hear that, as there was no amnesty in place for prohibited weapons, although she was not familiar with the military police procedures.

[50] At that time, Corporal Pattullo had the knife in his hands and thought, according to him, that it was a switchblade since he is not an expert in the matter of prohibited weapons.

[51] Corporal Demers responded to Corporal Pattullo, but Corporal Lyver could not say what he said; however, Corporal Lyver said that Corporal Demers looked shocked but indifferent. The conversation would have lasted seconds according to Corporal Lyver. She added that she never saw the knife leaving Corporal Pattullo's hands. The inspection of Corporal Demers's baggage took between 10 to 15 minutes.

[52] Corporal Pattullo testified that during his conversation with Corporal Demers, he gave him several options regarding how he would handle the matter. Corporal Pattullo said that he chose to talk to Corporal Demers and asked him how he got the knife, what were his intentions, if he knew that he was committing an offence, and why the knife was in his luggage. This is what Corporal Pattullo described as conducting a mini-investigation.

[53] Corporal Pattullo told the court that he believed that Corporal Demers did not know that the knife was a prohibited weapon and that he was honest and truthful in response to his questions.

[54] Corporal Lyver testified that Corporal Pattullo left her table as she was still inspecting Corporal Demers's baggage and only a few minutes after finding the knife. She observed the military police leaving the area towards the kitchen area which was in the direction opposite of the washrooms.

[55] Captain Indewey, who was responsible for the DAGs during ROTO 11, testified that he observed Corporal Lyver give the butterfly knife found in Corporal Demers's barrack box to Corporal Pattullo at the time. He was approximately ten feet away.

[56] He described Exhibit 6 to be similar to the knife found at that time. He added that the day after, he inquired with Corporal Pattullo's superiors; that is, Master Corporal Street and Master Seaman Stevens, as to whether Demers was allowed to depart on the redeployment flight.

[57] Corporal Demers corroborated Corporal Lyver's testimony and testified that Exhibit 6 is the knife that was seized from his barrack box on 23 March by Corporal Lyver and handed to the military police.

[58] He said that he was questioned by the military police as to why he had the knife in his bags. Corporal Demers testified that he did not know at the time that the knife was illegal, also that he paid only between five to ten dollars for that knife in Split, Croatia. His knowledge about whether or not the knife was a prohibited weapon was supposedly because he did not receive a specific briefing to that effect because he was serving in Behac at the time.

[59] Corporal Demers testified that he had used the knife as a tool for approximately a period of five months. He used it to clean his C7 bolt, as well as for other uses. He described how he used the knife and he explained the markings and scratches on it. In particular, he testified that it was his knife because the metal was partly stained at a specific area, the last letters of the word "stainless" engraved at the base of the blade were almost erased or faded.

[60] In addition, he said that the distinct circles and diamonds were particular to his knife. He added that he does not know what happened to the knife after that time. He did not give his particulars to the police or, at least, he does not remember having provided that information.

[61] Corporal Demers stated that he spent approximately ten minutes with the military policeman by the table as there were approximately seven persons awaiting in line to be processed. He said that he never left with the military police. Also, Corporal Demers could not remember if he was given the knife back at any time after.

[62] Corporal Demers did say in cross-examination that he still had concerns about what could happen to him for being found in possession of that knife in March 2003. He also said in cross-examination that he did not describe the markings and scratches in so many details when asked by the police in order to ascertain that it was his knife.

[63] Corporal Demers stated at the end of his cross-examination that he could not be absolutely certain that Exhibit 6 was his knife. Corporal Demers could not remember if he had a second meeting with the military policeman that seized his knife on 23 March 2003, but stated that he did not attend at the MP detachment in Velika Kladusa.

[64] Corporal Pattullo would have left the DAG with Corporal Demers's knife in his pocket after having agreed together that they would meet later that evening at the MP Detachment. Corporal Pattullo would have left around 1930 hours that day.

[65] He testified that he then inspected the men's washroom and found a knife on a toilet water tank as he reached up. Corporal Pattullo said that the second knife would have

been found at approximately 1918 hours. Corporal Pattullo said that he had Corporal Demers's knife in his pocket at the time. He would have put the second knife, identical to the first one, in the same pocket. The knives had similar handles and were both silver. He then proceeded to the MP patrol section and filled Exhibit 4, the DOB entry, and Exhibit 7, the property tag.

[66] Corporal Pattullo further testified that he then went to the mess hall where he saw Petty Officer 1st Class Lamorie, Sergeant Hayes, and Master Seaman Stevens and told them that he had found a knife in the bathroom, but he did not mention anything about Corporal Demers's knife discovered by Corporal Lyver during the DAG because he wanted to talk to Corporal Demers a little more to ascertain what he would do. He felt that Demers was repentant, truthful, and did not have the mental element required for the offence.

[67] In the meantime, Corporal Pattullo would have been to the MP section, of course, to dispose of the knife and fill the documents that I've stated before. Corporal Pattullo said that he located Corporal Demers later that night at or near the Junior Ranks' Mess where Corporal Demers was having his two beers, although Corporal Demers has no memory of that meeting.

[68] Corporal Pattullo said that he used his discretion and treated this incident like if it was a minor traffic offence because Corporal Demers had told him that this incident could cause him some grief in his attempt to transfer to the Regular Force. Corporal Demers would have asked him for a break, and Corporal Pattullo would have agreed.

[69] Corporal Pattullo testified that he gave the remaining knife back to its owner and instructed Corporal Demers not to take it back to Canada and dispose of it in a dumpster or garbage. Corporal Pattullo said that he had given his word to Corporal Demers that he would not report the matter through his chain of command, and this was a matter of his own credibility.

[70] Corporal Pattullo never inquired, according to him, directly or indirectly, as to Corporal Demers's particulars such as his name or service number.

[71] This summarizes, in a nutshell, the evidence that was presented to the court in relation to the incidents that form the basis of the charges laid against Corporal Pattullo, and I wish to state again, that this is a summary of the evidence that we had with eight witnesses.

[72] Turning now to the applicable law, I will discuss the elements of the particular offences that the prosecution must prove beyond a reasonable doubt in this case.

[73] As it relates to the first charge, of course, it alleges a breach of section 83 of the *National Defence Act*, in that Corporal Pattullo, on or about 23 March 2003, at Camp Black Bear, Velika Kladusa, Bosnia and Herzegovina, did not conduct a military police investigation into the discovery of a prohibited weapon as he was ordered to do so by Master Seaman Stevens, his superior.

[74] The elements of this offence are:

First, the identity of the offender, as alleged in the charge; that is, Corporal Pattullo;

Second, the date and place of the offence; that is, on or about 23 March 2003, at Camp Black Bear, Velika Kladusa, Bosnia and Herzegovina;

Third element is the act itself or the disobedience. In this case, it refers to an omission; in that, Corporal Pattullo did not conduct a military police investigation into the discovery of a prohibited weapon;

Fourth, the act or omission, of course, was contrary to an order given. Here it's alleged that the order was given by Master Seaman Stevens;

Fifth, that the order was lawful;

Sixth, that the order was given by a superior officer. Here, of course, it is alleged that Master Seaman Stevens was such a person; and

Seventh, the seventh element, of course, the guilty intent of the accused person.

[75] The only issue as it relates to the first charge is whether or not Corporal Pattullo did investigate, as he was required to do so by Master Seaman Stevens. The prosecution submits that there was no investigation within the meaning of police practices and standards as it was conveyed by the prosecution witnesses, and, in addition, the prosecution argues that Corporal Pattullo's actions amounted to the perpetuation of a criminal offence and a cover-up.

[76] The defence argues that there was some commencement of investigation, a mini-investigation, although the defence concedes that it may have been a bad one. The

defence argues that the accused may have been negligent in the performance of his policing duties, but the defence alleges that this was not the charge before this court.

[77] The defence submits that the meaning of the word “investigate”, in the context of this charge, should be its ordinary meaning and not a specialized meaning within a distinct environment.

[78] The second charge alleges a contravention of paragraph 125(a) of the *National Defence Act*. It is alleged that Corporal Pattullo:

[O]n or about 23 March 2003, at Camp Black Bear, Velika Kladusa, Bosnia and Herzegovina, made an entry in a military police Daily Occurrence Book, indicating that a switchblade had been found in a washroom, knowing the said information was false.

[79] The elements of this offence are:

First, of course, the identity of the offender, as alleged in the charge; that is, Corporal Pattullo;

Second, of course, the date and place of the offence, so 23rd of March, at Camp Black Bear, Velika Kladusa, Bosnia and Herzegovina;

Third, the fact that the accused made a false entry, and the entry being that a switchblade had been found in a washroom, in a document entitled “Military Police Daily Occurrence Book”;

Fourth element is the fact that the accused, Corporal Pattullo, made that entry wilfully;

Fifth, that the fact that the accused had the knowledge that the entry was false;

Sixth, that the entry was made in a document; that is, a Military Police Daily Occurrence Book that was required for official purpose; and

Seventh, the last element, that Corporal Pattullo had a blameworthy state of mind.

[80] The defence suggests that the only issue as it relates to the second charge is whether Exhibit 6 is the same knife that was seized from Corporal Demers on 23 March 2003.

[81] As I said earlier, the prosecution must prove beyond a reasonable doubt all the essential ingredients or elements of each offence, and the accused does not have to prove anything.

[82] The nature of the evidence in this case requires this court to make certain findings as to the credibility of various witnesses and this is not a matter where someone can choose between the version of the accused or of other witnesses.

[83] In assessing the evidence, the court has concluded that the witnesses could be divided into four categories.

[84] First, Corporal Pattullo. Corporal Pattullo testified, he was examined, and he was also the subject of a vigorous cross-examination. In assessing Corporal Pattullo's evidence and credibility, the court analysed his evidence in light of all the evidence.

[85] In particular, the court looked carefully at the testimonies of Captain Somerville, Petty Officer 1st Class Lamorie, Master Seaman Stevens, Corporal Lyver, Captain Indewey and Corporal Demers.

[86] Corporal Pattullo is an experienced member of the military police who had one previous deployment prior to ROTO 11. Corporal Pattullo emphasized that he had not been given direct and specific guidelines from his chain of command on the issue of prohibited weapons and his duty to investigate when confronted to a prohibited weapon and suspects, and therefore, he didn't know that the issue of prohibited weapons was real.

[87] This position is somewhat inconsistent with the admissions made by the defence, contained in the document filed and marked as Exhibit 3. The evidence before the court established that the members of the military police detachment lived very closely in Velika Kladusa. Camp Black Bear is not only a small camp, but more importantly members of the military police lived, played, and ate together outside their normal working hours.

[88] The court is satisfied that Corporal Pattullo knew that the chain of command wanted to enforce their policy on prohibited weapons. Be it otherwise would not only be illogical, but would amount to question Corporal Pattullo's own physical presence on camp.

[89] Corporal Pattullo said that Master Seaman Stevens only told him to go to the DAG on the 23 March and did not mention anything about conducting an investigation if

Corporal Pattullo would find a prohibited weapon. The question related as to what were the exact words pronounced by Master Seaman Stevens when he ordered Corporal Pattullo to attend at the DAG on 23 March 2003 is not essential in this case. However, the court is satisfied that Master Seaman Stevens told Corporal Pattullo to investigate as it has been admitted by the defence at Exhibit 3. This fact corroborates Master Seaman Stevens's testimony.

[90] In light of all the evidence, in particular, the testimonies of Captain Indewey, Corporal Lyver, and Corporal Demers, the court accepts that Corporal Pattullo decided to give a break to Corporal Demers and gave his word that he would not report the discovery of the knife.

[91] The discovery of an identical knife in the bathroom by Corporal Pattullo shortly after the DAG, as well as his version of the facts that he would have put that second similar knife in the same pocket, is not believed. The court does not believe the accused on that point. The court does not believe the accused either when he described how he went looking for Corporal Demers afterwards and ultimately gave him the knife back for disposal in a dumpster.

[92] This does not stand in light of the evidence given by Corporal Lyver and Corporal Demers. If Corporal Pattullo would have wanted to pursue the matter in the first place with Corporal Demers, he would have had at least asked him his particulars as any policeman, not only an experienced policeman, would have done.

[93] As far as Corporal Pattullo was concerned, the matter was over when he left the table after his discussion with Corporal Demers by the side of the table. The court believes Corporal Demers on that point.

[94] During his testimony, the court found that Corporal Pattullo was reticent, evasive, and purposely tried not to answer questions put to him. He was argumentative in his cross-examination and told the prosecutor several times that he had already answered to a question rather than answering it directly.

[95] He did not see anything wrong or substandard in the fact that he did not ask the name of Corporal Demers when a prohibited weapon was found in his baggage. He also told the court that he had to rely on a Traffic Tech as to whether the knife was illegal, a butterfly or a switchblade, because he is not an expert. He has been a policeman, including an investigator, for eleven years.

[96] During that same DAG, he had provided advice to other Traffic Techs on four or five occasions in the determination of whether an instrument was a prohibited weapon. Corporal Pattullo's testimony is filled with illogical statements and inconsistencies, and his testimony on essential aspects such as his interaction with Corporal Lyver and Demers, as well as the discovery of an identical knife in the male washroom, is not believed.

[97] The second category of witnesses are what the court calls the members of the military police; that is, Captain Frei, Captain Somerville, Petty Officer 1st Class Lamorie, and Master Seaman Stevens.

[98] This group represents, but for Captain Frei, members of the accused's military police chain of command. One may argue that they all have a vested interest in this case, but the evidence before this court would not support such a statement. Captain Somerville and Petty Officer 1st Class Lamorie have testified to their concerns concerning the handling and disposal of prohibited weapons when they arrived in theatre.

[99] They explained the policy put in place at the time and the enforcement measures attached to that policy. In the court's view, they have testified in an unbiased, helpful, and truthful manner. They explained and agreed that members of the military police enjoyed a certain level of discretion in the performance of their military police duties, and they explained as well how, and in what context, that discretion could be exercised.

[100] These witnesses provide context to the overall picture, but they are not instrumental to any significant issue in this case.

[101] The third category is composed of Captain Indewey and Corporal Lyver. These witnesses are independent witnesses and they have no interest in the outcome of this case. They testified in a straight and honest manner and to the best of their knowledge. They did not try to exaggerate their description of events or the accuracy of their recollection. They testified dispassionately.

[102] Corporal Lyver and Captain Indewey recognized that the knife marked as Exhibit 6 is similar to the one seized in Corporal Demers's unaccompanied baggage. In all fairness, they could not say more than that. Corporal Lyver's description of the events at the table with Corporal Demers is reliable and corroborated in great part by him. She is a highly credible witness.

[103] Lastly, dealing with Corporal Demers. Corporal Demers is the person that was found in possession of a prohibited weapon on 23 March 2003. The evidence before the

court reveals that he is still somewhat concerned with the outcome of his case concerning potential charges for possession of that weapon. He said that he did not believe at the time, and told Corporal Pattullo accordingly, that he did not know his knife was illegal. He described at length where he bought it and how he used it as a tool for a period of five months.

[104] He was cross-examined thoroughly on critical issues. He answered to the best of his ability in a frank and respectful manner. He did not try to minimize or exaggerate details. He did not evade questions nor was he argumentative. He did not try to assist any position. He just answered to the best of his ability.

[105] After his lengthy cross-examination, the defence asked the witness to confirm that he could not be absolutely certain that the knife marked as Exhibit 6 was his knife.

[106] The witness agreed with counsel for the defence because his name is not on it. This answer cannot be taken outside the scope of Corporal Demers's testimony as a whole. I refer to his testimony where Corporal Demers explained in many details as to why this knife was his.

[107] Also the witness does not remember having a second meeting or being given his knife back by Corporal Pattullo, but he said it was possible. He remembers everything else and, in substance, Corporal Lyver corroborates the part that he remembers.

[108] The court believes that in assessing Corporal Demers's evidence, and when he says that he has no memory of a second meeting or that he does not remember receiving his knife back, it's the reason why he does not remember because those events did not take place.

[109] Overall, the court accepts the testimony of Corporal Demers and finds him to be a credible witness.

[110] With regard to the first charge, the court agrees with the defence that there's only one issue with respect to that charge. Did Corporal Pattullo investigate or not?

[111] There is ample evidence on every other essential ingredient. The prosecution tried to establish, through Captain Somerville, Petty Officer 1st Class Lamorie, and Master Seaman Stevens, the meaning of what constituted an investigation in the context of the discovery of a prohibited weapon during ROTO 11.

[112] It is clear for the court that the duties expected from a member of the military police platoon when conducting an investigation in the discovery of a prohibited weapon included more than ascertaining facts and ask questions to a suspect. It is also clear from the evidence that the members of the military police section did not have much discretion in that area and that they were to conduct an investigation when put in the presence of such a weapon.

[113] As correctly pointed out by the defence again, Corporal Pattullo is not charged under section 129 of the *National Defence Act* for an act, conduct, or neglect to the prejudice to good order and discipline nor is he charged for negligent performance of his duties under section 124 of the *National Defence Act*. In cases under section 129 or 124, the nature and standards attached to the duties may be essential to the charge.

[114] However, for the purposes of dealing with the charge before this court, the meaning of the word investigation or investigate cannot be construed as what was meant by the military police chain of command during ROTO 11.

[115] *Queen's Regulations and Orders for the Canadian Forces* (QR&O) article 1.04 provides:

Words and phrases shall be construed according to the common approved meaning given in the Concise Oxford Dictionary if in English, or in Le Petit Robert if in French, except that:

- (a) technical words and phrases, and words that have acquired a special meaning within the Canadian Forces, shall be construed according to their special meaning; and
- (b) words and phrases that are defined within QR&O or within the *Interpretation Act* or the *National Defence Act* shall be construed according to that definition.

[116] There is no evidence before this court that “investigate” or “investigation” have a special meaning within the Canadian Forces. The military police chain of command during ROTO 11 or the Military Police Professional Standards organization do not own or determine the meaning of these words for the Canadian Forces. These words may have a different meaning in the Canadian Forces whether we are dealing in the Medical, Logistic, Engineering, Naval, Combat Arms, or other contexts.

[117] These words are not defined in the QR&Os, the *Interpretation Act* or the *National Defence Act*. Therefore, these words shall be construed according to the common approved meaning given in the *Concise Oxford English Dictionary*.

[118] The *Concise Oxford English Dictionary* defines “investigate” in the following manner:

carry out a systematic or formal inquiry into (an incident or allegation) so as to establish the truth. carry out research into (a subject). make a search or systematic inquiry.

[119] In light of the totality of the evidence, and in particular, the testimonies of Corporal Demers, Corporal Lyver, and Captain Indewey, the court has a reasonable doubt that Corporal Pattullo carried out an inquiry, what was referred to as a mini-investigation or a poor investigation, into the incident involving Corporal Demers.

[120] He asked him questions at the table as to how he got the knife and what he was planning to do with it. Further to his discussion with Corporal Demers, Corporal Pattullo made a conclusion and a judgement call regarding Corporal Demers's explanations so as to establish, at least as far as Corporal Pattullo was concerned, the truth. This would, in the court's view, amount to some investigation.

[121] With regards to the second charge. As the court stated earlier, the defence suggests that the only issue as it relates to the second charge is whether Exhibit 6 is the same knife that was seized from Corporal Demers on 23 March 2003. The court agrees that this is the issue.

[122] Captain Indewey and Corporal Lyver testified that Exhibit 6 was similar to the knife found in Corporal Demers's property during the DAG on 23 March 2003. Corporal Lyver, who discovered the knife, gave a fair description of that knife before being confronted with the knife. She provided details concerning the distinctive design of the handle and of the groove. She had not seen any knife with a similar design in the past, although she had discovered other prohibited knives previously but none that particular day.

[123] The critical evidence on that issue is the evidence given by Corporal Demers himself, and the court already commented on the credibility of the witness and accepts his testimony.

[124] The court looked carefully at his entire testimony. He was cross-examined at length on the issue of whether Exhibit 6 was his knife and why.

[125] Corporal Demers corroborated Corporal Lyver's testimony and testified that Exhibit 6 is the knife that was seized from his barrack box on 23 March 2003 by Corporal Lyver and handed to the military police. He said that he was questioned by the military police as to why he had the knife in his bags.

[126] Corporal Demers said that he had used the knife as a tool for approximately a period of five months to clean his C7 bolt, as well as for other use. He described how he used the knife and explained the markings and scratches on it. In particular, he testified that it was his knife because the metal was partly stained at a specific area, the last letters of the word "stainless" engraved at the base of the blade were almost erased or faded. In addition, he said that the distinct circles and diamonds were particular to his knife, although he admitted that he had seen similar knives in Split.

[127] As I said earlier, after its lengthy cross-examination, the defence asked Corporal Demers to confirm that he could not be absolutely certain that the knife marked as Exhibit 6 was his knife. The witness agreed with counsel for the defence because his name was not on the knife. This answer, as I said, cannot be taken in isolation. The court must take that statement in light of Corporal Demers's testimony as a whole.

[128] After showing the specific markings on the blade and explain their presence, after referring to the particular design, after referring or mentioning the stain on the metal at a specific area, after referring and testifying to the last letters on the word "stainless" that were fading, after all this, the only thing that would make it absolutely certain for him to say that it was his knife would be that his own name be marked on the knife or a serial number.

[129] There was no doubt in Corporal Demers's testimony, that he believes with certainty that the knife marked as Exhibit 6 was the knife that was seized from his baggage.

[130] The defence argued that Corporal Demers did not provide a detailed description of his knife when he met the police during the investigation that led to this case. From the defence counsel's perspective, the court should consider Corporal Demers's testimony on this issue as suspect. The court disagrees. He certainly could have provided more details at the time, especially if he had been confronted to a police officer that would have been as rigorous as counsel before this court during his examination-in-chief and cross-examination.

[131] The reasonable doubt standard may well be closer to absolute certainty than to proof on a balance of probabilities. On the other hand, it should be remembered that it is

virtually impossible to prove anything to an absolute certainty, and the prosecution is not required to do so. As the Supreme Court said before, such a standard of proof is impossibly high.

[132] Corporal Demers could never be absolutely certain, in this case, that this knife was his, but the court believes that Corporal Demers's evidence as a whole establishes that he is as close to be absolutely certain of that fact as someone could ever be.

[133] This court does not believe the accused about the discovery of another identical knife and does not believe the accused when he says that he gave the knife back to Corporal Demers later during that evening of 23 March 2003.

[134] In light of the totality of the evidence relevant to this charge, the court is not left with a reasonable doubt as the result of Corporal Pattullo's testimony, and there is no reasonable doubt on the basis of the evidence that is accepted by the court.

[135] Looking at that evidence, the court is satisfied beyond a reasonable doubt that there is no other rational explanation other than the guilt of Corporal Pattullo on the second charge.

[136] In conclusion, the court is satisfied that the prosecution has proven all essential elements of the second charge beyond a reasonable doubt, and that the accused made a false entry in the DOB completed by him on 23 March 2003 and marked as Exhibit 4 indicating that a switchblade had been found in a washroom.

[137] The court finds not guilty of the first charge, and the court finds you guilty of the second charge.

---

**Counsel:**

Major B. MacGregor, Directorate of Military Prosecutions, Counsel for Her Majesty the Queen

Captain S.M.A. Raleigh, Regional Military Prosecutions Central, Assistant Counsel for Her Majesty the Queen

Captain S.E. Turner, Directorate of Defence Counsel Services, Counsel for Corporal D.A. Pattullo