



COURT MARTIAL

Citation: *R. v. Richard*, 2019 CM 2005

Date: 20190221

Docket: 201827

Standing Court Martial

Halifax Courtroom Suite 505
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Leading Seaman M.H. Richard, Accused

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

REASONS FOR FINDING

(Orally)

Introduction

[1] Leading Seaman Richard is facing one charge contrary to section 129 of the *National Defence Act (NDA)* for conduct to the prejudice of good order and discipline.

[2] The particulars of the charge read as follows:

“First charge
Section 129 N.D.A.

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE

Particulars: In that he, between 1 February 2016 and 10 December 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.”

[3] In reaching the Court's decision, I reviewed and summarized the facts emerging from the evidence and made findings on the credibility of the witnesses. I instructed myself on the applicable law and applied the law to the facts, conducting my analysis before I came to a determination on the charge.

The evidence

[4] The following evidence was adduced at the court martial:

- (a) in court, testimonies of the following three prosecution witnesses, in order of appearance:
 - i. Master Corporal Sabalbal;
 - ii. Master Seaman Crocker;
 - iii. Master Seaman Sin;
- (b) Exhibit 1 – Convening order;
- (c) Exhibit 2 – Charge sheet;
- (d) Exhibit 3 – Copy of *Queen's Regulations and Orders for the Canadian Forces* (QR&O) articles 1.20, 1.21, 1.22, 1.23 and 1.235 ;
- (e) Exhibit 4 – Phone data extraction dated 18 January 2016;
- (f) Exhibit 5 – Phone data extraction dated 12 November 2016;
- (g) Exhibit 6 – Phone data extraction dated 10 December 2016;
- (h) Exhibit 7 – DVD part 1 of Leading Seaman Richard's interview on 9 June 2017
- (i) Exhibit 8 – DVD part 2 of Leading Seaman Richard's interview on 9 June 2017
- (j) Exhibit 9 – Transcript of Leading Seaman Richard's interview on 9 June 2017
- (k) Exhibit 10 – Annex P to Chapter 2 of CCFA/CCFP Joining Orders signed by Able Seaman Richard on 1 February 2016
- (l) Exhibit 11 – Agreed Statement of Facts dated 18 February 2018

- (m) The Court also took judicial notice of the facts and matters covered by section 15 of the *Military Rules of Evidence (MRE)*.
- (n) Under section 16 of the *MRE*, the Court also took judicial notice of Exhibit 3 as well as the court martial decision in the case of Leading Seaman Stow, *R. v. Stow*, 2018 CM 3014.”

Background

[5] The facts of this case arose out of a Canadian Forces National Investigation Service (CFNIS) investigation into drug trafficking by a number of military personnel in the Halifax area. During that investigation, Leading Seaman Stow was charged and last August 2018, he pleaded guilty to trafficking cocaine and is currently serving a ten-month term of imprisonment.

[6] In the course of investigating Leading Seaman Stow, the CFNIS executed a search warrant of his residence and seized a number of cell phones. Through the execution of a production order, the details of the electronic communications from three of these cell phones revealed that the accused, Leading Seaman Richard had communicated with Leading Seaman Stow on a number of occasions. Pursuant to another production order, the CFNIS obtained the bank records of Leading Seaman Stow and confirmed details of electronic transfers of money from Leading Seaman Richard to Leading Seaman Stow.

[7] The Statement of Circumstances of the Offence” as per *R. v. Stow*, 2018 CM 3014, paragraph 5 revealed that together with Leading Seaman Smith they had trafficked approximately 200 grams of cocaine with a street value of approximately \$10,000.00.

[8] Based on the details from the production order on Leading Seaman Stow’s banking records, as well as the nature of the texts received from three different cell phones, Master Corporal Sabalbal, an investigator with the CFNIS formed reason to believe that the accused had purchased cocaine from Leading Seaman Stow.

Assessment of evidence

Presumption of innocence and the standard of proof beyond a reasonable doubt

[9] Before providing an assessment of the charge before the Court, it is appropriate for the Court to deal with the presumption of innocence and the standard of proof beyond a reasonable doubt.

[10] It is important to remember that the accused, Leading Seaman Richard, enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the prosecution has, on the evidence put before

the Court, satisfied the Court beyond a reasonable doubt that the accused is guilty of the charge.

[11] So, what does the expression “beyond a reasonable doubt” mean? The term “beyond a reasonable doubt” is anchored in our history and traditions of justice. It is so entrenched in our criminal law that some think it needs no explanation, but its meaning bears repeating (see *R. v. Lifchus*, [1997] 3 S.C.R. 320):

A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.

[12] In essence, this means that even if I believe that Leading Seaman Richard is probably guilty or likely guilty, that is not sufficient. In those circumstances, I must give the benefit of the doubt to him and acquit him because the prosecution has failed to satisfy me of his guilt beyond a reasonable doubt.

Assessment of witnesses

Prosecution witnesses

[13] The prosecution had three witnesses. The first witness was Master Corporal Sabalbal, an investigator with the CFNIS who had conducted the larger drug investigation focussed on Leading Seaman Stow and interviewed the accused. The second witness was Master Seaman Crocker who testified that he was the individual who administered Exhibit 10 known as Annex P to Chapter 2 – CCFA/CCFP Joining Orders to Leading Seaman Richard on 1 February 2016, a copy which was kept on Leading Seaman Richard’s personnel file. Annex P outlines the expectations of Canadian Armed Forces (CAF) members posted to Canadian Fleet Atlantic and at paragraph 7 of this document, it says that members joining the fleet must become acquainted with QR&O Chapter 20 (Canadian Forces Drug Control Program). It then goes on to quote the pivotal part of QR&O 20.04. The third witness was Master Seaman Sin who was the information systems administrator on Her Majesty’s Canadian Ship (HMCS) *Montreal*. He testified that his main role on the ship was creating user accounts for the Shipboard Local Area Network (ShipLAN) or Consolidated Secret Network Infrastructure (CSNI). He described the ShipLAN as a downgraded version of Defence Wide Area Network (DWAN).

[14] The Court found that all the prosecution witnesses were credible and reliable.

Defence witnesses

[15] Defence did not call any witnesses, however, he submitted an Agreed Statement of Facts.

Facts

[16] After the accused's involvement with Leading Seaman Stow came to the attention of the CFNIS investigation, Master Corporal Sabalbal called HMCS *Montreal*'s coxswain and requested that he send Leading Seaman Richard to the CFNIS office to participate in an interview on 9 June 2017. Leading Seaman Richard reported to the CFNIS office as directed by the coxswain. When he arrived at the CFNIS office, he was advised that he had done his due diligence in reporting, but that his participation in an interview was 100 per cent voluntary. Leading Seaman Richard agreed to participate in an interview.

[17] This Court conducted a *voir dire* into the voluntariness of the statement Leading Seaman Richard provided to Master Corporal Sabalbal and despite several concerns raised by the defence, it found that the interview was voluntary and the DVD containing audiovisual footage of the interview was admitted as evidence.

[18] During the interview, Leading Seaman Richard was cooperative and forthcoming. He acknowledged that he served onboard HMCS *Montreal* with Leading Seaman Stow. During that time, the accused was an apprentice and Leading Seaman Stow was a qualified sonar technician. He explained that although they were the same rank, given that Leading Seaman Stow was qualified, he was effectively the accused's superior. He indicated that they had gotten together only a few times socially during the time they served together as their spouses got along and they would shoot pool. The accused told the investigator that he had a pool table at his house.

[19] Based on the whole of the evidence, which included the court martial case of Leading Seaman Stow, the testimony of Master Corporal Sabalbal, text messages and the admissions made by the accused within the interview, the Court found that the activities that occurred on 10 December 2016, to be the most reliable and that is what the Court focussed on.

[20] During a text exchange on 10 December 2016, the accused tells Leading Seaman Stow that his girlfriend is working until 7 p.m., but asks if he wants to "get ruined at some pool." Then, at 6:37 p.m., he asks him, "Think you could bring one out with you when you come" to which Leading Seaman Stow replies, "Yaaap". At 7:54 p.m., the accused asks Leading Seaman Stow, "Keep it on the DL from the old lady tho."

[21] In his testimony, Master Corporal Sabalbal stated that on 10 December 2016, the CFNIS had followed Leading Seaman Stow's vehicle (which was on a GPS tracker) to the accused's home which was located at his private residence, located in Halifax, Nova Scotia. Master Corporal Sabalbal explained that on that day, the NIS were conducting physical surveillance of Leading Seaman Stow and watched him go into the accused's house and stay for quite some time. He told the Court that it looked like a social visit. Having been present at the address, Master Corporal Sabalbal testified the residence was located in the south end of Halifax.

[22] During the interview, when the accused was asked if he had consumed cocaine in the last year, he first said “no” and when pressed further, he avoided the question, but admitted that he had a dark past, something he was not proud of. He clarified that now with his girlfriend, kids and family responsibilities, he was on the straight and narrow and he does not associate with drugs and emphasized that he is proud of this.

[23] When pressed for details on how he transitioned into using cocaine, the accused was clear that there was no transition, he was not a user. He then explained that people seek a means to fit in, and “but it is there and it is around.” He then said he was in the “wrong place at the wrong time.”

[24] Despite consistent questioning by Master Corporal Sabalbal, the accused provided rather non-committal responses to his questions that are not very definitive. He responded to most questions with, “Yeah”, “Sure”, “I guess so”.

[25] When asked for specifics on dates, the accused refused to give a ballpark or estimate any cocaine usage. When shown dates, based on the various texts, he did not refute the evidence, but he did not elaborate either.

[26] Under continued questioning, when the investigator asked him if he could accurately say that since 10 December 2016, he had not used cocaine, Leading Seaman Richard responded, “That’s definitely correct.”

[27] During the interview, the accused confirmed that his cocaine use was as follows:

“Like, what I can say is that it was 100 percent confined to the time he was on board ship, and by that I mean physically posted in (indiscernible) attach-posted out somewhere. [. . .] When he was physically posted to that event and physically on board, is what I mean [. . .] I didn’t know him prior to.”

[28] When asked to clarify his cocaine use further, the conversation was as follows:

“MCPL SABALBAL: [. . .] So let me get this straight. What I’m understanding here is he would have been the only person you’ve ever bought cocaine from, but only at the time that he was actually posted to the *Montreal*.

LS RICHARD: Yes.

[. . .]

MCPL SABALBAL: Okay. So Stow was literally the only person you’ve ever bought cocaine from?

LS RICHARD: Yes.”

[29] Upon review of the totality of the evidence, the material proven facts are that on 10 December 2016, the accused invited Leading Seaman Stow to his home to shoot some pool and have some pulled pork. His home is located in Halifax, Nova Scotia. Before Leading Seaman Stow arrived, the accused asked Leading Seaman Stow to bring him “one” (inferring cocaine) and then asked him to keep it on the “DL” (down low) around his girlfriend. Further, in his interview with Master Corporal Sabalbal, he told him that 10 December 2016 was the last day he used cocaine.

[30] When asked to describe the effects of cocaine, the accused was continually evasive and either avoided answering the question or said that he could not describe it. When first asked the question, he responded, “Guilty, I guess.” When the question was rephrased, to ask how it made him feel, he responded, “I don’t really know, you know, I don’t know.” On the subsequent 12 additional queries, his responses were to the effect that he found it to be a depressant and strongly refuted that it made him feel hyper or energetic. Then after switching subjects to discuss the various Interac transactions, Master Corporal Sabalbal asked Leading Seaman Richard four more times to describe the effects of the cocaine. Once again, he stated that he could not provide an accurate depiction.

Assessment of the charge

[31] Having instructed myself on the presumption of innocence, reasonable doubt, the onus on the prosecution to prove their case, the required standard of proof and the essential elements of the offence, I now turn to the questions at issue and address the legal principles and the charge.

[32] The first issue for this Court to decide is whether the particulars as detailed in the charge were proven beyond a reasonable doubt. The onus is on the prosecution. The particulars read: “In that he, between 1 February 2016 and 10 December 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.”

[33] The identity of the accused was not disputed by defence and it was noted that during the interview the accused also confirmed his telephone number that was referenced in the texts submitted in evidence. The elements left to be proven beyond a reasonable doubt for the charge are as follows:

- (a) time and place of the offence;
- (b) the conduct alleged; namely, Leading Seaman Richard did use a drug, to wit cocaine contrary to the QR&O 20.04;
- (c) that Leading Seaman Richard had a blameworthy state of mind; and

- (d) the fact that the conduct is prejudicial to good order and discipline.

Time and Place

[34] Defence counsel argued that the place of the offence, being in Halifax, Nova Scotia was not made out and it was not clear whether it was in the urban part of Halifax or the larger amalgamated area. He argued that the evidence suggests that the sales took place in either Halifax or Dartmouth, but there is no evidence that suggests where and when the use occurred. Based on the evidence presented at trial, the Court agrees that for the greater part, there is not sufficient evidence to suggest when the accused used cocaine, nor is there sufficient evidence on where he used it. However, the Court did find there is sufficient material evidence to prove beyond a reasonable doubt that the accused used a substance that he believed to be cocaine on 10 December 2016 at his home located in Halifax, Nova Scotia. This date falls within the material time period set out in the particulars and the location is located within the Halifax area.

QR&O 20.04

[35] The QR&O 20.04 sets out the prohibition on the use of drugs as it relates to CAF members. It reads as follows:

20.04 – PROHIBITION

No officer or non-commissioned member shall use any drug unless:

- a. the member is authorized to use the drug by a qualified medical or dental practitioner for the purposes of medical treatment or dental care;
- b. the drug is contained in a non-prescription medication used by the member in accordance with the instructions accompanying the medication; or
- c. the member is required to use the drug in the course of military duties.

(G)

NOTES

(A) Possession, possession for purpose of trafficking, trafficking, importing, exporting, manufacturing and cultivating certain drugs constitute offences contrary to federal legislation such as the *Controlled Drugs and Substances Act*. These activities are included in the phrase "other involvement with drugs" which appears in articles 20.05 (*Education*) and 20.19 (*Treatment and Rehabilitation*). **(1 September 1999)**

(B) This regulation does not authorize a military authority to order or permit the use of a drug by a member when that use, or possession of the drug, is prohibited by another law.

Did Leading Seaman Richard have a blameworthy state of mind – did he know that the use of cocaine was prohibited?

[36] In assessing whether the accused had a blameworthy state of mind, the Court must first determine whether Leading Seaman Richard knew or ought reasonably to have known that the use of cocaine was contrary to the QR&O 20.04. The prosecution

led and this Court accepted the following evidence that Leading Seaman Richard had been informed of the prohibition on the use of drugs:

- (a) Annex P to Chapter 2 of the CCFS/CCFP Joining Orders that the accused signed on 1 February 2016;
- (b) the testimony of Master Seaman Crocker that he administered Annex P and although he could not specifically remember doing so, he described for the Court, the procedures he regularly followed in doing so; and
- (c) pursuant to QR&O article 1.21 (which came into effect on 1 August 2015) since Leading Seaman Richard had ready access to the DWAN as confirmed by the testimony of Master Seaman Sin, Leading Seaman Richard has deemed knowledge of QR&O 20.04.

[37] Although defence disputed the fact that the accused knew about the prohibition under QR&O 20.04 and argued that despite his signature on Annex P, it was unlikely that the accused was directed to familiarize himself with the QR&O and that QR&O 1.22 requires the commanding officer to draw the material to the member's attention. However, the Court notes that QR&O 1.22, more accurately states that commanding officers must take measures to ensure that the QR&O are accessible, which could be through any defence or government website. QR&O 1.21 states members will be sufficiently notified of the QR&O if they are published electronically, which they are. Master Seaman Sin testified that the accused's user account was set up in 2013 and that during the material times, the accused had an active DWAN account and therefore he would have access. Defence further argued that Master Seaman Sin could not confirm that he had access to his account during the material time, however, the Court is cognizant that specific knowledge of the dates of his access is not required. The member would have known where to seek the information and he had a responsibility to keep himself informed. Further, the Court noted that if the accused had read just Annex P itself, (which his signature attests to), the essential prohibition of QR&O 20.04 was captured directly within paragraph 7 of Annex P.

[38] The accused's knowledge that the use of cocaine was prohibited is further buttressed by the content of the text messages exchanged with Leading Seaman Stow, on 10 December 2016, shortly before they got together to shoot pool on what the accused admitted was the last day he used cocaine. Starting at 4:09:48 p.m., they discussed the stress regarding the upcoming drug testing. During that text exchange, Leading Seaman Stow asks the accused whether he believed there would be drug testing during their upcoming professional development day. Leading Seaman Stow goes on to tell the accused how paranoid he is and discusses the consequences of getting caught. Although Leading Seaman Richard does not appear to be concerned, the exchange itself is evidence that they were both aware that the use of cocaine was prohibited.

[39] As such, based on the above analysis, the Court can conclude that Leading Seaman Richard knew or ought reasonably to have known that using cocaine was prohibited.

Did Leading Seaman Richard intend to use cocaine?

[40] In proving the remaining particulars of the charge, amongst the other elements of the offence, the Court must come to a determination beyond a reasonable doubt that Leading Seaman Richard:

- (a) had a blameworthy state of mind – intended to use cocaine; and
- (b) the substance actually used was cocaine.

[41] From the direct evidence presented and the accused's own admissions in the video interview, we know that on a few occasions within the timeline set out in the particulars, the accused orders a substance, measured in grams which is delivered to him from Leading Seaman Stow. Based on the texts and the testimony of Master Corporal Sabalbal, it is reasonable for this Court to believe that the accused paid approximately \$80.00 per gram for the substance which is consistent with the street rate for cocaine in the Halifax area. We also know as a fact that Leading Seaman Stow was convicted for trafficking in cocaine. Although the Court heard that other types of drugs had been found in Leading Seaman Stow's premises, it was the cocaine that was packaged and ready for sale. None of the texts specifically describe the substance being ordered, however, in analysing the evidence as a whole, and relying upon the positive proven facts, including the accused's admission, one can draw the inference that the accused intended to order and use cocaine (see Justice David Watt in *Watt's manual of criminal evidence 2009*. Toronto: Carswell at paragraph 9.01). As a result, the accused clearly had the mental intent to use cocaine, which is a prohibited substance under QR&O 20.04.

Has it been proven beyond a reasonable doubt that the substance used was cocaine?

[42] Defence argued that there is no proof that the accused in fact received and used cocaine. He intimated that the accused was a naive user, only having bought cocaine from Leading Seaman Stow and he may have been duped and sold something else. There were no witnesses that testified that they ever saw the accused use cocaine nor any other substance and there was no analyst's certificate submitted in evidence to confirm the substance used. Similarly, there was no urine test that provided proof that Leading Seaman Richard had used cocaine.

[43] Although an analyst's certificate could provide scientific certainty of the substance used, proof beyond a reasonable doubt does not require scientific certainty. 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. Case law supports

that an analyst's certificate is not essential to prove that a substance is cocaine. (see *R. v. Khalif*, 2014 SKQB 165)

[44] Therefore, in order to find Leading Seaman Richard guilty of the charge before the Court, the onus is on the prosecution to prove something less than an absolute certainty, but something more than probable guilt for the charge set out in the charge sheet. (see *R. v. Starr*, [2000] 2 S.C.R. 144, paragraph 242)

[45] So, to make that determination, the Court must analyse the evidence as a whole and decide whether the prosecution has proven beyond a reasonable doubt that the substance used by the accused was in fact cocaine. If the prosecution seeks to rely upon circumstantial evidence, the inferences drawn from the established facts must be inconsistent with any other rational conclusion. (*McIver v. The Queen*, [1965] 1 C.C.C. 210 (Ont H.C.), at 214, affirmed at [1966] SCR 254 (SCC))

[46] Since there was no product found on the accused and therefore nothing available for analysis, then the issue for this Court to determine is whether based upon the proven facts, a rational conclusion can be drawn that the substance used was in fact cocaine and that it meets the standard of proof beyond a reasonable doubt.

[47] In assessing this aspect of the charge, the Court found the material proven facts to be the following:

- (a) during the material times in the charge, the accused served onboard HMCS *Montreal* working directly with Leading Seaman Stow, who was responsible for signing off on the accused's training as an apprentice;
- (b) on 9 June 2017, during his interview with CFNIS Investigator Master Corporal Sabalbal, Leading Seaman Richard admitted having acquired and used cocaine from Leading Seaman Stow;
- (c) the accused admitted to being with Leading Seaman Stow at the accused's home, which the evidence suggests is located in Halifax, Nova Scotia. A review of the text messages indicates that the accused invited Leading Seaman Stow to his home to shoot pool and asked him to bring him "1" but to keep it on the "DL" from his girlfriend. The accused admitted that the last time he used cocaine was on 10 December 2016;
- (d) the CFNIS Investigator, Master Corporal Sabalbal, confirmed that on 10 December 2016, they followed Leading Seaman Stow's vehicle (via GPS tracker) and conducted physical surveillance noting Leading Seaman Stow entering the accused's home where he stayed for quite some time;

- (e) the next day, on 11 December 2016, when the military police conducted a search of Leading Seaman Stow's residence they seized approximately 20 grams of cocaine; and
- (f) Leading Seaman Stow was charged and pleaded guilty to trafficking in cocaine both on and off Canadian Forces Base Halifax, to both civilians and military members.

[48] In my opinion, from the material proven facts, the only reasonable and rational conclusion to be drawn is that the substance used by the accused was in fact cocaine. This inference is logically and reasonably drawn from the group of facts clearly established at subparagraphs (a) to (f) and proved in this court martial. The totality of the evidence satisfies me beyond a reasonable doubt that although the accused might not have been an experienced cocaine user, he intended to buy and use cocaine from Leading Seaman Stow, who was convicted for trafficking in cocaine and during a search of his residence, the day after the accused socialized with Leading Seaman Stow and where the accused admitted he last used cocaine, 20 grams of cocaine were seized in Leading Seaman Stow's residence.

[49] Based on the accused's admissions to the CFNIS investigator, we heard that the accused:

- (a) had no previous experience either purchasing or using cocaine until he came in contact with Leading Seaman Stow onboard HMCS *Montreal*;
- (b) Leading Seaman Stow was the only person the accused ever purchased cocaine from; and
- (c) when asked by the CFNIS investigator to describe the expected effects of the cocaine, the accused was unable to accurately describe what the CFNIS investigator expected to hear.

[50] The Court noted that during the 9 June 2017 interview with the CFNIS investigator, immediately after the accused assured the investigator he would not lie, he did so. Further, it became apparent that after a certain point in the interview, particularly at pages 53 and 54 of the transcript of his interview, when the accused appreciates the jeopardy he is facing, he continued to be very pleasant and cooperative, but his answers became more vague, non-committal and evasive. He avoided answering questions as much as possible. Hence, it would be dangerous for the Court to assume that his inability to describe the effects of cocaine or the veracity of his evidence on his cocaine use are reliable. Based only on the accused's admissions, for the Court to determine that the product used was something other than cocaine would be speculation as it would not be predicated on any material proven facts.

Determination of prejudice

[51] Technically, since the Court found that the accused's drug use was a contravention of QR&O 20.04, which is an outright contravention of an order, then pursuant to subsection 129(2) of the *NDA*, the prosecution is relieved of having to prove prejudice as an essential element of the offence. After the decision in *R. v. Korolyk*, 2016 CM 1002, such deemed prejudice is rebuttable. Defence argued that there was no evidence that suggested that the use of cocaine occurred while on duty. While this may be true, based on current knowledge and understanding that resulted in the substance being determined to be a prohibited substance, absent scientific data and a change in Canadian law, in the Court's view this fact alone is not sufficient to rebut any prejudice.

[52] Further, as the Court explained during closing submissions, since the Court Martial Appeal Court decision in *R. v. Golzari*, 2017 CMAC 3, the only standard of conduct required to prove a section 129 offence is whether the conduct alleged tended to have an adverse effect on good order and discipline. This is one of those rare cases, where there is ample evidence upon which a military judge, applying her own military experience and general service knowledge, could determine that the use of cocaine, a prohibited substance by military members while serving on an operational warship will tend to adversely affect good order and discipline.

Closing comments

[53] The Court is satisfied beyond a reasonable doubt that the particulars of the offence were proven and that there was prejudice to good order and discipline that flowed from the conduct at issue.

FOR THESE REASONS, THE COURT:

[54] **FINDS** Leading Seaman Richard guilty of the charge before the court.

Counsel:

The Director of Military Prosecutions as represented by Major M.L.P.P. Germain

Major A.H. Bolik and Captain P.C. Briffett, Defence Counsel Services, Counsel for Leading Seaman M.H. Richard