



COURT MARTIAL

Citation: *R. v. Rumbolt*, 2019 CM 2028

Date : 20190924

Docket : 201906

Standing Court Martial

Halifax Court Room Suite 505
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Master Seaman R.E. Rumbolt, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Master Seaman Rumbolt pleaded guilty to one charge, contrary to section 130 of the *National Defence Act (NDA)*, that is to say, assault causing bodily harm contrary to section 267(b) of the *Criminal Code*. Having accepted and recorded his plea of guilty with respect to the charge, the Court must now determine and pass sentence on the charge which reads as follows:

“FIRST CHARGE
Section 130 of the
National Defence Act

**AN OFFENCE PUNISHABLE UNDER
SECTION 130 OF THE NATIONAL
DEFENCE ACT, THAT IS TO SAY
ASSAULT CAUSING BODILY HARM
CONTRARY TO SECTION 267(B) OF**

THE CRIMINAL CODE OF CANADA

Particulars: In that he, on or about 3 April 2018, at or near Cayo Santa Maria, Cuba, did in committing an assault on A.J. cause bodily harm to her.”

[2] The Statement of Circumstances filed in court reads as follows:

“STATEMENT OF CIRCUMSTANCES

1. Master Seaman Rene Rumbolt is a former member of the Canadian Armed Forces (CAF). He joined the CAF in July of 2001 and released on 15 February 2019. MS Rumbolt served as an engineering technician on various ships and in various positions. MS Rumbolt served 630 days of that time at sea. He was a qualified submariner.

2. Corporal Anna Joachim is a serving member of the CAF, as a Human Resource Administrator. She joined the CAF in January of 2012.

3. At all material times, MS Rumbolt was a member of the Regular Force and subject to the *Code of Service Discipline*.

4. Cpl. Joachim and MS Rumbolt met in October of 2014 when both were serving at Maritime Forces Atlantic (MARLANT). They commenced a romantic relationship, which lasted to December of 2017.

5. By December of 2017, the relationship was failing. MS Rumbolt and Cpl. Joachim had previously booked a trip to Cuba, which they decided to take together. On 29 March 2018, MS Rumbolt and Cpl. Joachim flew together to Cuba. They went to an all-inclusive resort called Dhawa Cayo Santa Maria. MS Rumbolt and Cpl. Joachim stayed in a room together at the resort.

6. During the trip, MS Rumbolt and Cpl. Joachim became agitated with each other. On the evening of 2 April 2018, MS Rumbolt and Cpl. Joachim planned a dinner together but due to various disagreements the plan dissolved. The two spent the bulk of the early evening apart. MS Rumbolt returned to their shared room later that evening after having consumed alcohol. Cpl. Joachim was already in the room. MS Rumbolt got into bed with Cpl. Joachim and started to send a text message to someone. Cpl. Joachim asked him to not text his girlfriend around her, or something to that effect. MS Rumbolt began insulting and berating her. Cpl. Joachim flicked MS Rumbolt’s arm with the back of her hand and said, “stop calling me names”.

7. In response, MS Rumbolt jumped up and got on top of Cpl. Joachim. He pinned Cpl. Joachim down with his left arm on her right shoulder and brought his face close to hers. He had his other arm drawn back in a fist and verbally threatened Cpl. Joachim. Cpl. Joachim screamed asking him to get off of her. She started to kick out at MS Rumbolt. One kick hit MS Rumbolt in the face, and another knocked him from the bed.

8. MS Rumbolt left the room. He returned a few hours later. At that time he was highly intoxicated, and he passed out on the bed. Cpl. Joachim examined MS Rumbolt's phone and discovered that he had been texting another woman. The messages that Cpl. Joachim found revealed to her that MS Rumbolt was romantically involved with another woman. Cpl. Joachim used MS Rumbolt's phone to telephone and send messages to this other woman, to advise her that MS Rumbolt was in Cuba with Cpl. Joachim. Cpl. Joachim then woke MS Rumbolt to confront him about what she had found on his phone.

9. MS Rumbolt woke up and saw Cpl. Joachim with his phone. MS Rumbolt got up from the bed and attempted to retrieve his phone. There was a struggle during which MS Rumbolt placed his hand on Cpl. Joachim's neck and pushed her to the floor. MS Rumbolt recovered his phone and moved away to look at it. Cpl. Joachim got on her hands and knees and started to get up from the ground.

10. After examining his phone, MS Rumbolt began to berate Cpl. Joachim again. He moved to where Cpl. Joachim was getting up from the floor and stopped her from doing so using his knee. He eventually let her get up and she moved toward the door to leave the room. MS Rumbolt came from behind Cpl. Joachim and pushed her to the floor. While Cpl. Joachim was on the ground MS Rumbolt struck her on the left side of her face.

11. Both MS Rumbolt and Cpl. Joachim left the room. Cpl. Joachim went to the front desk area of the resort and advised the staff of the incident. Hotel security staff escorted Cpl. Joachim to the shared room to gather her belongings, and then provided her with a separate room, where she spent the rest of the night. MS Rumbolt spent the remainder of the night in their shared room. When Cpl. Joachim retrieved her belongings, she inadvertently took MS Rumbolt's Cuban Travel Visa.

12. Later in the day on 3 April 2018, Cpl. Joachim saw MS Rumbolt at the front desk of the resort, making arrangements to leave. They spoke about leaving, and Cpl. Joachim followed MS Rumbolt back to their shared room. She returned the Cuban Travel Visa to MS Rumbolt, and also pressed him about having assaulted her the night before. Cpl.

Joachim recorded their conversation on her mobile phone. MS Rumbolt was verbally abusive and during this interaction he grabbed Cpl. Joachim by the face, and threw water on her. Cpl. Joachim left the room and had no further direct interaction with MS Rumbolt at the resort.

13. Cpl. Joachim reported the assault to her chain of command while she was still at the resort. On 4 April 2018, MS Rumbolt and Cpl. Joachim left Cuba separately.

14. As a result of the assault, Cpl. Joachim suffered bruising to her shoulders, arms and face, as well as swelling to her throat. She also complained of soreness to her ribs and stiffness to her upper body for a week following the assault, as well as headaches that lasted for three days. She took photographs of the bruising over the course of three days, which she later provided to the Military Police. Cpl. Joachim was treated at the CAF Health Services Centre Halifax on 6 April 2018 where her injuries were documented, x-rays were taken, and she was prescribed anti-inflammatory medication.”

The joint submission

[3] In a joint submission, the prosecution and defence counsel recommend that I impose a sentence of a severe reprimand and a fine in the amount of \$5,000 payable in \$500 payments over a period of ten months. In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada (SCC) clarified that a trial judge must impose the sentence proposed in a joint submission “unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest.” By entering into a plea bargain, the constitutional right to be presumed innocent is given up and this should never be done lightly. In fact, by virtue of the oath taken by all service members, this right is one we all stand to protect.

[4] Thus, in exchange for making a plea of guilty, the accused must be assured of a high level of certainty that the court will accept the joint submission. The prosecution, who jointly proposed the sentence, will have been in contact with the chain of command as well as the victim in this case being A.J. and he is aware of the needs of the military and the surrounding community and he is charged and responsible for representing those interests.

[5] The defence counsel, on the other hand, acts exclusively in the accused’s best interests, including ensuring that the accused’s plea is a voluntary and informed choice, and unequivocally acknowledges his guilt. As members of the legal profession they are both accountable to their respective law societies and the court relies heavily on their professionalism, honesty, judgement, as well as their duty to the court.

The evidence

[6] In this case, the prosecutor read the Statement of Circumstances and provided all those documents required under the *Queen's Regulations and Orders for the Canadian Forces*. The Statement of Circumstances was introduced on consent to inform the Court of the context of the incident that led to the charge before the Court. Further, the Court benefitted from counsel's submissions to support their joint submission on sentence, where they highlighted relevant facts and considerations. The Court also heard two victim impact statements, one from the victim herself, being A.J., and one from the commanding officer of the offender's former unit. The court also had the opportunity to hear from Master Seaman Rumbolt.

The offender

[7] Master Seaman Rumbolt is 38 years old and is financially supporting one dependent child. He enrolled in the Canadian Armed Forces (CAF) on 5 July 2001 and was medically released on 15 February 2019. He served almost 18 years in the CAF as a weapons engineering technician. Aside from the incident before the Court, he has served his country well in a hard sea trade. He served on board two different warships and three different submarines amassing a total of 630 days at sea. That is no small feat. He does have one record for a conviction for operating a motor vehicle while impaired that he received in September 2015. He has no previous record of conduct involving acts of violence in either his military service or in the civilian context.

[8] Since his release from the CAF, Master Seaman Rumbolt has spent a significant amount of time investing in his personal rehabilitation, retraining and taking positive strides forward to make a fresh start in his life. In just the last few months, this has culminated in him finishing his Bachelor of Technology degree at Memorial University as well as attending a specialized course in Non-Destructive Testing at Mohawk College where he is maintaining a GPA of 90 percent and just recently retained a successful co-op position.

The victim

[9] The prosecution consulted and advised the victim of her right to provide a victim impact statement which she accepted and very bravely read for the Court. It takes significant courage for a victim to come forward to his or her chain of command to report conduct and even more so when it involves an incident that unfolded in the private sphere of one's life.

[10] We are here today because A.J.'s chain of command listened to her and took her concerns seriously. Master Seaman Rumbolt stood up today, in a very public forum and took responsibility for his actions and he apologized. He also heard what A.J. had to say today and there is no doubt that he will remember it for years to come.

[11] The message I want to send to A.J. today is that by her actions, she has proven that she is a strong woman. In A.J.'s statement, she demonstrates resilience. Resilience is something we do not speak enough of, but it is perhaps one of the most valuable qualities one can possess. It is important because it enables us as humans to develop mechanisms for self-protection against experiences that could otherwise be overwhelming. Resilience helps us maintain balance in our lives and gives us the psychological and mental strength to cope with stress and hardship. More simply put, it gives us the power to bounce back no matter what gets thrown our way.

[12] The events that led to the charges before the court were unacceptable. Notwithstanding this, A.J. stated that she will not let Master Seaman Rumbolt hurt her anymore and she is no longer afraid. As such, her happiness lies in closure and moving forward with an open heart. To do this, she has to let go of the past. She can't let the incidents from her past haunt her, undermine her confidence or her future. I wish her all the best as she moves forward.

Purpose, objectives and the principles of sentencing

[13] The fundamental purpose of sentencing in a court martial is to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency and morale, and to contribute to respect of the law and maintenance of a just, peaceful and safe society. The fundamental purpose is achieved by imposing sanctions that have one or more objectives as set out at subsection 203.1(2) of the *NDA*. The prosecution has emphasized that in negotiations, he and defence counsel closely considered the objectives set out therein.

[14] On the facts of this case, both prosecution and defence counsel submit the objectives they considered most important are general and specific deterrence as well as denunciation. Whenever an offence occurs where violence is committed against another person, courts recognize that the objectives of denunciation and deterrence are paramount. In a case such as this where there is clear evidence of rehabilitation, defence counsel recommends that the court heavily weigh the objective of rehabilitation and invites the Court to inform its decision-making by following the direction of civilian courts in addressing these types of cases.

[15] In terms of general deterrence, the message that must be conveyed is not simply the unacceptable nature of the conduct before the Court, but also the CAF's capacity to hold its members to account to a high standard of conduct wherever they serve or travel. The extraterritorial application of Canadian law is embodied in section 60 of the *NDA* which outlines who is subject to the Code of Service Discipline (CSD) and sections 67, 130(1)(b) and 132 address the extraterritorial jurisdiction of the CSD. Pursuant to section 60 of the *NDA*, Master Seaman Rumbolt was a regular force member of the CAF and subject to the CSD at all times, even when he was on holidays vacationing in Cuba.

[16] As the location of military service for CAF members has no geographical boundaries, neither does Canada's military justice system and as such it operates extraterritorially to ensure that there are never any gaps in the law. When a person subject to the CSD commits an act or omission while outside Canada either for work or travel, and that offence, if it had taken place in Canada, constitutes an offence under Part VII of the *NDA*, the *Criminal Code* or any other federal statute, Canadian service tribunals have jurisdiction to try that offence as a service offence under section 130(1)(b) of the *NDA*.

[17] The facts before the Court suggest this is a domestic assault case that took place outside of Canada between two military members. The evidence suggests that they were at the tail end of a relationship that had deteriorated to a toxic level. Although the military justice system always has concurrent jurisdiction over this type of offence in Canada, for policy reasons, courts martial do not try these cases unless there is no civilian court that has the jurisdiction, willingness or ability to proceed. Civilian courts in Canada do not have the jurisdiction to try Canadians for committing this type of offence outside of Canada.

[18] Although A.J. is also a military member, in order for the CSD to apply, jurisdiction must exist over the offender, which in this case was Master Seaman Rumbolt. It would not have mattered if A.J. had been a Canadian or foreign civilian. Furthermore, pursuant to section 68 of the *NDA*, a court martial may also be held outside Canada in a situation where the incident occurred abroad and it involves a victim or witnesses from the country where the incident occurred. On the facts of this case, both the offender and the victim were Canadian and returned to Canada and as such, the court martial was held here in Canada.

Gravity of the offence

[19] In assessing a sentence, the court must first determine whether the proposed sentence is proportionate to the gravity of the offence and the degree of responsibility of the offender. The offence before the Court is serious and it is imperative that the Court begin by considering its gravity. Courts martial have always treated assault between military members very seriously and assault causing bodily harm even more so.

[20] As I explained in the plea process, the offence of having committed assault causing bodily harm under paragraph 267(b) of the *Criminal Code* is serious. If an individual is found guilty of an indictable offence of the charge, he or she would be liable to imprisonment for a term not exceeding 10 years. If an individual is found guilty of an offence punishable on summary conviction, he or she would be liable to imprisonment for a term not exceeding 18 months. However, the military justice system draws no distinction between whether an offence is indictable or a summary conviction. As a result, the objective seriousness of this offence in the military justice system can be quite variable. As a result, the circumstances surrounding the commission of such an offence are particularly important in assessing a sentence.

Mitigating and aggravating factors

[21] Also under section 203.3 of the *NDA*, in imposing a sentence, the court shall increase or reduce a sentence to account for any aggravating and mitigating circumstances relevant to the offence or the offender.

[22] In cases of assault causing bodily harm, the courts have found the following factors to be aggravating circumstances, among others: evidence of a pattern or history of physical or psychological violence by the offender; the fact that the offender acted in a planned and deliberate manner; the duration and severity of the attack on the victim and the fact that the victim was young or vulnerable. Along with the characteristics of the offender that are relevant to sentencing, these same courts also took into account the existence of a criminal record for acts of violence, the prospects for rehabilitation and the demonstration of remorse toward the victim.

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

- (a) *NDA* statutory consideration. Under subparagraph 203.3 (a)(iii) where the offender, in committing the offence, abused their spouse or common-law partner;
- (b) Adverse effect on the victim. We heard from A.J. who testified on the negative effect the incident had on her;
- (c) Continuous nature of the incidents. Upon a review of the Statement of Circumstances, as the prosecution pointed out, there were six incidents where Master Seaman Rumbolt used force spanning from one evening into the next day. And each of them had different stimulants, but the assaults did extend over a period of a day and a half; and
- (d) Involvement of alcohol. During the time period of the incidents, Master Seaman Rumbolt had consumed a significant amount of alcohol and he has a previous conviction for driving while impaired. Although there are currently no indications of concern regarding the abuse of alcohol, it obviously was a factor at that time.

[24] However, the Court notes there are several mitigating factors that must be highlighted:

- (a) Guilty plea. Master Seaman Rumbolt's plea of guilty for this offence as described in the Statement of Circumstances must be given full weight. He displayed courage by stepping forward to publicly accept responsibility before a public court, before his former peers, supervisors and his former partner, being A.J. His guilty plea has helped the victim in that she does not have to testify and be cross-examined, nor endure a

lengthy trial. Further, Master Seaman Rumbolt's guilty plea saved the court, counsel and the unit supporting the court considerable time.

- (b) Sincere remorse and acceptance of responsibility. Master Seaman Rumbolt showed sincere remorse and he addressed the Court where he publicly acknowledged the impact of his actions and apologized to A.J., the Court, his former unit and CAF members at large. He was straightforward and unequivocal in accepting responsibility for his conduct.
- (c) First violent offence recorded either on his conduct sheet or on a criminal record. This is the first military disciplinary hearing of any type for Master Seaman Rumbolt. He had an otherwise successful almost 18 year military career as a weapons engineering technician. I am not sure what triggered this conduct, but I encourage Master Seaman Rumbolt to seek professional help to ensure that this does not happen again. Not only could a repeat of this conduct tarnish his future relationships, I can assure him the courts will treat a second offence very harshly.
- (d) Military service. Master Seaman Rumbolt served at sea for 630 days. That is significant. That is two years of his life at sea. That does not include the fact that he was continually posted from one ship to the next. There is no doubt that this may have had an impact on his personal relationships.
- (e) Rehabilitation and release from CAF. The matters before the Court date back to 2018 and since this time, the offender released from the CAF and moved on with his life, moving to a different geographical area and diligently pursuing, with success, his education on multiple levels including finishing his degree as well as learning a new trade. He has shown significant positive progress and it was argued that the conduct before the Court is uncharacteristic of the offender.

Parity

[25] Pursuant to section 203.3 of the *NDA*, the law requires that the sentence imposed be similar to sentences imposed on similar offences. The prosecution provided me with some case law. In his submissions, the prosecution relied upon one from the civilian courts as well as other courts martial cases where the underlying facts can easily be differentiated. There was only one court martial case provided to the court that involved domestic assault, being that *R. v. Lieutenant-Colonel G.C. Szczerbaniwicz*, 2008 CM 2009, where the accused in that case was found guilty of the lesser included offence of assault and sentenced to a fine in the amount of \$1,800. This Court is also aware of another similar case, although not quite as serious as this one that also unfolded between two military members. In the case *R. v. Baluyot*, 2017 CM 2013, the Court sentenced Officer Cadet Baluyot to a reprimand and a fine in the amount of \$1,900.

Moderation

[26] Also, under the principles of sentencing set out in section 203.3 of the *NDA*, an offender should not be deprived of liberty by imprisonment or detention if less restrictive sanctions are appropriate in the circumstances. Further, it states that a sentence should be the least severe sentence required to maintain discipline, efficiency and morale.

Any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[27] Pursuant to paragraph 203.3(e), defence counsel made extensive submissions on the indirect consequences of the finding and the sentence of detention on the offender. He explained that the criminal conviction alone for an offence such as this being one of violence will likely have an impact on his ability to travel and could impact his future employability as well.

[28] Further, he argued that the fine recommended is significant and will have an undeniable ripple impact on his ability to support and visit with his child.

[29] In short, defence counsel argued that the principle of deterrence should yield to support Master Seaman Rumbolt's reasonable chance of continued rehabilitation.

Consideration of weapons prohibition order and order to surrender weapons and associated documents

[30] Since Master Seaman Rumbolt pleaded guilty to one offence of assault causing bodily harm, which is an act of violence, pursuant to paragraph 147.1(1)(a) of the *NDA*, consequently this Court must consider whether it is desirable, in the interests of the safety of the person or of any other person, to make a weapons prohibition order. The prosecution argued that although there is some discretion in the *NDA*, such an order is required under the *Criminal Code* and given that Master Seaman Rumbolt is now a civilian, the discretion that exists in the *NDA* should not be exercised.

[31] Further, pursuant to section 147.2 of the *NDA* where the court orders a weapons prohibition order under paragraph 147.1(1)(a) of the *NDA*, in that order, the court must order the surrender to a member of the military police anything in his possession of which is prohibited by the order that is in Master Seaman Rumbolt's possession as well as every authorization, licence and registration certificate relating to anything the possession of which is prohibited by the order. The prosecution requested a 14-day reasonable time period for surrendering the things or documents.

DNA Order

[32] In accordance with section 196.14(1) of the *NDA*, given that the charge that Master Seaman Rumbolt pleaded guilty to is a primary designated offence under the *NDA*, the prosecution requests the court impose an order authorizing the taking of a number of samples of bodily substances that are reasonably required for the purpose of DNA analysis.

Comments

[33] Although Master Seaman Rumbolt is no longer serving and, as a result, may never engage in this type of inappropriate conduct within the CAF again, it is absolutely imperative that the rest of the CAF community understand that this type of misconduct will not be tolerated and that significant consequences will flow.

[34] Based on the facts of this case, had it not been for the guilty plea and the significant efforts that Master Seaman Rumbolt has invested in his personal rehabilitation, the Court would have had hesitation accepting a non-custodial sentence. However, the joint submission takes into account very significant mitigating factors and recognizes the positive steps taken by him, which are important. Significant credit is appropriate in these circumstances and hopefully his example will serve to inspire and motivate other members who might find themselves in a similar situation to take concrete steps to turn their lives around.

[35] In the Court's view, if there is a possibility that Master Seaman Rumbolt will make enduring progress in his rehabilitation, such improvement would benefit society and the CAF more than incarcerating him and I agree with the recommendation that a non-custodial sentence in this case is warranted.

[36] Although a severe reprimand is a military punishment, it is important to note that based on the scale of punishments set out within section 139(1) of the *NDA*, its imposition is reserved for the most serious offences. He is being treated as a master seaman before the Court today and, as such, it is appropriate the punishment he receives is a military punishment. If Master Seaman Rumbolt was still serving, it would carry significant career implications.

Conclusion

[37] After considering counsel's submissions in their entirety and all the evidence before the Court, I must ask myself whether the proposed sentence would, if reviewed by the reasonable and informed CAF member, as well as the public at large, be viewed as a breakdown in the proper functioning of the military justice system. In other words, would the acceptance of the sentence cause the general public to lose confidence in the military justice system?

Sentence

[38] Considering all the factors, the circumstances of the offence, the consequence of the finding, the sentence and the gravity, I am satisfied that counsel have discharged their obligations in making their joint submission. The recommended sentence is in the public interest and does not bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT:

[39] **FINDS** Master Seaman Rumbolt guilty of the one charge before the Court for assault causing bodily harm, contrary to section 267(b) of the *Criminal Code*.

[40] **SENTENCES** the offender to a severe reprimand and a fine in the amount of \$5,000, payable in ten equal monthly payments of \$500 commencing as soon as possible, and no later than 1 October 2019.

[41] MAKES THE FOLLOWING ORDERS, NAMELY:

- (a) **Weapons Prohibition Order** - In accordance with subsection 147.1(1) of the *NDA*, the Court will impose an order prohibiting the offender from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, to end not before 24 September 2029.
- (b) **Surrender Order** - Whereby the offender must surrender to a member of the military police or to the offender's commanding officer, within 14 days
 - (a) any thing the possession of which is prohibited by the order that is in the possession of the offender on the commencement of the order; and
 - (b) every authorization, licence and registration certificate relating to any thing the possession of which is prohibited by the order that is held by the offender on the commencement of the order.
- (c) **DNA Order** - In accordance with section 196.14(1) of the *NDA*, considering that the offence for which the court has passed sentence is a primary designated offence within the meaning of section 196.11 of the *NDA*, it is hereby ordered as indicated on the attached prescribed form, that the number of samples of bodily substances that are reasonably required be taken from Master Seaman Rene Rumbolt for the purpose of forensic DNA analysis.

Counsel

The Director of Military Prosecutions as represented by Lieutenant-Commander D.R.J. Schroeder and Lieutenant-Colonel S.D. Richards

Mr I. Hutchinson, Hutchinson Law, 305-5670 Spring Garden Road, Halifax, Nova Scotia, Counsel for Master Seaman R. Rumbolt