



COURT MARTIAL

Citation: *R. v. Crouter*, 2022 CM 4007

Date: 20220328

Docket: 202220

Standing Court Martial

Canadian Forces Base Halifax
Halifax, Nova Scotia, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal K.M. Crouter, Offender

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

REASONS FOR SENTENCE

(Orally)

Introduction

[1] Master-Corporal Crouter, having accepted and recorded your plea of guilty in respect of the one charge on the charge sheet, the Court now finds you guilty of that charge for discharging oleoresin capsicum spray (OC spray) in the military police guardhouse, an act to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act (NDA)*.

A joint submission is being proposed

[2] I now need to impose the sentence. This is a case where a joint submission is made to the Court. Both prosecution and defence counsel recommended that I impose a sentence constituted of a fine of \$200, combined with the minor punishment of seven days of extra work and drill.

[3] This recommendation of counsel severely limits my discretion in the determination of an appropriate sentence. As any other trial judge, I may depart from a joint submission only if the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. This is the test promulgated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43.

[4] Indeed, the threshold to depart from the joint submission being made is high as joint submissions respond to important public interest considerations. The prosecution agrees to recommend a sentence that the accused is prepared to accept, avoiding the stress and expense of a trial and allowing efforts to be channelled into other matters. Furthermore, offenders who are remorseful may take advantage of a guilty plea to begin making amends. The most important benefit of joint submissions is the certainty they bring to all participants in the administration of justice.

[5] Yet, even if certainty of outcome is important for the parties, it is not the ultimate goal of the sentencing process. I must also keep in mind the disciplinary purpose of the Code of Service Discipline and military tribunals in performing the sentencing function attributed to me as a military judge. As recognized by the Supreme Court of Canada, courts martial allow the military to enforce internal discipline effectively and efficiently. Punishment is the ultimate outcome once a breach of the Code of Service Discipline has been recognized following either a trial or a guilty plea. It is the only opportunity for the Court to deal with the disciplinary requirements brought about by the conduct of the offender, on a military establishment, in public and in the virtual or physical presence of members of the offender's unit.

[6] The imposition of a sentence at court martial proceedings, therefore, performs an important disciplinary function, making this process different from the sentencing usually performed in civilian criminal justice courts. Even when a joint submission is made, the military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence, the offender and the joint submission are not only considered, but also adequately laid out in the sentencing decision to an extent that may not always be necessary in other courts.

[7] The fundamental principle of sentencing found at section 203.2 of the *NDA* provides that a military judge shall impose a sentence commensurate with the gravity of the offence and the degree of responsibility of the offender.

Matters considered

[8] In this case, the prosecutor read a Statement of Circumstances which was formally admitted as accurate by Master Corporal Crouter. It was entered in evidence as an exhibit, along with other documents provided by the prosecution as required at *Queen's Regulations and Orders for the Canadian Forces* (QR&O) article 112.51.

[9] For its part, the defence produced an Agreed Statement of Facts, to which three letters of appreciation were annexed, describing the personal situation and the

accomplishments of Master Corporal Crouter shortly prior to, at the time and since the offence.

[10] In addition to this evidence, counsel made submissions to support their position on sentence on the basis of the facts and considerations relevant to this case and of precedents in other cases, in order to assist the Court to adequately apply the purposes and principles of sentencing to the circumstances of both the individual offender and the offence committed.

[11] The Statement of Circumstances, the Agreed Statement of Facts, the submissions of counsel and the information on the documents entered as exhibits reveal the following circumstances relevant to the offence and the offender.

The offence

[12] The Statement of Circumstances reveals the following information as it pertains to the offence:

- (a) At the material time, the offender was a member of the regular force posted to the Military Police (MP) Unit Halifax.
- (b) On or about 13 January 2020, the offender was joking around with his colleagues who were using batons on a chair they intended to discard. He discharged a short burst from his OC spray canister onto the empty chair in the dispatch area in the MP Guardhouse in Halifax. There were two other MP officers and a commissionaire in the room at the time.
- (c) The Commissionaire who was in the dispatch area at the time suffers from asthma. He experienced coughing and difficulty breathing. He began to worry he was experiencing the onset of an asthma attack and was not able to locate his puffer in order to reduce the effects of the attack. A MP officer on shift at the time was able to provide the victim with a puffer to reduce the effects of the OC spray. Without the puffer, it is feared that the victim may have had to go to the hospital.
- (d) That same MP officer on shift entered the dispatch area after the offender sprayed the chair and after the chair had been removed from the room. He also began coughing and had to use his puffer to alleviate the spray's effects. Other members on shift at the time did not report significant effects.
- (e) OC spray is a prohibited weapon under the *Firearms Act*. It can cause a number of physiological effects including: shortness of breath, irritation of the eyes, mouth, throat, nose and lungs, and chest pain. The symptoms may be more severe with persons who have underlying respiratory issues, and for those who experience direct contact with the OC spray.

- (f) Master Corporal Crouter had received training on the appropriate use of OC spray and of the effects OC spray has on individuals. Employing the OC spray in the manner he did was contrary to military police training.

The offender

[13] Master Corporal Crouter is a thirty-four years old military policeman who joined the Canadian Armed Forces (CAF) in June 2010. After basic training he trained as a crewman in the armoured corps and served with the 12e Régiment Blindé du Canada (12RBC) in Valcartier. He joined the military police in 2015 and served as a peace officer since, in Halifax, Montreal and, since August 2020, in Bagotville.

[14] The Agreed Statement of Facts, complemented by submissions of counsel, reveals the following facts:

- (a) Master Corporal Crouter deployed to Operation CALUMET from September 2018 to April 2019, for which he earned the Peacekeeping and Multinational Force and Observers medals. Upon returning from that deployment, Master Corporal Crouter received a commanding officer's coin from the Commanding Officer of the MP Unit in Halifax in 2020 for his work as President of the Mess Committee (PMC) of the MP Thunderbird Mess.
- (b) Master Corporal Crouter has received various letters of appreciation throughout his career for his exemplary performance, during tasking such as PMC of the Junior Ranks Mess at Canadian Forces Base (CFB) Bagotville, his performance in delivering training for Operation IMPACT ROTO 6 pre-deployment, and his performance delivering training for Operation REASSURANCE pre-deployment.
- (c) Master Corporal Crouter received an initial counselling for this incident in April of 2021. Master Corporal Crouter's military police credentials were also revoked following the incident and have not yet been reinstated. Although initially posted to a supervisory policing position at CFB Bagotville, the employment of Master Corporal Crouter was re-directed to security duties. Despite these setbacks, he was appointed Master Corporal in July 2021.
- (d) Master Corporal Crouter has been suffering from ongoing mental health issues which were exacerbated by the suicide of a friend last year, also a member of the military police. He has reached out for help. The period of time in which the offence was committed was a difficult period in Master Corporal Crouter's life. His mental health struggles have been exacerbated by these ongoing court proceedings. Master Corporal

Crouter is eager to learn from his mistakes and put these incidents behind him so he can move forward in his career.

Seriousness of the offence

[15] The Court has considered the objective gravity of the offence in this case. The offence of an act to the prejudice of good order and discipline contrary to section 129 of the *NDA*, attracts a maximum punishment of dismissal with disgrace from Her Majesty's service. It is therefore an objectively serious offence going to the core of the need to maintain a disciplined armed force.

[16] Of course, a broad range of circumstances can lead to offences under section 129. This case illustrates a lack of judgement. It led an otherwise reliable member of the military police to misuse what is essentially an issued weapon in the form of an OC spray canister. The dangerous substance was discharged in utter disregard for applicable safety precautions. This failure to adhere to instructions was admittedly prejudicial to good order and discipline and had adverse consequences on two persons.

Objectives of sentencing to be emphasized in this case

[17] The circumstances of this case require that the focus be placed on the objectives of denunciation and deterrence in sentencing the offender. The sentence proposed must be sufficient not only to deter Master Corporal Crouter from reoffending, but must also denounce his conduct in the community, especially the military police, acting as a deterrent to others who may be tempted to engage in the same type of unacceptable behaviour.

[18] The sentence must show that misbehaviour has consequences. In arriving at an appropriate sentence in this case however, I must take into consideration the fact that there has already been consequences imposed on Master Corporal Crouter since January 2020, when the offence occurred. The initial counselling and revocation of military police credentials are administrative consequences which reduce the need for specific deterrence and, for the revocation of credentials, have no doubt had a denunciating effect in the military police community. The same can be said for the fact that a prosecution by court martial is likely to have a significant deterrent effect on a member of the military police which may not be present for other members of the CAF not involved in the administration of military justice. These factors do mitigate the need for specific and general deterrence in the circumstances of this case, even if they cannot be classified as mitigating or aggravating per se.

[19] The circumstances of this case also reveal the need to keep in mind the objective of rehabilitation. As highlighted by counsel for the offender, the sentence proposed must not compromise the efforts that Master Corporal Crouter still have to make to rehabilitate himself as a member of the military police, efforts which he has displayed already given his most satisfactory performance since the offence.

Aggravating factors

[20] The prosecution submits and I agree that the circumstances of the offence and the offender in this case reveal two aggravating factors.

[21] First, the fact that Master Corporal Crouter was entrusted with OC spray by virtue of his duties as a member of the military police. Those entrusted by the public to be equipped with weapons in public are expected to adhere to a high standard of conduct. As stated by the military judge in *R. v. Leading Seaman Sharp*, 2008 CM 1004:

Playing practical jokes using a weapon . . . including OC spray, is simply not tolerable, even more so when the person making the practical joke is there to uphold the law.

[22] The second aggravating factor in this case is the fact that the use of the OC spray in the circumstances has caused significant respiratory distress to one of the person present and not insignificant discomfort to another person subsequently. This highlights the reasons why the rules and safety precautions associated with the handling of OC spray need to be followed.

Mitigating factors

[23] That said, the Court acknowledges the following mitigating factors:

- (a) Master Corporal Crouter's guilty plea today, which avoided the expense and energy of running a trial and demonstrates that he is taking full responsibility for his actions in this public trial in the physical and virtual presence of members of his unit and of members of the broader military community;
- (b) the fact that Master Corporal Crouter is a first-time offender; and
- (c) the fact that Master Corporal Crouter appears to be an otherwise exemplary member of the military police who has demonstrated the capacity to perform at a high level before, at the time of and since the commission of the offence. At his young age, he has many years to contribute to the CAF and to society and any sentence imposed should not unduly compromise this potential contribution.

Assessing the joint submission

[24] In the context of arguments to demonstrate that their joint submission was within a range of similar sentences for similar offences, counsel brought two cases to my attention, representing what defence counsel characterized as bookends for the range of sentence applicable. The first case which is particularly on point as it is specific to misuse of OC Spray is the already mentioned case of *R. v. ex-Leading*

Seaman Sharp, 2008 CM 1004. A member of the military police in the same rank as the offender here, had discharged OC spray at a colleague as a joke at the police station in Trenton, immediately following his last shift before retiring. After having been found guilty of one offence of assault with a weapon and having pleaded guilty of another charge of conduct to the prejudice of good order and discipline, ex-Leading Seaman Sharp was sentenced to a reprimand and a fine of \$1,000.

[25] Counsel also discussed the case of *R. v. Private J.D.P. Fortin*, 2006 CM 97 representing the low end of the range. After returning from a heavy drinking party, when Private Fortin was the designated driver, the inebriated victim was taken to his room by his colleagues, all military police students at basic qualification course in Borden, Ontario. Private Fortin suggested to handcuff the victim as a joke. He used his own handcuffs to do so with the help of a colleague, while another colleague filmed the event. The victim asked twice to be released. Private Fortin acquiesced in his request, using the key to his handcuffs to release him. A few days later, the victim lodged a complaint with the military police. The military judge accepted a joint submission for a fine of \$200.

[26] I do agree with counsel that the proposed sentence is within the range of sentences imposed for similar behaviour in the past. In any event, the issue for me to assess as military judge is not whether I like the sentence being jointly proposed or whether I would have come up with something better. As stated earlier, I may depart from the joint submission of counsel only if I consider that the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

[27] In determining whether that is the case, I must ask myself whether the joint submission is so markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a breakdown in the proper functioning of the military justice system. In this case, I do believe that a reasonable person aware of the circumstances would expect the offender to receive a punishment which expresses disapprobation for the failure in discipline involved and have a direct impact on the offender. The sentence being proposed, combining the punishments of a fine with a minor punishment, is aligned with these expectations. Specifically, I am satisfied that the extra work and drill which will be performed in accordance with the conditions expressed at QR&O 108.35 is a punishment suited to meet the objectives of denunciation and deterrence, without having a lasting effect detrimental to rehabilitation of the offender in the circumstances of this case.

[28] As recognized by the Supreme Court of Canada, trial judges must refrain from tinkering with joint submissions if their benefit can be maximized. Indeed, prosecution and defence counsel are well placed to arrive at joint submissions that reflect the interests of both the public and the accused. They are highly knowledgeable about the circumstances of the offender and the offence, as they are with the strengths and weaknesses of their respective positions. The prosecutor who proposes the sentence is in contact with the chain of command and victims. He or she is aware of the needs of

the military and civilian communities, and is charged with representing the community's interest in seeing that justice be done. Defence counsel is required to act in the accused's best interests, including ensuring that the accused's plea is voluntary and informed. Both counsel are bound professionally and ethically not to mislead the Court. In short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest, as they have demonstrated in this case.

[29] Considering the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I conclude that the sentence being jointly proposed would not bring the administration of justice into disrepute nor would otherwise be contrary to the public interest. I will, therefore accept it.

[30] Master Corporal Crouter, I accept the submission of your counsel essentially to the effect that your conduct of January 2020 reveals a lack of judgement on the part of an otherwise exemplary member of the military police. I trust you have learned a lesson and that you are determined to do much better in the future. The execution of the sentence will provide another occasion to show that you are grateful for the opportunity to redeem yourself. From there, I hope you will be able to move on and be allowed to contribute positively to the important task of law enforcement within and in relation to the CAF and its members.

FOR THESE REASONS, THE COURT:

[31] **SENTENCES** Master Corporal Crouter to fine of \$200 payable forthwith and to the minor punishment of extra work and drill for a period of seven days.

Counsel:

The Director of Military Prosecutions as represented by Major M. Reede

Major F.D. Ferguson, Defence Counsel Services, Counsel for Master Corporal
K.M. Crouter