



COURT MARTIAL

Citation: *R. v. Laffin*, 2022 CM 5020

Date: 20221219

Docket: 202237

Standing Court Martial

14 Wing Greenwood
Greenwood, Nova Scotia, Canada

Between:

His Majesty the King

- and -

Warrant Officer K. Laffin, Offender

Before: Commander C.J. Deschênes, M.J.

REASONS FOR SENTENCE

(Orally)

Overview

[1] Warrant Officer Laffin pleaded guilty to an offence of drunkenness. The incident occurred on 2 June 2022 at Canadian Forces Base Trenton during his attendance at the Royal Canadian Air Force Tactical Command and Control Course. While at the Officer's Mess, wearing his uniform and in the presence of several classmates, he drank to excess, resulting in becoming highly intoxicated. During that evening, he was seated beside the complainant, Captain Lewis, and he put his right hand on her arm several times. Each time, she told him to stop, and she removed his hand from her arm. He then placed his hand on her leg, around her mid-thigh. She again told him to stop and removed his hand. He repeated the motion, and she responded the same way. Not long after, the complainant's husband, Corporal Boucher, arrived at the mess and sat down near his wife. Corporal Boucher observed Warrant Officer Laffin's hand against the side of her thigh. He told him to remove his hand. Warrant Officer Laffin did so, then both Captain Lewis and Corporal Boucher left the mess.

[2] After Warrant Officer Laffin's guilty plea was recorded, counsel proposed a joint submission of a reprimand combined with a fine in the amount of \$2,000. The issue for the Court to determine is whether imposing the sentence jointly recommended by counsel would bring the administration of justice into disrepute or is otherwise contrary to the public interest in the circumstances of this case. For the reasons that follow, the Court finds that the joint submission of a reprimand combined with a fine in the amount of \$2,000 is not contrary to the public interest.

Whether imposing a reprimand combined with a fine in the amount of \$2,000 would bring the administration of justice into disrepute or is otherwise contrary to the public interest

Positions of parties

[3] The prosecution contended that the objectives of general deterrence and denunciation should be the focus of the punishment because there is no excuse for becoming severely intoxicated. He identified as aggravating: the offender's rank and experience, that the conduct involved the repeated violation of the bodily integrity of another Canadian Armed Forces (CAF) member and that the touching became more invasive. He also contended that the intervention of the spouse of the complainant, a subordinate, to put an end to the conduct, aggravates the circumstances. The prosecution considered as mitigating the guilty plea, that Warrant Officer Laffin is a first-time offender, that he has the support of his chain of command and that he has a good service record. The prosecution also considered his apology, and that he has taken positive steps to rehabilitate himself.

[4] The defence explained that Warrant Officer Laffin suffered from his deployment in support of Operation IMPACT. In fact, his actions on 2 June 2022 were fueled by undiagnosed post-traumatic stress disorder (PTSD) issues. He was in fact using alcohol as a coping mechanism, but he eventually sought medical assistance. Defence counsel also explained that the offender wanted to resolve this disciplinary matter quickly. His apology came of his own volition. Counsel contended that Warrant Officer Laffin did not attempt to rationalize, excuse or justify his actions; he took full responsibility for his conduct. Defence counsel further informed the Court that the last few years have been challenging for the offender, with the untimely passing of his mother whom he was close to, and to whom he did not have a chance to say a proper goodbye. Additionally, despite the circumstances of the offence, he has the support of his wife and children. Finally, counsel contended that the letter from Warrant Officer Laffin's commanding officer (CO), who described the contentious conduct as being out of character, is meaningful because the CO has known him for many years. Defence concluded that there is little else the offender can do to repair the harm done by his conduct, other than pleading guilty.

The public interest test

[5] When considering the joint submission, sentencing judges must turn to the public interest test. This test requires that the joint submission be rejected only when it is so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. In other words, in light of the circumstances of the case and of the offender, the joint submission is either so severe or so lenient, as the case may be, that accepting it would bring the military justice system into disrepute. This high threshold means that the sentencing judge has limited discretion when considering a fair and fit sentence and must exhibit restraint when considering rejecting a joint submission.

[6] Guilty pleas in exchange for joint submissions are a necessary part of the administration of both criminal and military justice. When properly conducted, plea resolutions benefit not only the accused, but also victims, witnesses, counsel, and the administration of justice generally. Accused persons who plead guilty are able to minimize the stress and legal costs associated with trials, and for those who are truly remorseful, a guilty plea offers an opportunity to begin making amends. For many accused, certainty as to the outcome of the trial proceedings is paramount and provides some comfort. Indeed, generally, accused persons will not give up their right to a trial on the merits, and all the procedural safeguards it entails, unless they have some assurance that the agreements entered into with the prosecution will be honoured. The prosecution also relies on joint submissions to see fast and fair resolution of its cases.

[7] Both the prosecution and defence counsel are well placed to arrive at a joint submission that reflects the interests of their respective clients. Counsel have an in-depth knowledge of the circumstances of the offender, the offence, and the strengths and weaknesses of their respective positions. Their professional and ethical obligations as well as their accountability toward the party they represent, toward the Court and the public, ensure that they accord due diligence when arriving at resolution so the recommended punishment is fair and consistent with the public interest. Counsel are, in this context, expected to have considered the sentencing principles of the military justice system, in particular the fundamental purposes of sentencing, which is to maintain the discipline, efficiency and morale of the CAF. Counsel are required to ensure that their joint submission is proportionate to the gravity of the offence and the degree of responsibility of the offender.

Circumstances of the offender

[8] In determining whether the joint submission meets the public interest test, in addition to the circumstances surrounding the offence, I must also take into account the personal situation of the offender. The documentary evidence listed at article 111.17 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) reveals that Warrant Officer Laffin is forty-five years old and enrolled in the CAF on 10 June 1995. He deployed on four occasions from October 2014 to November 2017 in support of Operation IMPACT. His deployments were normally for periods of three months. He

received several decorations, including two General Campaign Stars – EXPEDITION (GCS-EXP), two General Service Medals – EXPEDITION (GSM-EXP), as well as the Canadian Forces Decoration. Except when he was away on deployment, he has been serving in Greenwood, Nova Scotia, since 2008 and at the time of the commission of the offence, he was a member of 404 Squadron. He has over 116 hours of flying time. He was promoted substantive to his current rank in October 2021. He has no conduct sheet. He has a spouse and two dependents.

[9] An agreed statement of facts was introduced by the defence which explains that while Warrant Officer Laffin was deployed in 2017, he witnessed non-combatants, namely women and children, killed during a kinetic strike on a legitimate military target. This had immediate and long-term effects on his mental health, resulting in the summer of 2021 diagnosis of PTSD, anxiety and depression. He has been prescribed medications to attenuate the effects of these conditions and he is actively engaged in his treatment.

[10] Prior to his diagnosis and treatment, he turned to alcohol to self-medicate. This rapidly devolved into the abuse of alcohol. Recognizing then that he had an issue with alcohol abuse, he sought out counselling. Since the incident forming the basis of the charge, he has abstained from the consumption of alcohol. He continues to see a counsellor who supports him in his sobriety.

[11] In late 2020, at the height of the COVID-19 pandemic, Warrant Officer Laffin's mother was diagnosed with cancer. At the time of her diagnosis, the cancer had spread to such a degree that her prognosis was terminal. It was hoped she would enjoy one more Christmas holiday with her family. However, due to further health complications, she died in the fall of 2020 while Warrant Officer Laffin was completing his Intermediate Leadership Qualification. Prior to his mother's passing, his spouse and one of his children were experiencing personal health issues which required his intervention.

[12] Since his mother's passing, Warrant Officer Laffin has been getting support and treatment. He sees a psychologist and medical officer to address his underlying mental health issues. He has the support of his wife and children. From a community perspective, he is also supported by close friends

[13] The defence also introduced a letter from Warrant Officer Laffin's CO, who wrote that he has known the offender for many years. He explained that the offender repeatedly demonstrated himself as a responsible, principled, and dependable member of the CAF, one who acts with a great sense of integrity and accountability. He is a socially responsible member who consistently steps forward to help people in need and to support colleagues at the squadron. He selflessly volunteers to lead various initiatives to improve squadron life and esprit de corps. The CO wrote that while recent events call into question Warrant Officer Laffin's decision making and actions at that time, he assures the Court that the allegations that led to the convening of this court martial are not representative of the offender's character based on his observations over the last thirteen years.

[14] Warrant Officer Laffin read an apology letter to Captain Lewis and her family during the trial. He wrote that he understands that his conduct was inappropriate and does not align with the ethical standards of the CAF as a whole. He recognized that everyone has the right to be treated with respect, dignity, and to feel safe within the institution but that he failed to uphold that value. He knows he has lost her respect due to his actions that night. He offers his regret and a heartfelt apology to her and her family for his failure to act in a professional and respectful manner. He takes full responsibility for his behaviour and, with assistance, has been working towards correcting it. He also mentioned that he cannot expect the complainant's forgiveness, though he can certainly hope for it.

Aggravating factors

[15] Turning to the circumstances surrounding the commission of the offence, which must also be considered, I agree generally with the aggravating factors identified by the prosecution, in particular that the conduct involved the repeated touching of another CAF member, resulting in the violation of her bodily integrity. Warrant Officer Laffin's rank and experience are also aggravating circumstances; a member who has served in the military as long as he has ought to know that they should not allow themselves to become highly intoxicated at the mess in uniform in presence of other CAF members. Nothing good can come out of this. The offence reflects poor judgement on his part. Additionally, the intervention of a corporal to protect his spouse from the touching of a senior non-commissioned member is very troubling. I acknowledge however that the degree of force offered by the offender was minimal, and there are no known adverse consequences on the complainant, who, according to the prosecutor, did not wish to provide a victim impact statement. It remains that participants in unit functions should not be subjected to any kind of inappropriate touching, even of minor intensity.

Mitigating factors

[16] I also agree with counsel's positions regarding the relevant mitigating factors of this case: the guilty plea demonstrating an offender who is taking full responsibility for his actions in this public trial in the presence of members of his unit and community. Warrant Officer Laffin also informed counsel at an early stage of his intent to plead guilty. He is a first-time offender. Further, it is apparent that he has the trust and support of his CO who holds him in very high regard. Warrant Officer Laffin's apology seems sincere; I agree that he did not try to downplay or justify his actions. While this is no excuse, I am informed of the continuing challenges he has faced in the last two years. These were tough times for him and his family. Considering also his outstanding service to the CAF and continued performance up to the incident, combined with the efforts he undertook to address his alcohol consumption and mental issues, the offender is on a clear path for rehabilitation.

Parity

[17] In determining whether the joint submission meets the public interest test, the Court considered punishments imposed in other cases for offenders in a similar situation for similar offences in similar circumstances. In sum, the Court is required to determine whether the proposed punishment is within the range of punishment for similar cases. I have considered the cases provided by the prosecution. In particular, in *R. v. Billings*, 2022 CM 2011, Petty Officer, 1st Class Billings struck the victim on the buttocks with his hand using significant force. A joint submission of a severe reprimand and a fine in the amount of \$2,500 was accepted by the Court. In *R. v. Petty Officer 2nd Class K.C.S. Melchior*, 2007 CM 1009, a case subjectively less serious, a sentence of a reprimand combined with a fine in the amount of \$1,500 was imposed following the acceptance of a joint submission. Therefore, a review of the cases submitted by counsel satisfy the Court that the joint submission meets the parity principle.

Principles of sentencing deserving greatest emphasis

[18] Considering the offence to which the accused pleaded guilty, and in light of the circumstances surrounding this case, I agree with counsel that the fundamental purpose of sentencing shall be achieved by imposing a sanction that has the objectives of deterring others from adopting the same conduct and denouncing unlawful conduct. The proposed punishment certainly does meet these objectives.

Conclusion

[19] Consequently, in reviewing the documentary evidence and considering counsel's submissions, it is apparent that they carefully assessed the relevant circumstances of this case when they arrived at their joint submission, including the aggravating and mitigating factors as well as the personal situation of the offender. Considering the evidence before me, imposing a sentence of a reprimand combined with a fine in the amount of \$2,000 would not be contrary to the public interest and would not bring the military justice system into disrepute.

[20] Warrant Officer Laffin is on the right path. The Court finds that there is no reason why he should not be able to continue progressing in his career.

FOR THESE REASONS, THE COURT

[21] **FINDS** Warrant Officer Laffin guilty of one count of drunkenness, contrary to section 97 of the *National Defence Act*.

[22] **SENTENCES** him to a reprimand and a fine in the amount of \$2,000. The fine is payable in monthly instalments of \$200, beginning 1 February 2023. In the event that he is released from the Canadian Armed Forces for any reason before the fine is paid in full, the outstanding balance is to be paid the day prior to release.

Counsel:

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

Captain C. Da Cruz, Directorate of Defence Counsel Services, Counsel for Warrant
Officer K. Laffin