



COURT MARTIAL

Citation: *R. v. Bertuzzi*, 2014 CM 1027

Date: 21041201

Docket: 201429

Standing Court Martial

Asticou Centre Courtroom
Gatineau, Québec, Canada

Between:

Her Majesty the Queen

- and -

Ex-Sapper T.J. Bertuzzi, Offender

Before: Colonel M. Dutil, C.M.J.

REASONS FOR SENTENCE

(Orally)

[1] Ex-Sapper Bertuzzi has pleaded guilty to one count of insubordinate behaviour under section 85 of the *National Defence Act*, and one count of absence without leave under section 90 of the *Act*. Counsel for the prosecution and defence have made a joint submission on sentence. They recommend that the court impose a severe reprimand accompanied by a fine in the amount of \$100. The court is not bound by this joint proposal but it cannot reject it unless it is unfit, contrary to the public interest or if it would bring the administration of military justice into disrepute.

[2] The summary of circumstances surrounding the commission of the offences filed at Exhibit 7 reads as follows:

"The statement of circumstances is reproduced as presented at Exhibit 7"

1. At the time of the events, Sapper Bertuzzi was a member of the 5th Combat Engineer Regiment (5 CER), in Valcartier.

2. At around 11:15 hrs, on 4 February 2014, Cpl Johnston was working on the Reverse Osmosis Water Purification Unit (ROWPU) with Sgt Fillion and Sgt Mikhail. At some point, Sgt Fillion sent Cpl Johnston to get Spr Bertuzzi, so he could help him retrieve a bladder and take it to the ROWPU bay.

3. Cpl Johnston walked to the Resource Troop bay, saw Spr Bertuzzi sitting in the office area and he requested his help. Spr Bertuzzi replied that it was almost lunch and that he didn't want to.

4. Cpl Johnston responded that the bladder would be filled over the lunch hour so they needed to retrieve it now. He then walked away to get a trolley to move the bladder with. Upon his return, Spr Bertuzzi still had not moved, so Cpl Johnston reiterated that the task needed to be done now.

5. Spr Bertuzzi mumbled a response and Cpl Johnston moved away to get more things prepared for taking the bladder down from the rafters. When he returned a third time, Spr Bertuzzi was still sitting so Cpl Johnston told him again that he had to help him.

6. Spr Bertuzzi started to curse at Cpl Johnston, calling him an *asshole*. Cpl Johnston noticed that Spr Bertuzzi looked ill, so he responded that if he was sick, he should go to the MIR, but if he comes to work, he should be prepared to work. Spr Bertuzzi then left so Cpl Johnston asked Cpl Morasse for help, which he gladly did.

7. As Cpl Johnston was carrying the bladder to the ROWPU bay, he saw Spr Bertuzzi by the canteen and Spr Bertuzzi started yelling at him again. Cpl Johnston ignored him and continued to walk toward the ROWPU bay. Cpl Johnston then set up the bladder with Sgt Fillion and Sgt Mikhail.

8. Shortly after, Spr Bertuzzi came into the ROWPU bay. He walked toward Cpl Johnston in a threatening manner while yelling "*fucking asshole, you call me lazy, you want to fuck with me*". Spr Bertuzzi had his fists closed while walking towards Cpl Johnston, who then believed that Spr Bertuzzi was going to hit him.

9. Sgt Fillion was also certain that Spr Bertuzzi was going to hit Cpl Johnston, so he stepped in and tried to calm him down. After a few unsuccessful tries, Spr Bertuzzi finally started to calm down and Sgt Fillion brought him out of the bay and into the office of Sgt St-Germain, so he could calm down. He then asked Spr Bertuzzi to explain what had happened, from his perspective.

10. Spr Bertuzzi explained that he hated Cpl Johnston and that everything that just happened was Cpl Johnston's fault. He said that everyone was telling him what to do and that nobody was leaving him alone. He said that he went to the hospital the same morning, but that all they did was give him useless pills. He further said that he had not slept well the night before and that partly explained the mornings events. He spoke a few times about suicidal thoughts over the conversation, but he did not have any plans or intent to act on them. He thought that everyone would be better without him and that suicide would be the only way to avoid having further anger outbursts.

11. Following this conversation, Sgt St-Germain stayed with Spr Bertuzzi while Sgt Fillion informed his chain of command. A meeting was arranged with a nurse at the Valcartier Health Center, at 13:15 hrs the same day. Sgt Fillion and Capt Turzanski accompanied Spr Bertuzzi to this meeting. The medical personnel then took charge of Spr Bertuzzi.

12. Spr Bertuzzi was back to work on 5 February 2014.

13. Around 15:50 hrs, on 5 February 2014, WO Rose met with all members of the Resource Troop, including Spr Bertuzzi. He explained that lots of work would need to be done in the coming days, since they were back from exercise, and he confirmed when and where members were to be. He stated that everyone was to be ready to work by 07:30 hrs on 6 February 2014. This was the usual timing for this Regiment, while in Garrison.

14. On 6 February 2014, at 07:30 hrs, Sgt Fillion and Sgt Simard noticed that Spr Bertuzzi was absent. Sgt Simard called Spr Bertuzzi on his cell phone but he only got an automatic reply from the phone service provider. Then, at 07:48 hrs, he sent a text message to Spr Bertuzzi. At 08:15 hrs, Spr Bertuzzi called Sgt Fillion. He informed him that he had just woke up and that he was on his way to the Regiment.

[3] Counsel provided the court with an agreed statement of facts (Exhibit 8). It reads as follows:

"The agreed statement of facts is reproduced as presented at Exhibit 8"

1. Prior to the events stated in the Summary of Circumstances, Spr Bertuzzi was seen a number of times by health professionals, on and off base, who dealt with him in English. Spr Bertuzzi declined group therapy because it was only available in French.

2. On 2 February 2014, Spr Bertuzzi received the following medical employment restrictions: *"Besoin d'un suivi médical plus souvent qu'aux 6*

mois. Inapte au travail en milieu opérationnel. Pas d'utilisation arme ou explosif."

3. On 14 July 2014 Spr Bertuzzi appeared in Municipal court to face charges. He pled guilty to one count of mischief under section 430(1)a) of the Criminal code, for events that took place on 8 June 2013. He also pled guilty to one count of possession and use of a credit card under section 342(1)c) of the Criminal code, for events that took place on 19 August 2013. He was sentenced to an absolute discharge for both of these charges.

4. Spr Bertuzzi was released from the CAF on 22 August 2014, under item 5(f) – Unsuitable for further service. He currently resides in Sudbury, Ontario.

5. Spr Bertuzzi has been accepted at Cambrian College, on the Electrical Techniques course, which is set to begin in January 2015 at campus Barrydowne, in Sudbury.

[4] The offender also testified that since his release from the Canadian Armed Forces, he has moved with his mother in Sudbury, Ontario. He will commence an Electrical Techniques course in January 2015 and he has already engaged several thousand dollars in doing so. He expects to attend at his education programme for the next two years. He is currently in receipt of unemployment insurance benefits, since last month. He also contributes to his mother expenses significantly because she has modest revenues.

[5] In sentencing an offender under the Code of Service Discipline, a court martial should guide itself with the appropriate sentencing purposes, principles and objectives, including those enunciated in sections 718.1 and 718.2 of the *Criminal Code*. The fundamental purpose of sentencing at court martial is to contribute to the respect of the law and the maintenance of military discipline by imposing punishments that meet generally one or more of the following objectives:

- (a) the protection of the public, including the Canadian Forces;
- (b) the denunciation of the unlawful conduct;
- (c) the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences; and
- (d) finally, the reformation and rehabilitation of the offender.

[6] The sentence must also take into consideration the following principles. It must be commensurate with the gravity of the offence, the previous character of the offender and his/her degree of responsibility. The sentence should be similar to sentences

imposed on similar offenders for similar offences committed in similar circumstances. A court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances. Finally, the sentence should or will be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. However, the court must act with restraint in determining sentence in imposing such punishment or punishments that constitute the minimum necessary intervention to maintain discipline. In this case, the sentence must emphasize the objectives of denunciation as well as general deterrence. The young age of the accused and the fact that he has since been released from the Canadian Armed Forces does not require that the sentence emphasize the need for specific deterrence.

[7] The aggravating factors in this case are the following:

- (a) The numerous prior convictions for similar types of offences in less than four years. He also has a criminal record; and
- (b) the circumstances surrounding the commission of the offences.

[8] The mitigating circumstances are the following:

- (a) Ex- Sapper Bertuzzi has accepted full responsibility for his conduct by pleading guilty;
- (b) since being released from the Canadian Armed Forces, he has taken positive steps to start a new career. The fact that he has engaged significant sums of money indicates that he is serious in moving forward as a positive contributor to our Canadian society; and
- (c) finally, the financial situation of the offender since being released from the Canadian Armed Forces.

[9] I find that the proposed sentence is the minimal sentence in the circumstances. The proposed sentence is adequate to meet the objectives sought; namely, denunciation, general deterrence and rehabilitation.

FOR THESE REASONS, THE COURT:

[10] **FINDS** the offender, ex- Sapper Bertuzzi, guilty of the one count of insubordinate behaviour under section 85 of the *National Defence Act*, and one count of absence without leave under section 90 of the *Act*.

AND

[11] **SENTENCES** the offender, ex-Sapper Bertuzzi, to a severe reprimand and a fine in the amount of \$100.

Counsel:

Major P. Doucet, Canadian Military Prosecution Service
Counsel for Her Majesty the Queen

Major E. Thomas, Directorate Defence Counsel Services
Counsel for ex-Sapper T.J. Bertuzzi